

A.I.D. Project No. 399-0358
Project Agreement No. 399-90-0358



PROJECT GRANT AGREEMENT

BETWEEN

THE KINGDOM OF THAILAND

AND

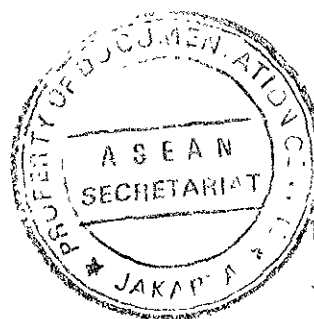
THE UNITED STATES OF AMERICA

FOR

ASEAN PRIVATE INVESTMENT AND TRADE OPPORTUNITIES PROJECT

Dated: April 26, 1990

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PROJECT GRANT AGREEMENT

Dated: April 26, 1990

Between

The Kingdom of Thailand on behalf of the Association of Southeast Asian Nations ("Grantee")

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 ("Parties") with respect to the undertaking by the Grantee and Grantee Institutions (as defined in Section 8.2) described below, 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 I and Annex II, will establish a mechanism to promote expanded private sector trade and investment between the Association of Southeast Asian Nations ("ASEAN") and the U.S. The system will serve to establish networks to facilitate expanded market driven economic activities in ASEAN countries and productive and mutually beneficial ASEAN and U.S. trade and investment activity.

Within the limits of the above definition of the Project, elements of the amplified description stated in Annex I may be changed by written agreement of the authorized representatives of the Parties named in Section 8.2, without formal amendment of this Agreement.

Section 2.2. Incremental Nature of Project.

(a) A.I.D.'s contribution to the Project will be provided in increments, the initial one being made available in accordance with Section 3.1. of this Agreement. Subsequent increments will be subject to

availability of funds to A.I.D. for this purpose, and to the mutual agreement of the Parties, at the time of a subsequent increment, to proceed.

(b) Within the overall Project Assistance Completion Date stated in this Agreement, A.I.D., based upon consultation with the Grantee and Grantee Institutions, may specify in Project Implementation Letters appropriate time periods for the use of funds granted by A.I.D. under an individual increment of assistance. The planned total amount of assistance will be United States Dollars Thirteen Million (U.S. \$13,000,000.00) "Grant".

Article 3: Financing.

Section 3.1. The Grant. To assist the Grantee to meet the costs of carrying out the Project, A.I.D., pursuant to the Foreign Assistance Act of 1961, as amended, agrees to grant to the Grantee under the terms of this Agreement an amount not to exceed United States Dollars One Million (U.S.\$1,000,000.00) "Grant".

The Grant may be used to finance foreign exchange costs, as defined in Section 6.1., and local currency costs, as defined in Section 6.2., of goods and services required for the Project.

Section 3.2. Grantee Resources for the Project.

The ASEAN member governments have no responsibility for counterpart funding for this Project.

To help further project sustainability, the ASEAN and U.S. private sectors will be encouraged to provide cash or in-kind support either through Grantee Institutions or individual participation in project activities.

Section 3.3. Project Assistance Completion Date.

(a) The "Project Assistance Completion Date" (PACD), which is September 30, 1996, 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 Grant will have been performed and all goods financed under the Grant 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 Grant 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 7.1. 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 Grantee, may at any time or times reduce the amount of the Grant 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. Conditions Precedent to Disbursement.

Section 4.1. First Disbursement. Prior to the first disbursement under the Grant, or to the issuance by A.I.D. of documentation pursuant to which disbursement will be made, the Grantee 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 statement of the names and specimen signatures of the Grantee official representative who will have authority to sign implementing documents under the Project.

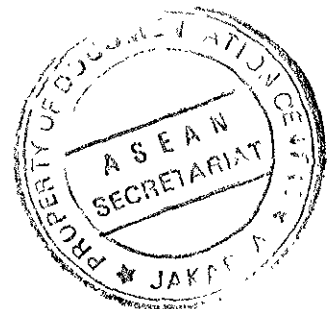
Section 4.2. Notification. When A.I.D. has determined that the conditions precedent specified in Sections 4.1. have been met, it will promptly notify the Grantee.

Section 4.3. Terminal Dates for Conditions Precedent. If the condition specified in Sections 4.1. has not been met within 120 days from the date of this Agreement, or such later date as A.I.D. may agree in writing, A.I.D., at its option, may terminate this Agreement by written notice to the Grantee.

Article 5: Special Covenants.

Section 5.1. Annual Work Plan. Prior to any additional disbursements under the Grant, or to the issuance by A.I.D. of documentation pursuant to which such disbursement will be made for project activities for calendar year 1991 and for each subsequent calendar year, the Grantee will, except as the Parties may otherwise agree in writing, furnish to A.I.D. in form and substance satisfactory to A.I.D. an annual work plan for project activities to be financed.

Section 5.2. Project Evaluation and Audit. The Parties agree to establish an evaluation and audit plan as part of the Project. Except as the Parties may otherwise agree in writing, the plan will include, during the implementation of the Project and at one or more points thereafter:



(a) Evaluation of progress towards attainment of Project objectives;

(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; and

(d) Evaluation, to the degree feasible, of the overall effect of the Project.

Article 6: Procurement Source.

