

No. 17494

**UNITED STATES OF AMERICA
and
SRI LANKA**

**Loan Agreement for Mahaweli Ganga irrigation (with
annexes). Signed at Colombo on 9 November 1977**

Authentic text: English.

Registered by the United States of America on 22 January 1979.

**ÉTATS-UNIS D'AMÉRIQUE
et
SRI LANKA**

**Accord de prêt relatif à un projet d'irrigation concernant le
Mahaweli Ganga (avec annexes). Signé à Colombo le
9 novembre 1977**

Texte authentique : anglais.

Enregistré par les États-Unis d'Amérique le 22 janvier 1979.

LOAN AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SRI LANKA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA FOR MAHAWELI GANGA IRRIGATION

Dated: November 9, 1977

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A.I.D. LOAN No. 383-T-018

LOAN AGREEMENT for Mahaweli Ganga Irrigation, dated November 9, 1977, between the REPUBLIC OF SRI LANKA ("Cooperating Country") and the UNITED STATES OF AMERICA, acting through the AGENCY FOR INTERNATIONAL DEVELOPMENT ("A.I.D.").

¹ Came into force on 9 November 1977 by signature.

Article 1. THE AGREEMENT

The purpose of this Agreement is to set out the understandings of the Parties named above (“Parties”) with respect to the undertaking by the Cooperating Country of the Project described herein, and with respect to the financing of the Project by the Parties.

Article 2. THE PROJECT

Section 2.1. DEFINITION OF PROJECT. The Project, which is further described in annex 1 will consist of equipment for construction, land clearing, maintenance, social infrastructure and settlement to enable irrigated agricultural production of 106,000 acres of land along the Mahaweli River. Annex 1, attached, amplifies the definition of the Project contained in this section 2.1. Within the limits of the definition of the Project in this section 2.1, elements of the amplified description stated in annex 1 may be changed by written agreement of the authorized representatives of the Parties named in section 9.2 without formal amendment of this Agreement.

Article 3. FINANCING

Section 3.1. THE LOAN. To assist the Cooperating Country to meet the costs of carrying out the Project, A.I.D. pursuant to the Foreign Assistance Act of 1961, as amended, agrees to lend the Cooperating Country under the terms of this Agreement not to exceed five million two hundred thousand U.S. dollars (\$5,200,000) (“Loan”). The amount of the loan (\$5,200,000) is referred to as “Assistance”. The aggregate amount of disbursements under the Loan is referred to as “Principal”.

The Assistance may be used to finance foreign exchange costs, as defined in section 7.1, and local currency costs, as defined in section 7.2 of goods and services required for the Project, except that, unless the Parties otherwise agree in writing, local currency costs financed under the Loan will not exceed one million two hundred thousand U.S. dollars (\$1,200,000).

Section 3.2. COOPERATING COUNTRY RESOURCES FOR THE PROJECT. (a) The Cooperating Country agrees to provide or cause to be provided for the Project all funds, in addition to the Assistance, and all other resources required to carry out the Project effectively and in a timely manner.

(b) The resources to be provided by the Cooperating Country for the Project are estimated to be not less than Rs. 206 million including costs borne on an “in-kind” basis.

Section 3.3. PROJECT ASSISTANCE COMPLETION DATE. (a) The “Project Assistance Completion Date” (PACD), which is September 30, 1982, or such other date as the Parties may agree to in writing, is the date by which the Parties estimate that all services financed under the Assistance will have been performed and all goods financed under the Assistance will have been furnished for the Project as contemplated in this Agreement.

(b) Except as A.I.D. may otherwise agree in writing, A.I.D. will not issue or approve documentation which would authorize disbursement of the Assistance for services performed subsequent to the PACD or for goods furnished for the Project, as contemplated in this Agreement, subsequent to the PACD.

(c) Requests for disbursement, accompanied by necessary supporting documentation prescribed in Project Implementation Letters, are to be received by A.I.D. or any bank described in section 8.1 no later than nine (9) months following the PACD, or such other period as A.I.D. agrees to in writing. After such period, A.I.D., giving notice in writing to the Cooperating Country, may at any time or times reduce the amount of the Assistance by all or any part thereof for which requests for disbursement, accompanied by necessary supporting documentation prescribed [in] Project Implementation Letters, were not received before the expiration of said period.

