

No. 19904

**UNITED STATES OF AMERICA
and
PERU**

Loan Agreement concerning rural development—*Agribusiness Fund Project* (with annexes). Signed at Lima on 31 May 1978

Authentic texts: Spanish and English.

Registered by the United States of America on 10 June 1981.

**ÉTATS-UNIS D'AMÉRIQUE
et
PÉROU**

Accord de prêt concernant un projet de développement rural — *Fonds des agro-industries* (avec annexes). Signé à Lima le 31 mai 1978

Textes authentiques : espagnol et anglais.

Enregistré par les États-Unis d'Amérique le 10 juin 1981.

LOAN AGREEMENT¹ BETWEEN THE REPUBLIC OF PERU AND THE UNITED STATES OF AMERICA: RURAL DEVELOPMENT—AGRIBUSINESS FUND PROJECT

Date: May 31, 1978

A.I.D. Loan No. 527-T-060

LOAN AGREEMENT, dated May, 31st, 1978 (the "Agreement"), between the REPUBLIC OF PERU (the "Borrower") acting through the CENTRAL RESERVE BANK OF PERU ("the Central Bank") and the UNITED STATES OF AMERICA, acting through the AGENCY FOR INTERNATIONAL DEVELOPMENT ("A.I.D.").

Article 1. THE AGREEMENT

The purpose of this Agreement is to set out the understandings of the parties named above with respect to the undertaking by the Borrower of the project described in Section 2.1 (the "Project") and 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: a special facility—the Rural Development Agribusiness Fund (the "Fund")—established by the Central Bank for financing agribusiness loans.

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 the Agreement.

Article 3. FINANCING

Section 3.1. THE LOAN. To assist the Borrower 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 to the Borrower under the terms of this Agreement not to exceed fifteen million United States dollars (\$15,000,000) (the "Loan"). The aggregate amount of disbursements under the Loan constitutes the principal of the Loan.

The Loan may be used to finance U.S. dollar costs (as defined in Section 7.1) and Peruvian soles costs (as defined in Section 7.2) of goods and services required for the Project.

Section 3.2. BORROWER RESOURCES FOR THE PROJECT. (a) The Borrower agrees to provide or cause to be provided for the Project all funds, in addition to the Loan, and all other resources reasonably required to carry out the Project effectively and in a timely manner.

(b) The resources provided by the Borrower for the Project will be not less than the equivalent of five million United States dollars (\$5,000,000) including costs borne on an "in-kind" basis.

¹ Came into force on 31 May 1978 by signature.

Section 3.3. PROJECT ASSISTANCE COMPLETION DATE. (a) The Project Assistance Completion Date ("PACD"), which is December 31, 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 Loan will have been performed and all goods financed under the Loan 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 under the Loan for services performed after the PACD or for goods furnished for the Project, as contemplated in this Agreement, after 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 Borrower, may at any time or times reduce the amount of the Loan 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 Borrower will pay to A.I.D. interest on the Loan which will accrue at the rate of two percent (2%) per annum for seven years following the date of the first disbursement of the Loan hereunder and at the rate of three percent (3%) per annum thereafter on all outstanding balances. Interest on the outstanding principal balance will accrue from the date (as defined in Section 8.5) of each respective disbursement, and will be payable semiannually. The first payment of interest will be due and 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 Borrower will repay the principal to A.I.D. within twenty (20) years from the date of the first disbursement of the Loan in twenty-seven (27) approximately equal semiannual installments of principal and interest. The first installment of principal will be payable six and one-half (6 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 Borrower 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 such office.

Section 4.4. 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 4.5. 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 Peru, 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 9.2 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 9.2, 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 President of the Central Bank in Lima, Peru.

Section 4.6. TERMINATION OF 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. relating to the provisions of this Agreement shall terminate.