Section 6.1. Foreign Exchange Cost. Disbursements pursuant to Section 7.1. will be used exclusively to finance goods and services required for the Project having their source and origin in the United States of America (A.I.D. Geographic Code 000) and the countries of Brunei Darrusalam, Indonesia, Malaysia, Philippines, Singapore, and Thailand (A.I.D. Geographic Code 399) ("Foreign Exchange Costs"), except as A.I.D. may otherwise agree in writing, and except as provided in the Project Grant Standard Provisions Annex, Section C.1. (b), with respect to marine insurance. Ocean transportation will be financed under the Grant only on vessels under flag registry of the United States, except as A.I.D. may otherwise agree in writing.

Section 6.2. Local Currency Costs. Disbursements pursuant to Section 7.2. will be used exclusively to finance goods and services required for the Project having their source and, except as A.I.D. may otherwise agree in writing, their origin in Brunei Darrusalam, Indonesia, Malaysia, Philippines, Singapore and Thailand ("Local Currency Costs").

Article 7: Disbursement.

Section 7.1. Disbursement for Foreign Exchange Costs.

(a) After satisfaction of conditions precedent, the Grantee Institutions may obtain disbursements of funds under the Grant for the Foreign Exchange Costs of goods or services required for the Project in accordance with the terms of this 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 advances and/or reimbursements for such goods and services; or (B) requests for A.I.D. to procure commodities and/or services for the Project on behalf of the Grantee Institutions; 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 banks for payments made by them to contractors or suppliers, under Letters of Credit or otherwise, for such goods or services, committing A.I.D. to pay such contractors or suppliers for such goods and services.

(b) Banking charges incurred by the Grantee Institutions in connection with Letters of Commitment and Letters of Credit will be financed under the Grant unless the Grantee Institutions instruct A.I.D. to the contrary. Such other charges as the Parties may agree to may also be financed under the Grant.

Section 7.2. Disbursement for Local Currency Costs.

(a) After satisfaction of conditions precedent, the Grantee Institutions may obtain disbursements of funds under the Grant 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 may be obtained:

(1) by A.I.D. purchase with U.S. Dollars; or

(2) by A.I.D. (A) requesting the Grantee Institutions to make available the local currency for such costs, and (B) thereafter making available to the Grantee Institution, through the opening or amendment by A.I.D. of Special Letters of Credit in favor of the Grantee or its designee, an amount of U.S. Dollars equivalent to the amount of local currency made available by the Grantee, which dollars will be used for procurement from the United States under appropriate procedures described in Project Implementation Letters.

The U.S. dollar equivalent of the local currency made available hereunder will be, in the case of subsection (b) (1) above, the amount of U.S. dollars required by A.I.D. to obtain the local currency, and in the case of subsection (b) (2) above, an amount calculated at the rate of exchange specified in an applicable Special Letter of Credit Implementation Memorandum as of the date of the opening or amendment of the applicable Special Letter of Credit.

Section 7.3. Other Forms of Disbursement. Disbursements of the Grant may also be made through such other means as the Parties may agree to in writing.

Section 7.4. Rate of Exchange. Except as may be more specifically provided under Section 7.2., if funds provided under the Grant are introduced into Thailand or any other ASEAN member country by A.I.D. or any public or private agency for purposes of carrying out obligations of A.I.D. hereunder, the Grantee will make such arrangements as may be necessary so that such funds may be converted into currency of the country into which funds have been introduced at the highest rate of exchange which, at the time the conversion is made, is not unlawful in the country into which funds have been introduced.

Article 8: Miscellaneous.

Section 8.1. Communications. Any notice, request, document, or other communication submitted by either Party to the other under this Agreement will be in writing or by facsimile transmittal, telegram, or cable, and will be deemed duly given or sent when delivered to such Party at the following addresses:

To the Grantee:

Mail Address: Ministry of Foreign Affairs
Director-General Department of ASEAN Affairs
Bangkok, Thailand

Alternate address for facsimile transmittal: 246-4316

To A.I.D.:

Mail Address: A.I.D. Representative to ASEAN
c/o U.S. Agency for International Development
The American Embassy
Bangkok, Thailand

Alternate address for facsimile transmittal: (662) 255-3730

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

Section 8.2. Representatives. For all purposes relevant to this Agreement, the Grantee will be represented by the individual holding or acting in the office of Director-General/ASEAN, and A.I.D. will be represented by the individual holding or acting in the office of the A.I.D. Representative to ASEAN, 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 I. The names of the representatives of the Grantee, and Grantee Institutions, with specimen signatures, will be provided to A.I.D., which may accept as duly authorized any instrument signed by such representatives in the implementation of this Agreement, until receipt of written notice of revocation of their authority.

The Grantee Institutions responsible for implementing Project activities are:

Technonet Asia
The East West Center (Resource Systems Institute)
The ASEAN-U.S. Business Council, U.S. and ASEAN Sections

The Grantee hereby acknowledges that all subsequent incremental obligations of the Grant will be provided directly to The Grantee Institutions by A.I.D. The mechanism for such obligations shall be separate A.I.D. direct grant agreements with each Grantee Institution.

Section 8.3. Standard Provisions Annex. A "Project Grant Standard Provisions" which is attached as Annex III forms part of this Agreement.

IN WITNESS WHEREOF, the Grantee 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.

