

No. 17755

**UNITED STATES OF AMERICA
and
JAMAICA**

**Loan Agreement for the Commodity Import Loan. Signed
at Kingston on 15 December 1977**

Authentic text: English.

Registered by the United States of America on 17 April 1979.

**ÉTATS-UNIS D'AMÉRIQUE
et
JAMAÏQUE**

**Accord de prêt relatif à l'importation de marchandises.
Signé à Kingston le 15 décembre 1977**

Texte authentique : anglais.

Enregistré par les États-Unis d'Amérique le 17 avril 1979.

LOAN AGREEMENT¹ BETWEEN THE GOVERNMENT OF JAMAICA AND THE UNITED STATES OF AMERICA FOR THE COMMODITY IMPORT LOAN

Dated: December 15, 1977

A.I.D. Loan Number 532-K-011

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A.I.D. Loan No. 532-K-011

COMMODITY IMPORT LOAN AGREEMENT dated December 15, 1977, between the GOVERNMENT OF JAMAICA ("Borrower") and the UNITED STATES OF AMERICA, acting through the AGENCY FOR INTERNATIONAL DEVELOPMENT ("A.I.D.").

¹ Came into force on 15 December 1977 by signature.

Article 1. THE LOAN

To finance the foreign exchange costs of certain commodities and commodity-related services ("Eligible Items") necessary to promote the economic and political stability of Jamaica, the United States, pursuant to the Foreign Assistance Act of 1961, as amended, agrees to lend the Government of Jamaica under the terms of this Agreement, not to exceed Nine Million Five Hundred Thousand United States dollars (\$9,500,000) ("Loan"). The aggregate amount of disbursements under this Loan is referred to as "Principal".

Article 2. LOAN TERMS

Section 2.1. INTEREST. The Borrower will pay to A.I.D. interest which will accrue at the rate of two percent (2%) per annum for ten (10) 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 will accrue from the date (as defined in Section 5.5) of each respective disbursement, and will be payable semi-annually. The first payment of interest will be due and payable no later than six (6) months after the first disbursement hereunder, on a date to be specified by A.I.D.

Section 2.2. REPAYMENT. The Borrower will repay to A.I.D. the Principal within twenty (20) years from the date of the first disbursement of the Loan in twenty-one (21) approximately equal semi-annual installments of Principal and interest. The first installment of Principal will be payable nine and one-half (9 1/2) years after the date on which the first interest payment is due in accordance with Section 2.1. A.I.D. will provide the Borrower with an amortization schedule in accordance with this Section after the final disbursement under the Loan.

Section 2.3. APPLICATION, CURRENCY, AND PLACE OF PAYMENT. All payments of interest and Principal hereunder will be made in United States dollars and will be applied first to the payment of interest due and then to the repayment of Principal. Except as A.I.D. may otherwise specify in writing, payments will be made to the Controller, Office of Financial Management, Agency for International Development, Washington, D.C., 20523, U.S.A., and will be deemed made when received by the Office of Financial Management.

Section 2.4. PREPAYMENT. Upon payment of all interest and any refunds then due, the Borrower may prepay, without penalty, all or any part of the Principal. Unless A.I.D. otherwise agrees in writing, any such prepayment will be applied to the installments of Principal in the inverse order of their maturity.

Section 2.5. RENEGOTIATION OF TERMS. (a) The Borrower and A.I.D. agree to negotiate, at such time or times as either may request, an acceleration of the repayment of the Loan in the event that there is any significant and continuing improvement in the internal and external economic and financial position and prospects of Jamaica, which enable the Borrower to repay the Loan on a shorter schedule.

(b) Any request by either Party to the other to so negotiate will be made pursuant to Section 8.3., and will give the name and address of the person or persons who will represent the requesting Party in such negotiations.

(c) Within thirty (30) days after delivery of a request to negotiate, the requested Party will communicate to the other, pursuant to Section 8.3., the name and address of the person or persons who will represent the requested Party in such negotiations.

