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FD-516 - 2-18-61

DECLASSIFIED

DEPARTMENT OF STATE
BUREAU OF INTERNATIONAL DEVELOPMENT
Washington, D. C. 20523

ORDER FORM

Approved and Recommended
For the Interest of the
Development Loan Committee

698-H-005
671-081

Approved - United Nations Loan 698-H-005, State Department

6/13/96

698-H-005

DECLASSIFIED

PROJECT DATA SHEET

1. PROJECT TITLE: **ROADS FOR DEVELOPMENT OF TRANSPORTATION**

2. PROJECT NUMBER: **000-0-0000**

3. PROJECT TYPE: **ROAD**

4. ESTIMATED PV OF PROJECT COMPLETION: **2,700**

5. ESTIMATED PV OF AUTHORIZATION/OBLIGATION: **INITIAL 2,700**

6. ESTIMATED TOTAL COST (GOODS AND SERVICES BY DATE 7/1/77): **2,700**

ITEM DESCRIPTION (YTD TOTAL)	INITIAL VALUE BY			ALL VALUES		
	Q. 1-3	Q. 4-6	Q. 7-9	Q. 1-3	Q. 4-6	Q. 7-9
ROADS	2,700	0	0	2,700	0	0
OTHER	0	0	0	0	0	0
TOTAL	2,700	0	0	2,700	0	0

Q. 1-3	Q. 4-6	Q. 7-9	TOTAL VALUE			
			Q. 1-3	Q. 4-6	Q. 7-9	TOTAL
2,700	0	0	2,700	0	0	2,700

To finance a portion of the cost overrun stemming from the construction of the Bunduma-Iyayi section of the Tazara Highway.

Project Committee
GC/ATR: **Muntelinger**
ATR/ISA: **DC Kaele**
TTC/DPRE: **Bodell**

13. WRITE COMMENTS WITHIN IN BLOCKS 13, 14, OR 15 OF THE BID FACE SHEET? IF YES, ATTACH CHANGED BID FACE SHEET.

Yes No

14. DATE RECEIVED IN AID/M, or For AID/M DOCUMENTS, DATE OF DISTRIBUTION

Edward Hogan, Director, RDBSO/EA

3 3 0 7 6

15 9 4 7 6

1/ Date upon which October 3, 1973 settlement agreement of \$4 million payable in U.S. dollars was based.

2/ Represents estimated amount of Tanzanian source procurement to be financed under the loan. It does not, however, represent a true "local cost", since the amount is payable in U.S. dollars, not in Tanzanian shillings. See FP page 15.

DEPARTMENT OF STATE
AGENCY FOR INTERNATIONAL DEVELOPMENT
WASHINGTON, D.C. 20522

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AID-DLC/P-2157

May 13, 1976

MEMORANDUM FOR THE DEVELOPMENT LOAN COMMITTEE

SUBJECT: Tanzania - TanZam Highway Loan 698-H-005, Third Amendment

Attached for your review are the recommendations for authorization of a loan not to exceed Three Million Eight Hundred Seventy Thousand United States Dollars (\$3,870,000) to the Government of the United Republic of Tanzania ("Borrower") to assist in financing the foreign exchange and local currency costs of goods and services required for the construction of the Tunduma-Iyayi portion of the Tan-Zam Highway Project.

No meeting is scheduled for this proposal. However, please advise us of your concurrence by e.o.b. Thursday, May 20, 1976. If you are a voting member a poll sheet has been enclosed for your response.

Development Loan Committee
Office of Development Program Review

UNCLASSIFIED

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UNITED REPUBLIC OF TANZANIA

TanZam Highway Loan 698-N-005
Third Amendment

PART I - SUMMARY AND RECOMMENDATIONS

A. Recommendation: Authorization of a \$3,870,000 loan amendment to assist in financing cost overruns of the Tunduma-Iyayi construction contract.

1. Borrower: The Government of the United Republic of Tanzania

2. Loan Amount: \$3,870,000

3. Terms:

- a) Maturity - 40 years, 10 year grace period on repayment of principal
- b) Interest - 2 percent during grace period
3 percent per annum thereafter
- c) Repayment - Interest and principal repayable in U.S. dollars.

4. A.I.D. Financing:

Prior A.I.D. loan financing	\$17,047,721.51
Proposed Third Amendment	<u>3,870,000.00</u>
Total	\$20,917,721.51

B. Description of the Project: The project, which is physically completed and operational, consisted of the construction of approximately 150 miles of the Tunduma-Iyayi section of the TanZam Highway. However, Nello L. Teer Company (NLT) of Durham, North Carolina, the construction contractor, submitted various claims for increased compensation totalling \$12,189,661.78. These claims were not accepted by the Government of Tanzania (TanGov). Arbitration of the dispute was therefore entered into, but a settlement agreement was negotiated prior to completion of the arbitration hearings. The agreement specified that the TanGov would pay NLT \$4,000,000 in satisfaction of the claims plus costs of arbitration which the arbitrator assessed at \$577,320. A Consent Award reflecting the terms of the settlement was issued on October 3, 1975. This

proposed loan amendment, exclusive of prior A.I.D. contributions to the TanZam Highway (Tanzania section) of approximately \$11,500,000, will assist the TanGov in financing the additional construction costs resulting from the settlement and Consent Award.

- C. Summary Findings: Arbitration and a negotiated settlement of disputes arising during the performance of the Tunduma-Iyayi highway construction by the U.S. contractor have determined the amount of cost overruns under or in connection with that A.I.D.-financed contract. The Tunduma-Iyayi section is one A.I.D. and TanGov component of the over-all TanZam Highway Project to which A.I.D. has made a substantial contribution. It is considered appropriate and justified for A.I.D. to assist the TanGov in financing the determined cost overruns.

PART II - PROJECT BACKGROUND AND DETAILED PROJECT CLAIM DESCRIPTION

- A. Background: The completed Tan-Zam Highway, which runs from Dar es Salaam and joins an older highway approximately 80 Kms. from Lusaka, was designed to improve internal road transportation between Zambia and East Africa, particularly between Zambia and the Indian Ocean ports in Tanzania and Kenya. The portions of the road for which A.I.D. financed construction and/or engineering services are entirely within Tanzania. Sweden, the U.K. and the IBRD provided financing for construction and engineering services not financed by A.I.D. The AID contribution was not pooled with those of other donors, and A.I.D.-financed contracts were administered separately.

Under Loan 698-H-005, as amended, AID agreed to provide up to \$17,900,000 to finance (1) a portion of the cost of the construction supervision contract, which was performed by DeLeuw Cather International, Inc. (DCI), and the construction contract, which was performed by the Nello L. Teer Co. (NLT) for the Tunduma-Iyayi section (approximately 150 miles); and (2) engineering design contracts for the Iringa-Mahenge and the Dar-Morogoro sections, which were also performed by DCI. The engineering design services for the Tunduma-Iyayi section together with engineering reconnaissance surveys of the Iringa-Mahenge and Dar-Morogoro sections, was financed by A.I.D. under Loan No. 698-H-003 totalling \$1,600,000. Under a subsequent loan, 698-H-007, in the amount of \$15,000,000 as amended, A.I.D. assisted in financing construction and engineering supervision services for the Dar-Morogoro section, performed by NLT and DCI, respectively, and the engineering design of the Dar Port Access Road by Lyon Associates Incorporated. Adjusted for

deobligations of roughly \$3,000,000, the total contribution by A.I.D. to the TanZam Highway thus has been approximately \$31,500,000. A.I.D. also grant-financed certain feasibility studies.*

NLT entered into a contract with the TanGov on August 6, 1968, to construct the Tunduma-Iyayi section. DCI as the design engineer prepared the technical design and specifications and the initial draft of the invitation for bids, which in essence provided the original text of the contract. NLT was mobilized to begin work in September 1968 and worked under the supervision and direction of DCI, also the supervising engineer, in carrying out the construction. Construction was completed in December 1972 and NLT's maintenance period ended in December 1973. AID Engineers have determined that the physical construction of the AID-financed portion was successful.

NLT's contract for the Tunduma-Iyayi section was of the fixed unit price type whereby the contractor receives periodic payments equal to the unit prices for various kinds of work multiplied by the actual quantities of work performed. An over-all contract price ceiling would have been determined at the time of bidding by multiplying the unit prices by the quantities of work estimated by DCI as being necessary to complete the road. Actual quantities always vary from those estimated on a job of this magnitude, and DCI, which furnished certifications for all of NLT's payment requests, approved the actual quantities for which payment was made. Local currency payments also had to be approved by the TanGov.

Aggregate payments to date for the Tunduma-Iyayi construction were as follows:

	<u>By TanGov</u>	<u>By AID (005)</u>	<u>Totals</u>
To NLT	\$7,768,222.03	\$14,396,337.93	\$22,164,559.96

A.I.D. has also financed \$2,651,383.58 of the DCI contracting resulting in total disbursements under 698-H-005 of \$17,047,721.51.

Total available under 698-H-005	\$17,900,000.00
Total Disbursed by AID to NLT and DCI	<u>17,047,721.51</u>
Decbligated June 1975	\$ 852,278.49

* Total cost of the over-all TanZam Highway Project is estimated at approximately \$126.1 million. This is based on an estimated input of \$90.0 million from other donors and the Governments of Tanzania and Zambia (as shown in the CAP for Amendment Two to AID Loan 698-H-005), the \$31.5 million contribution to date from AID, plus the currently proposed \$3.9 million contribution from AID and the additional \$.7 million to be contributed by the TanGov.

- B. Project Claim: During and after construction NLT submitted certain requests for compensation which the TanGov refused to pay in full. The parties were at a stalemate and unable to negotiate a settlement at that early stage and NLT, as provided for in the contract, demanded arbitration. NLT's sixty-four page letter to the TanGov dated June 29, 1973, referred to the apparent necessity for arbitration and summarized the claims, alleged to total \$12,189,661. The claims were similarly described in NLT's "Points of Claim" (Annex B) or complaint which was submitted at the outset of the arbitration proceedings.

An experienced arbitrator, Mr. Richard J. Soper, a British barrister and civil engineer with some experience in road building in LDC's was selected in the spring of 1974 by the parties. Following several preliminary meetings, the selection of legal counsel and the preparation of the respective cases, hearings were held from time to time between September 1974 and September 1975. During the hearings each party was represented by a barrister and his assistant, solicitors and British engineers, as well as their own personnel. For the TanGov the latter were a lawyer from the Attorney General's office and representatives of the Ministries of Finance and Communications and Works ("Comworks"). NLT's in-house representation included its General Counsel and various personnel who were engaged in the Tunduma-Iyayi construction.

In the sixty-four page letter and the Points of Claim NLT divided its claims into "liquidated" and "unliquidated" categories. A summary of the liquidated claims, which totalled \$1,380,266.44, is presented in Annex C to illustrate the nature of the liquidated category and that these claims are of a type which would represent contract cost overruns.

REDSO/EA has been informed that up to the point when arbitration hearings were pre-empted by settlement negotiations in September 1975 the presentation of evidence had been completed only on the liquidated claims. Of these, numbers 11, 12, 14, 16, 18 and 19 had been deferred to be heard with the cases on unliquidated claims on the theory that the evidence needed to prove these claims was included in that needed to prove certain unliquidated claims.

Unlike the rather precise and quantified liquidated claims, the unliquidated variety, as can be seen from NLT's pleadings, the sixty-four page letter and the Points of Claim, were and still remain generalized allegations of interacting and inter-related causes

beyond the control or responsibility of MLT which are said to have had a "ripple" effect resulting in increased costs of performance to NLT for which it has not been paid. It is understood that this type of pleading which, in effect, merely gives notice to the respondent and the forum as to the nature of the claims and the dispute and leaves it to subsequent phases of the proceeding for the particulars and evidence of the alleged damages to be produced, is not irregular, although it provides only the barest of initial outlines. It also appears that the TanGov's pleading ("Points of Defense") (Annex D) included a general denial but no detailed rebuttal of the allegations made by MLT in support of its unliquidated claim. The unliquidated claims were alleged to be \$10,809,394.56.

NLT's sixty-four page letter provides the following summary of alleged "...items consisting of or contributory to the damages making up or comprising the unliquidated aspect of our claim..."

- "1) Damages arising out of Stop Orders pertaining to grading operations in early 1969.
- 2) Indirect damages arising out of erroneous designation of the Vwawa Quarry site, which basically upset our entire construction schedule concerning work dependent on crushed stone throughout the entire construction program.
- 3) Damages arising out of numerous grade changes and realignments that occurred on a frequent and continuing basis from early 1969 until late 1971, all of which interrupted our planned sequence of operations and schedules, affecting our overall job costs and efforts expended throughout the entire construction program.
- 4) Damages caused by the Engineer's having inadequate field engineering forces; see Exhibit 14.
- 5) Damages arising out of the interference by the Engineer with construction operations by issuance of unnecessary and unjustified Stop Orders, particularly in October and November 1969, and on various other occasions. See the Contractor's letter to the Engineer under date of December 1, 1969 (Exhibit 17).

- 6) Damages arising out of inefficiencies of the Contractor's base and pavement operations during the 1969-1970 and 1970-1971 rainy seasons, which inefficiencies resulted from the Engineer's attempts to use unsuitable materials for sub-grade and sub-base.
- 7) Damages arising out of the prolongation of the work program resulting from the use of erroneous testing procedures by the Engineer in his attempt to obtain a better quality product than was contractually required.
- 8) Damages arising out of the Engineer's disallowance of specification tolerances with respect to sub-grade and sub-base surfaces in an attempt to achieve a better product than was contractually required, thereby prolonging the period of construction and requiring thicknesses of sub-base and base course materials in excess of those contractually required and paid for.
- 9) Damages arising out of the Engineer's delay in recognizing the urgent need of redesigning the pavement structure and his failure to redesign the project on a timely basis.
- 10) Damages arising out of the delay in the execution of Variation Order No. 18.
- 11) Damages arising out of the delay in execution of Contract Amendment No. 2.
- 12) Damages arising out of the continuous changes in scope of work from project inception to project completion.
- 13) Damages arising out of the Engineer's continued predilection and attempts to cut corners in a febrile effort to reduce the cost of the project regardless of the economic risks entailed to the Owner and regardless of the disruption of and added cost to the Contractor's operations, all of which completely changed the character of the work anticipated to be done. For example, the extensive and massive "patching" of failed pavement structure areas and constant changes in definition of pavement overlay areas made it completely impossible for the Contractor to plan and execute or to keep any semblance of an organized paving sequence during the latter half of 1971 and during 1972."

The TanGov in its "Points of Defense" (Annex D) generally denied that the Claimant NLT was entitled to the amount of damages claimed for all of the above items.

NLT's Points of Claim places the unliquidated claim in four general categories. To some extent any categorization of these claims is arbitrary, as shown by the variety of ways in which NLT's counsel approached this descriptive chore. The abstract provided below is intended to demonstrate the nature of the dispute with which the parties and the arbitrator would have had to contend.

It is first alleged that a number of stop orders issued by DCI interrupted and interfered with NLT's schedule and had a "rippling effect" throughout the performance of this work.

One such stop order was issued when the alignment of the road unexpectedly crossed the Tazama pipeline and DCI directed that work be halted while NLT carried out certain physical protective measures for the pipeline. The damages alleged are additional to any liquidated direct losses resulting from the pipeline incident. It is also said that NLT was carrying out construction faster than DCI could furnish revised plans and that DCI compounded the delays by halting the work by additional stop orders so that it could correct the "defective and inadequate" design.

The secondary category of unliquidated demand deals with the Vwawa Quarry, which also accounted for direct costs sought under the liquidated claims. NLT asserted that the quarry did not contain 250,000 tons of proven material as represented in the invitation for bids, and that this constituted a breach of contract. The breach is said to have resulted in an initial four months delay in crushing operations that had a continuing effect on all subsequent operations and caused indirect damages and costs to NLT.