Article 4. LOAN TERMS

Section 4.1. INTEREST. The Cooperating Country will pay to A.I.D. interest which will accrue at the rate of two percent (2%) per annum for ten years following date of the first disbursement of the Loan 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 8.5) of each respective disbursement and will be computed on the basis of a 365-day year. Interest will be payable no later than six (6) months after the first disbursement of the Loan hereunder on a date to be specified by A.I.D.

Section 4.2. REPAYMENT. The Cooperating Country will repay to A.I.D. the Principal within forty (40) years from the date of the first disbursement of the Loan in sixty-one (61) 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 4.1. A.I.D. will provide the Cooperating Country with an amortization schedule in accordance with this section after the final disbursement under the Loan.

Section 4.3. APPLICATION, CURRENCY, AND PLACE OF PAYMENT. All payments of interest and Principal hereunder will be made in U.S. 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 4.4. PREPAYMENT. Upon payment of all interest and any refunds then due, the Cooperating Country 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 4.5. RENEGOTIATION OF TERMS. (a) The Cooperating Country 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 Sri Lanka, which enable the Cooperating Country 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 9.1 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 the delivery of a request to negotiate, the requested Party will communicate to the other, pursuant to section 9.1, 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 sub-section (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 the Cooperating Country Director of External Resources Department, Ministry of Finance and Planning in Sri Lanka.

Section 4.6. TERMINATION ON FULL PAYMENT. Upon payment in full of the Principal and any accrued interest, this Agreement and all obligations of the Cooperating Country and A.I.D. relating to the Loan provisions of this Agreement will cease.

Article 5. CONDITIONS PRECEDENT TO DISBURSEMENT

Section 5.1. FIRST DISBURSEMENT FOR LOAN. Prior to the first disbursement of the Assistance, or to the issuance by A.I.D. of documentation pursuant to which disbursement will be made, the Cooperating Country will, except as A.I.D. 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 Cooperating Country and that it constitutes a valid and legally binding obligation of the Cooperating Country in accordance with all of its terms;
- (b) A statement of the names of the persons holding or acting in the office of the Cooperating Country, specified in section 9.2, and a specimen signature of each person specified in such statement;
- (c) Evidence that the CIDA Loan Agreement, IDA Development Credit Agreement, the Netherlands Loan Agreement, and the U.K. Grant Agreement have been authorized or ratified by and executed and delivered on behalf of the Parties thereto and are legally binding on those Parties and that all conditions precedent to the effectiveness of those Agreements except for the effectiveness of this Agreement, have been fulfilled;
- (d) Evidence of an Agreement between the Mahaweli Development Board (MDB) and Agrarian Research and Training Institute (ARTI) for ARTI to carry out socio-economic surveys under the Project;
- (e) A detailed implementation plan for the physical construction phase of the Project.

Section 5.2. NOTIFICATION. When A.I.D. has determined that the conditions precedent specified in section 5.1 have been met, it will promptly notify the Cooperating Country.

Section 5.3. TERMINAL DATES FOR CONDITIONS PRECEDENT. If all of the conditions specified in section 5.1 have not been met within 120 days from the date of this Agreement, or such later date as A.I.D. may agree to in writing, A.I.D., at its option, may terminate this Agreement by written notice to the Cooperating Country.

Article 6. SPECIAL COVENANTS

Section 6.1. PROJECT EVALUATION. The Parties agree to establish an evaluation program as an integral part of the Project. Except as the Parties otherwise agree in writing, the program will include, during the implementation of the Project and at one or more points thereafter (a) evaluation of progress toward attainment of the objectives of the Project; (b) identification and evaluation of problem areas or constraints which may inhibit such attainment; (c) assessment of how such information may be used to help overcome such problems, in this or other project; and (d) evaluation, to the degree feasible, of the overall development impact of the Project.

Section 6.2. PROJECT IMPLEMENTATION. (a) The Cooperating Country agrees to implement recommendations arising from the A.I.D.-financed environmental assessment of the Project which are mutually agreeable to A.I.D. and the Cooperating Country.

