

Distr.  
RESTRICTED  
E/CEPAL/R.270  
14 January 1982  
ENGLISH  
ORIGINAL: SPANISH

---

CEPAL  
Economic Commission for Latin America



POLICIES AND NEGOTIATIONS WITH TRANSNATIONAL CORPORATIONS  
IN THE COPPER INDUSTRY IN PERU

Fernando Sánchez Albavera \*/

---

\*/ The author was a Consultant with the Joint CEPAL/CTC Unit on Transnational Corporations. The views expressed in this working paper are the sole responsibility of the author and do not necessarily reflect those of the Organization.

81-9-2016



CONTENTS

	<u>Page</u>
Introduction .....	
I. Summary and conclusions .....	
A. Development of Peruvian mining .....	
B. The legal and political framework of mining negotiations .....	
C. Negotiations with Southern on the Cuacone Agreement .....	
D. Changes in marketing policy .....	
II. Development of Peruvian mining .....	
A. Trends in mining output .....	
1. Development of copper mining .....	
2. Other minerals .....	
B. Significance of mineral exports .....	
C. Share of Peru in world copper output and world trade in copper .....	
D. Pattern of ownership and presence of foreign capital .....	
III. Legal and political framework of mining negotiations .....	
A. Legal and political framework in the period 1950-1970 .....	
B. The legal and political framework of the 1970s .....	
1. New legal framework in the period 1969-1970 .....	
2. The 1971 General Mining Act .....	
C. Evaluation of impact .....	
1. Retained value of mining and metallurgical output .....	
2. Distribution of mining and metallurgical GDP .....	
3. Distribution of the profits of the mining and metallurgical sector .....	
4. Transfer abroad of income from capital .....	
5. Net foreign currency balance .....	
6. Variations in domestic gross investment .....	
IV. Negotiations with Southern Peru Copper Corporation on the Toquepala and Cuacone Agreements .....	
A. The Toquepala Agreement .....	
B. The Cuacone Agreement .....	
1. Framework of the negotiations .....	
2. Guarantees that the Agreement provides to investors .....	
3. Governmental regulation and control machinery .....	

- V. Changes in marketing policy: bargaining power and profits .....
- A. Marketing methods prior to the 1970s .....
- 1. Marketing in large-scale mining .....
- 2. Marketing in medium and small-scale mining .....
- 3. Transfer prices .....
- B. State intervention in marketing of minerals from 1972 onwards .....
- C. Copper marketing according to level of processing .....
- 1. Copper concentrates .....
- 2. Agreements concerning the distribution and processing of Cuajone blister .....
- 3. Marketing of blister .....
- 4. Marketing of refined copper .....

## Introduction

In their desire to take better advantage of their non-renewable natural resources, the governments of Latin America have made substantial changes in the productive structure of the mining industry by extending State participation in mining activities, pursuing active policies and negotiating with the transnational corporations that had traditionally monopolized the sector.

In the absence of a domestic private sector having the necessary financial, technological and administrative capabilities, the State has been obliged, in some countries, to assume entrepreneurial functions and to set up public enterprises for the exploitation, processing and marketing of minerals. These significant changes in Latin American mining were not sufficient, however, to overcome its dependency on foreign capital and the transnational corporations continued to maintain their supremacy, particularly in the areas of technology and marketing on the world markets.

Nevertheless, this situation changed the bargaining capacity of both sides and, as a result, brought about new types of relationships and contracts with the foreign corporations, thus making it possible for some countries in the region to gain considerable experience in policy design and implementation and in negotiations regarding specific problems.

Through its Joint Unit with the United Nations Centre on Transnational Corporations, CEPAL has been concerned with this subject over the last few years. Along with the Regional Commissions for Africa and for Asia and the Pacific, as well as the United Nations Centre on Transnational Corporations (CTC), it has developed an interregional project on bargaining power and distribution of gains among developing countries and transnational corporations in export-oriented primary commodities.

Under this project, studies are being made of seven commodities in the different countries of the region (bauxite in Jamaica, copper in Chile and Peru, tin in Bolivia, cotton in Mexico, bananas in Honduras and Panama, coffee in Colombia and sugar cane in Brazil), applying a common methodology in order to carry out integrated sectoral studies that will summarize the complex and multifaceted experiences of the countries that produce export commodities in the three developing

/regions.1/

regions.<sup>1/</sup> In addition, at each of its last three regular sessions (1975, 1977 and 1979), CEPAL approved a resolution on co-operation among developing countries and among developing regions of different geographical areas.<sup>2/</sup> The goal of this study is to consider and evaluate governmental policy on, and negotiations with, transnational corporations in the copper industry in Peru and the resulting distribution of gains between the two parties. An endeavour has been made in the study to adopt the common approach of the above-mentioned interregional project.