The third category covers grade changes and realignment which are said to have been so great, untimely and continuous as to have retarded, disorganized and disrupted NLT's rate of progress resulting in increased costs. NLT added that DCI's alleged lack of adequate engineering personnel prevented the timely completion of such revisions and, hence, the delays in construction work were compounded.

The underlying cause for the final category of unliquidated claims is alleged "unsuitable materials for sub-grade and sub-base and erroneous testing and contracts". NLT asserts that DCI utilized erroneous and inadequate testing procedures and, therefore, failed to discover the rocky sub-base and other soil conditions unsuitable for road construction. The increased costs allegedly arising

from this situation are explained as being the costs of working with improper material, costs associated with the significant reduction in NLT's efficiency and costs of correcting construction and pavement failures. NLT does not fail to assert that the effects of the inadequate material "flowed throughout the construction program" and were cumulative to the other matters described in the pleading.

NLT no doubt intended to argue that the evidence established a causal connection between the alleged breaches of contract and the total amount of alleged damages, but apparently NLT was unable to show precise increases in costs directly resulting from each of the individual items alleged under its unliquidated claim.

Accordingly, NLT adopted a theory for computing damages which it labelled "quantum meruit" or "total cost". Briefly, NLT's employment of this concept was to determine the total costs it incurred in completing the job plus 5% overhead and 10% profit. From this total it then deducted the amount it was actually paid. The remainder after allowing for a further reduction by the amounts of its liquidated claims constituted NLT's alleged damages for the unliquidated claims. Whatever one may think of this theory of damages in the abstract, the most pertinent fact is that the TanGov with good and reputable counsel agreed, in the face of what it perceived to be the likely outcome of the arbitration if it continued to a decision, to settle a substantial claim which was based in part on such theory.

The parties were scheduled to present their cases on the unliquidated claim in mid-September 1975, but, instead, with the encouragement of the arbitrator entered into settlement negotiations which culminated in the settlement agreement (Annex E) and Consent Award (Annex F), both dated October 3, 1975, providing that the TanGov would pay NLT \$4,000,000 by October 31, 1975 in satisfaction of the claims plus NLT's "costs of and occasioned by" the arbitration which were to be assessed by the arbitrator. The settlement amount is a lump sum figure, not broken down or allotted for individual elements of the over-all demand. On October 9, 1975, pursuant to the settlement agreement and award, the arbitrator taxed NLT's costs of arbitration. They included costs incurred by NLT for legal and engineering counsel, for arbitrator's fees, for providing the services of Mr. Fredrich, an NLT executive, and Mr. Nye, NLT's General Counsel, and for miscellaneous items, and totalled \$577,320 (Annex G).

In accordance with the Tanzania Arbitration Ordinance, the Consent Award was filed with the High Court of Tanzania. The TanGov has not objected to the basic award but did make application to the Court that the costs assessed against it be remitted to the arbitrator for reconsideration and reduction. The Tanzania Court (Judge Patel) issued a ruling upholding the arbitrator's cost assessment.

- C. The Borrower: The Government of Tanzania by letter (Annex H) dated January 29, 1976, requested "...financial assistance in the amount of..." \$4,577,320 to satisfy the Consent Award. Of this amount \$577,320 represents NLT's arbitration costs assessed against the TanGov by the arbitrator. The letter states that the TanGov intends "to seek indemnity from..." DCI and that the \$4,000,000 settlement includes "certain taxes which are ultimately the responsibility of the Government", but that the request is being submitted "before completion of necessary readjustments in order that the Government may meet its obligations under the said compromise agreement without further delay". As of April 1976 the TanGov had not made any payment on the award.

PART III - PROJECT ANALYSES

A. Claims Analysis:

1. In September 1975 the parties began serious settlement negotiations. This may have been motivated by the increased knowledge which each had gained of the strengths and weaknesses of the other's case. The negotiations also may have been a reaction to the great time and expense being consumed by the arbitration and to increasing irritation with this complicated dispute. For whatever reasons, the matter became ripe for settlement which is generally thought to be a regular and salutary step.

A.I.D. has been advised by both parties that the negotiations did not involve item by item allocations to components of the claim.

It can be presumed, however, that each party estimated what the award would be if the arbitration went the distance and how much it could expect to win or lose in gross in that eventuality. Each party, perhaps, made allowances to provide for a margin

of error in its estimate and for the costs it would save if a settlement were achieved in the near future. The net conclusion for each side was probably an approximate figure or range of amounts at which it would find settlement acceptable.

NLT accepted an offer, communicated in a letter from the TanGov's solicitors, of TSh. 28,720,000 (later converted to \$4,000,000 at 7.18 Tanzania Shillings to U.S. \$1.00), covering all claims, but exclusive of costs. Of the total settlement, it appears that TSh 26,207,000 (\$3,650,000) was attributed to the unliquidated claims and TSh. 2,513,000 (\$350,000) was attributed to the liquidated claims (Annexes I and J).

Considering the history of the claims and arbitration, and the circumstances and factors involved, leading up to and surrounding the parties' arrival at a mutually agreed-upon settlement, the amount of the settlement can, in this case, be presumed to be reasonable, or at least not unreasonable or excessive, absent evidence to the contrary of sufficient weight to overcome such a presumption. The following factors are believed to be adequate to support such a presumption:

- (a) The settlement appears to have been reached fully in accordance with applicable law, accepted practice and procedure, and pursuant to the resolution of disputes provision of the contract between TanGov and NLT which AID had approved.
- (b) The TanGov was represented by competent legal and engineering counsel throughout the arbitration proceeding and settlement negotiations.
- (c) It was in the TanGov's own self-interest to settle at the lowest possible cost consistent with the perceived merits of the case and prospects of the ongoing arbitration. There was no outstanding aid agreement under which a settlement could be financed, and the TanGov had no promise or assurance that it would receive any assistance in financing the settlement at the time the settlement agreement was signed and consent award was issued. Moreover, the TanGov knew that any assistance it might receive from A.I.D. toward meeting the cost of the settlement would be in the form of a loan, repayable to the USG in dollars.
- (d) The arbitrator, who is a British barrister and civil engineer with experience both as an arbitrator and in road construction encouraged the parties to pursue serious settlement

agreements and subsequently accepted the agreed-upon settlement by making a consent award which incorporated the terms of the settlement and by filing this award in the High Court of Tanzania under the provisions of the Arbitration Ordinance of Tanzania.

(c) The Arbitration Ordinance of Tanzania (Chapter 15 of the laws) empowers the High Court of Tanzania (a) to make the award, if in its judgment it should be considered, to the reconsideration of the arbitrator, (b) to set aside the award if it finds that the arbitrator has misconducted himself, or that the award has been improperly procured, and (c) to make any order of its own or such terms as to costs or otherwise as the Court thinks fit. The High Court of Tanzania has neither set aside the award nor referred it to the arbitrator for reconsideration. The Court has, in fact, issued a ruling upholding the arbitrator's cost assessment -- a part of the over-all settlement, the amount of which was questioned by the Banker before the High Court of Tanzania.

(d) The Arbitration Ordinance of Tanzania expressly provides that an award, on being filed in the High Court of Tanzania in accordance with the Arbitration Ordinance, shall (unless the Court orders it to the reconsideration of the arbitrator or sets it aside) be enforceable as if it were a decree of the Court.

There is no corroborating evidence within A.I.D.'s knowledge, -- situated to the presumption that the amount of the settlement award is reasonable and that the settlement and award were properly procured -- which can be shown to be of sufficient substance and weight as to overcome the presumption of reasonableness and propriety which arises based on the foregoing factors.

1. The amount to be paid NIS under the claims award constitutes contract cost because in that they are costs arising under or in connection with the contract and NIS's performance of the work. This is readily apparent from an examination of the nature of the claims. A few examples are illustrative.

Regarding the liquidated claim for the extra cost of hauling sand from alternative sources when the Huda pit proved inadequate in quantity, NIS alleged that the contract warranted adequate quantity and quality and that the failure of the source constituted a breach of contract. The damages flowing from this

breach, the cost of hauling sand a distance greater than anticipated, can be considered only an increased cost of performing the contract.

Another example is the one most removed from physical construction, the claim for taxes, duties and levies. Again, we do not know to what extent this claim contributed to the \$4,000,000 settlement. NLT alleges that the TanGov withheld amounts for payment of taxes which the contract exempted NLT from paying. Such action would constitute a breach of contract increasing the costs of performing the contract, and recovery would be measured by the scope of the tax and duty exemption provided for in the contract, which, incidentally, is a paraphrase of a section in the U.S. assistance bilateral with the TanGov.

The unliquidated claims were never individually quantified. The very essence of all of those claims, however, is that NLT's costs of performance were increased as a result of numerous eventualities, including stop-work orders, changed conditions, delays, and allegedly inadequate and defective plans and design, which were both unforeseeable to and beyond the control and responsibility of NLT.

3. It is proposed that A.I.D. not finance \$80,000 of the award to allow for the possible inclusion in the \$4,000,000 settlement of taxes, duties, and levies which are ineligible under A.I.D. policy. This allowance represents the amount of NLT's total liquidated claim for taxes, duties, and levies and assures adherence to AID policy of not financing host country taxes and duties.

It is also proposed that AID not finance an additional \$50,000 of the award to allow for the possible inclusion therein of the costs of procurement from ineligible source countries. This allowance represents the sum of two liquidated claims covering alleged additional costs to NLT of bitumin imported from the Middle East.

It is further proposed that the Third Amendment not finance the arbitration costs assessed against the TanGov, since the total amount thereof (\$577,320) includes not only immediate costs of the arbitration proceedings, including the arbitrator's fees, but also fees of NLT's legal and engineering counsel and costs of the services of an NLT executive.

The TanGov, by paying NLT's arbitration costs, the amounts attributed to taxes and duties, non-eligible source procurement, and any interest determined to be payable by reason of delayed satisfaction of the award, will be carrying a significant part of the burden. It should also be noted that the TanGov contribution to the Tunduma-Iyayi project has been in excess of U.S. \$7.5 million.

The USAID Mission to Tanzania and REDSO/EA are of the opinion that forcing the TanGov to obtain the \$3,870,000, proposed for this amendment from commercial sources, even if possible would be extremely harmful to its soaring foreign exchange deficit. Moreover, Tanzania as one of the poorest LDC's in the world, faces very substantial development obligations and costs.

B. Financial Analysis

Concessional Financing

Tanzania greatly needs the concessionary financing being made available from AID and other donors. The balance of payments deteriorated sharply in 1974 when the overall deficit reached \$156.5 million as compared to surpluses of \$18.4 million in 1973, \$61.3 million in 1972, and \$14.2 million in 1971. As a result of two years of drought, in 1974 the Government of Tanzania imported large amounts of emergency food grains. Imports of maize, wheat, and rice, together amounted to 385,000 tons in 1974, compared to 11,000 tons in 1973. The increased food grain imports together with the increases in import prices, particularly for oil, were mainly responsible for the sharp deterioration of the overall balance of payments.

The overall balance of payments deficit is expected to decrease to \$98.5 million in 1975 due to lower import payments and a sharp increase in the level of net inflows of unrequited transfers and government capital (aid). Food grain imports in 1975 declined somewhat but it is estimated they were 350,000 tons valued at \$58.4 million in 1975 as compared to 385,000 tons valued at \$99.6 million in 1974. Other imports are expected to decline by about 5 percent in nominal terms and significantly more in real terms. This decrease is partly due to a tighter import control system regarding non-essential consumer goods and transport equipment.

Tanzania has experienced sluggish growth of exports in the 1970's. There were perennial deficits in the trade balance and current account which until 1974 were more than offset by development aid. Because of the drought, Tanzania was not able to take advantage of a 52 percent increase in its export prices in 1974 and only

realized a 12 percent gain in export receipts. Total export earnings are expected to remain approximately at their 1974 level in 1975.

Agricultural exports are expected to be approximately Tsh. 1,746 million in 1975. Exports of coffee are projected to increase to 50,000 tons from 41,000 tons in 1974 and, following the recent frost in Brazil, the average price is expected to rise by about 19 percent. Cotton exports are likely to decrease since some farmers have shifted to maize production following the recent drought and the increased producer price for maize. Sisal exports are also projected to decline mainly due to an expected 49 percent decline in the average unit export price. The principal export crops, tea and tobacco, should show significant increase in 1975.

At the end of 1974 net official reserves were negative at \$12.0 million, and gross official reserves amounted to \$55.8 million, equivalent to less than four weeks of import payments. Following a further decline in the first five months of 1975, at the end of May gross official reserves of \$39.1 million represented about three weeks of projected 1975 import payments. There has been no reported improvement in the availability of official foreign exchange reserves.

The TanGov expects the FY 1976 deficit of \$98.4 million to be financed through special assistance from the IBRD, the UN Emergency Fund, the Arab Fund for Africa, and through recourse to the IMF. Gross foreign assets are therefore not expected to fall significantly.

The Government of Tanzania has restricted the volume of short-term and medium-term indebtedness and has been fairly successful in maintaining an inflow of foreign assistance on concessionary terms. Thus, although total debt has increased substantially in recent years, debt service payments still represent only about 4 percent of export earnings and the debt profile projection remains favorable into the early 1980's.

Local Currency Financing

Concerning the form of AID financing under this loan, i.e. foreign exchange or Tanzanian shillings or a combination thereof, the Government of Tanzania is obliged according to the settlement agreement to pay the amount of the settlement (\$4 million) and the costs of arbitration (\$577,320) to NLT in U.S. dollars to NLT's favor at the First National City Bank of New York. The payment which the proposed AID loan will assist in financing, therefore, is fully a Foreign Exchange Cost to the Government of Tanzania. However, at the time the overrun costs were incurred by NLT

(originally a claimed amount of \$12 million and ultimately the finally agreed amount of \$4 million), the services and products provided by NLT in the course of the road construction and for which payment is now required certainly consisted of a mix of U.S. dollar and Tanzanian shilling costs. Because the \$4 million settlement was neither specified as to geographic source nor specific service or product provided by NLT, it is not possible to determine an exact split between the U.S. and Tanzanian or other source of overrun costs. In order to obtain an approximate attribution of the amount which AID proposes to finance, however, it is possible to extrapolate a U.S. dollar, Tanzanian shilling estimate based upon past experience under the loan. Financial procedures under the original loan provided for AID to finance 67.5% of each progress payment to NLT. That percentage was established as an appropriate percentage to cover the eligible foreign exchange component of the NLT contract which could consist only of procurement of U.S. source and origin. Applying that percentage to the \$4 million settlement results in an estimate of \$2,700,000 attributable to U.S. source procurement. Reducing the balance of the settlement by the \$130,000 deducted for the amounts claimed for taxes and duties and ineligible source procurement leaves a net amount of \$1,170,000 attributable to proposed local currency cost financing. The proposed AID financing therefore can reasonably be assumed to cover the U.S. dollar and Tanzanian shilling overrun costs in the following amounts: U.S. dollar \$2,700,000, U.S. dollar equivalent of Tanzanian shillings \$1,170,000. Both of these costs are eligible for AID financing. All of the \$707,320 TanGov contribution is attributable to Foreign Exchange costs. The total financing for this amendment will be as follows:

	<u>FX</u>	<u>LC</u>
AID	\$3,870,000	-
TanGov	<u>707,320</u>	<u>-</u>
Total	4,577,320	-

C. Technical Soundness

With the exception of a 3.2 mile section at Tunduma, which required reconstruction, the 146 mile Tunduma-Iyayi portion of the Tanzam Highway was opened to traffic March 30, 1972. NLT completed construction and began its maintenance period on different sections of the Tunduma-Iyayi road as the various sections were

completed and, hence, the maintenance periods began at different times. Minor repairs and the Tunduma reconstruction were finished and the maintenance period on the last completed section ended on December 15, 1972, by which time the TanGov had officially accepted maintenance responsibility for all sections comprising the Tunduma-Iyayi Road.