(d) The representatives of the Parties will meet to carry on negotiations no later than thirty (30) days after delivery of the requested Party's communication under Subsection (c). The negotiations will take place at a location mutually agreed upon by the representatives of the Parties, provided that, in the absence of mutual agreement, the negotiations will take place at the office of Borrower's Minister of Finance in Jamaica.

Section 2.6. TERMINATION ON FULL PAYMENT. Upon payment in full of the Principal and any accrued interest, this Agreement and all obligations of the Borrower and A.I.D. under it will cease.

Article 3. CONDITIONS PRECEDENT TO DISBURSEMENT

Section 3.1. CONDITIONS PRECEDENT. Prior to the first disbursement under this Loan, or to the issuance by A.I.D. of documentation pursuant to which disbursement will be made, the Borrower will, except as the Parties may otherwise agree in writing, furnish to A.I.D., in form and substance satisfactory to A.I.D.:

- (a) An opinion of counsel acceptable to A.I.D. that this Agreement has been duly authorized and/or ratified by, and executed on behalf of, the Borrower, and that it constitutes a valid and legally binding obligation of the Borrower in accordance with all of its terms;
- (b) A statement representing and warranting that the named person or persons have the authority to act as the representative or representatives of the Borrower pursuant to Section 8.2., together with a specimen signature of each person certified as to its authenticity.

Section 3.2. NOTIFICATION. When A.I.D. has determined that the conditions precedent specified in Section 3.1 have been met, it will promptly notify the Borrower.

Section 3.3. TERMINAL DATE FOR CONDITIONS PRECEDENT. If all the conditions specified in Section 3.1 have not been met within ninety (90) days from the date of this Agreement, or such later date as A.I.D. may specify in writing, A.I.D., at its option, may terminate this Agreement by written notice to Borrower.

Article 4. PROCUREMENT, ELIGIBILITY, AND UTILIZATION OF COMMODITIES

Section 4.1. A.I.D. REGULATION 1. This Loan and the procurement and utilization of commodities and commodity-related services financed under it are subject to the terms and conditions of A.I.D. Regulation 1 as from time to time amended and in effect, except as A.I.D. may otherwise specify in writing. If any provision of A.I.D. Regulation 1 is inconsistent with a provision of this Agreement, the provision of this Agreement shall govern.

Section 4.2. ELIGIBLE ITEMS. The commodities eligible for financing under this Loan shall be those mutually agreed upon by the Parties and specified in the Implementation Letters issued to Borrower in accordance with Section 8.1 of this Agreement. Commodity-related services as defined in A.I.D.

Regulation 1 are also eligible for financing under this Loan. Eligible Items will be subject to the requirements and Special Provisions of Parts I, II and III of the A.I.D. Commodity Eligibility Listing which will be transmitted by Implementation Letter. Other commodities or services shall become eligible for financing only with the written agreement of A.I.D. A.I.D. may decline to finance any specific commodity or commodity-related service when in its judgment such financing would be inconsistent with the purposes of the Loan or of the Foreign Assistance Act of 1961, as amended, or other applicable laws.

Section 4.3. PROCUREMENT SOURCE. All Eligible Items shall have their source and origin in the United States of America (Code 000 of the A.I.D. Geographic Code Book as in effect at the time orders are placed or contracts entered into for such Eligible Items) except as A.I.D. may specify in Implementation Letters or as it may otherwise agree in writing.

Section 4.4. ELIGIBILITY DATE. No commodities or commodity-related services may be financed under the Loan if they were procured pursuant to orders or contracts firmly placed or entered into prior to November 1, 1977, except as A.I.D. may otherwise agree in writing.

Section 4.5. PROCUREMENT FOR PUBLIC SECTOR. With respect to procurement under this Loan by or for Borrower, its departments and instrumentalities, the provisions of Section 201.22 of A.I.D. Regulation 1 regarding formal competitive bid procedures will apply unless A.I.D. otherwise agrees in writing.

Section 4.6. SPECIAL PROCUREMENT RULES. (a) None of the proceeds of this Loan may be used to finance the purchase, sale, long-term lease, exchange or guaranty of a sale of motor vehicles unless such motor vehicles are manufactured in the United States, except as A.I.D. may otherwise agree in writing.

