

No. 16272

**UNITED STATES OF AMERICA
and
PANAMA**

Loan Agreement for the grains and perishables marketing systems project (with annex). Signed at Panamá on 10 September 1975.

Authentic text: English.

Registered by the United States of America on 27 January 1978.

**ÉTATS-UNIS D'AMÉRIQUE
et
PANAMA**

Accord de prêt relatif à un projet concernant les systèmes de commercialisation des céréales et des denrées périssables (avec annexe). Signé à Panamá le 10 septembre 1975

Texte authentique : anglais.

Enregistré par les États-Unis d'Amérique le 27 janvier 1978.

LOAN AGREEMENT¹ BETWEEN [THE] REPUBLIC OF PANAMA AND THE UNITED STATES OF AMERICA FOR THE GRAINS AND PERISHABLES MARKETING SYSTEMS PROJECT

Dated: September 10, 1975

A.I.D. Loan No. 525-T-042

LOAN AGREEMENT dated September 10, 1975, between the REPUBLIC OF PANAMA ("Borrower") and the UNITED STATES OF AMERICA, acting through the AGENCY FOR INTERNATIONAL DEVELOPMENT ("Lender").

Article I. THE LOAN

Section 1.01. THE LOAN. Lender agrees to lend to the Borrower, pursuant to the Foreign Assistance Act of 1961, as amended, an amount not to exceed six million two hundred thousand United States dollars (\$6,200,000) ("Loan") to assist the Borrower in carrying out the Project referred to in section 1.02 ("Project"). The Loan shall be used exclusively to finance the offshore costs of goods and services required for the Project ("Offshore Costs") and local costs of goods and services required for the Project ("Local Costs"). The aggregate amount of disbursements under the Loan is hereinafter referred to as "Principal".

Section 1.02. THE PROJECT. The Project shall consist of the provision of basic physical infrastructure required by the Government Marketing Institution (Mercadeo) to properly execute public marketing programs in basic grains and perishables and to expand its outreach to remote areas. Mercadeo's technical and administrative capacity will be strengthened to improve the development and execution of sound marketing policies and programs, aimed at the production of quality products at low cost to the consumer.

The Project is more fully described in annex I, attached hereto, which annex may be modified in writing, consistent with the foregoing, by the representatives of Borrower and Lender designated under section 8.02 of this Agreement. The goods and services to be financed under the Loan shall be listed in the Implementation Letters referred to in section 8.03 ("Implementation Letters").

Article II. LOAN TERMS

Section 2.01. INTEREST. The Borrower agrees to pay to Lender interest which shall accrue at the rate of two percent (2%) per annum for ten years following the date of the first disbursement hereunder and at the rate of three percent (3%) per annum thereafter on the outstanding balance of Principal and on any due and unpaid interest. Interest on the outstanding balance shall accrue from the date of each respective disbursement (as such date is defined in section 6.04) and shall be computed on the basis of a 365-day year. Interest shall be payable semiannually. The first payment of interest shall be due and payable no later than six (6) months after the first disbursement hereunder, on a date to be specified by Lender.

Section 2.02. REPAYMENT. The Borrower agrees to repay to Lender the Principal within forty (40) years from the date of the first disbursement hereunder in sixty-one (61) approximately semiannual installments of Principal and interest, the

¹ Came into force on 10 September 1975 by signature.

first installment of Principal being payable nine and one-half (9½) years after the date on which the first interest payment is due in accordance with section 2.01. Lender shall provide the Borrower with an amortization schedule in accordance with this section after the final disbursement under the Loan.

Section 2.03. APPLICATION, CURRENCY, AND PLACE OF PAYMENT. All payments of interest and Principal hereunder shall be made in United States dollars and shall be applied first to the payment of interest due and then to the repayment of Principal. Except as Lender and Borrower may otherwise agree in writing, all such payments shall be made to the Controller, Agency for International Development, Washington, D.C. 20523, U.S.A., and shall be deemed made when received by the Office of the Controller.

Section 2.04. PREPAYMENT. Upon payment of all interest and refunds then due, the Borrower may prepay, without penalty, all or any part of the Principal. Any such prepayment shall be applied to the installment of Principal in the inverse order of their maturity.

Section 2.05. RENEGOTIATION OF THE TERMS OF THE LOAN. The Borrower agrees to negotiate with Lender, at such time or times as Lender may request, an acceleration of the repayment of the Loan in the event that there is any significant improvement in the internal and external economic and financial position and prospects of the Republic of Panama.

Article III. CONDITIONS PRECEDENT TO DISBURSEMENT

Section 3.01. CONDITIONS PRECEDENT TO INITIAL DISBURSEMENT. Prior to the first disbursement or to the issuance of the first Letter of Commitment under the Loan, the Borrower agrees, except as Lender may otherwise agree in writing, to furnish to Lender in form and substance satisfactory to Lender:

- (a) an opinion of the Procurador General of Panama that this Agreement has been duly authorized and/or ratified by, and executed on behalf of, the Republic of Panama, and that it constitutes a valid and legally binding obligation of the Borrower in accordance with all of its terms;
- (b) a statement of the names of the persons holding or acting in the office of the Borrower, specified in section 8.02, and a specimen signature of each person specified in such statement.