(b) The Cooperating Country agrees to implement during 1978 all such measures as shall be sufficient to recover from beneficiaries under the Project charges adequate to ensure the recovery of the operation and maintenance costs and of as much as possible of the construction costs after taking into account the ability of the beneficiaries to pay.

(c) The Cooperating Country agrees to expand the workshop facilities of the Department of Mechanical Engineering in the Ministry of Irrigation, Power and Highways at Ratmalana and Anuradhapura to provide for the increased maintenance effort that the Project will entail.

(d) The Cooperating Country agrees to conduct an evaluation of the overall project within three months of the submission to donors by June 10, 1982, of ARTI's initial comprehensive evaluation report.

(e) The Cooperating Country agrees to provide A.I.D. with semi-annual reports on the status of the overall Project beginning with the date of the signing of this Agreement, or with equivalent reports at such other time as A.I.D. may agree in writing, as well as, not later than November 1 of each year, a detailed plan for the implementation of the Project together with financial requirements for the Project for the following fiscal year.

Article 7. PROCUREMENT SOURCE

Section 7.1. FOREIGN EXCHANGE COSTS. Loan disbursements made pursuant to section 8.1 will be used exclusively to finance the costs of goods and services required for the Project 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 entered into for such goods and services ("Foreign Exchange Costs"), except as A.I.D. may otherwise agree in writing, and except as provided in the standard provisions annex, section C.1(b), with respect to marine insurance.

Section 7.2. LOCAL CURRENCY COSTS. Disbursements pursuant to section 8.2 will be used exclusively to finance the costs of goods and services required for the Project having their source and, except as A.I.D. may otherwise agree in writing, their origin in Sri Lanka ("Local Currency Costs"). To the extent provided for under this Agreement, "Local Currency Costs" may also include the provision of local currency resources required for the Project.

Article 8. DISBURSEMENTS

Section 8.1. DISBURSEMENT FOR FOREIGN EXCHANGE COSTS. After satisfaction of conditions precedent, the Cooperating Country may obtain disbursements of funds under the Loan for the foreign exchange costs of goods or services, required for the Project in accordance with the terms of the Agreement, by such of the following methods as may be mutually agreed upon:

- (1) By submitting to A.I.D., with necessary supporting documentation as prescribed in Project Implementation Letters (A) requests for reimbursement for such goods or services, or (B) requests for A.I.D. to procure commodities or services in the Cooperating Country's behalf for the Project; or
- (2) By requesting A.I.D. to issue Letters of Commitment for specified amounts (A) to one or more U.S. banks, satisfactory to A.I.D., committing A.I.D. to reimburse such bank or banks for payments made by them to contractors or suppliers, under Letters of Credit or otherwise, for such goods or services, or (B) directly to one or more contractors or suppliers, committing A.I.D. to pay such contractors or suppliers, through Letters of Credit or otherwise, for such goods or services.

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

Section 8.2. DISBURSEMENT FOR LOCAL CURRENCY COSTS. (a) After satisfaction of conditions precedent, the Cooperating Country may obtain disbursement of funds under the Loan for local currency costs required for the Project in accordance with the terms of this Agreement, by submitting to A.I.D., with necessary supporting documentation as prescribed in Project Implementation Letters, requests to finance such costs.

(b) The local currency needed for such disbursements hereunder may be obtained by acquisition by A.I.D. with U.S. dollars by purchase or from local currency already owned by the U.S. Government. The U.S. dollar equivalent of the local currency made available hereunder will be the amount of U.S. dollars required by A.I.D. to obtain the local currency.

Section 8.3. OTHER FORMS OF DISBURSEMENT. Disbursements of the Loan may also be made through such other means as the Parties may agree to in writing.

Section 8.4. RATE OF EXCHANGE. Except as may be more specifically provided under section 8.2, if funds provided under the Loan are introduced into Sri Lanka by A.I.D. or any public or private agency for purposes of carrying out obligations of A.I.D. hereunder, the Cooperating Country will make such arrangements as may be necessary so that such funds may be converted into currency of Sri Lanka at the highest rate of exchange which, at the time the conversion is made, is not unlawful in Sri Lanka.