In its first chapter the study contains an analysis of the importance of mining in the context of the Peruvian economy, placing emphasis on the significance of the mining and marketing of copper.

The second chapter contains an analysis of the legal and political framework that influenced mining negotiations and contractual relationships from the 1950s onwards, describing in detail the chief variations and stressing the policy goals that existed. It is within this context that the Cuajone Agreement is considered in the third chapter and the key aspects of the negotiation process between the Government of Peru and the Southern Peru Copper Corporation are described.

The paper ends with a detailed analysis of the marketing of copper that compares the situation prior to entrepreneurial intervention by the State with the current situation. The study was discussed and revised within the CEPAL/CTC Joint Unit, in co-operation with the CEPAL Division of Natural Resources, and presented to the seminar on Alternative Approaches to Negotiating with Foreign Investors and Transnational Corporations in the Copper and Tin Industry, organized by CEPAL in Santiago, Chile, 9-12 December 1981, with the participation of high-level officials of the public and private sectors and representatives of foreign enterprises from Bolivia, Brazil, Chile and Peru.

---

1/ For more detail, see UNDP, Proyecto de los Gobiernos de Bolivia, Brazil, Colombia, Chile, Honduras, Jamaica, México, Panamá and Perú sobre el "Fortalecimiento del poder de negociación de los Gobiernos Huéspedes en sus tratos con las empresas transnacionales dedicadas a la exportación de productos básicos" (RLA/80/016/A/01/02), "Transnational Corporations in Export Oriented Primary Commodities: A General Framework for Case Studies" (CTC/ESCAP/PEC/1) and "Report of the Interregional Expert Group Meeting on Transnational Corporations in Primary Export Commodities", Bangkok, 8-15 October 1979 (CTC/ESCAP/PEC/2).

2/ See CEPAL resolutions 363 (XVII), adopted at Guatemala, and 387 (XVIII), adopted at La Paz.

/Despite the

Despite the heterogeneous situations and experiences of the four countries and the different interests involved, various common positions were identified with regard to the importance of mining for the future economic development of the region and a need to count on the contributions of the technology, capital and administrative and commercial management of the transnational corporations. In this framework, there are four critical areas:

(a) Focus of mining policies and negotiating with transnational corporations in the framework of global socio-economic development strategies and plans and the use of adequate planning and information to assess the alternatives of mining and metallurgical expansion and the respective ways and means of international marketing and financing.

(b) Strengthening of the existing public sector as a conductor and supervisor of negotiations with foreign investors.

(c) New technological, commercial, administrative, financial and patrimonial relations between the public sector and transnational corporations and foreign investors, and policies and agreements leading to mutual benefits, clarity and stability in the rules of the game between both parties.

(d) Horizontal co-operation among the mining countries of the region and especially in the systematic exchange of important information and common positions with respect to foreign consumer and investor countries.

On this last point the suggestion was made to organize a data bank for the mining countries of the region on important areas of bargaining alternatives with transnational corporations and foreign investors (for example, investment agreements, marketing systems and discounts on metal refining ["maquilas"], characteristics of the transnational mining corporations, taxation and incentives, national mining codes, etc.). In addition, it was requested that a specialized workshop should be organized for the negotiators of the mining countries of the region. The Secretariat of the Economic Commission for Latin America and the Centre for Transnational Corporations of the United Nations will consider these initiatives in their programmes of work. Finally, another seminar of this type will be organized during the first half of 1982 in La Paz, Bolivia, at the request of the Ministry of Mines and Metallurgy of that country.

## I. SUMMARY AND CONCLUSIONS

### A. DEVELOPMENT OF PERUVIAN MINING (Chapter II)

1. Peruvian mining underwent considerable development from the 1950s onwards. Its contribution to GDP formation, which was 7% in 1950, was 9% in 1978. There are two periods that should be emphasized in the behaviour of mining output over the past three decades. These are the period 1957-1960, in which large-scale open-cast copper mining was begun with the initiation of the operation of the Toquepala deposit; and the period 1976-1980, in which the Cerro Verde and Cuajone copper deposits started to be mined. In those periods the mining GDP grew at average annual rates of 14% and nearly 17%, respectively.