Section 3.02. CONDITIONS PRECEDENT TO DISBURSEMENT FOR TRAINING. Prior to any disbursement or to the issuance of any Letter of Commitment under the Loan for training, Borrower shall furnish, in form and substance satisfactory to Lender, a training plan specifying the nature and duration of such training and criteria for selecting trainees within the framework of an employee development plan which includes monetary and career incentives.

Section 3.03. CONDITIONS PRECEDENT TO DISBURSEMENTS FOR OTHER THAN TECHNICAL ASSISTANCE, TRAINING, AND PROFESSIONAL SERVICES. Prior to any disbursement or to the issuance of any Letter of Commitment under the Loan for other than technical assistance, training or professional services, Borrower shall furnish in form and substance satisfactory to Lender:

- (a) a plan for a system of maintenance for all vehicles, machinery, equipment and facilities to be financed for the Project;
- (b) a detailed time-phased implementation plan for the Project;
- (c) a financial plan for the Project setting forth the timing and amounts of Loan and Borrower counterpart funding for the Project;

- (d) evidence that Mercadeo has initiated a technical assistance program, including provision for establishing a cost accounting system, for improving the grains and perishables operations;
- (e) a current profit and loss statement and balance sheet for Borrower's implementing agency prepared by the Controller General of the Republic.

Section 3.04. TERMINAL DATES FOR MEETING CONDITIONS PRECEDENT TO DISBURSEMENT. (a) If all of the conditions specified in sections 3.01 and 3.02 shall not have been met within 120 days from the date of Implementation Letter No. 1, or such later date as Lender may agree to in writing, Lender, at its option, may terminate this Agreement by giving written notice to the Borrower. Upon the giving of such notice, this Agreement and all obligations of the Parties hereunder shall terminate.

(b) If all of the conditions specified in section 3.03 shall not have been met within 180 days from the date of Implementation Letter No. 1, or such later date as Lender may agree to in writing, Lender, at its option, may cancel the then undisbursed balance of the amount of the Loan and/or may terminate this Agreement by giving written notice to the Borrower. In the event of a termination, upon the giving of notice, the Borrower shall immediately repay the Principal then outstanding and shall pay any accrued interest and, upon receipt of such payments in full, this Agreement and all obligations of the Parties hereunder shall terminate.

Section 3.05. NOTIFICATION OF MEETING OF CONDITIONS PRECEDENT TO DISBURSEMENT. Lender shall notify the Borrower upon determination by Lender that the conditions precedent to disbursement specified in sections 3.01, 3.02, and 3.03 have been met.

Article IV. GENERAL COVENANTS AND WARRANTIES

Section 4.01. EXECUTION OF THE PROJECT. (a) The Borrower agrees to carry out the Project with due diligence and efficiency, and in conformity with sound engineering, construction, financial, administrative, and management practices. In this connection, the Borrower agrees at all times to employ suitably qualified and experienced personnel to be professionally responsible for the design and execution of the Project and suitably qualified and competent construction contractors to carry out the Project.

(b) The Borrower agrees to cause the Project to be carried out in conformity with all of the plans, specifications, contracts, schedules, and other arrangements, and with all modifications therein, approved by Lender pursuant to this Agreement.

Section 4.02. FUNDS AND OTHER RESOURCES TO BE PROVIDED BY BORROWER. The Borrower shall provide promptly, as needed, all funds, in addition to the Loan, and all other resources required for the punctual and effective maintenance, repair, and operation of the Project as described in annex I hereto.

Section 4.03. CONTINUING CONSULTATION. (a) The Borrower and Lender shall cooperate fully to assure that the purpose of the Loan will be accomplished. To this end, the Borrower and Lender shall, from time to time, at the request of either Party, exchange views through their representatives with regard to the progress of the Project, the performance by the Parties hereto of their obligations under this Agreement, the performance of the consultants, contractors, and suppliers engaged on the Project, and other matters relating to the Project.

(b) Periodically during the course of the Project, and at least once a year, Borrower and Lender agree to conduct evaluations of the progress of the Project.

Section 4.04. MANAGEMENT. The Borrower shall provide qualified and experienced management for the Project, and it shall cause to be trained such staff as may be appropriate for the maintenance and operation of the Project.

Section 4.05. OPERATION AND MAINTENANCE. The Borrower shall cause the facilities constructed under this Project to be maintained and repaired in conformity with sound engineering, financial, administrative, and managerial practices and in such manner as to insure the continuing and successful achievement of the purposes of the Project.

Section 4.06. TAXATION. (a) This Agreement, the Loan, and any evidence of indebtedness issued in connection herewith shall be free from, and the Principal and interest shall be paid without deduction for and free from, any taxation or fees imposed under the laws in effect within Panama, or any political subdivision thereof except municipalities.

(b) In the event of any municipal taxation or fees being imposed with respect to this Agreement, the Loan or any evidence of indebtedness issued in connection herewith, Borrower warrants that it will pay said taxation or fees from resources other than the Loan and other than the funds which Borrower is otherwise obligated to contribute to the Project.