AID engineers inspected the road at various times during 1972 in the course of normal project implementation activities and conducted post construction inspections on March 15 and 16, and from October 19 to 23, 1973. As a result of these inspections it was concluded by AID, consistent with TanGov acceptance of the Road, that the Road had been satisfactorily constructed in accordance with the final approved plans and specifications of the contract.

The report of the first inspection in March 1973 indicates some isolated failures not larger than 4 square feet in two places and 6 to 8 soft spots. The October 1973 inspection indicated failures of the asphaltic concrete surface and slippage of approximately 10 square feet in ten locations west of Mbeya. Similar failures, but of a smaller magnitude, together with completed Ministry of Communications and Public Works repairs were found in the 76 mile section between Mbeya and Iyayi.

The 1973 inspections helped to establish that trucks carrying axle loads in excess of what the Road was designed for were using the Road to some extent and were accelerating the rate of pavement wear and deterioration and, accordingly, the need for corrective maintenance and repair. The Nello L. Teer Co., of course, has no responsibility for this situation.

From time to time AID has emphasized to the TanGov the importance of keeping vehicle weights within the designed capacity of the Road and of carrying out proper maintenance and repair. The TanGov response to AID suggestions on these points demonstrated a recognition of the problems and a desire to deal effectively with these situations. A continuous maintenance and repair program is in operation and weigh stations have been established along the route. However, implementation of corrective action has not been adequate to meet maintenance needs and to effectively handle overload problems, particularly in regard to trucks carrying copper exports from Zambia. The latter situation is likely to be alleviated when the Tazara Railway becomes fully operational for freight traffic.

The TanGov is aware of the importance of Road maintenance and repair, and last year entered into an agreement with the IBRD for a \$10.4 million loan to procure maintenance equipment and establish ten vehicle maintenance camps. Two such camps will be established on the TanZam Highway and, from the ten additional weigh scales procured, two are being installed on the TanZam Highway, raising the total of weigh stations to four.

PART IV - IMPLEMENTATION PLAN

Following authorization a brief Loan Amendment would be executed and an Implementation Letter issued.

The Project Description now included in Loan 698-H-005, as amended, would remain unchanged. The Loan Amendment would assure that the funds to be provided under this Third Amendment will be used only to assist in financing the additional costs of the Tunduma-Iyayi road as determined by the Settlement Agreement and Consent Award, but excluding amounts claimed for taxes and duties, procurements from ineligible source countries, costs of arbitration, and any interest that may become payable on the delayed satisfaction of the award. With one exception, the procurement provisions of the Loan Agreement would also remain unchanged. Under the existing Loan Agreement, as amended, Loan - Part I (\$13,000,000) was limited to the financing of goods and services of U.S. source and origin, and Loan - Part II (\$3,800,000) and Loan - Part III (\$1,100,000) were limited to financing goods and services of U.S. or East African (Tanzania, Kenya, and Uganda) source and origin. As a result, NLT was permitted by its contract to procure materials and supplies only of U.S. or East African source and origin. To avoid any possible difficulty as to the source and origin of the underlying goods and services for which additional financing is now proposed, the loan authorization amendment specifies in accordance with current AID policy, that goods and services financed by this Third Amendment may be from Code 941 countries or Tanzania. This requirement will be passed on in the Implementation Letter.

The only condition precedent to disbursement would be the submission of the usual legal opinion to the effect that the Loan Agreement Amendment constitutes a binding obligation of the TanGov. Specimen signatures of authorized representatives are required to be kept up to date under the original agreement, as amended, and need not be requested again.

One special covenant will be required. In its application for assistance (Annex H), the TanGov states: "We are of course aware that the consulting engineers, DeLeuw Cather International Inc., were responsible for a large portion of these claims and the Tanzania Government intends to seek indemnity from them." The TanGov will be required by express provision in the Loan Agreement Amendment to apply any and all sums it may recover from DCI, less whatever incremental (out-of-pocket) costs the TanGov may incur in pursuing any claims it may have against DCI, via arbitration or otherwise, as prepayments to AID under the loan. Such prepayments will be required to be made as soon as administratively possible following receipt by the TanGov of any such recoveries from DCI. Any prepayments thus made will be applied against the loan made under the proposed Third Amendment.

The disbursement procedure would be developed in an Implementation Letter issued by FIEDSO/EA. Such disbursement would be accomplished in one of three ways: (1) by the letter of credit and letter of commitment procedure, (2) by a direct letter of commitment issued to NLT or (3) by reimbursement to the TanGov. In whichever case, NLT would submit documentation which to the maximum practicable extent, would be the same as that required for final payment under the contract and previous letters of credit and commitment. Any documentation, such as a payment certification by DCI, which is inconsistent with or unnecessary under the arbitration and settlement procedure that determined the amount of the final payment would, however, be eliminated.

The disbursement procedure to be adopted will depend in part upon the manner in which the issue posed under Section 620(c) of the Foreign Assistance Act is resolved. Section 620(c) prohibits the furnishing of assistance under the Act to the government of any country which is indebted to any U.S. citizen or person for goods or services furnished or ordered where, inter alia, (i) such citizen or person has exhausted available legal remedies, including arbitration, or (ii) the debt is not denied or contested by such government. In the present case, it appears that NLT, a U.S. firm, has probably exhausted available legal remedies, including arbitration, within the meaning of Section 620(c), but in any case the \$4,000,000 indebtedness which is evidenced by the settlement agreement and consent award, and which was due to be paid no later than October 31, 1975, is neither denied nor contested by the TanGov. This raises a substantial question as to whether the making of a loan to the TanGov to assist it in meeting the cost of the settlement is prohibited under the FAA, unless one of the following two eventualities has first occurred: (a) the TanGov discharges the indebtedness by payment in full out of other resources, or (b) NLT and the TanGov amend the settlement agreement and consent award by deleting the provision which requires payment by October 31, 1975, and by substituting a mutually acceptable provision under which the TanGov would not be delinquent in meeting its obligation to pay the settlement at the time of the making of the A.I.D. loan.

The present plan is for the parties to pursue one of the two above-mentioned described alternatives. NLT has indicated a willingness, if necessary, to amend the settlement agreement and consent award with respect to the due date of payment, and the TanGov is investigating the availability of other funds with which to make payment of the settlement before execution of the loan amendment.

CHECKLIST OF STATUTORY CRITERIA

In the right-hand margin, for each item, write answer or, as appropriate, a summary of required discussion. As necessary, reference the section of the Capital Assistance Paper, or other clearly identified and available document, in which the matter is further discussed.

The following abbreviations are used in the checklist:

FAA - Foreign Assistance Act of 1961, as amended

FAA, 1973 - Foreign Assistance Act of 1973

App. - Foreign Assistance and Related Program Appropriation Act, 1974

MMA - Merchant Marine Act of 1935, as amended.

I. FULFILLMENT OF STATUTORY OBJECTIVES

A. Needs Which the Loan is Addressing

1. FAA Section 103. Discuss the extent to which the loan will alleviate starvation, hunger and malnutrition, and will provide basic services to poor people enhancing their capacity for self-help. Not applicable.

2. FAA Section 104. Discuss the extent to which the loan will increase the opportunities and motivation for family planning; will reduce the rate of population growth; will prevent and combat disease; and will help provide health services for the great majority of the population. Not applicable.

3. FAA Section 105. Discuss the extent to which the loan will reduce illiteracy, extend basic education, and increase manpower training in skills related to development. Not applicable.

4. FAA Section 106. Discuss the extent to which the loan will help solve economic and social development problems in fields such as transportation, power, industry, urban development, and export development. Funds made available under the loan amendment will be used to finance a portion of the cost overruns stemming from construction of the Tunduma-Iyayi Road. The economic and developmental aspects of the now completed road are more fully explained in the original CAP.

5. FAA Section 107. Discuss the extent to which the loan will support the general economy of the recipient country; or will support development programs conducted by private or international organizations.

Not applicable.

B. Use of Loan Funds

1. FAA Section 110. What assurances have been or will be made that the recipient country will provide at least 25% of the costs of the entire program, project or activity with respect to which such assistance is to be furnished under Sections 103-107 of the FAA?

TanGov contribution to the Tunduma-Iyayi project has exceeded 25% of total costs. Questionable whether 110(a) would apply because:
(1) it is considered an interregional project;
(2) 110(a) was enacted after initial loan was authorized.

2. FAA Section 111. Discuss the extent to which the loan will strengthen the participation of the urban and rural poor in their country's development, and will assist in the development of cooperatives which will enable and encourage greater numbers of poor people to help themselves toward a better life.

Not applicable.

3. FAA Section 112. Will any part of the loan be used to conduct any police training or related program (other than assistance rendered under Section 515(c) of the Omnibus Crime Control and Safe Streets Act of 1968 or with respect to any authority of the Drug Enforcement Administration of the FBI) in a foreign country?

No.

4. FAA Section 113. Describe the extent to which the programs, projects or activities to be financed under the loan give particular attention to the integration of women into the national economy of the recipient country.

Not applicable.

5. FAA Section 114. Will any part of the loan be used to pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions?

No.

II. COUNTRY PERFORMANCE

A. Progress Towards Country Goals

1. FAA §§201(b)(5), 201(b)(7), 201(b)(9), 203. Discuss the extent to which the country is:

(a) Making appropriate efforts to increase food production and improve means for food storage and distribution.

The Third Five Year Plan will place major emphasis on increasing food production, marketing and storage. The National Maize Project will increase maize production and improve marketing and storage.

(b) Creating a favorable climate for foreign and domestic private enterprise and investment;

Tanzania's socialist policy and development strategy stress public investment. Private, foreign or domestic investments are generally not encouraged. Opportunities are limited. Tanzania has a Foreign Investment Protection Act and has entered into an Investment Guaranty Agreement.

(c) Increasing the people's role in the developmental process:

Tanzania has been steadily decentralizing development planning and implementation. People are politically involved from the center down to the "ten-family-cell." This decentralization will bring development decision-making closer to the people.

(d) Allocating expenditures to development rather than to unnecessary military purposes or intervention in other free countries' affairs:

Budgeted Defence expenditures have fluctuated from year to year but since 1972 have averaged 10% of total with about 12% of capital expenditures devoted to the military.

(e) Willing to contribute funds to the project or program:

The TanGov will contribute all financing of the settlement above that financed by A.I.D. This is in addition to the extensive contributions the TanGov has made in the past to the project.

(f) Making economic, social and political reforms such as tax collection improvements and changes in land tenure arrangement; and making progress toward respect for the rule of law, freedom of expression and of the press, and recognizing the importance of individual freedom, initiative, and private enterprise:

Tax revenues have increased at an average annual rate of 34% from FY 72 to FY 75. Tanzania is committed to an egalitarian system of distribution for land and wealth. Tanzania is weak in conventional political and legal rights. The one-party system controls internal media and does not allow dissent from basic party/government policies. Detention without trial is not uncommon.

(g) Responding to the vital economic, political and social concerns of its people, and demonstrating a clear determination to take effective self-help measures.

The TanGov development policy is aimed at the poorer classes. The TanGov has demonstrated a remarkable concern for improving equality of opportunity and welfare for all people.

B. Relations with the United States

1. FAA Sec. 620(c). If assistance is to a government, is the government indebted to any U.S. citizen for goods or services furnished or ordered where: (a) such citizen has exhausted available legal remedies, including arbitration, or (b) the debt is not denied or contested by the government, or (c) the indebtedness arises under such government's or a predecessor's unconditional guarantee?

Substantial issue is posed as to whether this section is intended to prohibit AID financing of cost overruns as in the present case. Present plans call for resolution of the issue by eliminating TanGov delinquency either by prior payment of the settlement or by NLT-TanGov agreement to extend the due date of payment. See PP Part IV - Implementation Plan.

2. FAA Sec. 620(c). If the loan is intended for construction or operation of any productive enterprise that will compete with U.S. enterprise, has the country agreed that it will establish appropriate procedures to prevent export to the U.S. of more than 20% of its enterprises annual production during the life of the loan?

Not applicable.

3. FAA Sec. 620(e)(1). If assistance is to a government, has the country's government, or any agency or subdivision thereof, (a) nationalized or expropriated property owned by U.S. citizens or by any business entity not less than 50% beneficially owned by U.S. citizens, (b) taken steps to repudiate or nullify existing contracts or agreements with such citizens or entity, or (c) imposed or enforced discriminatory taxes or other exactions, or restrictive maintenance or operation conditions? If so, and more than six months has elapsed since such occurrence, identify the document indicating that the government, or appropriate agency or subdivision thereof, has taken appropriate steps to discharge its obligations under international law toward such citizen or entity? If less than six months has elapsed, what steps, if any, has it taken to discharge its obligations?

a) The TanGov has nationalized a coffee estate (1973), a gasoline station and adjacent buildings (1972) and two houses (1972) previously wholly-owned by US citizens. The ex-owners and the US Embassy have raised the compensation issue on numerous occasions without payment of any claims to date. The US Inter-Agency Group on Expropriation has the matter under review.

b) No.

c) No.

4. FAA Sec. 620(l). Has the country permitted, or failed to take adequate measures to prevent, the damage or destruction by mob action of U.S. property, and failed to take appropriate measures to prevent a recurrence and to provide adequate compensation for such damage or destruction? No.

5. FAA Sec. 620(l). Has the government instituted an investment guaranty program under FAA Sec. 221(h)(1) 234(a)(1) for the specific risks of inconvertibility and expropriation or confiscation? Yes.

6. FAA §620(o). Fisherman's Protective Act of 1954, as amended, Section 5. Has the country seized, or imposed any penalty or sanction against, any U.S. fishing activities in international waters? If, as a result of a seizure, the U.S.G. has made reimbursement under the provisions of the Fisherman's Protective Act and such amount has not been paid in full by the seizing country, identify the documentation which describes how the withholding of assistance under the FAA has been or will be accomplished. No.

7. FAA Sec. 620(a). Has the country been in default, during a period in excess of six months, in payment to the U.S. on any FAA loan? No.

8. FAA Sec. 620(t). Have diplomatic relations between the country and the U.S. been severed? If so, have they been renewed? No.

9. FAA Sec. 102. Explain whether and how the recipient country makes any distinction between American citizens because of race, color, or religion in the granting of, or the exercise of personal or other rights available to American Citizens.

In recent years TanGov encouraged immigration of and recruited Afro-Americans to work in Tanzania. The recruitment program has now tapered off or ended. Starting sometime after April 1975 TanGov initiated a unique registration procedure applicable to Afro-Americans only.

C. Relations with Other Nations and
the UN.

1. FIA Sec. 603(c). Has the country been officially represented at any international conference where that representation included planning activities involving incitement or subversion directed against the U.S. or countries receiving U.S. assistance?

It is considered that TanGov sponsorship in the UN and other international gatherings of resolutions calling for independence of U.S. dependencies does not constitute "planning activities" as described in this Section.

2. FIA Secs. 603(a), 603(n). Has the country sold, furnished, or permitted ships or aircraft under its registry to carry to Cuba or North Vietnam, items of economic, military or other assistance?

We are not aware of any such case.

3. FIA Sec. 603(u); Exp. Sec. 107. What is the status of the country's U.S. debt, assessments or other obligations? Does the loan agreement bar any use of funds to pay U.S. assessments, debt or arrearages?

Tanzania is not in arrears on its obligations to the UN. The Loan Amendment will permit use of loan funds only for financing of the consent agreement.

D. Military Situation

1. FIA Sec. 603(i). Has the country engaged in or prepared for aggressive military efforts directed against the U.S. or countries receiving U.S. assistance?

1. No.

2. FIA Sec. 603(s). What is (a) the percentage of the country's budget devoted to military purposes, and (b) the amount of the country's foreign exchange resources used to acquire military equipment, and (c) has the country spent money for sophisticated weapons systems purchased since the statutory limitation became effective?