For and on Behalf of:

KINGDOM OF THAILAND

For and on Behalf of:

UNITED STATES OF AMERICA

By: 

Saroj Chavanaviraj

By: 

Lawrence J. Ervin

Title: Director-General
Department of ASEAN Affairs
Ministry of Foreign Affairs

Title: A.I.D. Representative
to ASEAN

PROJECT DESCRIPTIONASEAN PRIVATE INVESTMENT AND TRADE OPPORTUNITIES (PIIO)1. GRANTEE AND FUNDING

A. Grantee

The Government of the Kingdom of Thailand, which is serving as the current host country for the ASEAN-U.S. Dialogue, will be the signatory of the Project Agreement on behalf of ASEAN.

B. Coordinating Mechanisms

Project coordination will be provided by establishing a Project Secretariat in Bangkok linked by the ASEAN-U.S. Business Council (AUSBC) to trade and investment promotion representatives and activities in each of the ASEAN countries and supported by cooperative grant agreements with: the ASEAN-U.S. Council for Business and Technology, Inc. in Washington D.C. for trade and investment promotion; a U.S.-based center for policy analysis and support; Technonet Asia in Singapore for technology commercialization issues; and the Overseas Private Investment Corporation (OPIC) for devising the ASEAN Growth Fund.

C. Amount and Sources

The Project will be supported by a planned U.S.\$13 million from the Agency for International Development (A.I.D.). To help further project sustainability, the ASEAN and U.S. private sector will be encouraged to provide cash or in-kind support either through grantee institutions or individual participation in project activities. The A.I.D. grant will be obligated incrementally on the following schedule:

FY'90	\$ 1.0 million
FY'91	\$ 3.0 million
FY'92	\$ 3.0 million
FY'93	\$ 3.0 million
FY'94	\$ 3.0 million

2. PROJECT DESCRIPTION

A. Introduction

The ASEAN region is one of the most economically dynamic areas of the world. Most member countries are rapidly transforming themselves into centers of industrial production. In addition, most have already or are in the process of instituting market based and outward oriented economic policies, which experience has demonstrated is the most effective strategy for rapid economic growth.

Although the regional outlook is generally optimistic, a strong need for development assistance remains. Most importantly in this instance, the process of economic transformation to advanced industrial nations and private sector-led growth is still in its initial stages, especially in the three poorest ASEAN nations.

Numerous constraints remain in place and continue to emerge at each new stage of transition. Constraints include policy impediments, lack of capital, technological and management resources and a dearth of information on markets and venture opportunities. Apart from the removal of policy impediments, these constraints can be best addressed through private sector activities, especially commercial linkages between the private sectors of ASEAN member countries and those of more advanced industrial nations that possess the needed capital, technology, management expertise and markets.

Over the past fifteen years the commercial presence of the U.S. in the ASEAN region has been in relative decline. This decline is resulting in a potentially unstable situation in which ASEAN countries are becoming increasingly dependant on a few East Asian countries for capital and technology, and on the U.S. as a destination for their exports. The lack of greater U.S. private sector involvement in ASEAN economies also deprives ASEAN member countries of efficient and useful U.S. technologies and equipment, as well as needed investment.

By promoting a greater exchange of trade, capital and technology between the private sectors of the U.S. and ASEAN member countries, and supporting regional policy problem solving efforts, PITO is designed to further the process of private sector-led growth in ASEAN countries. By encouraging the U.S. private sector to become more involved in ASEAN, PITO should help ASEAN countries address some of the obstacles to continued rapid economic development as well as help the U.S. improve its competitive position in this increasingly economically important region.

B. Project Goal and Purpose

The Project's goal is to contribute to sustained economic growth and development in the ASEAN region. The Project's purpose is to

establish a structure and a mechanism to promote expanded private sector trade and investment between ASEAN and the U.S. The system will serve to establish networks to facilitate expanded market driven economic activities in ASEAN countries and productive and mutually beneficial ASEAN and U.S. trade and investment activity. To achieve its goal and purpose, the Project is focused on three major areas of private sector development.

Component One: Trade and Investment Promotion -- This component will establish a mechanism for promoting and facilitating expanded trade and investment in sectors of high development priority which are of mutual benefit to ASEAN and the United States.

Component Two: Policy Analysis/Problem Resolution -- Using a network of ASEAN and U.S. policy analysis groups, this component will identify policy constraints/problems, then conduct seminars/workshops for public and private sector policy makers to review effects of existing policies, consider alternatives, and devise means to introduce policies enhancing private sector participation in development.

Component Three: Capital Market Development -- This component provides assistance to the Overseas Private Investment Corporation (OPIC) in establishing an ASEAN Growth Fund to provide equity financing for U.S. - ASEAN ventures.

The End of Project Status includes the following achievements.

- o An established institutional network between the United States and ASEAN to support trade and investment and policy analysis;
- o Increased two way trade flows between the United States and ASEAN nations;
- o Increased flows of direct investment from the United States to ASEAN nations;
- o Approximately 30 ventures funded under the ASEAN Growth Fund;
- o Diversification of ASEAN export markets with increased export flow to East Asia and an improved trade balance between ASEAN nations and the United States;
- o A dramatically increased number of private sector inquiries on trade and investment opportunities between ASEAN and the United States;
- o A demonstrable set of indicators of cooperative working relationships among U.S. agencies interested in trade and investment; and

- o A series of concrete policy improvements flowing from the regional policy and problem solving studies undertaken cooperatively by regional institutes supported by the U.S.-based policy analysis center.