Section 8.5. DATE OF DISBURSEMENT. Disbursements of the Loan by A.I.D. will be deemed to occur (A) on the date on which A.I.D. makes a disbursement to the Cooperating Country or its designee, or to a bank, contractor or supplier pursuant to a Letter of Commitment or Credit; (B) on the date on which A.I.D. disburses to the Cooperating Country or its designee local currency acquired in accordance with section 8.2 (b).

Article 9. MISCELLANEOUS

Section 9.1. 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 Cooperating Country:

Mail address:

Director
External Resources Department
Ministry of Finance and Planning
Colombo, 1, Sri Lanka

Alternate address for cables:

FORAID
Colombo, Sri Lanka

To A.I.D.:

Mail address:

Office of A.I.D. Representative
c/o American Embassy
Colombo, Sri Lanka

Alternate address for cables:

USAID, AmEmbassy
Colombo, Sri Lanka

All such communications will be in English, unless the Parties otherwise agree in writing. Other addresses may be substituted for the above upon the giving of notice.

Section 9.2. REPRESENTATIVES. For all purposes relevant to this Agreement, the Cooperating Country will be represented by the individual holding or acting in the Office of Director of External Resources Department, Ministry of Finance and Planning, and A.I.D. will be represented by the individual holding or acting in the Office of the A.I.D. Representative, each of whom, by written notice, may designate additional representatives for all purposes other than exercising the power under section 2.1 to revise elements of the amplified description in annex 1. The names of the representatives of the Cooperating Country, 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 9.3. STANDARD PROVISIONS ANNEX. A “Loan Standard Provisions Annex” (annex 2) is attached to and forms part of this Agreement.

IN WITNESS WHEREOF, the Cooperating Country 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 the Republic
of Sri Lanka:

Government of the United States
of America:

By: [Signed]

By: [Signed]

Name: C. CHANMUGAM

Name: W. HOWARD WRIGGINS

Title: Acting Secretary
Ministry of Finance and Planning

Title: American Ambassador

ANNEX 1

PROJECT DESCRIPTION

The Project will provide over a five-year period the following on an area of more than 106,000 acres of land lying approximately between the Kalawewa Tank and Anuradhapura in northwest central Sri Lanka along the diverted Mahaweli Ganga (River) known as Mahaweli Ganga Phase I, Stage II:

- (a) Construction of irrigation, drainage and road infrastructure for 40,300 acres;
- (b) Clearing of jungle and preparing 40,300 acres for cultivation as well as settling some 15,300 families on 2-1/2 acre plots;
- (c) Construction and O&M facilities and equipment for 71,000 acres;
- (d) Production support in the form of farm equipment, marketing, transport and processing facilities for 71,000 acres;
- (e) Improved agricultural extension services for 106,000 acres;
- (f) Social infrastructure—village wells, schools, medical and community development facilities—for 64,900 acres.

Proceeds of the AID Loan will finance the foreign exchange costs of construction, land clearing and ancillary maintenance equipment. In observance with an understanding with other donors to the Project approximately 25% of the AID Loan required will reimburse a portion of the sizable local costs under the Project.

ANNEX 2

LOAN STANDARD PROVISIONS ANNEX

Definitions. As used in this annex, the "Agreement" refers to the Loan Agreement to which this annex is attached and of which this annex forms a part. Terms used in this annex have the same meaning or reference as in the Agreement.

Article A. PROJECT IMPLEMENTATION LETTERS

To assist the Cooperating Country in the implementation of the Project, A.I.D., from time to time, will issue Project Implementation Letters that will furnish additional information about matters stated in this Agreement. The Parties may also use jointly agreed-upon Project Implementation Letters to confirm and record their mutual understanding on aspects of the implementation of this Agreement. Project Implementation Letters will not be used to amend the text of the Agreement, but can be used to record revisions or exceptions which are permitted by the Agreement, including the revision of elements of the amplified description of the Project in annex 1.