2.a. In recent years about 10% of the total Tanzania budget has been devoted to military purposes. For the FY 76 budget this figure is 12.5%.

b. The FY 76 budget devotes \$53 million to military capital expenditures some of which will be foreign exchange outlays.

c. See Embassy reporting for info on purchase of sophisticated weapons systems.

2. (2) Is the country diverting U.S. development assistance or PL 480 sales to military expenditures? No.

2. (3) Is the country diverting its own resources to unnecessary military expenditures? (Findings on these questions are to be made for each country at least once each fiscal year and, in addition, as often as may be required by a material change in relevant information.) No.

III. CONDITION OF THE LOAN

A. General Soundness

Interest and Repayment

1. FAA §§201(d), 201(b)(2). Is the rate of interest excessive or unreasonable for the borrower? Are there reasonable prospects for repayment? What is the grace period interest rate; the following period interest rate? Is the rate of interest higher than the country's applicable legal rate of interest.

The loan terms are concessional and within the country's capacity to repay. The interest rate is 2% during the grace period and 5% thereafter, which is below the applicable rate in Tanzania.

Financing

1. FAA §201(b)(1). To what extent can financing on reasonable terms be obtained from other free-world sources, including private sources within the U.S.?

No private source financing is available.

Economic and Technical Soundness

1. FAA §§201(b)(2), 201(c). The activity's economic and technical soundness to undertake loan; does the loan application, together with information and assurances, indicate that funds will be used in an economically sound manner?

Funds will be used to finance cost overruns of physically completed project.

2. FAA 5611(a)(1). Have engineering, financial, and other plans necessary to carry out assistance, and a reasonable firm estimate of the cost of assistance to the U.S., been completed?

Not applicable since funds will be used to finance additional costs of an otherwise completed project.

3. FAA 5611(b); Ann. 5101. If the loan or grant is for a water or related land-resources construction project or program, do plans include a cost-benefit computation? Does the project or program meet the relevant U.S. construction standards and criteria used in determining feasibility?

Not applicable.

4. FAA 5611(c). If this is a Capital Assistance Project with U.S. financing in excess of \$1 million, has the principal A.I.D. officer in the country certified as to the country's capability effectively to maintain and utilize the project?

See Annex I.

B. Relation to Achievement of Country and Regional Goals

Country Goals

1. FAA 55207, 231(a). What is this loan's relation to:

(a) Institutions needed for a democratic society and to assure maximum participation on the part of the people in the task of economic development?

Not applicable.

(b) Enabling the country to meet its food needs both from its own resources and through development, with U.S. help, of infrastructure to support increased agricultural productivity?

The loan will provide funds to finance cost overruns resulting from the construction of the Tunduma-Iyayi section of the TanZam Highway. See original CAP, Loan 698-H-005, for discussion of benefits to Tanzania in this regard.

(c) Meeting increasing need for trained manpower?

Not applicable.

(d) Developing programs to meet public health needs?

Not applicable.

See CAP for original loan.

(e) Assisting other important economic, political, and social development activities, including industrial development, growth of free labor unions; cooperatives and voluntary agencies; improvement of transportation and communication systems; capabilities for planning and public administration; urban development; and modernization of existing laws?..

2. FAA §201(b)(4). Describe the activity's consistency with and relationship to other development activities, and its contribution to reliable long-range objectives.

Original CAP describes these relationships.

3. FAA §201(b)(9). How will the activity to be financed contribute to the achievement of self-sustaining growth?

See CAP for original loan.

4. FAA §201(f). If this is a project loan, describe how such project will promote the country's economic development, taking into account the country's human and material resource requirements and the relationship between ultimate objectives of the project and overall economic development.

See CAP for original loan.

5. FAA §201(b)(3). In what ways does the activity give reasonable promise of contributing to the development of economic resources, or to the increase of productive capacities?

See CAP for original loan.

6. FAA 5022(b). How does the program under which assistance is provided recognize the particular needs, desires, and capabilities of the country's people; utilize the country's intellectual resources to encourage institutional development; and support civic education and training in skills required for effective participation in political processes.

See CAP for original loan.

7. FAA 5601(a). How will this loan encourage the country's efforts to:
(a) increase the flow of international trade; (b) foster private initiative and competition; (c) encourage development and use of cooperatives, credit unions, and savings and loan associations; (d) discourage monopolistic practices; (e) improve technical efficiency of industry, agriculture, and commerce; and (f) strengthen free labor unions?

See CAP for original loan.

8. FAA §202(a). Indicate the amount of money under the loan which is: going directly to private enterprise; going to intermediate credit institutions or other borrowers for use by private enterprise; being used to finance imports from private sources; or otherwise being used to finance procurements from private sources.

Loan amendment funds will be used to finance cost overruns of the original construction. Precise breakdown as to what element of liquidated and unliquidated damages the consent award encompassed is not possible.

9. FAA §611(a)(2). What legislative action is required within the recipient country? What is the basis for a reasonable anticipation that such action will be completed in time to permit orderly accomplishment of purposes of loan?

No action necessary.

Regional Goals

1. FAA §619. If this loan is assisting a newly independent country, to what extent do the circumstances permit such assistance to be furnished through multilateral organizations or plans?

Not applicable.

2. FAA §209. If this loan is directed at a problem or an opportunity that is regional in nature, how does assistance under this loan encourage a regional development program? What multilateral assistance is presently being furnished to the country?

Project is inter-regional in nature. See original CAP for details. The World Bank, WHO, and FAO provide assistance to Tanzania.

C. Relation to U.S. Economy

Employment, Balance of Payments,
Private Enterprise.

Amendment will authorize
Code 941 (and Tanzania)
as source/origin.

1. FAA §5201(b)(6); 102. What are the possible effects of this loan on U.S. economy, with special reference to areas of substantial labor surplus? Describe the extent to which assistance is constituted of U.S. commodities and services, furnished in a manner consistent with improving the U.S. balance of payments position.

As original loan limited
procurement to U.S. and
Tanzanian source/origin
there should be little
or no adverse balance
of payments effects.

2. FAA §5612(b); 636(h). What steps have been taken to assure that, to the maximum extent possible, foreign currencies owned by the U.S. and local currencies contributed by the country are utilized to meet the cost of contractual and other services, and that U.S. foreign owned currencies are utilized in lieu of dollars?

U.S.-owned local
currencies are not
available.

3. FAA §601(d); Ann. 51C3. If this loan is for a capital project, to what extent has the Agency encouraged utilization of engineering and professional services of U.S. firms and their affiliates? If the loan is to be used to finance direct costs for construction, will any of the contractors be persons other than qualified nationals of the country or qualified citizens of the U.S.? If so, has the required waiver been obtained?

Not applicable, U.S.
firm did the A&E work
for the road.

4. FAA §603(a). Provide information measures to be taken to utilize U.S. Government excess personal property in lieu of the procurement of new items. Not applicable.
5. FAA §602. What efforts have been made to assist U.S. small business to participate equitably in the furnishing of commodities and services financed by this loan? Not applicable.
6. FAA §621. If the loan provides technical assistance, how is private enterprise on a contract basis utilized? If the facilities of other Federal agencies will be utilized, in what ways are they particularly suitable; are they competitive with private enterprise (if so, explain); and how can they be made available without undue interference with domestic programs? Not applicable.
7. FAA §611(c). If this loan involves a contract for construction that obligates in excess of \$100,000, will it be on a competitive basis? If not, are there factors which make it impracticable? Competitive procedures were used on the original loan.
8. FAA §601(b). Describe the efforts made in connection with this loan to encourage and facilitate participation of private enterprise in achieving the purposes of the Act. Not applicable.

Procurement

1. FAA §604(a). Will commodity procurement be restricted to U.S. except as otherwise determined by the President? Yes. Authorization is requested to allow for procurement from Code 941 (and Tanzania).
2. FAA §604(b). Will any part of this loan be used for bulk commodity procurement at adjusted prices higher than the market price prevailing in the U.S. at time of purchase? No.

3. FAA §604(e). Will any part of this loan be used for procurement of any agricultural commodity or product thereof outside the U.S. when the domestic price of such commodity is less than parity?

3

No.

4. FAA §604(f). Will the agency receive the necessary pre-payment certification from suppliers under a commodity import program agreement as to description and condition of commodities, and on the basis of such, determine eligibility and suitability for financing?

Not applicable.

D. Other Requirements

1. FAA §201(b). Is the country among the 20 countries in which development loan funds may be used to make loans in this fiscal year?

Yes.

2. App. §105. Does the loan agreement provide, with respect to capital projects, for U.S. approval of contract terms and terms?

Original loan did so provide.

3. FAA §620(k). If the loan is for construction of a production enterprise, with respect to which the aggregate value of assistance to be furnished will exceed \$100 million, what preparation has been made to obtain the express approval of the congress?

Not applicable.

4. FAA §620(b), 620(f); Has the President determined that the country is not dominated or controlled by the international Communist movement? If the country is a Communist country (including but not limited to, the countries listed in FAA §620(f)) and the loan is intended for economic assistance, have the findings required by FAA §620(f) and App. §109(b) been made and reported to the Congress?

Yes. Tanzania is not a Communist or Communist-dominated country.

5. FAA Section 620(h). What steps have been taken to insure that the loan will not be used in a manner which, contrary to the best interest of the United States, promotes or assists the foreign aid projects of the Communist-bloc countries?

Loan Amendment will contain standard A.I.D. provisions to this effect, and will direct that the loan proceeds only be used to finance a portion of the overruns.

6. FAA Section 636(i). Will any part of this loan be used in financing non-U.S. manufactured automobiles? If so, has the required waiver been obtained?

No.

7. FAA Section 620(g). Will any part of this loan be used to compensate owners for expropriated or nationalized property? If any assistance has been used for such purpose in the past, has appropriate reimbursement been made to the U.S. for sums diverted?

No.

8. FAA Section 201(f). If this is a project loan, what provisions have been made for appropriate participation by the recipient country's private enterprise?

Not applicable.

9. App. Section 103. Will any funds under the loan be used to pay pensions, etc., for persons who are serving or who have served in the recipient country's armed forces?

No.

10. FAA Section 901.b. Does the loan agreement provide for compliance with U.S. shipping requirements that at least 50% of the gross tonnage of all commodities financed with funds made available under this loan (computed separately by geographic area for dry bulk carriers, dry cargo liners, and tankers) be transported on privately-owned U.S. flag commercial vessels to the extent such vessels are available at fair and reasonable rates for U.S. flag vessels and that at least 50% of the gross freight revenue generated by all shipments financed with funds made available under this loan and transported on dry cargo liners be paid to or for the benefit of privately-owned U.S. flag commercial vessels?

Not applicable.
Original loan ~~is~~ provided.

11. FAA Section 481. Has the President determined that the recipient country has failed to take adequate steps to prevent narcotic drugs produced or procured in, or transported through, such country from being sold illegally within the jurisdiction of such country to U.S. Government personnel or their dependents or from entering the United States unlawfully?

No. Tanzania is cooperating with the U.S. and international organizations to control narcotic drugs.

12. App. Section 110. Is the loan being used to transfer funds to world lending institutions under FAA Sec. 209(d) and Sec. 251(h)?

No.

13. App. Section 601. Are any of these funds being used for publicity or propaganda within the United States?

No.

14. FAA Section 612(d) and Section 40 of PL 93 189 (FAA of 1973). Does the United States own host country excess foreign currency and, if so, what arrangements have been made for its release in compliance with Section 40 (FAA of 1973)?

No.

15. FAA Section 604(d). Will provisions be made for placing marine insurance in the U.S. if the recipient country discriminates against any marine insurance company authorized to do business in the U.S.?

Not applicable.

16. Section 29 of PL 93 - 189 (FAA of 1973). Is there a military base located in the recipient country which base was constructed or is being maintained or operated with funds furnished by the U.S., and in which U.S. personnel carry out military operations? If so, has a determination been made that the government of such recipient country has, consistent with security, authorized access to such military base on a regular basis to bona fide news media correspondents of the U.S.

No, not applicable.

17. FAA Section 640(c). Will a grant be made to the recipient country to pay all or part of such shipping differential as is determined by the Secretary of Commerce to exist between U.S. foreign flag vessel charter or freight rates?

Not applicable.

18. App. Section 117. Will any of the loan funds be used to acquire currency of recipient country from non-U.S. Treasury sources when excess currency of that country is on deposit in U.S. Treasury?

No.

19. App. Section 114. Have the House and Senate Committees on Appropriations been notified five days in advance of the availability for obligation of funds for the purposes of this project?

Such notification will be made.

Project, and all related documents (Contract documents) are referred to and are hereby incorporated herein by reference.

III.

That the Engineer for the project was De Lauw, Cathor International, Inc., a United States engineer; said Engineer did the preliminary engineering work pertaining to the project, prepared the Contract documents and was Engineer for the construction of the project as an agent for the Respondent.

IV.

That the prequalification for the tendering of the Contract was limited to United States contractors.

V.

That the qualification for the engineer was limited to United States Engineers.

VI.

That the Contract incorporated the Economic, Technical and Related Assistance Agreement between the Government of the United States and the Government of Tanzania, dated 8 February 1968, and especially Sections 5 (a) (d), and by reference the U.S.A.I.D. Capital Projects Guidelines.

VII.

That the Claimant commenced the construction program on or about the 4th day of August, 1968 and substantially completed the construction program on 30 March 1972; that

commencing on or about the date the Claimant commenced its work and thenceforth throughout the entire construction program, many disputes and differences arose between the Claimant on the one hand and the Respondent and its Engineer on the other hand; that the disputes and differences primarily arose out of the interpretation of the Contract language, its terms and conditions, and out of breaches of Contract, expressed and implied, by the Respondent and its Engineer, and out of variations of the work; all of which subsequently increased the Claimant's cost for which it has not been reimbursed or paid in accordance with the Contract documents and the law prevailing; that the disputes and differences between the Claimant and the Respondent are more particularly defined as follows:

LIQUIDATED CLAIMS

1) That the agreement between the United States of America and the Respondent and the Contract documents between the Claimant and the Respondent clearly exempted the Claimant from any and all taxes and burdens of a similar nature; that, in particular, Special Condition 77.7 provides as follows:

"TAXES AND CUSTOMS DUTIES

"The customs, taxes, and income taxes treatment of the Contractor and his personnel will be governed by Sections 6 (c) and (d) of the Economic, Technical and Related Assistance Agreement between the Government of the United States of America and the Government of the United Republic of Tanzania dated February 3, 1968."
(Emphasis Added)

These sections are quoted in the paragraphs which follow.

"(a) Any supplies, materials, equipment or funds introduced into or acquired in the United Republic of Tanzania by the Government of the United States of America, or any contractor financed by that Government, for purposes of

any program or project conducted hereunder shall, while such supplies, materials, equipment or funds are used in Tanzania in connection with such a program or project, be exempt from any taxes on ownership or use of property, and any other taxes, investment or deposit requirements and currency controls in the United Republic of Tanzania, and the import, export, purchase, or use of any such supplies, materials, equipment or funds in connection with such a program or project shall be exempt from any tariffs, customs duties, import and export taxes, or taxes on purchase of property, and any other taxes or similar charges in the United Republic of Tanzania. No direct tax (whether in the nature of an income, profits, business tax or otherwise) shall be imposed upon any contractor, not having a regular place of business in East Africa, who is financed by the Government of the United States of America hereunder."