3. DESCRIPTION OF PITO PROJECT ACTIVITIES

A. Component One - Trade and Investment Promotion

This component focuses on promoting expanded trade between ASEAN and the United States and ASEAN exports to third markets, especially East Asia, and U.S. investment in sectors of high development priority in which the United States is competitive in equipment, systems and/or services. Emphasis will be placed on promoting small and medium sized business enterprises.

The comprehensive study of trade and investment activity in ASEAN countries performed during the Project's detailed design phase confirmed the premise underlying the preliminary project design: trade and investment promotion activities should be directed primarily at increasing the interest of the U.S. private sector in ASEAN. The design team concluded that little promotion is needed to encourage the interest of the ASEAN private sectors in trade and investment relationships with U.S. firms. Not only does a strong interest already exist, but most ASEAN business executives also express a strong preference for entering into business relationships with U.S. firms.

This component will promote activities in both the United States and ASEAN but will emphasize developing the interest of the U.S. private sector in ASEAN. It will establish an ASEAN-wide and U.S. network to provide information on trade and investment opportunities. The network will be comprised of PITO-funded inquiry centers in each country, and a U.S.-based inquiry and referral center (ASEAN-U.S. Council for Business and Technology Inc.).

Promotion activities will focus on sectors or sub-sectors identified by ASEAN private and public sector officials, with U.S. private and public participation, as having high priority in the ASEAN members' development scheme and in which there is interest in, and the U.S. has the capacity for, trade, investment and technology commercialization. Based on detailed interviews conducted by the project design team in all ASEAN countries, and on a recent recommendation by the AUSBC, emphasis during the first year will be given to the agribusiness/natural resource based sector, machinery and machine tools and packaging industries including plastics and paper. It will also focus on a theme which cuts across sectors; increasing the access of ASEAN products to East Asian markets.

Sectors selected for future promotion activities will depend on analyses undertaken and on annual work plans developed by the Project

Secretariat. The Project Steering Committee will review and approve each plan. Once specific products or services within sectors are identified, activities to stimulate the interest of U.S. firms in these opportunities will be put in action. These will generally consist of:

- o Identifying specific U.S. firms having the needed technology, interest and capacity to engage in exports or an international joint venture, i.e. licensing agreements, co-production, and equity investments;
- o Identifying specific ASEAN firms with a demand for the technology and the interest and capacity to engage in an import transaction or joint venture arrangement with a U.S. firm;
- o Arranging programs in the United States to present ASEAN opportunities to U.S. firms. These efforts will focus on regions where there is a concentration of American businesses in the selected sector. The principal activities will be seminars providing concrete examples of business opportunities, with assistance, where possible, from ASEAN officials and private sector parties;
- o Arranging trade and investment missions to ASEAN. These missions will normally take place after a promotional effort in the United States to further charge the interest of U.S. firms. The missions will focus on a sector or sub-sector and only serious and capable U.S. firms will be recruited. Because of its experience in this area, and its project involvement through the ASEAN Growth Fund, OPIC will be asked to assist in recruiting appropriate participants for the missions;
- o Arranging one-on-one meetings between U.S. and ASEAN firms. The ASEAN-wide and U.S. information network will facilitate meetings between U.S. and ASEAN firms interested in working toward a business arrangement;
- o Providing follow-up assistance to companies expressing serious intent. After initial meetings, both parties need to establish communication links to answer questions, describe more details, refine concepts, clarify technical, financial and market information, and cover a myriad of points to bring a transaction to closure. Because of limited experience, smaller firms may well need such "hand holding" services.

The information network, as diagrammed below, is designed to complement proposed trade and investment activities in the A.I.D. bilateral programs in Indonesia, the Philippines and Thailand. The AUSBC/ASEAN is responsible for hiring project-funded nationals or residents to serve as points of inquiry and be responsible for developing host country PITO activities.

The U.S.-based center -- the ASEAN-U.S. Council for Business and Technology Inc. -- will direct trader and investor interest to ASEAN through promotional activities and serve as a single point of inquiry for the ASEAN side of the AUSBC seeking information on potential U.S. partners, applicable technologies and other trade and investment related information. CTE will also work closely with United States Government (USG) agencies already involved in trade and investment promotion as well as such organs in state governments. Much of the data and information to be provided by the U.S.-ASEAN network has already been or is in the process of being developed by other USG agencies, including the Department of Commerce, especially the U.S. and Foreign Commercial Service which has offices and staff in five of the six ASEAN countries, OPIC, Ex-Im Bank, the U.S. Trade and Development Program (TDP) and the Office of the U.S. Trade Representative (USTR).

PITO will supplement these sources with promotional material on opportunities in the ASEAN region, but most information used in this material will be generated from and accessed through referral networks developed in each country and from existing sources.

The PITO project will also help to promote market research, product design and adaptation and market development. The PITO project should also help promote the ASEAN PTA concept among ASEAN and with potential U.S. investors.

The promotional activities conducted in the United States not only will include conferences and seminars on particular sectoral and sub-sector opportunities, as identified in annual work plans, but also will be directed at increasing the private sector's awareness and knowledge of ASEAN. In all cases promotional efforts will direct U.S. traders and investors to the appropriate contacts in each ASEAN country. Promotional activities carried out within ASEAN will concentrate on introducing ASEAN private sectors to U.S.-based technology and product standards that might have either universal or industry specific applications. The assistance provided will include: advising on standards, quality control and materials testing; assisting ASEAN entrepreneurs to acquire U.S. commercial technologies on a mutually-beneficial basis; and carrying out seminars and workshops on technology issues and concerns.