Article 5. CONDITIONS PRECEDENT TO DISBURSEMENT

Section 5.1. CONDITIONS PRECEDENT TO INITIAL DISBURSEMENT. Prior to the first disbursement of the Loan or to the issuance by A.I.D. of documentation pursuant to which disbursement will be made, the Borrower 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) A legal opinion of the Attorney General of Peru or other counsel acceptable to A.I.D. to the effect 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 of the name of the person holding or acting in the office of the Borrower specified in Section 9.2, and of any additional representatives, together with a specimen signature of each person specified in such statement;
- (c) A Supreme Decree and/or a resolution of Central Bank's Board of Directors, as required under Peruvian law, authorizing the establishment of the Fund and the creation of a special management unit (the "Special Unit") within the Central Bank's organizational structure for administration of the Project;
- (d) Evidence that the above mentioned Supreme Decree and/or resolution authorizes commercial banks participating in the Project to engage in medium and long-term lending under the Fund and allows rediscounted subloans made by participating commercial banks under the Fund to be counted toward meeting the portfolio coefficient requirements of the selective credit system;
- (e) Evidence that the Special Unit has been created and is in operation with key personnel in place; and

- (f) A plan identifying timing and amounts pursuant to which the Borrower will contribute not less than U.S.\$5.0 million to the Project.

Section 5.2. CONDITIONS PRECEDENT TO DISBURSEMENT FOR SUB-LENDING UNDER THE RURAL DEVELOPMENT AGRIBUSINESS FUND. Prior to disbursement of the Loan or the issuance by A.I.D. of documentation pursuant to which disbursement will be made to finance sub-lending under the Fund, the Borrower 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) A Credit Manual detailing program concepts, objectives and guidelines for participation by financial institutions including sub-project impact determination requirements and eligibility criteria.
- (b) A mechanism pursuant to which the Borrower will maintain the value of the assets of the Fund at a level, in Peruvian soles, equivalent to not less than the total value in U.S. dollars originally provided to the Fund by A.I.D. and the Borrower.

Section 5.3. NOTIFICATION OF MEETING CONDITIONS PRECEDENT. When the conditions precedent specified in Sections 5.1 and 5.2 have been satisfactorily met, A.I.D. will promptly notify the Borrower.

Section 5.4. TERMINAL DATES FOR CONDITIONS PRECEDENT. (a) If all the conditions specified in Section 5.1 have not been met within 90 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 Borrower.

(b) If all of the conditions specified in Section 5.2 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 cancel the then undisbursed balance of the Loan, to the extent not irrevocably committed to third parties, and may terminate this Agreement by written notice to the Borrower. In the event of such termination, the Borrower will repay immediately the principal then outstanding and any accrued interest.

Article 6. SPECIAL COVENANTS

Section 6.1. PERIODIC REVIEW OF FUND OPERATIONS AND REDISCOUNT PERCENTAGES. The Borrower covenants to review periodically the progress of the Fund's operations and with the prior written approval of A.I.D. to adjust, if necessary, the rediscount percentage for eligible loans in order to elicit the broadest possible participation by financial institutions in the Project.

Section 6.2. SUB-LOAN ELIGIBILITY CRITERIA. The Borrower covenants that rediscounted sub-loans financed under the Project will conform to impact determination guidelines and eligibility criteria specified in the Credit Manual.

Section 6.3. BORROWER CONTRIBUTION TO THE PROJECT. The Borrower covenants that it will provide as a cash contribution to the Project not less than the equivalent of \$5.0 million in accordance with the agreed plan specified in Section 5.1(f).

Section 6.4. MAINTENANCE OF VALUE OF THE RURAL DEVELOPMENT AGRIBUSINESS FUND. The Borrower covenants to maintain the value of the Fund for at least the grace period of the Loan at an amount in Peruvian soles equivalent

to not less than the original U.S. dollar value of the resources provided by A.I.D. and the Borrower.

Section 6.5. INTEREST RATES. The Borrower covenants to maintain interest rates charged to ultimate sub-borrowers of the Fund in line with comparable credit sources available in Peru and to adjust interest rates under the Fund whenever necessary to maintain such comparability.

Section 6.6. ANNUAL PROJECT EVALUATION. The Borrower covenants to evaluate on an annual basis jointly with A.I.D. progress towards meeting project goals and targets based on the evaluation system to be established as part of the Project.