"(d) All personnel under contract with, or employed by public or private organizations under contract with the Government of the United States of America, or the Government of the United Republic of Tanzania, or financed by the Government of the United States of America, who, not being citizens of or normally resident in Tanzania, are present in the United Republic of Tanzania to perform work in connection herewith and whose entrance into the country has been approved by the Government of the United Republic of Tanzania, shall be exempt from income and social security taxes levied under the laws of the United Republic of Tanzania with respect to income upon which they are obligated to pay income or social security taxes to any government and on first arrival in the United Republic of Tanzania, shall be entitled to customs privileges not less favourable than those presently conferred by Item 144 of the 1st Schedule to the Customs Tariff Ordinance, by the Customs Tariff (Remission of Customs Duties) (Technical Assistance) (General) Order, 1965; and if specifically provided by the project agreement, the benefit conferred by the Private Motor Vehicles Registration Tax (Technical Assistance Exemption) Order, 1965. None of the supplies, materials, or equipment used for the purposes of the project shall be transferred or sold for use in the United Republic of Tanzania without the written permission of the Commissioner of Customs and Excise, who will only authorize the transfer after payment of any duty involved, unless the transfer or sale is to the Government of the United Republic of Tanzania who shall have first priority, or other approved user, at a price to be agreed with the Contractor or by valuation by an independent assessor.

"The Contractor will be permitted to re-export the duty free items free of export duty, provided that all such re-export shall be completed within ninety days following date of acceptance of the work. The Contractor will be required to pay all normal duty on his imported items that have not been re-exported within the above specified ninety-day period. The Contractor shall bear all charges

incurred in the importation of all items referred to above including port and lighterage dues, pilot charges, employer harbour dues and wharfage.

"There shall be no restriction by the Government of the United Republic of Tanzania on the free convertibility of local currency derived from the sale of duty free items in accordance with the above requirements."

(Emphasis Added)

The U.S.A.I.D. Capital Projects Guidelines applicable to the said project state in part:

"This clause (in the case of contracts to which the government of the borrower country is a party) confirms to the contractor the extent of its exemption of immunity and that of its personnel from financial liability for all taxes, customs, duties and the like imposed by or in borrower country. To the extent the government does not provide such exemption or immunity (including the case of a private borrower) the contract will provide that all such taxes, customs duties and the like on or with respect to the contractor or its personnel shall be shown as a local currency expense and these will be reimbursed (or paid in the first instance by borrower) from borrower's local currency funds. The contract should, as specified in the loan agreement, letters of implementation, or other related documents, enumerate the taxes, customs, duties and the like subject to this provision (these will normally not include taxes included in other local costs and not readily identifiable) and provide for escalation for any new or increased taxes, customs, duties and the like or any existing tax, customs, duty or the like inadvertently not enumerated. Where it is impracticable to enumerate and/or compute taxes, customs, duties and the like, the contract may specify a percentage of the contract price, to be payable in local currency by the borrower. Such percentage must be approved by AID. This clause will appear in all construction, engineering and other professional services, equipment and commodity related services, such as incidental services, contracts."

(Emphasis Added)

The Contract documents further provided, expressly or by implication, that the Respondent was to receive no fees, revenues or other such funds from the Claimant as a result of the United States financed road construction project and that if any such fees were collected by any agency of the Respondent,

that the Respondent would reimburse the Claimant; that, in particular, the Claimant was exempt from the burdens of the taxes, duties, levies, fees and other burdens of taxation or similar charges as identified in Exhibit No. 5, included with the Claimant's letter of 27 June 1973.

That in breach of the said Contract the Respondent has collected from the Claimant taxes, duties, levies and other fees and charges as identified on the said Exhibit No. 5 in the principal sum of Shs. 871,296/98 or in the sum of \$79,567.01; that the said principal sum, along with appropriate overhead and profit with interest is quantified in Exhibit A, hereto, and the Claimant herewith demands payment of the outstanding balance with interest at 9% until the same is paid in full.

2) That as a result of the involvement of United States dollars in connection with the project, the Contract expressly and/or by implication provided for a conversion rate of 7.10 Tanzanian shillings to one United States dollar and the proportions of payments made under the Payment Certificates were computed and paid at this rate or on this basis.

That as a result of the disputes and differences hereinabove set forth and hereinafter following, the Claimant was required and forced to transfer unexpended amounts of United States dollars to Tanzania to help finance the project and on each occasion of transfer on agent of the Respondent converted the transferred dollars at rates other than the stipulated conversion rate in violation of the expressed and implied terms of the agreements relating between the parties and in contradiction of the Respondent's interpretation of the Contract, Exhibit 5, hereto; that the principal amount that the . . .

Respondent has collected from the Claimant to date is in the sum of Shs. 307,190/49 or \$42,784.19; that the said principal sum with appropriate overhead and profit with interest at 9% is quantified in Exhibit C, hereto; that the Claimant herewith demands payment of the outstanding balance with appropriate interest until the same is paid in full.

3) That during the Claimant's construction work in ^{TRY ON Premium?} early 1969 an unexpected and unanticipated emergency arose when the construction of the roadway intersected a pipeline operated by Tazama Pipelines Ltd.; that the intersection of the pipeline and roadway created such an unexpected and unprovided for hazard that the Engineer issued a Stop Order whereby the Claimant was forbidden from working on or near the pipeline until suitable arrangements were made with Tazama Pipelines Ltd; that one of the arrangements eventually worked out was that the Claimant was to secure approximately £1,000,000 of insurance to insure the pipeline company against damage; that it was specifically understood and agreed between the Claimant and the Engineer and the Government of Tanzania that the unexpected and additional insurance would be obtained at the Respondent's cost; that on or about the 13th day of July 1972, the Claimant invoiced the Respondent through its Engineer and agent for the cost of the insurance in the sum of Shs. 200,975/05; that the Engineer forwarded the said invoice to the Respondent with his recommendations that the invoice be paid; that the said sum has been due the Claimant since on or about 1 June 1972 as a result of the expressed agreement between the parties; that the Claimant herewith demands that it have and recover from the Respondent the

principal sum of Shs. 200,375/05 or \$27,907.39 with interest at the rate of 9% from 1 June 1970 until the said sum has been paid in full, as quantified on Exhibit D, hereto.

4) That under the terms of the Contract ^{TRY} between the parties, the Claimant was required to obtain all of its automobile insurance from the National Insurance Corporation of Tanzania, an agency of the Respondant, and it so did; that in early 1972 the National Insurance Corporation of Tanzania unilaterally cancelled or withdrew comprehensive insurance coverage on some or all of the Claimant's vehicles; that after the withdrawal of the insurance, two of the Claimant's vehicles were damaged (or destroyed) in the sum of Shs. 82,900/- or \$11,545.96; that as a result of the Governmental action in withdrawing the insurance, which was not foreseeable at the time of the Claimant's tender, the Claimant has suffered damages in the said sum and herewith demands payment of the said principal sum with appropriate overhead and profit with interest at 9% from 4 August 1972 until paid in full, as quantified in Exhibit E, hereto.

5) That prior to the tender, the Claimant ^{TRY} had negotiated with its fuel supplier to purchase fuel at a stated price to be delivered to the job site, and during the initial period of the construction program the Claimant secured its fuel supply from ESSO Standard Tanzania, Ltd. at a fixed price FOB job site; that in or about May of 1970 the Respondant's licensing authority refused to renew ESSO's licence and East African Railways Corporation, a Governmental agency, took over the transportation of the fuel at an increase in freight prices which caused the Claimant to pay unexpected freight charges in the sum of

Shs. 940,630/35 or \$131,008.12, all because of the actions of the Respondent's agencies; that the Engineer for the project has ruled on numerous occasions that the Claimant's charges against the Respondent were proper and on several occasions the Respondent has directly acknowledged the correctness of the Claimant's charges, Exhibits F and G, hereto; that the Claimant herewith demands that it have and recover from the Respondent the principal sum of Shs. 940,638/35 or \$131,008.12 along with appropriate overhead and profit with interest at 9%, as quantified on Exhibit H, hereto.

6) That due to extensive and unexpected ^{TD-1} repair and reconstruction work required of the Claimant along with variations as it progressed in its construction work, unexpected quantities of 80/100 bitumen were required at an increased cost in the transportation of the bitumen and at an increased cost of the product itself; that the Engineer recognized in writing that the increased costs of transportation and of the bitumen itself were extra unavoidable costs incurred in the procurement of the bitumen for such quantities used in excess of those specified and/or foreseen by the Contract and subsequent Variation Orders; that the Engineer recommended to the Respondent that the charge be paid as an extra variation or as a result of Governmental action subsequent to the tender; that the extra direct costs incurred by the Claimant were Shs. 129,744/24 or \$19,870.23 for the cost of transportation and Shs. 126,226/50 or \$17,580.29 for the cost of the bitumen itself; that the Claimant demands that it have and recover from the Respondent the said principal sum along with appropriate overhead and profit with interest at 9% as quantified on Exhibits I and J, hereto.

7) That during the construction program an agency of the Respondent; to wit, East African Railways and Harbours, refused and failed to transport cement for the Claimant at the rate scheduled and as Claimant's schedule required; that as a result of this Governmental action and in order to minimize the Claimant's and the Respondent's damages, the Claimant transported the cement by truck at an increase in cost of Shs. 93,785/45 or \$13,062.04; that the said amount is justly due unto the Claimant as a variation or as a result of Governmental action and demand is herewith made that the Claimant be paid the said principal sum along with appropriate overhead and profit with interest at 9% as quantified on Exhibit K, hereto.

8) That prior to 1 June 1971, the Claimant was shipping its cement to the job site by rail at a specified freight rate established by an agency of the Government of Tanzania; to wit, East African Railways and Harbours; that by unilateral action, the said agency increased the freight price on or about 1 June 1971 which resulted in the Claimant's paying unexpected freight rates totalling Shs. 124,275/60 or \$17,308.58; that the unexpected variation in price is justly due the Claimant as a variation or as the result of Governmental action; that the Claimant does hereby demand that it have and recover from the Respondent the principal sum of Shs. 124,275/60 or \$17,308.58 along with appropriate overhead and profit with interest at 9% as quantified on Exhibit L, hereto.

9) That beginning in the Spring of 1971, the East African Railways and Harbours could not or did not have the capability or refused to transport blasters to the Claimant's job site; that in order to minimize the Claimant's and the

Respondent's damages and in order to continue on a reasonable progress schedule, the Claimant shipped bitumen by sea from Honbaa to Dar es Salaam and then either by rail or road to the project site; that by reason of the unexpected Governmental action and by reason of a variation and implied warranty that the Claimant could get reasonable and normal freight service, the Claimant incurred additional transportation costs in the amount of Shs. 302,422/36 or \$42,120.11; that the Claimant herewith demands that it have and recover from the Respondent the said sum along with appropriate overhead and profit with interest at 9%, as quantified on Exhibit H, hereto.

10) That due to the extensive and unexpected ^{TRV} repair and reconstruction work along with variations ordered by the Engineer and the Respondent during the construction of the project, the Claimant was eventually unable to obtain the overrun of bitumen in East Africa and had to import the same from the Middle East, thereby incurring additional costs in the sum of Shs. 230,679/80 or \$32,120.11; that the Engineer had recommended to the Respondent that it pay the Claimant compensation for the extra unavoidable increased price in the procurement of bitumen for such quantities in excess of those specified or foreseen by the Contract and subsequent Variation Orders, but the Respondent has failed and refused to pay the Claimant and the Claimant herewith demands that it have and recover from the Respondent the said principal sum along with appropriate overhead and profit with interest at 9%, as quantified on Exhibit H, hereto.

✓ ^{TRV} 11) That on or about 1 July 1973, the Engineer determined that extensive patching of portions of the completed roadway was necessary and that repairs of work orders for the base and subgrade was required due to unexpected soil conditions and/or

inadequate design of pavement structures, all of which was outside the Claimant's contractual responsibility; that the Claimant was directed to calculate its direct cost on the basis of unit prices and "day work"; that the Claimant did calculate its additional and unexpected costs for the repair work on the said rate and submitted the direct costs to the Respondent in the sum of Shs. 1,292,720/31; that the Respondent, recognizing its responsibility to pay for the direct costs, has paid the Claimant on account the sum of Shs. 320,775/38, leaving a net principal balance due the Claimant in the sum of Shs. 963,944.93 or \$134,254.16; that the direct cost does not include any indirect cost as hereinafter set forth; that the Claimant herewith demands that it have and recover from the Respondent the said sum of Shs. 963,944/93 or \$134,254.16 along with appropriate overhead and profit, with interest at 9% from 24 August 1971, as quantified on Exhibit O, hereto.

12) That upon commencing the TM construction of the project it became evident to the Claimant and the Engineer that the Engineer did not have sufficient forces to perform its engineering obligations and an agreement was reached between the Claimant and the Respondent (the Engineer) that the Claimant would perform some engineering work for the Respondent in excess of Claimant's obligations under the Contract; that it was further specifically agreed that the Claimant could be paid for the extra engineering work performed by it as an extra and as a variation, and it was agreed between the parties that the Claimant would be paid for this extra engineering work at the rate of Shs. 1,500/- per day; that subsequent to the date of the agreement concerning the Claimant's performing extra

engineering work, the Engineer arbitrarily issued Variation Order No. 11, whereby it unilaterally reduced the price of the engineering work from She. 1,500/- per day to She. 1,436/- per day; that as a result of the engineering work performed by the Claimant as a variation through the period commencing in December 1968 and ending in about April of 1972, the Claimant incurred unpaid costs or expenses in the sum of She. 632,357/45 or \$88,072.70, which remains unpaid; that the Claimant herewith demands that it have and recover from the Respondent the said principal sum along with interest at 9% from the 1st of June 1970 until paid, as quantified on Exhibit P, hereto.

13) That in about September 1968, the Claimant ^{TRP} required lands owned by the Government of Tanzania, said lands being located adjacent to the project, for the Claimant's camp site; that in order to obtain the lands for its camp site the Claimant was required to advance the sum of She. 15,296/- to the Regional Engineer, Ministry of Communications and Works, Ilboya, for the acquisition of the lands; that the advance to the Regional Engineer was made under the specific understanding that the Claimant would be reimbursed the said sum forthwith because of the obligation of the Respondent, under Clause A-5, Amendment to the Contract Documents, dated 16 July 1968; that the Engineer requested that its principal, the Respondent, reimburse the Claimant for the unexpected expense but the Respondent has failed and refused to make the reimbursement after requests by the Engineer and the Claimant; that the Claimant herewith demands that it have and recover from the Respondent the principal sum of She. 15,296/- or \$2,227.84 along with overhead and profit with interest at 9% from 20 September 1968, as quantified on Exhibit R, hereto.

sum of Shs. 1,572,531/- or \$219,311.23; that demand has been made by the Claimant upon the Respondent for the said sum but the Respondent has failed and refused and still fails and refuses, without just cause, to pay the same as a variation or as a supplemental agreement; that the Claimant hereby demands that it have and recover from the Respondent the sum of Shs. 1,572,531/- or \$219,311.23 with interest at 9% from 1 June 1978, as quantified on Exhibit R, hereto.

15) That under the terms of the Contract ^{TRY} between the parties, the Claimant was required to furnish vehicles for the Engineer's use on or about the project; that during the lifetime of the Contract the Engineer and the Claimant continuously negotiated, but never consummated, a fixed agreement as to the charges for the use of the vehicles and the interim payment made by the Respondent was without prejudice concerning the final amount due under this item; that the principal amount claimed hereinafter, representing seventeen vehicles furnished for a total of 974 vehicle months, is Shs. 1,958,271/40, less the amount paid to date of Shs. 1,688,506/00, leaving a balance due of Shs. 269,765/40 or \$371,181.72; that the Claimant herewith demands to have and recover from the Respondent the said principal sum with interest at 9% from 1 July 1978, as quantified on Exhibit S, hereto.