Article B. GENERAL COVENANTS

Section B.1. CONSULTATION. The Parties will cooperate to assure that the purpose of this Agreement will be accomplished. To this end, the Parties, at the request of either, will exchange views on the progress of the Project, the performance of obligations under this Agreement, the performance of any consultants, contractors or suppliers engaged on the Project, and other matters relating to the Project.

Section B.2. EXECUTION OF PROJECT. The Cooperating Country will:

- (a) Carry out the Project or cause it to be carried out with due diligence and efficiency, in conformity with sound technical, financial, and management practices, and in conformity with those documents, plans, specifications, contracts, schedules or other arrangement, and with any modifications therein, approved by A.I.D. pursuant to this Agreement; and
- (b) Provide qualified and experienced management for, and train such staff, as may be appropriate, for the maintenance and operation of the Project, and, as applicable for continuing activities, cause the Project to be operated and maintained in such manner as to assure the continuing and successful achievement of the purposes of the Project.

Section B.3. UTILIZATION OF GOODS AND SERVICES. (a) Any resources financed under the Assistance will, unless otherwise agreed in writing by A.I.D., be devoted to the Project until the completion of the Project, and thereafter will be used so as to further the objectives sought in carrying out the Project.

(b) Goods or services financed under the Assistance, except as A.I.D. may otherwise agree in writing, will not be used to promote or assist a foreign aid project or activity associated with or financed by a country not included in code 935 of the A.I.D. Geographic Code Book as in effect at the time of such use.

Section B.4. TAXATION. (a) This Agreement and the Assistance will be free from, and the Principal and interest will be paid free from, any taxation or fees imposed under laws in effect in the territory of the Cooperating Country.

(b) To the extent that (1) any contractor, including any consulting firm, any personnel of such contractor financed under the Assistance, and any property or transaction relating to such contracts and (2) any commodity procurement transaction financed under the Assistance are not exempt from identifiable taxes, tariffs, duties or other levies imposed under laws in effect in the territory of the Cooperating Country, the Cooperating Country will, as and to the extent provided in and pursuant to Project Implementation Letters, pay or reimburse the same with funds other than those provided under the Assistance.

Section B.5. REPORTS, RECORDS, INSPECTIONS, AUDIT. The Cooperating Country will:

- (a) Furnish A.I.D. such information and reports relating to the Project and to 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, books and records relating to the Project and to this Agreement, adequate to show, without limitation, the receipt and use of goods and services acquired under the Assistance; such books and records will be audited regularly, in accordance with generally accepted auditing standards, and maintained for three years after the date of last disbursement by A.I.D.; such books and records will also be adequate to show the nature and extent of solicitations of prospective suppliers of goods and services acquired, the basis of award of contracts and orders, and the overall progress of the Project toward completion; and
- (c) Afford authorized representatives of a Party the opportunity at all reasonable times to inspect the Project, the utilization of goods and services financed by such Party, and books, records and other documents relating to the Project and the Assistance.

Section B.6. COMPLETENESS OF INFORMATION. The Cooperating Country 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 Assistance, are accurate and complete, and include all facts and circumstances that might materially affect the Project 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 Project or the discharge of responsibilities under this Agreement.

Section B.7. OTHER PAYMENTS. The Cooperating Country affirms that no payments have been or will be received by any official of the Cooperating Country in connection with the procurement of goods or services financed under the Assistance except fees, taxes, or similar payments legally established in the territory of the Cooperating Country.

Section B.8. INFORMATION AND MARKING. The Cooperating Country will give appropriate publicity to the Assistance and the Project as a program to which the United States has contributed, identify the Project site, and mark goods financed by A.I.D., as described in Project Implementation Letters.

Article C. PROCUREMENT PROVISIONS

Section C.1. SPECIAL RULES. (a) 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.

(b) Premiums for marine insurance placed in the territory of the Cooperating Country will be deemed an eligible Foreign Exchange Cost, if otherwise eligible under section C.7 (a).

(c) Any motor vehicles financed under the Assistance will be of United States manufacture, except as A.I.D. may otherwise agree in writing.

Section C.2. ELIGIBILITY DATE. No goods or services may be financed under the Assistance which are procured pursuant to orders or contracts firmly placed or entered-into prior to the date of this Agreement, except as the Parties may otherwise agree in writing.