Article 7. PROCUREMENT SOURCE

Section 7.1. U.S. DOLLAR COSTS. Disbursements under the Loan 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 ("dollar costs"), except as A.I.D. may otherwise agree in writing, and except as provided in Annex 2 (Project Loan Standard Provisions Annex), Section C.1(b) with respect to marine insurance.

Section 7.2. PERUVIAN SOLES COSTS. Disbursements under the Loan 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 Peru ("Peruvian soles costs").

Article 8. DISBURSEMENTS

Section 8.1. DISBURSEMENT FOR DOLLAR COSTS. (a) After satisfaction of conditions precedent, the Borrower may obtain disbursements of funds under the Loan for the dollar 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, requests for reimbursement for such goods or services, or requests for A.I.D. to procure commodities or services on behalf of the Borrower for the Project; or
- (2) By requesting A.I.D. to issue Letters of Commitment for specified amounts 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.

(b) Banking charges incurred by the Borrower in connection with Letters of Commitment and Letters of Credit will be financed under the Loan unless the Borrower instructs A.I.D. in advance to the contrary.

Section 8.2. DISBURSEMENT FOR PERUVIAN SOLES COSTS. (a) After satisfaction of conditions precedent, the Borrower may obtain disbursement of funds under the Loan for Peruvian soles 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 Peruvian soles needed for such disbursement hereunder may be obtained by acquisition by A.I.D. with U.S. dollars by purchase.

(c) The U.S. dollar equivalent of the Peruvian soles made available hereunder will be, in the case of subsection (b) above, the amount of U.S. dollars required by A.I.D. to obtain the Peruvian soles in accordance with the provisions of Section 8.4.

Section 8.3. OTHER FORMS OF DISBURSEMENT. Disbursements of the Loan may also be made through such other legal 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 Peru by A.I.D. or any public or private entity for purposes of carrying out obligations of A.I.D. hereunder, the Borrower will make such arrangements as may be necessary so that such funds may be converted into Peruvian soles at the highest rate of exchange which, at the time the conversion is made, is not unlawful in Peru.

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 Borrower or its designee, or to a bank, contractor or supplier pursuant to a Letter of Commitment or Letter of Credit; (b) on the date on which A.I.D. disburses to the Borrower or its designee Peruvian soles acquired in accordance with Section 8.2(b); or (c) in the case of disbursements pursuant to Section 8.3, on the date specified in the other form of disbursement documents.

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 Borrower:

Mail Address:
Central Reserve Bank of Peru
P.O. Box 1958
Lima 1, Peru

Cable Address:
RESERBANCO
Lima 1, Perú

To A.I.D.:

Mail Address:
United States AID Mission
to Peru
c/o United States Embassy
Lima 1, Peru

Cable Address:
USAID, AmEmbassy
Lima 1, Peru

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 prior notice.

Section 9.2. REPRESENTATIVES. For all purposes relevant to this Agreement, the Borrower will be represented by the individual holding or acting in the office of President of the Central Bank, and A.I.D. will be represented by the individual holding or acting in the office of Mission Director; 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 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 9.3. STANDARD PROVISIONS ANNEX. A "Project Loan Standard Provisions Annex" (Annex 2) is attached to and forms part of this Agreement.

Section 9.4. CONTROLLING LANGUAGE. This Agreement is executed in both the English and Spanish languages. In case of inconsistency or conflict between the two versions, the English version shall control.

EN TESTIMONIO DE LO CUAL, la República del Perú y los Estados Unidos de América, actuando cada cual por medio de sus respectivos representantes debidamente autorizados, han suscrito el presente Convenio en sus nombres y lo han otorgado en el día y el año arriba mencionado.