B. Component Two - Policy Analysis/Problem Resolution

This component will support a network of ASEAN-based policy analysis groups, linked with a U.S.-based institution. The group will analyze concrete problems, identified by the PITO Steering Committee, constraining ASEAN-U.S. trade and investment. Component activities will engage business communities directly in formulating an agenda, through their representation on the PITO Steering Committee, and in promoting productive dialogue with U.S. and ASEAN governments on region-wide concerns.

A candidate list of topics emerged in discussions with ASEAN private and public sector representatives during project design. Among others, the issues listed below are of considerable interest to the public and private sectors throughout ASEAN and will be conducive to productive dialogue and resolution.

- What steps can be taken to improve the performance of the ASEAN Industrial Joint Venture (AIJV) program?
- What factors are inhibiting trade and investment in ASEAN by small and medium-sized U.S. firms (SMEs), and how can these constraints be reduced?
- What are the prospects of, and factors required, for an ASEAN commodity exchange, or an ASEAN-wide equity market?
- What conditions and policies underline the success or failure of export processing zones, and how best can successes be replicated throughout ASEAN?
- What is the relative degree of access of ASEAN-produced goods in North America (Canada and the U.S.A.), East Asia (Japan, South Korea, Taiwan and Hong Kong) and the European Community, and how can this access be expanded?

The policy analysis network will be open to all ASEAN institutions with international policy and analysis capacity. The network will include existing institutions such as: The Institute for Southeast Asia Studies (ISEAS) in Singapore; the Thailand Development Research Institute (TDRI) in Bangkok; the Center for Strategic and International Studies (CSIS) in Jakarta; the Economic Planning Unit (EPU) in Brunei; the Institute for Strategic and International Studies (ISIS) in Kuala Lumpur; and the Philippine Institute for Development Studies (PIDS) in Manila.

Each study undertaken by a team of two or more of the cooperating institutes will seek to provide concrete and realistic solutions to trade and investment policy constraints common to ASEAN. As illustrated in the examples discussed above, the perspective of a study might be United States or ASEAN or both. While it is not possible to predict precisely the number of studies undertaken, we currently estimate an average of four to five studies per year. Management, technical and logistics support will be provided by a U.S.-based policy analysis center.

The project does not seek merely to generate academic studies which are not used or which bear little practical relevance to the business community. To avoid this situation, each study will be accompanied by a pre-determined plan to disseminate information developed and to engage relevant decision-makers in productive dialogue. The Steering Committee will review each completed policy study and arrange for action-oriented

discussions with private and public sector leaders to work towards resolution of policy issues identified.

Finally, the PITO project will not unnecessarily duplicate any of the work being undertaken by other donors. The limited resources available to the project make it necessary to review on-going studies by other donors before any PITO studies are initiated.

C. Component Three - Capital Market Development

PITO-funded activities in this component are limited in scope, but are expected to have a catalytic effect leading toward an ASEAN Growth Fund of \$75-100 million. The Project will fund technical assistance to the Overseas Private Investment Corporation (OPIC) in organizing the Fund. This includes a feasibility study on the likely demand for such a fund based on private sector opportunities in ASEAN as they relate to U.S. business capabilities and interests and setting the parameters for its operation.

The component will reinforce a close collaborative relationship between A.I.D. and OPIC in creating a financial mechanism to increase U.S. trade and investment in the region. The OPIC Fund is likely to concentrate on providing equity capital for joint ventures geared toward bringing U.S. commercial technologies to the ASEAN region. With a fund of up to \$100 million, approximately 30 or more ventures will be established during the six-year life of the Project, or an average of five per year.

The Fund and the Project's trade and investment promotion component are mutually reinforcing. Promotion tasks will be enhanced once American firms are made aware of a possible source of equity funding for their prospective joint venture projects. The Fund, in turn, will be able to activate itself more quickly by having ready access to a stream of projects being identified and promoted through the trade and investment promotion component.

The ASEAN Growth Fund is not a fund for portfolio investment. Its resources will only be made available as equity to new ventures or, in some cases, to business expansions involving an American partner either as an equity participant, a provider of technology or as a supplier of a major share of the equipment needs of a project.

The Growth fund will remain in effect after the project is completed. The initial input from the project is provided to establish the Fund and a private banking concern will run the Fund as long as it is profitable.

4. PROJECT EXECUTION

A. Project Management

Management policy guidance and technical oversight of the Project will be provided by a Steering Committee comprised primarily of representatives of the private sector from each ASEAN country and the United States. The individual vice-chairman/members of the ASEAN/U.S. Business Council form a natural source for Steering Committee membership. If the members are to be appointed by the respective governments, this should be the decision of the respective governments together with the AUSBC in each of the member countries. The Committee will be chaired by the President of the ASEAN section of the ASEAN-U.S. Business Council. Additional members will be the following;

- o Six representatives of the ASEAN section of the ASEAN-U.S. Business Council representing one each from the six countries of ASEAN;
- o Three representatives from the U.S. section of the ASEAN-US Business Council;
- o The Chairmen, or their representatives, from the Committee on Trade and Tourism (COTT), Committee on Industry, Minerals, and Energy (COIME) and Committee on Finance and Banking (COFAB) Committees of ASEAN.
- o ASEAN will be represented by the Director-General from the ASEAN dialogue partner with the U.S. The United States will be represented by the A.I.D. Representative to ASEAN.