(c) To the extent that (i) any contractor, including any consulting firm, any personnel of such contractor financed hereunder, any property or transactions relating to such contractors financed hereunder and (ii) any commodity procurement transaction financed hereunder are not exempt from identifiable taxes, tariffs, duties, and other levies imposed under laws in effect in Panama, or any political subdivision thereof, Borrower agrees, as and to the extent prescribed in and pursuant to Implementation Letters, to pay or reimburse the same under section 4.02 of this Agreement with funds other than those provided under the Loan.

Section 4.07. UTILIZATION OF GOODS AND SERVICES. (a) Goods and services financed under the Loan shall be used exclusively for the Project, except as Lender may otherwise agree in writing. Upon completion of the Project, or at such other time as goods financed under the Loan can no longer usefully be employed for the Project, the Borrower may use or dispose of such goods in such manner as the Parties hereto may agree to in writing prior to such use or disposition.

(b) Except as Lender may otherwise agree in writing, no goods or services financed under the Loan shall be used to promote or assist any foreign aid project or activity associated with or financed by any country not included in Code 935 of the A.I.D. Geographic Code Book as in effect at the time of such use.

Section 4.08. DISCLOSURE OF MATERIAL FACTS AND CIRCUMSTANCES. The Borrower represents and warrants that all facts and circumstances that it has disclosed or caused to be disclosed to Lender in the course of obtaining the Loan are accurate and complete, and that it has disclosed to Lender, accurately and completely, all facts and circumstances that might materially affect the Project and the discharge of obligations under this Agreement. The Borrower shall promptly inform Lender of any facts and circumstances that may hereafter arise that might materially affect, or that it is reasonable to believe might materially affect, the Project or the discharge of obligations under this Agreement.

Section 4.09. COMMISSIONS, FEES AND OTHER PAYMENTS. (a) The signatories warrant and covenant that in connection with obtaining the Loan, or taking any action under or with respect to this Agreement, neither has paid nor will pay or agree to pay, nor to the best of either Party's knowledge has there been paid nor will there

be paid or agreed to be paid by any other person or entity, commissions, fees, or other payments of any kind, except as regular compensation to full-time officers and employees or as compensation for bona fide professional, technical, or comparable services. The signatories shall promptly report any payment or agreement to pay for such bona fide professional, technical, or comparable services to which either is a Party or of which it has knowledge (indicating whether such payment has been made or is to be made on a contingent basis), and if the amount of any such payment is deemed unreasonable, the same shall be adjusted in a satisfactory manner.

(b) The signatories warrant and covenant that no payments have been or will be received by either Party or any official of either Party, in connection with the procurement of goods and services financed hereunder, except fees, taxes, or similar payments legally established in the Republic of Panama or in the United States of America.

Section 4.10 MAINTENANCE AND AUDIT OF RECORDS. The Borrower shall maintain, or cause to be maintained, in accordance with sound accounting principles and practices consistently applied, books and records relating both to the Project and to this Agreement. Such books and records shall, without limitation, be adequate to show:

- (a) the receipt and use made of goods and services acquired with funds disbursed pursuant to this Agreement;
- (b) the nature and extent of solicitations of prospective suppliers of goods and services to be acquired;
- (c) the basis of the award of contracts and orders to successful bidders; and
- (d) the progress of the Project.

Such books and records shall be regularly audited, in accordance with sound auditing standards, at such intervals as may be agreed between Borrower and Lender (at a frequency of not less than once per year). Such books and records shall be maintained for five years after the date of the last disbursement by Lender or until all sums due Lender under this Agreement have been paid, whichever date shall first occur.

Section 4.11. REPORTS. The Borrower shall furnish to Lender such information and reports relating to the Loan and to the Project as Lender may reasonably request.

Section 4.12. INSPECTIONS. The authorized representatives of Lender shall have the right with prior notification to the Borrower at all reasonable times to inspect the Project, the utilization of all goods and services financed under the Loan, and the Borrower's books and records, and other documents relating to the Project and the Loan. The Borrower shall cooperate with Lender to facilitate such inspections and shall permit representatives of Lender to visit any part of the country of the Borrower for any purpose relating to the Loan.

Article V. PROCUREMENT

Section 5.01. PROCUREMENT FROM SELECTED FREE WORLD COUNTRIES. Except as Lender may otherwise agree in writing, and except as provided in subsection 5.09(c) with respect to marine insurance, disbursements made pursuant to section 6.01 shall be used exclusively to finance the procurement for the Project of goods and services having their source and origin in countries included in Code 941 of the A.I.D. Geographic Code Book as in effect at the time orders are placed or contracts are entered into for such goods and services. Goods and services procured pursuant to this section shall be referred to as "Selected Free World Goods" and

“Selected Free World Services” respectively. All ocean shipping financed under the Loan shall have both its source and origin in countries included in Code 941 of the A.I.D. Geographic Code Book as in effect at the time of shipment.

Section 5.02. PROCUREMENT FROM THE REPUBLIC OF PANAMA. Disbursements made pursuant to section 6.02 shall be used exclusively to finance the procurement for the Project of goods and services having both their source and origin in the Republic of Panama.

Section 5.03. ELIGIBILITY DATE. Except as Borrower and Lender may otherwise agree in writing, no goods or services may be financed under the Loan which are procured pursuant to orders or contracts firmly placed or entered into prior to the date of this Agreement.