República del Perú:
Republic of Peru:

MANUEL MOREYRA L.
Título: Presidente, Banco Central
de Reserva del Perú
Title: President, Central
Reserve Bank of Peru

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

Estados Unidos de América:
United States of America:

HARRY W. SHLAUDEMANN
Título: Embajador,
Estados Unidos de América
Title: Ambassador,
United States of America

LEONARD YAEGER
Título: Director USAID/Perú
Title: USAID/Peru Mission Director

ANNEX I. PROJECT DESCRIPTION

I. GOALS AND PURPOSES OF THE PROJECT

The Project is intended to contribute to increased food production, employment and incomes of the rural poor, and improve nutrition. In support of this general goal, the purposes of the Project are: i) to establish in the Central Bank a facility for rediscounting loans made by financial institutions to sub-borrowers which process or market agricultural products or provide complementary goods and services to the agricultural sector; and ii) to establish a program of promotion and development of such agribusinesses, including appropriate technical assistance, which will maximize benefits to small farmers and people of low incomes.

The Project will be directed toward stimulating the role of intermediate credit institutions (ICIs) in the development of a viable agribusiness sector. The development of agribusiness is seen as an effective way of alleviating the following four basic constraints to increased employment and income levels in the agricultural sector: i) inadequate processing facilities; ii) inadequate marketing facilities; iii) inadequate goods and services input industries; and iv) incomplete agribusiness system linkages.

II. PROJECT ELEMENTS

Within the Central Bank, the Project will establish a rediscount mechanism, the Rural Development Agribusiness Fund (Fund), to finance agribusiness sub-projects meeting eligibility criteria through the banking system. The Project's target group of low income people, including small farmers and the non sugar producing associative enterprises created under the Agrarian Reform, will benefit as a result of sub-loans made to agribusinesses providing marketing, processing, or goods and services to the target group.

A. Rural Development Agribusiness Fund

1. Magnitude and Scope

The Fund will consist of a total initial capitalization of \$19,600,000, of which \$14,700,000 will be A.I.D. Loan funds and \$4,900,000 will be provided by the Central Bank. These financial resources will support the development of industries which demonstrate significant direct backward or forward linkages to the target group. Additional resources from Peruvian sources to support these agribusinesses will be provided by participating ICIs and sub-borrowers.

The types of agribusiness activities which may be financed under the program include:

- i) Agribusinesses (including fruit and vegetable processing plants, balanced feed plants, canneries, freeze-drying facilities, etc.) which process raw materials provided by the target group;
- ii) Agribusinesses (such as refrigerated storage facilities, warehouses, transportation, etc.) which assist in the marketing of small farmer and associative enterprise agricultural products; and
- iii) Agribusinesses which provide goods and services which contribute to improved small farm and associative enterprise agricultural production, for instance suppliers of inputs and improved technologies (tools, farm machinery, pumps, windmills, vegetables crates, pesticides, improved seeds) as well as complementary services. Service enterprises would include distributors and repair facilities for the above-listed inputs, input marketing services, and rental services for farm machinery and land-clearing equipment.

2. Screening Criteria

In selecting sub-projects for Fund financing, the linkage between the proposed activity and the designated target group will be reviewed in addition to financial feasibility. As

part of the Credit Manual, the Central Bank will advise ICIs of factors to be taken into consideration in determining the anticipated impact of the activity on the target group. The Credit Manual will contain an initial impact determination format which will enable ICIs and sub-borrowers to determine whether specific sub-projects qualify for Fund financing. The format will assign weights to various factors to be considered in determining eligibility and ICIs will be advised of the minimum score necessary for a sub-project to qualify. The initial impact determination format will include such factors as the extent to which sub-projects alleviate identified constraints to increasing rural production, the extent to which the sub-projects will contribute to an increase in rural incomes, the location of the facility, the number and characteristics of the farmers who will benefit from the activity, the number and cost of jobs created both on-and off-farm as a result of the activity, and the ability of the sub-project to contribute to overall economic development. A system will be established to record the anticipated sub-project impact on the rural sector.