The Steering Committee will meet at least once annually and more frequently as required. Meeting locations may be rotated among ASEAN countries. The Steering Committee will provide overall management of the Project by approving the activities to be carried out by the Project in each succeeding year, including the detailed annual work plan and budget developed by the Project Secretariat. The Steering Committee will also review policy research studies and other project activities and recommend appropriate actions.

The Project Secretariat will function as the project manager. An Executive Director will be recruited and selected by the Steering Committee to direct the daily technical, management and administrative activities of the Project. Other specialists will include a Procurement Services Administrator, a Management Information Administrator and secretarial/administrative support staff. It is expected that all personnel will be ASEAN nationals or residents. The functional activities of the Secretariat will include:

- o Answering inquiries by U.S. business executives directed to it by business associations, state investment promotion entities and chambers of commerce; and,
- o Developing a database of U.S. firms with an expressed interest in ASEAN.

Note: Upon mutual agreement of the ASEAN AND U.S. sections of the AUSBC, a joint proposal for PITO promotional activities may be submitted for consideration by A.I.D. If considered and approved, one grant would be made to the ASEAN-U.S. Council for Business and Technology Inc.

3. A U.S.-based policy analysis center (East West Center, University of Hawaii) will manage the policy analysis/problem resolution component. The center's functions will include:
 - o Implementing the policy analysis/problem solving agenda approved by the Steering Committee;
 - o Awarding and administering contracts to ASEAN analysis institutes;
 - o Assisting ASEAN centers obtain technical specialists when required;
 - o Monitoring performance, editing and scheduling the studies undertaken by the institutes; and,
 - o Assuring a quality product is released.
4. An ASEAN-based organization, Technonet-Asia, serving as the Project's technology resource center in collaboration with other relevant ASEAN technical and standards institutions, will provide technical expertise and organize seminars and other programs on technology commercialization issues of ASEAN-wide interest. The principal functions will include:
 - o Identifying and obtaining the services of individuals and organizations with expertise in standards and quality assurance, as well as individuals from various technology disciplines targeted for commercialization;
 - o Organizing and conducting seminars on a range of technology topics of ASEAN-wide interest;
 - o Referring investors in search of technology partners to the AUSBC; and,

- o Coordinating with AUSBC in developing topics and conducting seminars of interest to the private sector.

In addition, project funds will be made available to OPIC to hire technical expertise related to establishing the ASEAN Growth Fund. All grants will be provided for a two year period initially. This will enable the Project, through the advice of its Steering Committee, to change Grantee in response to prevailing requirements of their performance.

C. Project Budget

The total cost of this Project is estimated at \$13.0 million. The A.I.D. contribution is expected to be \$13.0, while that from the ASEAN and U.S. private sectors is in cash or "in kind". Future increments of the A.I.D. contribution are subject to the availability of funds in accordance with the A.I.D./OYB allotment process and the mutual agreement of the Parties to proceed. Based on the above described activities, it is planned that A.I.D. resources will be allocated to the Project in accordance with the Financial Plan in attachment A to Annex I of this Agreement.

The Financial Plan is illustrative and changes in the Financial Plan may be made by representatives named in the text of the Agreement without formal amendment of the Agreement if such changes do not cause A.I.D.'s contribution to exceed the amount specified in the text of the Agreement. Adjustments of A.I.D. funding levels between project elements of up to 20% are permitted without modifying the Financial Plan, provided that the total planned A.I.D. financing in Section 2.2. of the Project Agreement is not exceeded.

The Grantees are expected to provide support assistance over the life of the Project. This support may be in cash or in-kind, from the private sector. Examples of ASEAN private sector support include: in-kind support to Project activities such as policy workshops and investment seminars; local office space; materials and supplies; the salary of ASEAN Steering Committee Members while in session; cash support for the cost of facilities and transportation for Steering Committee meetings; and co-financing of PITO trade investment promotion and technology commercialization activities.

ANNEX I

Attachment A

Table A: Life of Project Financial Plan (US \$000s)

<u>Use of Funds</u>	<u>Source of Funds</u>
	<u>A.I.D.*</u>
A. Promotion Services (ASEAN/U.S.)	\$ 7,710
B. Policy Analysis/Resolution (ASEAN/U.S.)	2,240
C. Growth Fund	200
D. Project Secretariat	2,345
E. Evaluation	415
F. Audits	90

Total	\$ 13,000

* Future A.I.D. obligations are subject to the availability of funds and the mutual agreement of the Parties to proceed.

Initial year A.I.D. grant of US \$1,000,000 is planned to be allocated as follows:

Table B

<u>Project Element</u>	<u>Amount</u>
A Promotion Service (ASEAN/U.S.)	\$ 650,000
B Policy Analysis/Resolution	215,000
C Project Secretariat	100,000
D Evaluation	25,000
E Audits	10,000

Total	\$ 1,000,000



U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT
USAID / THAILAND

ANNEX 11

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December 4, 1989

Saroj Chavanaviraj
Director General
ASEAN Affairs
Ministry of Foreign Affairs
Saranrom Palace, Bangkok.

Dear Khun Saroj:

Thank you for your letter dated November 29, 1989 providing consolidated ASEAN member country comments on the PITO Executive Summary and draft Grant Agreement received by your office. The following are our comments on the points listed in the order they were sent to us. Many of the questions were answered earlier in our letter we sent to the Preparatory Meeting for the 9th ASEAN-US Dialogue meeting held last August in Phuket. I have taken the liberty to enclose an additional 10 copies of the PITO Executive Summary to be used for your upcoming ASEAN Standing Committee Meeting in Jakarta on December 6, 1989.