16) That specifications for asphalt treated base contained in Contract Document Number 2 stipulated the use of ~~material~~ ^{material} ~~produced~~ ^{produced} ~~from the~~ ^{from the} ~~Hyale pit~~ ^{Hyale pit} (asphalts added); however, the use of the materials from the Hyale pit proved to be unsatisfactory from a production stand-point and from a product quality standpoint and a verbal agreement was reached

between the Claimant and Mr. Roy Robinson, Project Manager and senior official of the Engineer stationed in Tanzania, that the Claimant could or would utilize a mixture or blend of the Uyoie material and materials from the Mota and Chinole areas so as to produce an acceptable mix; that the Project Manager for the Engineer agreed that there would be no price increase for the upgraded material but that the Claimant would be paid the additional hauling expenses; that based upon the oral agreement, the Claimant did utilize suitable materials in the blend from other soil pits and incurred additional hauling expenses in the amount of Shs. 507,900/- or \$70,739.16; that the Claimant verified the variation in writing with another of the Engineer's representatives but the Engineer's other representative denied the claim because its senior representative had theretofore departed Tanzania without verifying or reducing the verbal variation to writing; that the Claimant's claim and demand for the extra hauling expenses has not been denied by the said Project Manager who made the agreement and who is still employed by the Engineer and the said amount is now due to the Claimant as an "account stated," and as a variation; that the Claimant demands that it have and recover from the Respondent the principal sum of Shs. 507,900/- or \$70,739.16 along with overhead and profit with interest at 7% from 1 June 1975, as quantified on Exhibit Y, hereto.

17) That prior to and at the time the Claimant submitted its tender, it used the custom and practice to pay Tanzanian workers and laborers for actual hours worked with one and a half times the regular hourly rate for each hour of work beyond eight hours per week day and one and a half times the regular

hourly rate for each hour worked beyond five hours on Saturdays; that after the construction program commenced the Claimant proceeded to pay Tanzanian employees in accordance with the custom and practice prevailing up to about June of 1969; that in or about June of 1969 a complaint was made to the Respondent, through the principal labor official in the Mboya area, concerning the Saturday work and the proper Government official ruled and held that the Claimant had to pay Tanzanian employees for eight hours work on Saturdays instead of five hours if the employees reported to work; that the ruling and directive of the Respondent's agency required the Claimant to pay each Tanzanian employee for three hours "work" although the Claimant did not receive any benefit therefrom and the employees did no work for the "pay time"; that as a result of the unexpected action of the Government after the date of the tender and the signing of the Contract between the parties, the Claimant has been harmed and damaged in the sum of Shs. ^{630,280/73} 805,272/40 or ^{87,782,53} 912,155/90; that the Claimant herewith demands to have and recover from the Respondent the said principal sum along with overhead and profit with interest at 9%, as quantified on Exhibit U, hereto.

omit 18) That prior to and at the date of tender the specifications for the project required a substantial amount of crushed stone or rock to be utilized in the construction program and as a part of the crushed aggregate requirement and as part of the inducement to make the tender at the lowest possible price, the Respondent specifically and expressly provided in the Contract documents that the Claimant could use the Uvuma quarry site identified and located within the Contract

documents; that the Respondent further expressly warranted, covenanted and agreed that the Uwawa quarry site had a "proven quantity of 250,000 tons" of suitable material which could be used or utilized by the Claimant in its quarry and crushed aggregate operations; that based upon the expressed and unequivocal condition and representation in the Contract, the Claimant proceeded in an attempt to develop the Uwawa quarry site into a suitable quarry operation immediately upon commencement of work on the project; that in the early exploratory process the Claimant advised the Engineer and the Respondent that the Uwawa quarry site apparently was unsuitable for a quarry operation and that it did not have the proven quantity of quarriable stone; that the Respondent and the Engineer insisted that the Claimant proceed to develop the quarry site and the Claimant spent approximately four months work in and around the area before the Engineer finally conceded that the site was not as expressly set forth in the Contract documents and directed the Claimant to develop another quarry site located at a considerable distance from the Uwawa site; that in attempting to develop the Uwawa quarry site the Claimant encountered direct expenses and damages in the amount of Shs. 329,659/90 or \$45,913.50; that the Engineer has stated in writing that the Claimant's charges are "fair" arising out of a breach of Contract or a variation; that the Claimant herewith demands that it have and recover of the Respondent the said principal sum along with overhead and profit with interest at 9% from 1 July 1969, as quantified on Exhibit V, hereto.

19) That according to the Engineer's computations, the Claimant was required to finish the project on or about 6 February 1972 and consequently the Engineer and the Respondent charged and collected from the Claimant the sum of Shs. 1,161,000/- or \$161,699.17 for the period from 6 February 1972 through 30 March 1972, when the project was substantially completed; that in assessing liquidated damages against the Claimant the Engineer and the Respondent failed and refused to take into consideration that the Respondent had breached the Contract on numerous occasions as hereinabove set forth and as will be shown hereinafter, which said breaches, both expressed and implied, resulted in the assessment being a penalty; that because of the breaches of Contract, variations and actions of the Government throughout the entire construction program, the senior representative of the Engineer stationed in Africa verbally advised and confirmed with the Claimant, representatives of U.S.A.I.D. and a consultant or advisor of the Ministry of Communications and Works that the assessment of liquidated damages against the Claimant was not applicable and that time extensions should be allowed so as to eliminate any liquidated damages; that the Claimant herewith demands that it have and recover the said principal sum heretofore withheld or collected by the Respondent as liquidated damages along with overhead and profit with interest at 7% from 30 March 1972, as quantified on Exhibit H, hereto.

VIII.

UNLIQUIDATED CLAIMS

That immediately after commencing work on the project and throughout the lifetime of the construction program, it was ascertained on a more or less daily basis that the plans and design of the roadway were inadequate and defective; that in attempting to construct the project the Claimant encountered numerous and continuing obstacles and variations on an overlapping basis which caused the Claimant to incur increased costs which were not foreseeable at the time of the tender; that the result, in terms of delay and disorganization, of each of the matters hereinafter referred to, was a continuing one and had a "rippling" effect throughout the lifetime of the job because as each matter or event occurred its consequences were added to the cumulative consequences of the matter which preceded it and it is therefore impractical, if not impossible, at this time to assess the additional expenses caused by delay or disorganization due to any one of these matters in isolation from any of the other matters; however, the Claimant respectfully requests that, based upon the evidence, the Claimant have and recover of the Respondent individual awards in respect to the individual items of the entire claim which can be dealt with in isolation and a supplemental award in respect of the remainder of the foregoing and following claims as a composite whole.

That the unliquidated claims are more particularly defined and set forth as follows:

1) Stop Orders

That early in the construction program certain direct costs were incurred concerning the pipeline crossing which resulted in direct damages arising out of the insurance premiums; however, as a result of the unexpected event of the conflict of the alignment of the road with the Tezama pipeline, the Engineer issued a Stop Order which interrupted and interfered with the Claimant's planned schedule and this had a continuous and rippling effect throughout the entire operation which indirectly and directly prolonged the work and increased its cost; that as a result of the Stop Order, and concurrently with it, a Variation Order was issued wherein certain physical protective measures were made as a variation to protect the pipeline which, along with the Stop Order, increased the cost of and the time of completion of the project.

That subsequent to commencement of the construction program, the Engineer issued one or more additional Stop Orders because the Claimant was proceeding faster than the Engineer could design, redesign or furnish plans for the works as a result of the original design being defective and inadequate; that the said subsequent Stop Orders further compounded the delays theretofore encountered and increased the Claimant's costs and delayed the overall completion of the project; that, in particular, the last referred to Stop Orders were issued in October and November of 1969.

2) Vwawa Quarry

That as the Claimant's original progress schedule will show, the setting up of a proper quarry operation and the obtaining of crushed aggregate on a priority basis was contemplated and required for the Claimant to properly finish or complete the project within the original contract time and on a reasonable schedule; that the express breach of the Contract concerning the 250,000 tons of proven material at the Vwawa quarry site caused the Claimant direct expenses as hereinabove set forth; that in addition to the direct expenses, the Claimant incurred indirect costs and expenses as a result of the approximately four months delay in its crushing operations caused by the lack of the proven site; that the delay created by the Vwawa quarry site created a formidable problem at the outset of the construction program which had a continuing effect on all subsequent operations as a result of the initial delay concerning this critical item or matter and the Claimant has never received any consideration or payment as a result of the indirect damages and costs flowing from and directly attributable to the express breach of Contract concerning the Vwawa quarry or the Variation Order that followed directing the Claimant to seek, find and use a substitute for a quarry site.

3) Grade Changes and Realignment

That due to the defective plans and specifications, it was necessary for the Engineer to issue numerous grade changes and realignments on a frequent and continuous basis

from early 1969 until into 1971, all of which changes interrupted the Claimant's sequence of operations and schedules and which affected the Claimant's costs and efforts throughout the entire construction program; that the magnitude and timing and the disorganizing effect of the grade and alignment changes is illustrated by Exhibit No. 27 to the Claimant's letter dated 29 June 1973; that the variations caused and created by the magnitude and timing of the grade and alignment changes was caused in part by the Engineer's lack of engineering personnel which resulted in the Engineer's being unable to furnish plans for the changes on a reasonable and prudent basis so as not to disrupt and disorganize the Claimant's planned or reasonable rate of progress; that the lack of engineering and the delinquency in furnishing the Claimant timely information concerning the gross changes in grades and alignment delayed all construction work and the Engineer's lack of qualified engineers delayed the Engineer in its redesign of the project, which also delayed issuance of Variation Order No. 18 which attempted to redesign the project so that a reasonable program could resume; that the delay in engineering and the delay in issuance of Variation Order No. 18 amounted to a constructive suspension of work, as well as variations, expressed and implied; that the failure of the Engineer to have adequate and competent engineering during the construction process and its failure to issue timely instructions and design or redesign criteria amounted to an implied breach of Contract, all of which greatly harmed and damaged the Claimant.

4) Unsuitable Materials for Subgrade and Sub-base
and Excessive Testing and Controls

That the rocky sub-base heretofore referred to not only caused the Claimant direct costs and expenses, but caused a gross amount of indirect expenses because of the delays and extra effort expended in attempting to utilize the unsuitable materials under the variation; that the Engineer has recognized in writing that the use or utilization of the rocky sub-base from unsuitable material sources, as directed by the Engineer as a variation, would result in a justifiable claim for damages; that the damages arising out of the use of the unsuitable rocky sub-base was a continuing one and had cumulative consequences on the matters which preceded and followed it to the completion of the project; that the required use of the rocky sub-base amounted to a variation and/or implied breach of the Contract that suitable soils would be reasonably available to the Claimant for utilization in its construction work.

That as a result of the excessive testing procedures used by the Engineer, both in its original soils investigation and its investigations for many months after the Claimant commenced its construction program, the values determined for subgrade and sub-base materials designated by the Engineer for use by the Claimant during its construction work were grossly in error and resulted in the roadway's being unstable in rainy weather, that the excessive evaluation of materials for subgrade and sub-base before and after construction commenced resulted in gross failures in the pavement structure constructed by the Claimant and seriously constrained the Claimant's base and pavement operations during the 1969-1970 and 1971-1972 rainy seasons, leaving them totally

ineffective and resulted in damage and an increased cost to the Claimant commencing in 1969 and continuing at least until the redesign and re-evaluation of procedures were accomplished by the Engineer in early 1971.

That as a direct result of the inadequacy of the design and the unsuitable materials used in the subgrade and sub-base, the Engineer, in direct breach of the expressed and implied terms of the Contract and over the objection of the Claimant, required and ordered the Claimant to compact the base course to greater densities than specified which further greatly harmed and damaged the Claimant in its cost and in its time required to finish the project; that, in particular, the Engineer used the incorrect CBR testing procedure which over-rated the soil quality as compared to the procedure designated by the specifications; that the Engineer continued to use control tests for base course densities not in accordance with those specified in the Contract; that, in particular, the utilization of the rocky sub-base material, the failure of the Engineer to allow the proper surface tolerances and the use of incorrect base course densities and testing procedures not in accordance with those specified in the Contract reduced the Claimant's overall efficiency for the entire 1970 dry season to about 20% of what it should have reasonably been and thereby effected, directly and indirectly, the overall cost of the project until completion and consequently prolonged its completion; that the defective specifications with the utilization of unsuitable materials, as a result of variations, caused and created numerous payment structure changes and resulted in a price structure redesign sequence,

all as partly enumerated in Exhibits 24 , 25 and 26 of Claimant's letter of 29 June 1973; that the variations between the design and as-built statistics ordered and required by the Engineer are set forth in Exhibit 23 to the Claimant's letter of 29 June 1973.

That as a result of the defective plans and specifications and the innumerable variations resulting therefrom, extensive pavement corrections and repairs were ordered by the Engineer as a result of failures in the base and sub-base and as a result of using unsuitable materials; that in addition to the direct damages hereinabove set forth concerning pavement corrections and repairs, the Claimant was greatly damaged and harmed by the magnitude of and because of the sequence of the corrective and repair work; that this indirect damage flowed throughout the construction program and was cumulative to the other matters set forth herein which delayed the Claimant's progress and which increased its costs.

That the delay of the Engineer in redesigning the project and issuing the subsequent variation orders, the numerous pavement structure changes, the numerous pavement correction and repair responsibilities imposed upon the Claimant by the unexpected variations, the pavement structure redesign sequence, the utilization of unsuitable materials, the failure of the Engineer to allow the correct surface tolerances as specified in the Contract, the Engineer's improper use of testing procedures, tests, densities, the numerous variations in sub-base as they pertained to deletion, substitution and location, the obstructions encountered in rock

excavation, crushing quantities, the overruns in bitumen and cement and other materials not contemplated under Contract Amendment No. 2, or otherwise, and the failure of the Engineer to act promptly, prudently and expeditiously concerning its duties to the Claimant after discovery of the defective specifications which resulted in numerous, constant and overlapping variations and changes, resulted in a total change in the character and/or quality and/or kind of work anticipated by the parties at the time of the tender and at the time the Contract was entered into between the parties; that an enumeration of some of the changes is reflected in Exhibits 8, 20, 21 and 22 to Claimant's letter of 29 June 1973.

IX.

The Claimant is entitled to recover from the Respondent for the matters and things herein set forth as unliquidated damages and because of the disputes and differences which arose between the parties, as will be shown at the hearing of this cause, based in part on:

- a) Breaches of express conditions of the Contract.
- b) Because of alterations, additions and omissions under Sections 62 and 63 of the General Conditions of the Contract.
- c) Delays and disruptions under the provisions of Section 61 (1) of the General Conditions of the Contract.
- d) Discrepancies under the provision of Section 6 of the General Conditions of the Contract.

- e) Variations under Section 77.13 or the Special Conditions of the Contract.
- f) Breaches of an implied term of the Contract that the Employer and/or its Engineer will furnish to the Claimant such drawings, information and instructions as are reasonably required by the Claimant for the execution of the work within a reasonable time in all of the circumstances so as to avoid disruption, acceleration or prolongation of the work.
- g) Breaches of an implied warranty that the Employer and/or its Engineer will not impose upon the Claimant a greater performance burden for discovery of the work or its completion than reasonably contemplated under the tender.
- h) Breaches of an implied warranty that the Employer and/or its Engineer will do nothing to interfere with the Claimant in the performance of this Contract.
- i) Breaches of an implied warranty that the Employer and/or its Engineer will always act with proper and adequate consideration for the interest of the Claimant on a reasonable and prudent basis.
- j) Breaches of an implied warranty that the Employer and/or its Engineer not only act to hinder performance but to do whatever is necessary to enable performance on a reasonable and prudent basis and schedule.
- k) Innocent misrepresentations.

X.