2. Mining is the most important economic activity from the point of view of generation of foreign currency. In 1950 mineral exports represented only approximately 20% of Peru's exports, whereas in 1979 they doubled, attaining the share of approximately 40%. The main mineral products exported are copper (45% of mineral exports), silver (29%), zinc (11%), lead (9%), and iron ore (6%).

3. In 1977 copper output attained the level of 336 000 metric tons of fine copper, 87% of which was accounted for by the output of the large-scale mining enterprises; 13% by the medium-scale mining enterprises and only approximately 0.4% by small-scale mining. The degree of processing of copper output rose considerably over the last decade. In 1970, only 16% of copper output was refined in Peru, while 64% and 20% were processed in the form of blister and concentrates. In 1977 approximately 53% of the country's total output was refined in Peru (CENTROMIN and Ilo Refinery), blister accounting for 43% and concentrates for 4%.

4. Up until 1973 copper output was entirely under the control of subsidiaries of transnational corporations (Cerro de Pasco Corp. and Southern Peru Copper Corporation (from now on referred to as Southern)). In 1977 Southern controlled 78% of copper output, while public enterprises accounted for 9% of Peru's output.

5. Public enterprises control only 20% of copper exports. CENTROMIN is the sole exporter of copper wire rod and, together with Minero-Perú, controlled 37% of refined exports. Southern controls exports of blister entirely and 63% of refined copper. All exports of concentrates and ores are controlled by private enterprises, 45% of which are accounted for by subsidiaries of transnational corporations, one

/of the



of the most prominent subsidiaries being Northern Mining, whose majority shareholder is the American Smelting and Refining Corporation (ASARCO), which also holds 51% of Southern's stock.

#### B. THE LEGAL AND POLITICAL FRAMEWORK OF MINING NEGOTIATIONS (Chapter III)

6. The 1970s marked a break with the legal and political framework that influenced mining in Peru. It may therefore be said that there are two phases in mining negotiations and the establishment of contractual relationships in the field of mining: one starting in 1950, with the promulgation of the Mining Code, and another starting with the new mining legislation of the first three years of the 1970s, which is currently in effect. The first stage is characterized by a markedly liberal approach towards mining activities and towards the economy in general; and the second stage is characterized by a decidedly nationalist policy that attached special importance to State intervention and the conduct of entrepreneurial activities.

7. Up until 1970 mining legislation basically favoured the interests of the concessionaires in that the concessions covered large potential mining areas, were granted for a virtually indefinite length of time and were not governed by the principle of "protection of labour interests". It was precisely that principle that was to establish norms for the new legislation of the 1970s. As a result of application of that principle, over 4 000 mining concessions were declared invalid and came under State control. Transnational corporations as large as Anaconda, American Smelting, Cerro Corporation and Charter Consolidated, to name some of the major ones, had to hand over to the State concessions they had in their possession, and that, in some cases, had been in their possession for up to 50 years.

8. In both stages State participation in profits from mining was established on the basis of the outcome of the economic year and in accordance with the principle of "tax stability", from the time when the mining contract was signed and for a period equivalent to the time required for recovery of investment. However, the 1950 Mining Code also permitted a series of deductions that enabled the concessionaires to reduce their tax burden. One such deduction to which attention should be drawn is the deduction owing to the so-called mines' "depletion factor", which gave concessionaires a deduction of up to 15% of taxable profits, which was

/the factor

the factor that resulted in a substantial reduction in the economic benefits procured by the State. This deduction was considered prejudicial to State interest and was eliminated in the mining legislation of the 1970s. However, elimination of this deduction was offset by tax incentives to investment of profits.

9. The mining legislation of the 1970s was focused on promoting a greater degree of processing of mineral products, placing particular emphasis on copper; and on encouraging the initiation of the operation of large copper bearing deposits that had been kept in reserve for many years by transnational corporations. Within the context of these two goals, particular priority was assigned to direct State participation, either exclusively or in association with private capital.

10. Nevertheless, although it was recognized that the 1950 Mining Code granted the concessionaires excessive advantages, just a few months before the Decree-Law regulating the mining industry was promulgated, in April 1970, the Cuajone Agreement was signed with Southern under the provisions of the old Mining Code. The Cuajone operation, which matured in the second half of the 1970s, thus became the only large-scale investment to benefit from the Mining Code within the context of the new mining policy that promoted government regulation and control machinery and entrepreneurial action by the State.