Before I respond to the individual comments, I would like to stress the importance we place on signing this grant agreement as soon as possible with your office. We have spent a great deal of time and energy in preparing the PITO project. It is designed to support ASEAN initiatives for expanded trade and development using the private sector in each of the member countries as the vehicle towards that goal. We know the US-ASEAN Business Council and the ASEAN CCIs support the project and we hope in the Jakarta meeting the ASEAN Director General will decide in favor of PITO.

The following responds to the concerns received from the different ASEAN countries.

On counterpart funding

- ASEAN is of the view that there should be no counterpart funding as proposed in the Executive Summary.
- o There are no ASEAN member country counterpart contributions required for the project. Also ASEAN has no responsibility to ensure contributions from any of the Grantees or participants.

On the Project Steering Committee

- The private sector's members of the committee should be appointed by their respective governments.
- o The individual vice-chairman/members of the ASEAN/US Business Council form a natural source for Steering Committee membership. If the members are to be chosen by the respective governments, this should be the decision of the respective governments together with the private sector in each of the member countries.
- The representatives from COTT, COIME and COFAB should be Chairmen of those respective committees (or their representatives and not only representatives of these economic committees from the ASEAN Secretariat)
- o We agree, again this is a decision that should be made by the respective committees.
- ASEAN should be represented by DG of the ASEAN national Secretariat of the Country Coordinator (instead of DG of ASEAN-Thailand solely as proposed in the Executive Summary).
- o We Agree, we believe that it is important that the DG from the ASEAN Dialogue partner with the US should be the representative. Therefore, when the Dialogue changes in 1991 the DG responsible for ASEAN from Brunei should be represented on the Steering Committee.
- The Steering Committee is to provide management policy guidance and technical supervision (not oversight) of the project.
- o The Steering Committee, by its very nature, provides overall management of the project through approval of the annual workplan, review of policy research studies and other Project activities that could include technical issues. We question the merit of the Steering Committee providing technical supervision of the project. This will be provided by the Project Secretariat with oversight by the Steering Committee.

On the Description of Project Activities

- Many ASEAN exporters are still unfamiliar with the US market and there is, hence, a need to assist these exporters with market research, product design and adaptation and market development. PITO should incorporate elements to address these needs. It should also help to promote the ASEAN PTA among ASEAN and with potential US investors.
- o PITO will address these particular ASEAN problems and will help promote the ASEAN PTA among ASEAN and with potential US investor through the three components of the project; Trade and Investment Promotion, Policy Analysis/Problem Resolution and Capital Market Development.
- It should be specified that the ASEAN Growth Fund as mentioned in the Summary is to continue beyond the six year life of the project.
- o The Growth fund will remain in effect after the project is completed. The initial input from the project is provided to establish the fund and a private banking concern will run the fund as long as it is profitable.
- General mechanisms already exist both on a region-wide as well as on a national level which could address policy issues, e.g. ASEAN-CCI, the AUSBC in consultation with the AEM or the economic committees. Policy analysis and studies should therefore be undertaken only on an on-request basis, if and when necessary.
- o Again, Policy analyses and studies will be approved by the Steering Committee and will only be conducted if the Steering Committee makes that decision. The analyses and studies will be fully coordinated with the ASEAN mechanism that already exists.
- ASEAN considers beneficial the establishment of an ASEAN-wide and US information network on trade and investment opportunities, which will publish promotional materials, conduct conferences and seminars and organize trade missions. Priority should be given to activities which will create investment opportunities specifically, arranging trade missions to ASEAN and arranging one-on-one meetings between US and ASEAN firms.
- o We agree fully with this statement.
- Under trade and promotion activities, other items such as food processing and raw materials production including metals, chemicals, rubber, glass and leather should also be included.
- o Certainly, the Trade and Promotion activities can promote these activities, but again, the items that are promoted under the project will be decided by the private sector/market and approved in the annual plan.

- On improved quality control and packaging, it is proposed that the US firms provide assistance by way of advising on standard, quality control and materials testing and conducting seminars and workshops on technology issues and concerns.
- o Information on these particular concerns will be provided under the Grant provided to Technonet Asia as described in the Executive Summary.
- On the regional promotion efforts, the programme should have a provision for national investment promotion efforts similar to the TIPP of the ASEAN-Australia Economic Cooperation Programme, which will serve the specific needs and requirements of individual member countries. (For instance, sectors being promoted are not necessarily the same on the region-wide basis and would therefore only require a specific country coverage.)
- o PITO representative and CCI member in each country will determine and recommend sectors of focus in each country. Again, the annual plan presented to the Steering Committee for approval will reflect this concern.
- It is noted that there is currently an on-going UNIDO project on studies on market opportunities for joint ventures in ASEAN. It is suggested that it be ascertained whether there may be a duplication of efforts in this respect. It is further suggested that feasibility studies on capital market development e.g., bond flotation and bonuses, could be included.
- o The PITO project will not duplicate any of the work being undertaken by other donors. The limited resources available to the project make it imperative that a review of on-going studies be conducted before any PITO studies are initiated. The funds provided in the project are for a feasibility study on capital market development in the region. We doubt that at the initial stages of the PITO project that we could undertake studies of bond flotation and bonuses.