That in addition to the foregoing disputes and differences between the parties, the following disputes have occurred and are at issue:

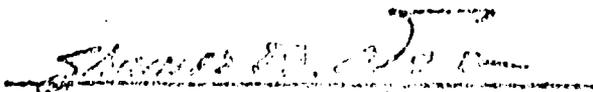
- 1) Whether or not the arbitrator, as requested by the Claimant herewith, can make an award in United States dollars rather than Tanzanian shillings?
- 2) Whether or not the conversion rate of any recovery if made in Tanzanian shillings should be converted into United States dollars based on the rate of 7.18 shillings to one United States dollar without any imposition of any burden whatsoever on the Claimant by the Government of Tanzania?
- 3) Whether or not any sums awarded under the arbitration shall be fully tax free in Tanzania and shall be freely exported without any imposition of any burden whatsoever by the Government of Tanzania?
- 4) Whether or not any duties, taxes of any nature, levies or other similar charges or impositions or burdens of any nature shall accrue or be imposed as a part of or as a result of the arbitration proceedings and the award thereunder?

CONCLUSIONS

Based on the foregoing, the Claimant respectfully requests:

- 1) That it be awarded damages in respect to those parts of the individual items of the claim which can be dealt with in isolation with appropriate interest and a supplementary award in respect to the remainder of the claims as a composite whole; that the composite whole be not less than \$12,189,661.12 with interest at the rate of 9% from 6 February 1972 on the unliquidated claim based upon the proofs to be offered at the hearing.
- 2) That the arbitrator render a decision on all issues raised herein.
- 3) That the Claimant be awarded all costs of arbitration including, but not limited to, the arbitrator's fees and expenses, expert witnesses' expenses, accounting expenses, clerical expenses, engineering expenses, travel expenses, reasonable attorney's fees and expenses.
- 4) That the Claimant have and receive such other and further relief as may be deemed proper by the arbitrator.

This, the 27th day of May 1974.



CHARLES G. BYE
Attorney for the Claimant

Post Office Box 115A
Durham, North Carolina 27702

Telephone (Area Code 919) 682-6121

SUMMARY OF LIQUIDATED CLAIMS

The following is a summary of NIT's allegations and do not record a determination of liability and damages by A.I.D. or anyone else.

1. Taxes and duties paid for which exemption should have been granted	TSh. 571,296.90
2. Exchange losses from TanGov failure to utilize rate required by contract for NIT purchase of local currency	307,190.49
3. Additional premium for liability insurance covering damage to pipeline as unanticipated extra cost	200,375.05
4. Inadequate insurance coverage resulting from cancellation by TanGov of insurance coverage leaving NIT uncompensated for loss to two motor vehicles	82,900.00
5. Increased fuel costs resulting from TanGov cancellation of Esso licence	910,638.35
6. Increased costs of bitumen for quantities in excess of contract quantities	126,226.50
7. Increased cost of road transport of cement when East African Rail failed to transport at scheduled rate	93,785.45
8. Rail rate for cement increased by EAR	124,275.60
9. Sea transport for bitumen from Mombasa to Dar es Salaam and rail and road transport to project site from EAR failure to transport completely by rail	302,422.36

10.	Increased cost of special (80/100) bitumen for quantities in excess of contract quantities (involved shipment from mid-East)	TSh.	230,679.90
11.	Pavement correction and repairs caused by unexpected soil conditions and inadequate design		963,944.93
12.	Engineering work by NLT beyond "setting out"		632,357.45
13.	Certain acquisition costs of land for contractor's Mbeya Camp site which TanGov had agreed to reimburse		15,996.00
14.	Design change in materials to be furnished resulting from rocky sub-base - direct costs		1,572,501.00
15.	Dispute on reasonableness of amount payable to NLT for supplying vehicles to DCI		941,884.80
16.	Cost of hauling sand for ATB from alternative sources when sand from specified Uyole pit proved uneconomic and inadequate in quality		507,900.00
17.	Increased labor costs resulting from TanGov action of requiring 8 hours pay for 5 hours work on Saturdays		805,279.40
18.	Cost of exploring Vwawa quarry and finding it inadequate and cost of finding substitute source (NLT says contract or plans represented Vwawa as having "proven quantity" of 250,000 tons of rock)		329,658.98
19.	Refund of liquidated damages, as time extension should have been granted		<u>1,161,000.00</u>
	Total alleged	TSh.	<u>9,910,313.16</u>
Total alleged liquidated claims equal			
	(at TSh. 7.18 = US\$1.00)	\$	1,380,266.44
	(at TSh. 8.2 = US\$1.00)	\$	1,208,574.78

IN THE MATTER OF ARBITRATION
BETWEEN :



NELLO L. TEBER COMPANY

and

THE UNITED REPUBLIC OF
TANZANIA

Respondent

POINTS OF DEFENCE

1. Save that no admissions are made as to the destination of funds by the Claimant in Tanzania, nor as to the relevancy of the sponsorship and financing of the project numbered paragraph I of the Particulars of Claim is admitted.
2. Numbered paragraph II of the Particulars of Claim is admitted.
3. Save that the Engineer had the functions and relationship vis a vis each contracting party usual in an engineering construction contract and was not specifically the agent of the Respondent numbered paragraph III of the Particulars of Claim is admitted.
4. Without conceding their relevancy, the Respondent admits numbered paragraphs III and IV and V of the Particulars of Claim.
5. Save that by Clause 77.7 sub-sections 5(a) and (d) of the Economic Technical and Related Assistance Agreement dated 8th February, 1968 were incorporated into the contract, numbered paragraph VI is denied. If and in so far as the Claimant seeks to incorporate the Capital Projects Guidelines by reference to oral communications the Claimant will say that the contract is entirely contained in writing and that parol or other evidence of negotiations or user is inadmissible.
6. Save that the dispute and differences the subject-matter of this Arbitration, have arisen between the Claimant and the Respondent, no admissions are made as to numbered paragraph VII of the Particulars of Claim.

LIQUIDATED CLAIMS



Claim 1. Taxes and Duties. Special Condition 77.7 incorporating section 5 (a) and (d) of the said agreement of 8th August 1968 is admitted. The Respondent will refer to the said Condition and sub-sections for their full terms and effect. The Capital Projects Guidelines was not incorporated into the contract and it is not permissible in law to refer to such documents as an Aid to construction of the contract or otherwise in applying its terms. It is denied that the term alleged at the bottom of p. 5 and top of p.6 of the Particulars of Claim was incorporated as an express term or that facts and circumstances exist whereby it was implied; the Respondent says that on true construction of condition 77.7 as incorporating section 5(a) and (d) the prerequisites for exemption from tax or duty were:

supplies, materials, equipment or funds - that

(a) they were imported into or acquired in or exported from Tanzania for purposes of the programme or project the subject matter of the contract

and (b) they were used in Tanzania in connection with such programme or project.

Such exemption is limited to taxes and duties and export/import tariffs properly so called and charges although differently named nevertheless within the category of a tax or duty or tariff as those words are generally understood.

non-Tanzanian personnel- that

(a) they were employed by or gave services under contract with the Claimant in Tanzania;

and (b) they performed work in connection with the project, and (c) they received income upon which they were required to pay income or social security tax elsewhere.

Such exemption was limited to income tax and social security tax.

The Respondent will answer the detailed allegation in the form of a Schedule when Particulars of the Claim have been served.

Claim 2. EXCHANGE LOSSES

It is denied that the contract expressly and/or by implication provided for a conversion rate of 7.10 Tanzania shilling to one United States Dollar and that any payments were to be made at this rate.

The Respondent will contend that such reference as was made in the said contract to a rate of exchange was for the purpose of measuring and evaluation of goods only, and was a Bill of Quantities item. The Respondent makes no admission to the further matters set out in paragraph 2 of the liquidated claim as if the same were set out and traversed seriatim. The Respondent denies that the Claimant is entitled to the sum of Shs. 307,190/49 or \$42,784 or any part thereof.

Claim 3. PIPELINE INSURANCE

Save that the rate of interest is subject to agreement between the parties the Claim and the amount thereof are admitted, restricted only to premia for the insurance actually taken out as required by the Respondent.

Claim 4. INADEQUATE INSURANCE

No admissions are made as to the matters alleged as if the same were set out and traversed seriatim. The Respondent will refer to and rely on at the trial General Conditions 8, 29 and 31 # of the contract. The National Insurance Corporation of Tanzania is not an agent of or otherwise controlled by the Respondent and further the Respondent gave no warranty or other undertaking that the said Corporation would accept the Claimant's Insurance. No breach of contract is disclosed and no liability under contract is disclosed. Further the Claimant has suffered no damage. The Respondent puts the Claimant to strict proof of claim.

Claim 5. INCREASED FUEL COSTS

The licence expired by effluxion of time. The licensing Authority [] as it was entitled to do, did not grant a renewal of the licence. In any event, the non-renewal of the licence cannot vest a cause of action in the Claimant under the Contract and no case in breach of contract is disclosed.

Claim 6. INCREASED COST OF BITUMEN

No admissions are made as to the matters alleged as if the same were set out and traversed seriatim.



The Respondent will refer to and rely on the trial General Conditions 62 and 63(5) of the contract. In particular the Respondent denies that any increased cost as to which no admission is made, was caused by an action on the part of the Respondent and that the Respondent is liable to make good such increased cost to the Claimant.

Claim 7. EXTRA TRANSPORT COSTS FOR CEMENT BY TRUCK

The Respondent denies that any refusal and/or failure, as to which no admission is made, by East African Railways and Harbours to transport cement for the Claimant caused any loss or damage to the Claimant, which are not admitted, which the Respondent is liable to make good. In particular the Respondent denies that the East African Railways and Harbours was a body and/or agency over whom the Respondent had any control, and further the Respondent denies that such extra costs were incurred by the Claimant, as to which no admission is made, constituted a variation and/or were the result of any action on the part of the Respondent. The Respondent will refer to and rely on, at the trial Paragraph 2 of Amendment No. 1 dated 16th July, 1968.

CLAIM 8 EXTRA TRANSPORT COSTS FOR CEMENT BY RAIL

The Respondent denies that it is under any liability to make good or reimburse to the Claimant the sum or any part thereof claimed. In particular the Respondent denies that the East African Railways and Harbours was a body and/or agency over which the Respondent had any control and further the Respondent denies that such extra costs were incurred by the Claimant, as to which no admission is made, constituted a variation and/or were the result of any action on the part of the Respondent. The Respondent will refer to and rely on, at the trial, Paragraph 2 of Amendment No. 1 dated 16th July, 1968.

Claim 9 ADDITIONAL COSTS OF WORKMAN SUPPLIED BY SRA

The Respondent denies that there was a variation of the contract or an implied warranty. Alternatively that if a variation did occur, the procedure as required by the contract as a condition precedent to recovery were not followed and that no cause of action lies against the Respondent. The Respondent will refer to and rely on at the trial, Paragraph 2 of Amendment No. 1 dated 16th July, 1968.

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Claim 10 WITH COST OF SUPPLIES 80/100 DETERMINED DUE TO PRICE INCREASE.

No admissions are made as to the matters set out as if the same were set out and traversed serially. The Respondent will refer to and rely on, at the trial, General Conditions 62 and 63(5) of the said contract.

Claim 13 ACQUISITION OF LAND

The Respondent denies that the Claimant is entitled to the sum or any part of it claimed. In particular the Respondent denies that the matters set out and referred to entitle the Claimant to any such payment. The Respondent will refer to and rely on, at the trial, for their terms and effect 'Amendment No 1 dated the 16th July, 1968, Special Condition 7712 of the contract paragraph 2 of section 2.02 of the Specifications to the contract. In particular Clause A-5 is referable to royalties, but the claim refers not to royalties, but to unexpected expenses.

Claim 15 ENGINEER'S VEHICLES

The Respondent denies that no fixed agreement was reached between the Claimant and the Engineer, acting on behalf of the Respondent, for the use of vehicles by the Engineer. In the Bill of Quantities item No. 2.05.5, to the Contract the sum of shs. 290,000 was included to cover costs incurred by the Claimant in this respect. The said sum was increased to shs. 600,000 by variation Order No. 3 of 25th February, 1969. By reason of the matters set out hereinafter and by reason of the admission contained in the said paragraph 15 that the Respondent has paid shs. 1,008 386.60 for the use of vehicles, the Respondent denies that any further sum is due and owing to the Claimant.

Claim No 17 INCREASED LABOUR COSTS DUE TO GOVERNMENT ACTION

No admissions are made as to the matters set out in paragraph 17 of the Liquidated Claims as if the same were set out and traversed serially. Without receding from the aforesaid if, which is not admitted, any of the matters are correctly set out in the said paragraph, the Respondent denies that by reason of any such matters the Claimant is entitled to payment of the sum or any part of it claimed in the said paragraph 17.



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The Respondent will refer to and rely on at the trial to General Conditions 63 (5)(i)(ii) and(iii) and Special Condition 77.13 of the said contract. In particular the Respondent will contend that any increased labour costs, as to which no admission is made, were foreseeable at the time of the tender within the meaning of the Special Condition 77.13. Further the need to pay did not arise by reason of any action for which the Respondent was responsible within the meaning of the provisions. At all material times it was open to the Claimant to alter working arrangements whereby it could obtain full value of wages paid.

Claim 19. LIQUIDATED DAMAGES

Save that, the Respondent admits that the sum of shs. 1,161,800 or \$ 161,199.17 has been withheld from the Claimant by reason of the matters alleged, the Respondent makes no admissions as to the matters alleged as if the same were traversed and set out verbatim. The Respondent will contend that it was entitled to withhold the said sum.

7. By reason of the matters set out and pleaded in the Points of Defence hereto the Respondent denies that the Claimant is entitled to the sum of shs. 912,589,661.12 with interest thereon.

DELIVERED AT DAR ES SALAAM this 14th day of August, 1974.



H. D. Joanni
ATTORNEY GENERAL

THE UNITED REPUBLIC OF TANZANIA

Served on Messrs Mollo L. Tour Company,
Respondent,
P. O. Box 2011
DAR ES SALAAM



ANNEX E

IN THE MATTER OF THE ARBITRATION
ORDINANCE

AND IN THE MATTER OF AN ARBITRATION

B E T W E E N :

NELLO J. TEER COMPANY

Claim:

and

THE UNITED REPUBLIC OF TANZANIA

Response:

A G R E E M E N T

A G R E E M E N T made on 3rd day of October 1975
between Kello L. Teer Co. ("the Claimant") of Durham,
North Carolina, U.S.A., and the Government of the United
Republic of Tanzania ("the Respondent")

WHEREAS:

(1) By a Contract in writing dated the 6th August 1968
numbered 14606/68 ("the Contract") the Claimant undertook
to carry out certain works.

(2) During the execution of the works disputes and
differences arose between the parties hereto.

(3) Certain of the said disputes and differences were
referred to Arbitration in accordance with the terms of
the Contract.

(4) The parties hereto have agreed to resolve those of the
said disputes and differences which remain outstanding in
manner hereinafter appearing.

NOW IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:-

1. The Respondent will pay to the Claimant the sum of
U.S. \$ 4,000,000 in full and final settlement (save as
hereinafter appears) of all claims by and liabilities to
the Claimant arising out of or in connection with the
Contract;

2. The said sum shall be paid to the Claimant in New York by way of remittance to First National City Bank of New York, 399 Park Avenue, New York to the credit of the Claimant marked "For the attention of William Harvey or David Graves on behalf of" the Claimant by 31st October 1975.

3. The Respondent shall pay to the Claimant their costs of and occasioned by the said Arbitration, such costs to be taxed by the Arbitrator.

4. The said costs, when agreed or thus ascertained shall be paid to the Claimant in U.S. ^{dollars} \$ 1 in New York by way of remittance to the said First National City Bank of New York as aforesaid ~~(or as otherwise nominated by the Claimant)~~ within 30 days of agreement or of receipt by the Respondent of the Arbitrator's order on taxation (as the case might be).

5. The parties forthwith shall apply to the Arbitrator to make an Award by Consent in the terms of the draft annexed hereto.

6. All claims and cross-claims by either party against the other arising out of or connected with the Contract are discharged as set forth in the said draft.