11. The results of the mining legislation of the 1970s may be regarded as positive in the light of the following indicators:

(a) Increase in the value of mining and metallurgical output retained in the country, which rose from 64% to 74% in the course of the period 1967-1976.

(b) Increase in the income from labour as a result of wages and salaries policy and participation by workers in the ownership and management of enterprises. Between 1967 and 1976 income rose from 27% to 53% of mining and metallurgical GDP.

(c) Greater participation by the State in obtaining global profits of enterprises and promoting a greater volume of entrepreneurial saving through incentives to reinvestment of profits. In that connexion, the income tax rate on the global profits of enterprises rose from 22% in 1967 to more than 40% in the first half of the 1970s and subsequently dropped as a result of the deterioration in international prices. Reserves for reinvestment of profits which only amounted to 15% of global profits, remained at the level of 20% in the first half of the 1970s.

/(d) Significant

(d) Significant reduction in the transfer abroad of income from capital as a result of the nationalization of two or three subsidiaries of transnational corporations that were engaged in large-scale mining. During the period 1967-1976 the transfer of income from capital invested in Peru dropped from 10% to only 2%.

(e) Increase in gross domestic investment as a result of the strengthening of State entrepreneurial activities and the establishment of governmental apparatus capable of generating, negotiating and managing investment projects, and gaining access on a more independent basis to the international market. Nevertheless, there was no large-scale private investment. Attraction of foreign capital thus suffered as a result of State control of marketing of minerals, the establishment of the "labour association", and the nationalization policy.

(f) The foreign currency net balance of the mining and metallurgical sector increased by 94% in the course of the period 1967-1976 chiefly as a result of import-substitution policies; protection of domestic industry; State control of marketing; greater incentives to reinvestment of profits and nationalization of foreign enterprises.

12. The mining legislation of the 1970s set aside marketing of minerals for the State and gave the State the sole right to process all mineral products, assigning particular priority to copper. This change in government policy surprised the Cuaajone investors and created a climate of uncertainty that delayed the project's financing. This situation prompted those investing in, and financing, the project to call for the signing of long-term marketing contracts, as a condition for proceeding to finance the final stages of the project.

#### C. NEGOTIATIONS WITH SOUTHERN ON THE CUAJONE AGREEMENT (Chapter IV)

13. The apparent contradiction between the signing of the Cuaajone Agreement and the new mining legislation could be explained by the difficult political situation the Government of Peru was experiencing following the expropriation of International Petroleum in October 1968 and owing to the demands made by its chief international creditors.

The new Government's better plan of reaching an agreement with Southern Peru, which had taken up negotiations on exploiting Cuaajone in June 1968, and the signing of the Agreement in December 1969 facilitated the restructuring of the external debt

/and allayed

and allayed the fears of foreign investors, who were highly distrustful following the expropriation of International Petroleum.

14. Broadly speaking, the Cuajone Agreement is what is legally referred to as a "concession contract". In other words, the transfer of use of State property in exchange for a share in the profits from exploiting that property.

15. The Agreement guarantees Southern the freedom to dispose of foreign currency generated by exports as it wishes. In order to ensure that that right is respected the Agreement provides that the State shall not be free to dispose of income set aside for the recovery of investment and, consequently, amortization and interest payments on loans taken out by the enterprise in question. Thus, in the period of recovery of investment only surpluses resulting from gross income, less application of funds used for amortization and interest payments and other payments made by the enterprise, enter the country.

16. Cuajone was financed by the partners of the enterprise; a series of banks co-ordinated from New York by the Chase Manhattan Bank; and a set of Japanese and European consumers that granted loans in exchange for future sales. The machinery used, which is described in the paragraph above, protects international investors and lenders from any unilateral act on the part of the Peruvian Government. Since an extensive series of commercial banks is involved and it was a requirement that the Central Reserve Bank of Peru should authorize the way of handling income in question, the risk of a possible expropriation or allocation of the foreign currency generated by Cuajone copper is considerably reduced.

17. The financial system of the Cuajone Agreement fits into the context of the most recent co-operative strategies, in that it spread political and financial risks by involving not only the subsidiary in financing exploitation of the deposit but also the major international banks and future consumers.