Section 5.04. GOODS AND SERVICES NOT FINANCED UNDER LOAN. Goods and services procured for the Project, but not financed under the Loan, shall have their source and origin in countries included in Code 935 of the A.I.D. Geographic Code Book as in effect at the time orders are placed for such goods and services.

Section 5.05. IMPLEMENTATION OF PROCUREMENT REQUIREMENTS. The definitions applicable to the eligibility requirements of sections 5.01, 5.02 and 5.04 will be set forth in detail in Implementation Letters provided they do not violate Panamanian law.

Section 5.06. PLANS, SPECIFICATIONS, AND CONTRACTS. (a) Except as Lender may otherwise agree in writing, the Borrower shall furnish to Lender promptly upon preparation, all plans, specifications, construction schedules, bid documents, and contracts relating to the Project, and any modifications therein.

(b) Except as Lender may otherwise agree in writing, all of the plans, specifications, and construction schedules furnished pursuant to subsection (a) above shall be approved by Lender in writing.

(c) All bid documents and documents related to the solicitation of proposals relating to goods and services financed under the Loan shall be approved by Lender in writing prior to their issuance. All plans, specifications, and other documents relating to goods and services financed under the Loan shall be in terms of normal standards and measurements of the United States or Panama, except as Lender may otherwise agree in writing.

(d) The following contracts financed under the Loan shall be approved by Borrower and Lender in writing prior to their execution:

- (i) contracts for engineering and other professional services;
- (ii) contracts for construction services;
- (iii) contracts for such other services as Borrower and Lender may specify; and
- (iv) contracts for such equipment and materials as Borrower or Lender may specify.

In the case of any of the above contracts for services, Borrower and Lender shall also approve in writing the contractor and such contractor personnel as they may specify. Material modifications in any of such contracts and changes in any of such personnel shall also be approved by Borrower and Lender in writing prior to their becoming effective.

(e) Consulting firms used by the Borrower for the Project but not financed under the Loan, the scope of their services and such of their personnel assigned to the Project as Lender may specify, and construction contractors used by the Borrower for the Project but not financed under the Loan shall be acceptable to Borrower and Lender.

Section 5.07. REASONABLE PRICE. No more than reasonable prices shall be paid for any goods or services financed, in whole or in part, under the Loan, as more fully described in Implementation Letters. Such items shall be procured on a fair and, except for professional services, on a competitive basis in accordance with procedures therefor prescribed in Implementation Letters.

Section 5.08. EMPLOYMENT OF NON-SELECTED FREE WORLD NATIONALS UNDER CONSTRUCTION CONTRACTS. The employment of personnel to perform services under any construction contract financed under the Loan shall be subject to certain requirements with respect to nationals of countries other than the Republic of Panama and countries included in Code 941 of the A.I.D. Geographic Code Book as in effect at the time the construction contract is entered into. These requirements are prescribed in Implementation Letters.

Section 5.09. SHIPPING AND INSURANCE. (a) Selected free world goods financed under the Loan shall be transported to the country of the Borrower only on flag carriers of a country included in Code 935 of the A.I.D. Geographic Code Book as in effect at the time of shipment. No such goods may be transported on any ocean vessel (or aircraft) (i) when Lender, in a notice to the Borrower, has designated as ineligible to carry A.I.D.-financed goods or (ii) which has been chartered for the carriage of A.I.D.-financed goods unless such charter has been approved by Lender.

(b) Unless Borrower and Lender shall determine that privately owned United States-flag commercial vessels are not available at fair and reasonable rate for such vessels, (i) at least fifty percent (50%) of the gross tonnage of all goods (computed separately for dry bulk carriers, dry cargo liners and tankers) financed under the Loan which may be transported on ocean vessels shall be transported on privately owned United States-flag commercial vessels, and (ii) at least fifty percent (50%) of the gross freight revenue generated by shipments financed under the Loan and transported to the Republic of Panama on dry cargo liners shall be paid to or for the benefit of privately owned United States-flag commercial vessels. Compliance with the requirements of (i) and (ii) above must be achieved with respect to both cargo transported from U.S. ports and cargo transported from non-U.S. ports, computed separately.

(c) Marine insurance on selected free world goods may be financed under the Loan with disbursements made pursuant to section 6.01, provided (i) such insurance is placed at the lowest available competitive rate in the Republic of Panama or in a country included in Code 941 of the A.I.D. Geographic Code Book as in effect at the time of placement, and (ii) claims thereunder are payable in the currency in which such goods were financed or in any freely convertible currency. If the Government of the Republic of Panama, by statute, decree, rule, regulation, or practice, discriminates with respect to Lender-financed procurement against any marine insurance company authorized to do business in any state of the United States, then all goods shipped to the cooperating country financed under the Loan shall be insured against marine risks and such insurance shall be placed in the United States with a company or companies authorized to do a marine insurance business in a state of the United States.

(d) The Borrower shall insure, or cause to be insured, all selected free world goods financed under the Loan against risks incident to their transit to the point of their use in the Project. Such insurance shall be issued upon terms and conditions consistent with sound commercial practice and shall insure the full value of the goods. Any indemnification received by the Borrower under such insurance shall be used to replace or repair any material damage or any loss of the goods insured or

shall be used to reimburse the Borrower for the replacement or repair of such goods. Any such replacements shall have their source and origin in countries included in Code 941 of the A.I.D. Geographic Code Book as in effect at the time orders are placed or contracts are entered into for such replacements, and shall be otherwise subject to the provisions of this Agreement.