(b) The source and origin of ocean and air shipping will be deemed to be the ocean vessel's or aircraft's country of registry at the time of shipment.

Section 4.7. FINANCING PHYSICAL FACILITIES. Not more than \$1,000,000 from the proceeds of this Loan shall be used for the purchase of commodities or commodity-related services for use in the construction, expansion, equipping, or alteration of a physical facility or related physical facilities without prior A.I.D. approval, additional to the approvals required by A.I.D. Regulation 1, except as A.I.D. may otherwise agree in writing. "Related physical facilities" shall mean those facilities which, taking into account such factors as functional interdependence, geographic proximity, and ownership, constitute a single enterprise in the judgment of A.I.D.

Section 4.8. UTILIZATION OF COMMODITIES. (a) Borrower will assure that commodities financed under this Loan will be effectively used for the purposes for which the assistance is made available. To this end, the Borrower will use its best efforts to assure that the following procedures are followed:

- (i) Accurate arrival and clearance records are maintained by customs authorities; commodity imports are promptly processed through customs at ports of entry; such commodities are removed from customs and/or bonded warehouses within ninety (90) calendar days from the date the commodities are unloaded from the vessel at ports of entry, unless the importer is hindered by *force majeure* or A.I.D. otherwise agrees in writing; and

(ii) The commodities are consumed or used by the importer not later than one (1) year from the date the commodities are removed from customs, unless a longer period can be justified to the satisfaction of A.I.D. by reason of *force majeure* or special market conditions or other circumstances.

(b) Borrower will assure that commodities financed under this Loan will not be reexported in the same or substantially the same form, unless specifically authorized by A.I.D.

Article 5. DISBURSEMENT

Section 5.1. LETTERS OF COMMITMENT TO BANKS. After satisfaction of the conditions precedent, Borrower may obtain disbursements of funds under this Loan by submitting Financing Requests to A.I.D. for the issuance of letters of commitment for specified amounts to one or more banking institutions in the United States designated by Borrower and satisfactory to A.I.D. Such letters will commit A.I.D. to reimburse the bank or banks on behalf of the Borrower for payments made by them to suppliers or contractors, under letters of credit or otherwise, pursuant to such documentation requirements as A.I.D. may prescribe. Banking charges incurred in connection with letters of commitment and disbursements shall be for the account of Borrower and may be financed by this Loan.

Section 5.2. OTHER FORMS OF DISBURSEMENT AUTHORIZATIONS. Disbursements of the Loan may also be made through such other means as the Parties may agree to in writing. Use of an Irrevocable Special Letter of Credit is hereby expressly agreed to.

Section 5.3. TERMINAL DATE FOR REQUESTS FOR DISBURSEMENT AUTHORIZATIONS. No letter of commitment or other disbursement authorization will be issued in response to a request received after twelve (12) months from the date of signing of this Agreement, except as A.I.D. may otherwise agree in writing.

Section 5.4. TERMINAL DATE FOR REQUESTS FOR DISBURSEMENT. No disbursement of Loan funds shall be made against documentation submitted after eighteen (18) months from the date of signing of this Agreement, except as A.I.D. may otherwise agree in writing.

Section 5.5. DATE OF DISBURSEMENT. Disbursements by A.I.D. will be deemed to occur on the date on which A.I.D. makes a disbursement to the Borrower or its designee, or to a bank, contractor or supplier pursuant to a letter of commitment or other form of disbursement authorization.

Article 6. GENERAL COVENANTS

Section 6.1. TAXATION. This Agreement and the Loan will be free from, and the principal and interest will be paid free from, any taxation or fees imposed under laws in effect in Jamaica.

Section 6.2. REPORTS AND RECORDS. In addition to the requirements in A.I.D. Regulation 1, the Borrower will:

(a) Furnish A.I.D. such reports and information relating to the goods and services financed by this Loan and the performance of Borrower's obligations under this Agreement as A.I.D. may reasonably request;

- (b) Maintain or cause to be maintained, in accordance with generally accepted accounting principles and practices consistently applied, such books and records relating to this Loan as may be prescribed in Implementation Letters. Such books and records may be inspected by A.I.D. or any of its authorized representatives at all times as A.I.D. may reasonably require, and shall be maintained for three years after the date of last disbursement by A.I.D. under this Loan; and
- (c) Permit A.I.D. or any of its authorized representatives at all reasonable times during the three-year period to inspect the commodities financed under this Loan at any point, including the point of use.