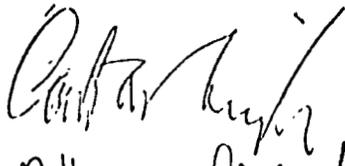
7. The parties agree that the Arbitrator shall be requested to file promptly the Award or a signed and certified copy

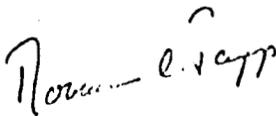
thereof in the Court in accordance with Section 11(2) of
the Arbitration Ordinance.

8. This Agreement is governed by the Law of Tanzania.

Dated 3rd October 1975

For the Government of the United Republic
of Tanzania


Solicitor General


Counsel

IN THE MATTER OF THE ARBITRATION ORDINANCE

AND IN THE MATTER OF AN ARBITRATION

B E T W E E N :

NELLO L. TEER COMPANY

Claimant

-and-

THE UNITED REPUBLIC OF TANZANIA

Respondent

A W A R D

WHEREAS:

(1) By an agreement (hereinafter called "the Contract") in writing dated 6th August 1968 numbered 14696/68 and made between the Respondent of the one part and the Claimant of the other part the Claimant undertook to carry out for the Respondent the construction completion and maintenance of the Tunduma to Iyayi Road on the terms and conditions therein contained. The Contract including all documents comprised therein and all amendments and variations thereof is deemed to be incorporated into this Award.

(2) The Contract provided by General Condition 74:-
"Provided always that in case any dispute or difference shall arise between the Employer or the Engineer on his behalf and the Contractor either during the progress of the Works or after the deterioration, abandonment or breach of the Contract

or as to any matter or thing arising thereunder (except as to matters left to the absolute discretion or final decision of the Engineer under the Clauses of this Contract or to the exercise by the Engineer of the right to have any work opened up for inspection) then either party shall forthwith give to the other notice in writing of such dispute or difference and such notice shall be and is hereby deemed to be a submission to arbitration within the meanings of the Arbitration Ordinance (Cap.15 of the Laws). The hearing of such reference shall not be opened until after the completion or alleged completion of the Works unless with the written consent of the Engineer. The Arbitrator shall have power to open up, review and revise any certificate, opinion, decision, requisition or notice save in regard to the said matters or things expressly excepted above and to determine all matters in dispute which shall be submitted to him and of which notice shall have been given as aforesaid in the same manner as if no such certificate, opinion, decision, requisition or notice had been given."

(3) Disputes and differences concerning and deriving from the Contract arose between the parties hereto, many of which the parties were unable to resolve.

(4) The outstanding disputes and differences were

referred and submitted to Arbitration in accordance with the terms of the Contract and I, Richard John Soper, Barrister at Law (England) was duly appointed sole Arbitrator to conduct the Arbitration under and in accordance with the Arbitration Ordinance (Cap.15 of the Laws of Tanzania) and the Rules made thereunder.

(5) On various occasions I enlarged the time for making the Award and finally by written direction dated 26th July 1975 addressed to the parties and their advisers signed by me in accordance with Paragraph 3 of Schedule 1 of the said Ordinance and pursuant to an application for directions heard on 17th July 1975 attended by Counsel for each party, I extended the time until 31st December 1975.

(6) The Pleadings annexed hereto (and which are deemed to be incorporated into this Award) summarise the broad outline of the Claimant's claims and the various issues between the parties.

(7) By direction made by me on 1st August 1974, I directed that the liquidated claims appearing in the Claimant's original Points of Claim dated 27th May 1974 be tried and determined as preliminary issues with a view to an interim award being made upon them, save that claims numbered (11), (12), (14), (16) and (18) be deferred until the hearing of the main unliquidated claim. By agreement between the parties claim (19) was also withdrawn from the preliminary hearing. Prior to the preliminary hearing parts of claim (1)

were compromised by the parties and ceased to feature in this Arbitration leaving in issue a total sum for that claim of Tanzanian Shillings 557,114.95 (equivalent to U.S. \$ 77,592.61)

(8) On 9th September 1974 and upon 21 days thereafter in London I heard the oral evidence and read such Affidavits and other written evidence as was tendered and was referred by the parties to material documents and I heard the submissions of Counsel upon the claims the subject matter of the preliminary hearing. Prior to the hearing the Respondent conceded liability on claim (3), namely oil pipeline insurance claim, and during the hearing the quantum in respect of this item was agreed at Tanzanian Shillings 136,248/- (equivalent to U.S.\$18,976)-subject to the item and its amount being included by consent in my interim award. I further heard submission on particular points of law at various later dates and I received written submissions tendered by the parties on various aspects of the case. I ultimately decided that it was not appropriate to make an interim award upon the preliminary issues prior to the hearing of the main unliquidated claim.

Between 12th and 14th May 1975 inclusive I heard oral evidence in Dar es Salaam given by various witnesses locally resident who were called on behalf of the Respondent.

(10) I directed that the hearing of the unliquidated claim and the outstanding items of liquidated claim should be fixed to start in London on 16th September 1975. At the request of the parties and to facilitate negotiations I have

adjourned the hearing from time to time.

(11) I am informed by the parties that they have compromised their differences and at their request I make the consent Award in the following terms:-

NOW I, the said Richard John Soper DO HEREBY
AWARD BY CONSENT as follows:-

1. The Respondent do pay to the Claimant the sum of U.S. \$ 4,000,000 (four million dollars) by the 31st day of October 1975 such payment to be made by remittance to First National City Bank of New York, 399 Park Avenue Branch, New York to the credit of the Claimant marked "For the attention of William Harvey or David Graves on behalf of" the Claimant.
 2. The Respondent shall pay the Claimant's costs of this Arbitration, such costs to be taxed by me.
 3. The said costs when ascertained by my order upon taxation or by agreement shall be paid by the Respondent to the Claimant in U.S. dollars in New York to First National City Bank of New York as aforesaid within 30 days of agreement or of receipt by the Respondent of my order (whichever may be the later).
 4. Upon payment of the sum referred to in Clause 1 above all claims and cross-claims of either party against the other party in this Arbitration or otherwise arising out of or in respect of the Contract are hereby discharged.
- DATED the 3rd day of October 1975.

.....Richard John Soper.....
(R. J. Soper).

NEMO L. TIER COMPANY

Claimant

and

THE UNITED REPUBLIC OF TANZANIA.

Respondent

 COSTS OF ADJUDICATION

IN PURSUANCE of my ORDER in this matter bearing the date the 5th day of October, 1975 I have been attended by solicitors for the claimant and the respondent and I certify that I have taxed the costs of the claimant thereby directed to be taxed at the undersigned rates:-

FRANK L. ROLLETT	55,136
RICHARD C. QUINLEN	30,584
J. A. TACKABURY	52,611
BEALE & CO	19,409
CHAMBERS & NAY	193,000
H. L. H. ...	41,300
MacCollinson	100,500
ADMINISTRATOR ...	22,980
TOTAL	577,320 US DOLLARS.

Dated this ninth day of October, 1975

Richard C. Quinlen ALTERNATE

Telephone: "TANZANIA", DAR ES SALAAM.

Telex: 2121

(All Official communications should
be addressed to the Principal
Secretary to the Treasury and
NOT to individuals.)

In reply please quote:
TTC/C/200/68.

Ref. No.

29th January, 1976.

648-H-005

Mr. V. Johnson,
Director,
United States Agency For International
Development,
P.O. BOX 9130,
DAR ES SALAAM.

Dear Mr. Johnson,

FINANCIAL ASSISTANCE FOR SETTLEMENT OF NELLO L.
TEER CLAIMS

With reference to a copy of your Agency's letter of 9th October, 1975, addressed to the Attorney General Tanzania, giving indications of your Agency's willingness to consider Tanzania Government's formal request for funds to meet costs for settlement of the above claims, which then were subject of arbitration, we are now formally writing to request financial assistance in the amount of four million, five hundred seventy seven thousand, three hundred and twenty U.S. dollars (\$ 4,577,320), which has been determined as the Government's liability in that regard.

2. As you may be aware, the Tanzania Government and Messrs. Nello L. Teer reached compromise agreement regarding these claims on 3rd October, 1975, following which an award by consent was made by the Arbitrator in the sum of four million U.S. Dollars, together with the claimants costs, which as of 2nd January, 1976 stood at five hundred seventy seven thousand, three hundred and twenty U.S. dollars (\$ 577,320). The total cost for settlement of the claims and for which the Government of the United Republic of Tanzania is now required to pay is, therefore, in the neighbourhood of four million, five hundred seventy seven thousand, three hundred and twenty U.S. dollars (\$ 4,577,320), which is the amount for in this request.

3. We are of course aware that the consulting engineers, De Leuw, Cather International Inc., were responsible for a large portion of these claims and the Tanzania Government intends to seek indemnity from them. We are also aware of the fact that the settled sum includes certain taxes which are ultimately the responsibility of the Government. We are, however, making this request before completion of necessary readjustments in order that the Government may meet its obligations under the said compromise agreement without further delay.

4. We hope that your Agency will give deserving consideration to this request.

5. Please accept the renewed assurance of our highest consideration.

Yours faithfully,

[Handwritten Signature]
Principal Secretary to the Treasury

JAQUES & Co

THE FIRM WILL S

W. B. BURNETT	M. A. TAYLOR
A. J. B. BURNETT	M. J. MATTHEWS
J. P. MURPHY	J. J. KEANE
M. P. MCGILLIVRAY	J. J. KEENE
J. W. S. GALE	J. H. BURNETT
J. H. BURNETT	A. G. GIBBY
D. H. JONES	D. B. J. CLARK
J. H. HARRIS	A. J. WALLIS
J. G. HARRIS	P. D. WINDYER

INCORPORATED
IN THE UNITED KINGDOM

YOUR REFERENCE
DAB/DRB/AH/G
OUR REFERENCE
MJM/6144/1

2 SOUTH SQUARE,
GRAY'S INN,
LONDON, WC1R 5HR

10th September, 1975

WITHOUT PREJUDICE
FIRST LETTER

Dear Sirs,

re: Nello L. Teer Co. - Government of
Tanzania Arbitration

We are instructed to inform you that our clients are prepared to pay to your clients the sum of 28,720,000 Tanzanian Shillings in full and final satisfaction of all claims arising out of or concerning the Tunduma/Iyayi Road contract. This sum is inclusive of all claims in respect of interest, profits and overheads but exclusive of costs; our clients will, in addition, pay your clients costs to date to be taxed or agreed in the usual way.

Yours faithfully,

Jaques & Co

Messrs. Beale & Co.,
22 Great Smith Street,
Westminster,
London,
SW1P 3DF

BY HAND.

£ 4,000,000⁰⁰

C. B. NTE

JAQUES & CO

TRENCHARD WILLS	
1. B. BENTLEY	11. A. TAYLOR
2. J. BENTLEY	12. G. HEDDERLEY
3. J. BENTLEY	13. G. HEDDERLEY
4. J. BENTLEY	14. G. HEDDERLEY
5. J. BENTLEY	15. G. HEDDERLEY
6. J. BENTLEY	16. G. HEDDERLEY
7. J. BENTLEY	17. G. HEDDERLEY
8. J. BENTLEY	18. G. HEDDERLEY
9. J. BENTLEY	19. G. HEDDERLEY
10. J. BENTLEY	20. G. HEDDERLEY

21. G. HEDDERLEY
22. G. HEDDERLEY
23. G. HEDDERLEY
24. G. HEDDERLEY
25. G. HEDDERLEY

YOUR REFERENCE
DAB/DRB/AH/G
YOUR REFERENCE
MIM/0144/1

2 SOUTH SQUARE,
GRAY'S INN,
LONDON, WGR 5HR

10th September, 1975

Dear Sirs,

SECOND LETTER

re: Nello L. Teer Co. - Government of
Tanzania Arbitration

We are instructed by our clients, the Government of Tanzania, to make you an unequivocal and irrevocable offer, subject to the ordinary rules as to payment into Court, to pay your clients the sum of 2,620,700 Tanzanian Shillings together with costs to date to be taxed or agreed in the usual way in respect of the entirety of your clients' claims in the pending part of the arbitration proceedings (the part which for convenience has been called the second part) arising out of the Tunduma/Iyayi Road contract. This offer is to be treated as a sealed offer in the usual way.

In the event of your clients not accepting it, the Government reserves the right to refer it to the Arbitrator when an Award upon the substance of the claims has been made and prior to any Award as to costs.

For practical purposes this offer is to be treated, as a payment into Court under Tanzanian jurisdiction and to be subject to equivalent rules.

Yours faithfully,

Jaques & Co

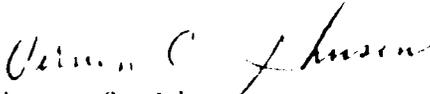
Messrs. Beale & Co., *2,3650,00*
22 Great Smith Street,
Westminster,
London,
WGR 5HR

ANNEX K

CERTIFICATION

I, Vernon C. Johnson, the principal officer of the Agency for International Development in Tanzania having dispatched an on-site inspection team (including engineers) and having a report on the maintenance and utilization of projects in Tanzania previously financed or assisted by the United States, do hereby certify that in my judgment, Tanzania has the human resource capability and is in the process of obtaining the financial capability to effectively maintain and utilize the Capital Assistance project, TanZam Highway Loan, Third Amendment.

This judgment is based in part upon (1) the satisfactory utilization of funds provided under prior AID Highway Construction Loans 698-H-005 and 698-H-007; (2) upon the fact that at least four (4) highway maintenance crews are currently assigned to maintaining this highway; and, (3) the past performance of the Government of Tanzania in maintaining and successfully utilizing capital assistance provided under other related AID projects.


Vernon C. Johnson
Director
USAID/Tanzania

April 15, 1976

Date

LOAN AUTHORIZATION AMENDMENT

AID Loan Amendment No.: 698-W-019

Original AID Loan and Prior Amendment Nos.: 698-H-005
698-H-005A
698-H-005B

AID Project No.: 698-22-310-081

Provided Under: FAA Section 106, Technical Assistance, Energy, Research,
Reconstruction, and Selected Development Problems

For: Africa Regional: TanZam Highway (formerly Great North Road)
(Construction)

Pursuant to the authority vested in the Administrator of the Agency for International Development ("A.I.D.") by the Foreign Assistance Act of 1961, as amended, and Delegations of Authority issued thereunder, I hereby authorize an amendment to increase the above-captioned loan to the Government of the United Republic of Tanzania ("Borrower") by an amount not to exceed Three Million Eight Hundred Seventy Thousand Dollars (\$3,870,000) to assist in financing the foreign exchange and local currency costs of goods and services required for the construction of the Tunduma-Ivayl portion of the Tan-Zam Highway Project. This loan amendment to be subject to the following terms and conditions:

1. Interest Rate and Terms of Repayment.

a. The Borrower shall repay the amount of the loan amendment to A.I.D. in United States Dollars within forty (40) years from the date of first disbursement thereof, including a grace period of not to exceed ten (10) years.

b. The Borrower shall pay to A.I.D. in United States Dollars interest on the outstanding disbursed balance of the loan amendment, and on any due and unpaid interest accrued thereon, at the rate of two percent (2%) per annum during the grace period and three percent (3%) per annum thereafter.

2. Other Terms and Conditions

a. Except as A.I.D. may otherwise agree in writing, the Borrower shall covenant and agree that any and all foreign exchange funds which it may realize in satisfaction of any claims made or to be made against any contractor or supplier in connection with goods or services furnished in carrying out the project shall be applied, as soon as practicable following

receipt of such funds, toward prepayment of the amount of the loan amendment; provided, however, that the amount of any such prepayment may be reduced by the amount of incremental, out-of-pocket costs incurred by the Borrower in seeking and obtaining satisfaction of such claims.

b. Equipment, materials, and services financed under the increased amount of the loan shall have been procured from Tanzania or from countries included in Code 941 of the A.I.D. Geographic Code Book.

c. The loan, as amended, shall be subject to such other terms and conditions as A.I.D. may deem advisable.

Administrator

Date