Section 5.10. NOTIFICATION TO POTENTIAL SUPPLIERS. In order that United States firms shall have the opportunity to participate in furnishing goods and services to be financed under the Loan, the Borrower shall furnish to Lender such information with regard thereto, and at such times, as Lender may request in Implementation Letters.

Section 5.11. UNITED STATES GOVERNMENT-OWNED EXCESS PROPERTY. The Borrower shall utilize, with respect to goods financed under the Loan to which the Borrower takes title at the time of procurement, such reconditioned United States Government-owned excess property as may be consistent with the requirements of the Project and as may be available within a reasonable period of time. The Borrower shall seek assistance from Lender and Lender will assist the Borrower in ascertaining the availability of and in obtaining such excess property. Lender will make arrangements for any necessary inspection of such property by the Borrower or its representative. The costs of inspection and of acquisition, and all charges incident to the transfer to the Borrower of such excess property, may be financed under the Loan. Prior to the procurement of any goods, other than excess property, financed under the Loan and after having sought such Lender assistance, the Borrower shall indicate to Lender in writing, on the basis of information then available to it, either that such goods cannot be made available from reconditioned United States Government-owned excess property on a timely basis or that the goods that can be made available are not technically suitable for use in the Project.

Section 5.12. INFORMATION AND MARKING. Borrower agrees to give publicity to the Loan and the Project as a joint program utilizing United States and Panamanian resources in furtherance of mutual objectives, identify the Project site, and mark goods financed under the Loan, as prescribed in Implementation Letters.

Article VI. DISBURSEMENTS

Section 6.01. DISBURSEMENT FOR OFFSHORE COSTS—LETTERS OF COMMITMENT TO UNITED STATES BANKS. Upon satisfaction of conditions precedent, the Borrower may, from time to time, request Lender to issue Letters of Commitment for specified amounts to one or more United States banks, satisfactory to Lender, committing Lender to reimburse such bank or banks for payments made by them to contractors or suppliers, through the use of Letters of Credit or otherwise, for offshore costs of goods and services procured for the Project in accordance with the terms and conditions of this Agreement. Payment by a bank to a contractor or supplier will be made by the bank upon presentation of such supporting documentation as Lender may prescribe in Letters of Commitment and Implementation Letters.

Banking charges incurred in connection with Letters of Commitment and Letters of Credit shall be for the account of the Borrower and may be financed under the Loan.

Section 6.02. DISBURSEMENT FOR LOCAL COSTS. Upon satisfaction of conditions precedent, the Borrower may, from time to time, request disbursement by Lender for local costs of goods and services procured for the Project in accordance with the terms and conditions of this Agreement by submitting to Lender such supporting documentation as Lender may prescribe in Implementation Letters. Funds

utilized under the Loan to finance local costs shall be made available under procedures satisfactory to Lender. The United States dollar equivalent of the local currency made available hereunder will be the amount of the United States dollars required by Lender to obtain the currency of the country of the Borrower.

Section 6.03. OTHER FORMS OF DISBURSEMENT. Disbursements of the Loan may also be made through such other means as the Borrower and Lender may agree to in writing.

Section 6.04. DATE OF DISBURSEMENT. Disbursement by Lender shall be deemed to occur (a) in the case of disbursements pursuant to section 6.01, on the date on which Lender makes a disbursement to the Borrower, to its designee, or to a banking institution pursuant to a Letter of Commitment and (b) in the case of disbursements pursuant to section 6.02, on the date on which Lender disburses to the Borrower or its designee.

Section 6.05. TERMINAL DATE OF DISBURSEMENT. Except as Borrower and Lender may otherwise agree in writing, no Letter of Commitment, or other commitment document which may be called for by another form of disbursement under section 6.03, or amendment thereto shall be issued in response to requests received by Lender, after June 30, 1978, and no disbursement shall be made against documentation received by Lender or any bank described in section 6.01 after December 31, 1978. Lender at its option may, at any time or times after June 30, 1978, reduce the Loan by all or any part thereof for which documentation was not received by such date.

Article VII. CANCELLATION AND SUSPENSION

Section 7.01. CANCELLATION BY MUTUAL AGREEMENT. The Borrower and Lender may mutually agree in writing to cancel any part of the Loan (i) which, prior to the giving of such notice, Lender has not disbursed or committed itself to disburse or (ii) which has not then been utilized through the issuance of irrevocable Letters of Credit or through bank payments made other than under irrevocable Letters of Credit.

Section 7.02. EVENTS OF DEFAULT; ACCELERATION. If any one or more of the following events ("Events of Default") shall occur:

- (a) the Borrower shall have failed to pay when due any interest or installment of Principal required under this Agreement,
- (b) the Borrower shall have failed to comply with any other provision of this Agreement, including, but without limitation, the obligation to carry out the Project with due diligence and efficiency,
- (c) the Borrower shall have failed to pay when due any interest or any installment of Principal or any other payment required under any other loan agreement, any guaranty agreement, or any other agreement between the Borrower or any of its agencies and Lender, or any of its predecessor agencies,

then Lender may, at its option, give to the Borrower notice that all or any part of the unrepaid Principal shall be due and payable sixty (60) days thereafter, and, unless the event of default is cured within such sixty (60) days:

- (i) such unrepaid Principal and any accrued interest hereunder shall be due and payable immediately; and
- (ii) the amount of any further disbursements made under then outstanding irrevocable Letters of Credit or otherwise shall become due and payable as soon as made.