3. *Sub-lending Terms and Conditions*

Except as the parties may otherwise agree in writing, the following conditions will apply to sub-projects financed by the Fund.

a. *Interest Rates.* Rates charged to end-user sub-borrowers will initially be set at 16% and the rediscount rate charged ICIs will be 9%. The Central Bank will adjust these rates whenever necessary to maintain comparability with similar credit sources available in Peru, including the regional selective credit system and medium and long term credit lines of the state development banks.

b. *Terms.* The maximum term for sub-loans will be 10 years with grace periods of not to exceed 2 years. Sub-loans will not be made for a term of less than one year. Within these limitations, sub-lending terms will be set by ICIs on a case-by-case basis.

c. *Percentage of ICIs Participation.* To initiate the program, the Central Bank will refinance 90% of ICI sub-loans meeting eligibility criteria with 10% to be contributed from the ICIs own resources. This will be analyzed and periodically adjusted, if necessary, with the aim of eliciting the broadest possible participation by ICIs under the Project.

d. *Sub-loan Uses.* Eligible uses of Fund resources will include construction, the acquisition of capital goods, working capital requirements, and technical assistance. If a sub-loan is to be utilized strictly for working capital purposes—as in the case of a company's making loans to farmers to induce cropping pattern shifts into crops which will be processed at the enterprise level—then it must be shown that the needs are for more than one year and therefore not eligible for conventional commercial bank financing. No more than 25% of the Fund will be utilized for such sub-projects which require only medium-term working capital financing. The Fund also will finance feasibility studies for sub-projects. Up to 4% of the Fund resources may be utilized for financing feasibility studies.

e. *Fund Sub-loan Size Restrictions.* The maximum sub-loan size and maximum amount to be outstanding to any one sub-borrower will be \$750,000. Exceptions to this restriction will only be considered on a case by case basis and would require the prior written approval of A.I.D.

B. *Central Bank Fund Administration*

The Central Bank will establish a Special Unit for the purpose of administering the Fund, under the leadership of a Fund Director, with an adequate number of full-time personnel assigned to promote and implement the Project.

The Central Bank will actively publicize the program through the design and development of pamphlets and brochures and the use of the mass media. Travel throughout Peru will be undertaken on a regular basis to initiate and maintain contact with existing agribusinesses, interested investors, and ICIs. The Central Bank will be responsible for organizing meetings with ICI branch officers. Topics to be addressed at these meetings will include sub-project eligibility requirements, impact identification procedures, sub-project promotion techniques, and necessary steps to be completed for obtaining financing.

In addition, control will be exercised by the Special Unit to check impact identification formats, to check on the progress of outstanding applications pending ICI approval, and to evaluate sub-project results. The Unit will maintain records on expected sub-project results, as well as account for sub-project disbursements, commitments, and Fund availabilities.

The Central Bank support for administration of the Fund is expected to total not less than the equivalent of \$100,000.

C. Technical Assistance

Up to \$300,000 of A.I.D. loan funds will be available to finance technical assistance and goods and services required to institutionalize the Fund's operations. If the full amount of this funding is not required for technical assistance, it may be utilized for sub-lending under the Fund.

III. PROJECT OUTPUTS AND TARGETS

The following outputs are anticipated under the Project: i) at least \$19.6 million of investments financed by the Fund; ii) approximately ten ICIs participating in agribusiness lending under the program; iii) sub-lending directives (the Credit Manual) distributed and periodically revised; iv) promotional meetings held in all areas of Peru reaching ICI branch office managers; and v) a project promotion and evaluation system established. At the end of the Project the parties anticipate that all Project funds will have been placed in sub-projects meeting eligibility criteria, the Fund will be institutionalized with the capacity to maintain its level of refinancing, and the Fund will continue as an effective system to identify, promote, and finance sub-projects.

ANNEX 2. PROJECT LOAN AGREEMENT STANDARD PROVISIONS ANNEX

Definitions. As used in this Annex, the "Agreement" refers to the Project 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 Borrower 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 and signed 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 Borrower 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 arrangements, 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 Loan 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 Loan, 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 Loan will be free from, and the principal and interest of the Loan will be paid free from, any taxation or fees imposed under laws in effect in Peru.