Section 6.3. COMPLETENESS OF INFORMATION. The Borrower confirms:

- (a) That the facts and circumstances of which it has informed A.I.D., or caused A.I.D. to be informed, in the course of reaching agreement with A.I.D. on the Loan, are accurate and complete, and include all facts and circumstances that might materially affect the Loan and the discharge of responsibilities under this Agreement; and
- (b) That it will inform A.I.D. in timely fashion of any subsequent facts and circumstances that might materially affect, or that it is reasonable to believe might so affect, the Loan or the discharge of responsibilities under this Agreement.

Section 6.4. OTHER PAYMENTS. Borrower affirms that no payments have been or will be received by any official of the Borrower in connection with the procurement of goods or services financed under the Loan, except fees, taxes, or similar payments legally established in the country of the Borrower.

Section 6.5. MINIMUM SIZE OF TRANSACTIONS. No foreign exchange allocation or letter of credit issued pursuant to this Agreement shall be in an amount less than Five Thousand Dollars (\$5,000), except as A.I.D. may otherwise agree in writing.

Section 6.6. USE OF LOCAL CURRENCY. The Jamaican currency accruing to the Borrower as a result of the sale or importation of the Eligible Items will be used as from time to time may be agreed upon by the representatives named in Section 8.2 for activities in the following fields: agriculture, education, nutrition, health, population, and such other sectors as may be agreed upon.

Section 6.7. ACCOUNT FOR LOCAL CURRENCY. Borrower will establish in the Bank of Jamaica a special account exclusively for deposit of the Jamaican currency referred to in Section 6.6. Borrower will make deposits of the Jamaican currency into the account in accordance with a schedule to be agreed upon by A.I.D. and the Borrower and to be submitted by Implementation Letter. If the total accruals of Jamaican currency to the Borrower exceed the amounts deposited pursuant to the schedule, Borrower shall make an additional deposit equal to the excess.

Section 6.8. EXCHANGE RATE. The exchange rate applicable to determine the amount of Jamaican currency accruing to the Borrower as a result of the sale or importation of each Eligible Item shall be the highest lawful rate (i.e. the rate giving the most Jamaican currency per U.S. Dollar) applicable to the Eligible Item on the date of its sale or importation.

Article 7. TERMINATION REMEDIES

Section 7.1. CANCELLATION BY BORROWER. The Borrower may, by giving A.I.D. 30 days written notice, cancel any part of the Loan which has not been disbursed or committed for disbursement to third parties.

Section 7.2. EVENTS OF DEFAULT; ACCELERATION. It will be an "Event of Default" if Borrower shall have failed:

- (a) To pay when due any interest or installment of Principal required under this Agreement, or
- (b) To comply with any other provision of this Agreement, or
- (c) To pay when due any interest or installment of Principal or other payment required under any other loan, guaranty or other agreement between the Borrower or any of its agencies and A.I.D. or any of its predecessor agencies.

If an Event of Default shall have occurred, then A.I.D. may give the Borrower notice that all or any part of the unrepaid Principal will be due and payable sixty (60) days thereafter, and, unless such Event of Default is cured within that time:

- (1) Such unrepaid Principal and accrued interest hereunder will be due and payable immediately, and
- (2) The amount of any further disbursements made pursuant to then outstanding commitments to third parties or otherwise will become due and payable as soon as made.