Section 7.03. SUSPENSION OF DISBURSEMENT. In the event that at any time:

- (a) an Event of Default has occurred,
- (b) an event occurs that Borrower or Lender determines to be an extraordinary situation that makes it improbable either that the purpose of the Loan will be attained or that the Borrower will be able to perform its obligations under this Agreement,
- (c) any disbursement by Lender would be in violation of the United States legislation governing Foreign Assistance,
- (d) the Borrower shall have failed to pay when due any interest or any installment of Principal or any other payment required under any other loan agreement, any guaranty agreement, or any other agreement between the Borrower or any of its agencies and the Government of the United States or any of its agencies,

then Lender may, at its option:

- (i) suspend or cancel outstanding commitment documents to the extent that they have not been utilized through the issuance of irrevocable Letters of Credit or through bank payments made other than under irrevocable Letters of Credit, in which event Lender shall give notice to the Borrower promptly thereafter;
- (ii) decline to make disbursements other than under outstanding commitment documents;
- (iii) decline to issue additional commitment documents;
- (iv) at Lender's expense, direct that title to goods financed under the Loan shall be transferred to Lender if the goods are from a source outside the country of the Borrower, are in a deliverable state and have not been offloaded in ports of entry of the country of the Borrower. Any disbursement made or to be made under the Loan with respect to such transferred goods shall be deducted from Principal.

Section 7.04. CANCELLATION BY LENDER. Following any suspension of disbursements pursuant to section 7.03, if the cause or causes for such suspension of disbursements shall not have been eliminated or corrected within sixty (60) days from the date of such suspension, Lender may, at its option, at any time or times thereafter, cancel all or any part of the Loan that is not then either disbursed or subject to irrevocable Letters of Credit.

Section 7.05. CONTINUED EFFECTIVENESS OF AGREEMENT. Notwithstanding any cancellation, suspension of disbursement, or acceleration of repayment, the provisions of this Agreement shall continue in full force and effect until the payment in full of all Principal and any accrued interest hereunder.

Section 7.06. REFUNDS. (a) In the case of any disbursement not supported by valid documentation in accordance with the terms of this Agreement, or of any disbursement not made or used in accordance with the terms of this Agreement, Lender, notwithstanding the availability or exercise of any of the other remedies provided for under this Agreement, may require the Borrower to refund such amount in United States dollars to Lender within thirty days after receipt of a request therefor. Such amount shall be made available first for the cost of goods and services procured for the Project hereunder, to the extent justified; the remainder, if any, shall be applied to the installments of Principal in the inverse order of their maturity and the amount of the Loan shall be reduced by the amount of such remainder. Notwithstanding any other provision in this Agreement, Lender's right to require a refund with respect to any disbursement under the Loan shall continue for five years following the date of such disbursement.

(b) In the event that Lender receives a refund from any contractor, supplier, or banking institution, or from any other third Party connected with the Loan, with

respect to goods or services financed under the Loan, and such refund relates to an unreasonable price for goods and services, or to goods that did not conform to specifications, or to services that were inadequate, Lender shall first make such refund available for the cost of goods and services procured for the Project hereunder, to the extent justified, the remainder to be applied to the installments of Principal in the inverse order of their maturity and the amount of the Loan shall be reduced by the amount of such remainder.

Section 7.07. EXPENSES OF COLLECTION. All reasonable costs incurred by Lender, other than salaries of its staff, in connection with the collection of any refund or in connection with amounts due Lender by reason of the occurrence of any of the events specified in section 7.02 may be charged to the Borrower and reimbursed to Lender in such manner as Lender may specify.

Section 7.08. NONWAIVER OF REMEDIES. No delay in exercising or omission to exercise any right, power, or remedy accruing to Lender under this Agreement shall be construed as a waiver of any of such rights, powers, or remedies.

Article VIII. MISCELLANEOUS

Section 8.01. COMMUNICATIONS. Any notice, request, document, or other communication given, made, or sent by the Borrower or Lender pursuant to this Agreement shall be in writing or by telegram, cable, or radiogram and shall be deemed to have been duly given, made, or sent to the Party to which it is addressed when it shall be delivered to such Party by hand or by mail, telegram, cable or radiogram at the following addresses:

To Borrower:

Mail address:

Ministry of Agricultural Development
Apartado 5390
Panamá 5, Panama

Cable address:

MIDA
Panama

To Lender:

Mail address:

United States Agency for International Development
Apartado 1099
Panamá 5, Panama

Cable address:

USAID
American Embassy
Panamá, R.P.

Other addresses may be substituted for the above upon the giving of notice. All notices, requests, communications, and documents submitted to Lender hereunder shall be in Spanish, except as Lender may request in writing.