Section C.3. PLANS, SPECIFICATIONS, AND CONTRACTS. In order for there to be mutual agreement on the following matters, and except as the Parties may otherwise agree in writing:

(a) The Cooperating Country will furnish to A.I.D. upon preparation

- (1) Any plans, specifications, procurement or construction schedules, contracts, or other documentation relating to goods or services to be financed under the Assistance, including documentation relating to the prequalification and selection of contractors and to the solicitation of bids and proposals; material modifications in such documentation will likewise be furnished A.I.D. on preparation;
- (2) Such documentanion will also be furnished to A.I.D., upon preparation, relating to any goods or services which, though not financed under the Assistance, are deemed by A.I.D. to be of major importance to the Project; aspects of the Project involving matters under this subsection (a) (2) will be identified in Project Implementation Letters;

(b) Documents related to the prequalification of contractors and to the solicitation of proposals for goods and services financed under the Assistance will be approved by A.I.D. in writing prior to their issuance and their terms will include United States standards and measurements.

(c) Contracts and contractors financed under the Assistance for engineering and other professional services, for construction services, and for such other services, equipment or materials, as may be specified in Project Implementation Letters, will be approved by

A.I.D. in writing prior to execution of the contract. Material modifications in such contracts will also be appoved in writing by A.I.D. prior to execution.

(d) Consulting firms used by the Cooperating Country for the Project but not financed under the Assistance, the scope of their services and such of their personnel assignment to the Project as A.I.D. may specify, and construction contractors used by the Cooperating Country for the Project but not financed under the Assistance shall be acceptable to A.I.D.

Section C.4. REASONABLE PRICE. No more than reasonable prices will be paid for any goods or services financed, in whole or in part, under the Assistance. Such items will be procured on a fair and, to the maximum extent practicable, on a competitive basis.

Section C.5. NOTIFICATION TO POTENTIAL SUPPLIERS. To permit all United States firms to have the opportunity to participate in furnishing goods and services to be financed under the Assistance, the Cooperating Country will furnish A.I.D. such information with regard thereto, and at such times as A.I.D. may request in Project Implementation Letters.

Section C.6. SHIPPING. (a) Goods which are to be transported to the territory of the Cooperating Country may not be financed under the Assistance if transported either (1) on an ocean vessel or aircraft under the flag of a country which is not included in A.I.D. geographic code 935 as in effect at the time of shipment; or (2) on an ocean vessel which A.I.D., by written notice to the Cooperating Country, has designated as ineligible; or (3) under an ocean or air charter which has not received prior A.I.D. approval.

(b) Costs of ocean or air transportation (of goods or persons) and related delivery services may not be financed under the Assistance, if such goods or persons are carried (1) on an ocean vessel under the flag of a country not, at the time of shipment, identified under the paragraph of the Agreement entitled "Procurement source: foreign exchange costs," without prior written A.I.D. approval; or (2) on an ocean vessel which A.I.D., by written notice to the Cooperating Country, has designated as ineligible; or (3) under an ocean vessel or air charter which has not received prior A.I.D. approval.

(c) Unless A.I.D. determines that privately owned United States—flag commercial ocean vessels are not available at fair and reasonable rates for such vessels, (1) at least fifty percent (50%) of the gross tonnage of all goods (computed separately for dry bulk carriers, dry cargo liners and tankers) financed by A.I.D. which may be transported on ocean vessels will be transported on privately owned United States—flag commercial vessels, and (2) at least fifty percent (50%) of the gross freight revenue generated by all shipments financed by A.I.D. and transported to the territory of the Cooperating Country 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 (1) and (2) of this subsection must be achieved with respect to both any cargo transported from U.S. ports and any cargo transported from non-U.S. ports, computed separately.