Section 7.3. SUSPENSION. If at any time:

- (a) An Event of Default has occurred; or
- (b) An event occurs that A.I.D. 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; or
- (c) Any disbursement by A.I.D. would be in violation of the legislation governing A.I.D.; or
- (d) The Borrower shall have failed to pay when due any interest, installment of principal or other payment required under any other loan, guaranty, or other agreement between the Borrower or any of its agencies and the Government of the United States or any of its agencies;

then, in addition to remedies provided in A.I.D. Regulation 1, A.I.D. may:

- (1) Suspend or cancel outstanding commitment documents to the extent they have not been utilized through irrevocable commitments to third parties or otherwise, giving prompt notice thereof to the Borrower;
- (2) Decline to issue additional commitment documents or to make disbursements other than under existing ones; and
- (3) At A.I.D.'s expense, direct that title to goods financed under the Loan be vested in A.I.D. if the goods are in a deliverable state and have not been off-loaded in ports of entry of Borrower's country. Any disbursement made

under the Loan with respect to such transferred goods will be deducted from Principal.

Section 7.4. CANCELLATION BY A.I.D. If, within sixty (60) days from the date of any suspension of disbursements pursuant to Section 7.3, the cause or causes thereof have not been corrected, A.I.D. may cancel any part of the Loan that is not then disbursed or irrevocably committed to third parties.

Section 7.5. CONTINUED EFFECTIVENESS OF AGREEMENT. Notwithstanding any cancellation, suspension of disbursements, or acceleration of repayment, the provisions of this Agreement will continue in effect until the payment in full of all Principal and accrued interest hereunder.

Section 7.6. REFUNDS. (a) In addition to any refund otherwise required by A.I.D. pursuant to A.I.D. Regulation 1, if A.I.D. determines that any disbursement is not supported by valid documentation in accordance with this Agreement, or is in violation of United States law, or is not made or used in accordance with the terms of this Agreement, A.I.D. may require the Borrower to refund the amount of such disbursement in U.S. dollars to A.I.D. within sixty (60) days after receipt of request therefor. Refunds paid by the Borrower to A.I.D. resulting from violations of the terms of this Agreement shall be considered as a reduction in the amount of A.I.D.'s obligation under the Agreement and shall be available for reuse under the Agreement if authorized by A.I.D. in writing. Any refund which reduces the amount of A.I.D. assistance hereunder will be applied to the installments of Principal in the inverse order of their maturity.

(b) The right to require such a refund of a disbursement will continue, notwithstanding any other provision of this Agreement, for three (3) years from the date of the last disbursement under this Agreement.

Section 7.7. NON-WAIVER OF REMEDIES. No delay in exercising or omitting to exercise, any right, power, or remedy accruing to A.I.D. under this Agreement will be construed as a waiver of such rights, powers, or remedies.

Article 8. MISCELLANEOUS

Section 8.1. IMPLEMENTATION LETTERS. From time to time, for the information and guidance of both parties, A.I.D. will issue Implementation Letters describing the procedures applicable to the implementation of this Agreement. Except as permitted by particular provisions of this Agreement, Implementation Letters will not be used to amend or modify the text of this Agreement.

Section 8.2. REPRESENTATIVES. For all purposes relevant to this Agreement, the Borrower will be represented by the individual holding or acting in the office of Minister of Finance and A.I.D. will be represented by the individual holding or acting in the office of Mission Director, USAID, Jamaica, each of whom, by written notice, may designate additional representatives. The names of the representatives of the Borrower, with specimen signatures, will be provided to A.I.D., which may accept as duly authorized any instrument signed by such representatives in implementation of this Agreement, until receipt of written notice of revocation of their authority.

Section 8.3. COMMUNICATIONS. Any notice, request, document or other communication submitted by either Party to the other under this Agreement

will be in writing or by telegram or cable, and will be deemed duly given or sent when delivered to such party at the following address:

To the Borrower:

Mail Address:

Minister of Finance
30 National Heroes Circle
Kingston, Jamaica

Alternate address for cables:

Minister of Finance
Kingston, Jamaica

To A.I.D.:

Mail Address:

Mission Director
USAID/Jamaica
c/o American Embassy
Kingston, Jamaica

Alternate address for cables:

Mission Director
USAID/Jamaica
c/o American Embassy
Kingston, Jamaica

Other addresses may be substituted for the above upon giving of notice.

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

Government of Jamaica:

[Signed]

By: DAVID COORE

Title: Deputy Prime Minister and Minister of Finance

United States of America:

[Signed]

By: DONOR M. LION

Title: Mission Director, USAID
Jamaica