Section 8.02. REPRESENTATIVES. For all purposes relative to this Agreement, the Borrower will be represented by the individual holding or acting in the office of the Minister of Agricultural Development and Lender will be represented by the individual holding or acting in the office of Director, United States Agency for International Development Mission to Panama. Such individuals shall have the authority to

designate additional representatives by written notice. In the event of any replacement or other designation of a representative hereunder, Borrower shall submit a statement of the representative's name and specimen signature in form and substance satisfactory to Lender. Until receipt by Lender of written notice of revocation of the authority of any of the duly authorized representatives of the Borrower designated pursuant to this section, it may accept the signature of any such representative or representatives on any instrument as conclusive evidence that any action effected by such instrument is duly authorized.

Section 8.03. IMPLEMENTATION LETTERS. Lender shall, from time to time, issue Implementation Letters that will prescribe the procedures applicable hereunder in connection with the implementation of this Agreement. Nothing in such letters shall alter the terms of this Agreement.

Section 8.04. PROMISSORY NOTES. At such time or times as Lender may request, the Borrower shall issue promissory notes or such other evidences of indebtedness with respect to the Loan, in such form, containing such terms and supported by such legal opinions as Lender may reasonably request.

Section 8.05. APPROVALS. Documents or reports submitted by Borrower to Lender in connection with this Agreement, which must be in form satisfactory to Lender, are deemed to be in form and substance satisfactory to Borrower who is submitting them.

Section 8.06. TERMINATION UPON FULL PAYMENT. Upon payment in full of the Principal and of any accrued interest, this Agreement and all obligations of the Borrower and Lender under this Loan Agreement shall terminate.

IN WITNESS WHEREOF, Borrower and Lender, each acting through its respective duly authorized representative, have caused this Agreement to be signed in their names and delivered as of the day and year first above written.

Republic of Panama:

By: [Signed]

Lieutenant Colonel
RUBÉN DARÍO PAREDES
Minister

of Agricultural Development

By: [Signed]

MIGUEL A. SANCHÍZ
Minister of Treasury

United States of America:

By: [Signed]

WILLIAM JORDEN
Ambassador

By: [Signed]

BERNARD CHAPNICK
Acting Director

Agency
for International Development

A N N E X I

THE PROJECT

One of the principal constraints to increasing Panama's agricultural production and participation in the market economy by the low-income farmer is the lack of an assured market which effectively reaches deep into the rural areas with known standards and prices. The Project, which will be financed by the Government of Panama and this Loan, consists of two major components designed to overcome this marketing constraint through: (1) the provision

of basic physical infrastructure required by the government marketing institution (Mercadeo) to properly execute public marketing programs in basic grains and perishables and to expand its outreach to remote areas; and (2) strengthening Mercadeo's technical and administrative capacity for developing and executing sound marketing policies and programs aimed at encouraging the production of quality products at minimum cost to the consumer.

The Borrower's policy objectives with respect to prices of agricultural products are to assure fair returns to agricultural producers, stimulate domestic production of food products, and maintain fair marketing margins to protect consumers' interests.

1. *Physical infrastructure*

The physical infrastructure to be financed under the Project consists of the following:

a. The construction or renovation and equipping of country buying points for grains, fruits, and vegetables. Approximately fourteen (14) buying points for grains and semi-perishables will be constructed, each with a capacity for storing 5,000 cwt. and equipped with receiving and sampling equipment.

b. Three (3) collection centers for fruits and vegetables will be constructed as follows: (1) Boquete, Chiriquí — 11,000 cubic feet of refrigerated storage space and grading facilities; (2) Cerro Punta, Chiriquí — same size and facilities as Boquete collection center; (3) El Valle, Coclé — 4,300 cubic feet of refrigerated storage space and space for product grading.

c. The construction and equipping of collection stations for buying and storing grains and semi-perishables. Three (3) collection stations will be established in the Darién Province and each will be equipped with receiving, drying and sampling equipment: (1) El Real — 10,000 cwt. storage capacity with a grain dryer; (2) Garachiné — 50,000 cwt. storage capacity; (3) Río Iglesia — 50,000 cwt. storage capacity and a 20 cwt./hour rice mill.

d. The construction and equipping of four (4) terminal plants for receiving, drying and storing grains: (1) Changuinola, Bocas del Toro — 100,000 cwt. bulk, 50,000 cwt. bag capacity; (2) Las Tablas, Los Santos — 100,000 cwt. bulk, 50,000 bag capacity; (3) Santiago, Veraguas — 200,000 cwt. bulk, 50,000 cwt. bag capacity; (4) Panama City, Panama — 200,000 cwt. bulk, 50,000 cwt. bag capacity.

e. Mercadeo's existing cold storage centers will be improved. The Panama City and Chitré cold storage plants will be equipped with humidity/temperature control systems, sliding doors, subdivided cold rooms, forklifts and pallet rack systems. The David cold storage plant will be equipped with a forklift and pallet rack system.

f. Cold storage and sub-zero facilities will be constructed and equipped for handling and storing perishable commodities as follows: (1) Colón, Colón — 62,000 cubic feet of refrigerated storage, including a 2,000 cubic foot sub-zero room, and equipped with a forklift and pallet rack system; (2) La Chorrera, Panamá — 47,000 cubic feet of refrigerated storage, including a 2,000 cubic foot sub-zero room and equipped with a forklift and pallet rack system; (3) Santiago, Veraguas — 32,000 cubic feet of refrigerated storage, including a 2,000 cubic foot sub-zero room; and (4) Penonomé, Coclé — same as Santiago plant.