On Project Implementation

- The functions of the Federation of Thai Industries (FTI) should be clearly spelled out. The AUSBC section in each member country should be given the opportunity to co-manage and execute the trade and investment promotion activities.
- o The Federation of Thai Industries (FTI) will not be a part of the project as originally discussed in the Executive Summary. A Grant will be provided to the AUSBC for Trade and Investment promotion. The AUSBC will use their offices in each country to coordinate and manage this component of the project.

- Amendment should be made so that paragraph 4 of page 11 of the Executive Summary should read: "...Technonet-Asia, acting as the focal point could work in collaboration with other relevant ASEAN technical and standard institutions will provide..."
- o We have always agreed with this statement and have instructed Technonet to do so.
- The annual breakdown as to the various components and the amount that will go to the institutions that will be involved in the project implementation should be indicated. For instance, it should be clarified whether or not the budget of the Center for Technology Exchange (CTE) which will serve on the US side as the single source of information on potential US partners, technology sources and other trade and investment, will be charged to the US\$13 million budget proposed under the project.
- o All of the project components will be charged to the project. Attached is a summary of the cost estimates for the project component.

Yours sincerely,



Lawrence J. Ervin
AID Representative to ASEAN

PROJECT GRANT STANDARD PROVISIONS ANNEX

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PROJECT GRANT STANDARD PROVISIONS ANNEX

Definitions: As used in this Annex, the "Agreement" refers to the Project Grant 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 Grantee 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. As more fully described in Section 2.1 of the Agreement, jointly agreed-upon Project Implementation Letters may be used to confirm and record mutual understandings 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 I.

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 Grantee 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 Grant 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 Grant, 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 Grant will be free from any taxation or fees imposed under laws in effect in Thailand.

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

(c) The Parties may consult with respect to the application of this section as provided in Article B, Section B.1 of Annex III to this Agreement.

SECTION B.5. Reports, Records, Inspections, Audits. The Grantee 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 Grant. 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 Grant.

SECTION B.6. Completeness of Information. The Grantee 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 Grant, are accurate and complete, and include all facts and circumstances that might materially affect the Project and the discharge of responsibilities under this Agreement;

(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 Grantee 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 Grant, except fees, taxes, or similar payments legally established in the country of the Grantee.

SECTION B.8. Information and Marking. The Grantee will give appropriate publicity to the Grant 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 Grant will be of United States manufacture, except as A.I.D. may otherwise agree in writing.

(d) Transportation by air, financed under the Grant, of property or persons will be on carriers holding United States certification, to the extent service by such carriers is available. Details on this requirement will be described in a Project Implementation Letter.

SECTION C.2. Eligibility Date. No goods or services may be financed under the Grant 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 Grantee 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 Grant, including documentation relating to the pre-qualification 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 Grant, 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 pre-qualification of contractors, and to the solicitation of bids or proposals for goods and services financed under the Grant 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 Grant 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 approved in writing by A.I.D. prior to execution; and

(d) Consulting firms used by the Cooperating Country for the Project but not financed under the Grant, 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 Cooperating Country for the Project but not financed under the Grant, 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 Grant. 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 Grant, the Grantee 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 Grantee may not be financed under the Grant 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 Grantee 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 Grant, 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 on a non-U.S. flag air carrier if a U.S. flag carrier is available (in accordance with criteria which may be contained in project implementation letters) without prior written approval of A.I.D.; or (2) on an ocean vessel which A.I.D., by written notice to the Grantee, 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 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 U.S. dollars or, as A.I.D. may agree in writing, in the currency in which such goods were financed or in any freely convertible currency. If 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, then 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 Grantee will insure, or cause to be insured, goods financed under the Grant 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 Grantee 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 Grantee for the replacement or repair of such goods. Any such replacements 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 Grantee agrees that wherever practicable United States Government-owned excess personal property, in lieu of new items financed under the Grant, should be utilized. Funds under the Grant may be used to finance the costs of obtaining such property for the Project.

Article D: Termination, Remedies.

SECTION D.1. Termination. Either Party may terminate this Agreement by giving the other Party 30 days written notice. Termination of this Agreement will terminate any obligation of the Parties to provide financial or other resources to the Project pursuant to this Agreement, except for payments which they are committed to make pursuant to non-cancellable commitments entered into with third parties prior to the termination of this Agreement. In addition, upon such termination A.I.D. may, at A.I.D.'s expense, direct that title to goods financed under the Grant be transferred to A.I.D. if the goods are from a source outside the territory of the Grantee's country, are in a deliverable state and have not been offloaded in ports of entry of the Grantee's country.

SECTION D.2. 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 under this Agreement, may require the Grantee 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 Grantee to comply with any of its obligations under this Agreement has the result that goods or services financed under the Grant 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 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 Grant, 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 reduce the amount of the Grant.

(e) Any interest or other earnings on Grant funds disbursed by A.I.D. to the Grantee under this Agreement prior to the authorized use of such funds for the Project will be returned to A.I.D. in U.S. Dollars by the Grantee.

SECTION D.3. 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.

SECTION D.4. Assignment. The Grantee agrees, upon request, to execute an assignment to A.I.D. of any cause of action which may accrue to the Grantee in connection with or arising out of the contractual performance or breach of performance by a party to a direct U.S. Dollar contract with A.I.D. financed in whole or in part out of funds granted by A.I.D. under this Agreement.