(b) (1) Any foreign contractor including any consulting firm, any foreign personnel of such contractor financed under the Loan, and any property or transaction relating directly to such contracts and (2) any commodity procurement transaction financed under the Loan, are exempt from identifiable taxes, tariffs, duties or other levies imposed under laws in effect in Peru.

(c) To the extent any such contractor or commodity may not be exempt from such taxes in Peru, the Borrower will pay or reimburse the same with funds other than those provided by the A.I.D. Loan.

Section B.5. REPORTS, RECORDS, INSPECTIONS, AUDIT. The Borrower 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 Loan. 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.I.D. the opportunity at all reasonable times to inspect the Project, the utilization of goods and services financed by A.I.D., and books, records and other documents relating to the Project and the Loan.

Section B.6. COMPLETENESS OF INFORMATION. The Borrower confirms that:

- (a) 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 Project and the discharge of responsibilities under this Agreement; and
- (b) 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 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 payment legally established in Peru.

Section B.8. INFORMATION AND MARKING. The Borrower will give appropriate publicity to the Loan 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 Peru will be deemed an eligible dollar cost, if otherwise eligible under Section C.7(a).

(c) Any motor vehicles financed under the Loan 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 Loan which are procured pursuant to order 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. Except as the parties may otherwise agree in writing:

(a) The Borrower 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 Loan, 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 to A.I.D. on preparation;

- (2) Such documentation will also be furnished to A.I.D., upon preparation, relating to any goods or services which, though not financed under the Loan, are regarded 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 Loan will be approved by A.I.D. in writing prior to their issuance, and their terms will include United States standards and measurements;

(c) Bid awards, contracts and contractors financed under the Loan 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 such awards and the execution of such contracts. Material modifications in such contracts will also be approved in writing by A.I.D. prior to execution;

(d) 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 A.I.D. may specify, and construction contractors used by the Borrower for the Project but not financed under the Loan, shall be acceptable to A.I.D.; and

(e) Bidding, contracting and procurement under the Loan shall be carried out in accordance with A.I.D. regulations and procedures with respect to international project loan agreements, including A.I.D. Handbook 11.

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 Loan. 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 Loan, the Borrower 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 Peru may not be financed under the Loan 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 Borrower, 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 Loan 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 Article and Sections of the Agreement entitled "Procurement Source: U.S. Dollar Costs", without prior written A.I.D. approval; or (2) on an ocean vessel which A.I.D., by written notice to the Borrower 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 Peru 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 Peru may be financed under the Loan as a dollar 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 Borrower 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, then all goods shipped to Peru 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 Borrower will insure, or cause to be insured, goods financed under the Loan 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 Borrower 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 Borrower 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 Borrower agrees that United States Government-owned excess personal property, in lieu of new items financed under the Loan will be utilized wherever practicable. Funds under the Loan may be used to finance the costs of obtaining such property for the Project.

Article D. TERMINATION; REMEDIES

Section D.1. CANCELLATION BY THE 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 D.2. EVENTS OF DEFAULT; ACCELERATION. It will be an "Event of Default" if the Borrower shall have failed: (a) to pay when due any interest or installment of principal required under this Agreement; (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 at its option 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 D.3. SUSPENSION. If at any time:

- (a) An Event of Default has occurred; or
- (b) An event or events occur which in the judgment of A.I.D. create 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 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 disbursement other than under existing ones; and
- (3) At A.I.D.'s expense, direct that title to goods financed under the Loan be transferred to A.I.D. if the goods are from a source outside Peru, are in a deliverable state and have not been offloaded in ports of entry of Peru. 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 Loan 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 Borrower 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 Borrower to comply with any of its obligations under this Agreement has the result that goods or services financed under the Loan are not used in accordance with this Agreement, A.I.D. may require the Borrower 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 four months 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) Any refund under subsection (a) or (b) or any refund to A.I.D. from a contractor, supplier, bank or other third party with respect to goods or services financed under the Loan, 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 be made available first for the cost of goods and services required for the Project, to the extent justified, and 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 within the terms of the Agreement.