Section C.7. INSURANCE. (a) Marine insurance on goods financed by A.I.D. which are to be transported to the territory of the Cooperating Country may be financed under the Assistance, as a foreign exchange cost under this Agreement provided (1) such insurance is placed at the lowest available competitive rate and (2) claims thereunder are payable in the currency in which such goods were financed or in any freely convertible currency. If the Government of the Cooperating Country, by statute, decree, rule, regulation, or practice, discriminates with respect to A.I.D.-financed procurement against any marine insurance company authorized to do business in any State of the United States, than all goods shipped to the territory of the Cooperating Country financed by A.I.D. hereunder will be insured against marine risks and such insurance will 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.

(b) Except as A.I.D. may otherwise agree in writing, the Cooperating Country will insure, or cause to be insured, goods financed under the Assistance imported for the Project against risks incident to their transit to the point of their use in the Project; such insurance will be issued on terms and conditions consistent with sound commercial practice and will insure the full value of the goods. Any indemnification received by the Cooperating Country under such insurance will be used to replace or repair any material

damage or any loss of the goods insured or will be used to reimburse the Cooperating Country for the replacement or repair of such goods. Any such replacement will be of source and origin of countries listed in A.I.D. geographic code 935 as in effect at the time of replacement and, except as the Parties may agree in writing, will be otherwise subject to the provisions of the Agreement.

Section C.8. U.S. GOVERNMENT-OWNED EXCESS PROPERTY. The Cooperating Country agrees that wherever practicable United States Government-owned excess personal property, in lieu of new items financed under the Assistance, should be utilized. Funds under the Assistance may be used to finance the costs of obtaining such property for the Project.

Article D. TERMINATION; REMEDIES

Section D.1. CANCELLATION BY COOPERATING COUNTRY. The Cooperating Country 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 D.2. EVENTS OF DEFAULT; ACCELERATION. It will be an "Event of Default" if the Cooperating Country 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 provisions 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 Cooperating Country 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 Cooperating Country 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 D.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 Assistance will be attained or that the Cooperating Country 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 Cooperating Country 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 Cooperating Country or any of its agencies and the Government of the United States or any of its agencies,

then 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 Cooperating Country;
- (2) Decline to issue additional commitment documents or to make disbursement other than under existing ones; and
- (3) At A.I.D.'s expense, direct that title to goods financed under the Assistance be transferred to A.I.D. if the goods are from a source outside Sri Lanka, are in a deliverable state and have not been offloaded in ports of entry of Sri Lanka; any

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

Section D.4. CANCELLATION BY A.I.D. If, within sixty (60) days from the date of any suspension of disbursements pursuant to section D.3 the cause or causes thereof have not been corrected, A.I.D. may cancel any part of the Assistance that is not then disbursed or irrevocably committed to third parties.

Section D.5. CONTINUED EFFECTIVENESS OF AGREEMENT. Notwithstanding any cancellation, suspension of disbursement, 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 D.6. REFUNDS. (a) In the case of any disbursement which is not supported by valid documentation in accordance with this Agreement, or which is not made or used in accordance with this Agreement, or which was for goods or services not used in accordance with this Agreement, A.I.D., notwithstanding the availability or exercise of any other remedies provided for under this Agreement, may require the Cooperating Country to refund the amount of such disbursement in U.S. dollars to A.I.D. within sixty days after receipt of a request therefor.

(b) If the failure of the Cooperating Country to comply with any of its obligations under this Agreement has the result that goods or services financed under the Assistance are not used effectively in accordance with this Agreement, A.I.D. may require the Cooperating Country to refund all or any part of the amount of the disbursements under this Agreement for such goods or services in U.S. dollars to A.I.D. within sixty days after receipt of a request therefor.

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

(d) (1) Any refund under subsection (a) or (b) or (2) any refund to A.I.D. from a contractor, supplier, bank or other third party with respect to goods or services financed under the Assistance, which refund relates to an unreasonable price for or erroneous invoicing of goods or services, or to goods that did not conform to specifications, or to services that were inadequate, will (A) be made available first for the cost of goods and services required for the Project, to the extent justified, and (B) the remainder, if any, will be applied to the installments of Principal in the inverse order of their maturity and the amount of the Loan reduced by the amount of such remainder.

Section D.7. NONWAIVER OF REMEDIES. No delay in exercising any right or remedy accruing to a Party in connection with its financing under this Agreement will be construed as a waiver of such right or remedy.