g. Dock facilities will be constructed in Darién Province. A floating dock, approximately 7 × 16 meters, will be located at El Real; and a wharf, founded on piling, approximately 12 × 80 meters will be located at Río Iglesia.

h. The Project will also provide the following transport equipment for Mercadeo's grains and perishables marketing operations:

- (1) 8 three-quarter-ton dual-wheel traction pick-up trucks;
- (2) 5 six-wheel ten-ton refrigerated vans;
- (3) 9 two-and-a-half-ton refrigerated vans;
- (4) 8 half-ton refrigerated panel trucks;
- (5) 10 five-ton grain utility trucks;

- (6) 10 ten-ton bulk/bag combination trailers and 3 tractors;
- (7) 3 100-150-ton shallow draft vessels.

i. A plant will be established for manufacturing wire-bound crates and boxes for perishable products. The plant will have a capacity for manufacturing approximately one million wirebound crates per year.

2. *Institutional development*

The second component of this Project is concerned with strengthening Mercadeo's technical and administrative capacity for developing and executing sound marketing policies and programs aimed at encouraging the production of quality products at minimum cost to the consumer. Specifically, the Project will provide both training and technical assistance to Mercadeo for developing and implementing an official grades and standards system for the major grains and perishables produced in Panama. A second institutional goal is the establishment of cost accounting and financial control systems within Mercadeo. Additionally, the Project will provide technical advisors and training to Mercadeo personnel for improving the handling, conditioning and storage techniques for both grains and perishables as these commodities move through the marketing channels from producers to consumers. Assistance will also be provided to Mercadeo for analyzing production costs at the farm level.

The Project will provide technical assistance to Mercadeo as follows:

- general marketing advisor — 24 man-months;
- fresh produce marketing specialist(s) — 12 man-months;
- grades and standards technician for perishables — 12 man-months;
- grain handling technician — 7 man-months;
- grades and standards technician for grains — 12 man-months;
- financial management, budgeting and cost accounting consultants — 24 man-months.

Mercadeo will provide secretarial and support facilities, including transportation, for the technical advisors financed under the Project. Mercadeo will also designate counterparts for each of the advisors provided under the Project.

In-country training will be provided by the technical advisors in their fields of specialization. In addition, the Project will provide up to 200 man-months of out-of-country training.

3. *Project execution*

The responsibility for the Project's execution will rest with the Dirección Nacional de Mercadeo of the Ministry of Agricultural Development. The consultants financed under the Project will assist Mercadeo in the implementation of the various Project elements. Mercadeo will be further assisted by an annual Project evaluation review with the Lender and representatives of Mercadeo, the Ministry of Agricultural Development, the Ministry of Planning and Economic Policy, and other concerned Ministries and institutions of the Borrower. The evaluation review, to be held in August of each year, will evaluate the Project's progress and continuing appropriateness of targets. Price policies for major grains and perishables and requirements for operating funds and inventory capital for Mercadeo's operations during the following fiscal year will also be reviewed. The Borrower will assure that sufficient working capital is available to Mercadeo to purchase and store the price-supported agricultural commodities meeting established quality standards, subject to marketing quotas where applicable, from the producers desiring to sell to the Borrower's buying entity. The Borrower will also continue to assure that the debt burden of Mercadeo will not impair its operational viability.

Mercadeo's implementation plan will cover:

- a.* provision for the appointment of a Project Manager and staff to supervise the various Project components;
- b.* an outline of the duties of the Manager and his staff;
- c.* a time-phased implementation schedule setting forth:

- (1) all major physical and institutional output targets under the Project and dates for achieving these targets;
- (2) the approximate procurement dates, and duration for all technical services, including architectural and engineering consultants and construction contractors, to be financed under the Project;
- (3) the approximate procurement dates, and delivery times, for all major equipment and materials to be financed under the Project.

4. *Financial plan**

The cost of the Project will be financed as follows:

<i>Budget item</i>	<i>Borrower</i>	<i>((\$000) Lender</i>	<i>Total</i>
I. Land	500	—	500
II. Physical facilities			
A. <i>Grains</i>			
(1) Facility construction	2,111	2,604	4,715
(2) Vehicles and additional equipment	—	625	625
B. <i>Perishables</i>			
(1) Facility construction	504	631	1,135
(2) Vehicles and additional equipment	—	685	685
III. Marine vessels	110	220	330
IV. Box factory			
(1) Construction	—	135	135
(2) Equipment	135	—	135
V. Accounting equipment	—	100	100
VI. Architectural and engineering services	—	500	500
VII. Technical assistance and training	—	700	700
TOTALS	3,360	6,200	9,560
PERCENT	35.1	64.9	100

* These figures will be refined in the detailed financial plan setting forth the timing and amounts of Loan and Borrower counterpart funding for the Project, furnished by the Borrower in accordance with section 3.03 (c) of this Agreement, and in the periodic evaluation reviews mentioned above in part 3 of this annex.