18. The Cuajone Agreement guarantees Southern free marketing of products, provided that domestic requirements are met. It is this condition that enabled the Government of Peru to guarantee full operation of the Ilo State Refinery. The construction of this refinery changed the investors' initial plans, since it was planned at the project stage that the refinery should transform copper only into blister. Following negotiations, which delayed the procurement loans, it was agreed that approximately 60% of Cuajone output would be marketed as blister and /sold to

sold to the Japanese and United Kingdom financiers of the project. The remaining 40% was the subject of toll contracts between a number of financiers and partners of the enterprise and the Ilo Refinery, for the export of cathodes.

19. The agreements on the marketing of Cuajone blister and cathodes, include discounts to project financiers that are in conflict with the stipulation in the exploitation agreement that products may not be sold below prevailing market prices.

The marketing contracts also include so-called "price-fixing", whereby in practice the purchasers set the sale price. The mechanism is geared in such a way as to favour the financiers and partners of the project, since, if they do not wish to apply the "price-fixing", they may avail themselves of a "marketing discount", giving them a discount equal to 1% of the value of the price of copper, on the basis of a particular year selected by the purchaser.

20. The price-fixing machinery complicates monitoring of the real value of exports, since the value of each shipment has to be monitored. Despite the fact that MINPECO is supposed to act as a guarantor of State interests and receives a commission of 1.36% of the FOB value of sales under the State minerals marketing monopoly, it has not monitored Cuajone exports.

21. A comparison of prices of Toquepala blister, which is marketed by the State, with the price of Cuajone blister, which is sold by Southern, reveals extremely large price differences. In 1977 and 1978 Cuajone blister was sold at US\$ 129 and US\$ 38, respectively, per ton less than the Toquepala blister. The price differences are due to the fact that the agreements regulating the sale of Toquepala material do not cover price-fixing by purchasers, and to the considerable differences in the refining charges agreed upon in the long-term Cuajone Agreement. It may thus be noted that in 1977 and 1978 the State obtained processing charges of US\$ 87 and US\$ 124 per ton lower than those negotiated for Cuajone blister, which shows that it is not desirable to sign long-term contracts with variable processing prices.

22. Price differences may also be observed in exports of refined copper. In 1977 Cuajone cathodes were sold at US 54.9 cents per pound, whereas the average price of Toquepala cathodes was US 57.6 cents per pound. Nevertheless, in 1978 owing to the Toquepala strike, which obliged the State to fulfil its sales commitments with lower quotation periods as a result of the lag in the shipment programme, there was an average price difference in favour of Cuajone of US 2 cents per pound.

/23. Obviously,

23. Obviously, these comparisons should only be regarded as reference points; their purpose is to illustrate the various market terms negotiated under the agreements on marketing Cuacone and Toquepala material. However, they are useful in demonstrating how undesirable it can be to sign long-term marketing agreements in connexion with the financing of investment projects.
24. The Cuacone Agreement guarantees tax stability during the period of recovery of investment. Within that context, a basic rate of 47.5% on taxable income is set. In the six years following the period of recovery of investment, which is set at ten years, a tax amounting to 54.5% is levied. However, it is stipulated that in those six years Southern may continue to make deductions on the basis of the "depletion factor" and that it is permissible for Southern to apply such deductions to other investments.
25. Provision is also made for tax exemptions and facilities in connexion with the temporary importation of machinery and equipment. The Cuacone Agreement establishes what might be termed a "competitiveness condition" concerning the acquisition of domestic goods. The condition in question is that domestic purchases must be made in cases where the price of local products does not exceed 25% of the CIF value of international suppliers, provided that domestic products meet the technical requirements.
26. Projects of the scale of Cuacone involve various public administration departments, which do not always have sufficient skilled staff and infrastructure to carry out the supervision responsibilities assigned to them in the contractual instruments. There is therefore a need for effective machinery to ensure co-ordination among the various administrative departments and thus counter an exclusively sectoral view of investment.

The Cuacone Agreement covers various forms of machinery to control and regulate investment that are of a strictly technical, customs, exchange, financial and fiscal nature. Regulations of an accounting nature are also laid down concerning sources and use of funds and registration of investment, and minimum goals are set for implementation of the investment schedule. There is also income-inspection machinery for tax purposes.

Not all the forms of regulation and control machinery function in a manner that is in keeping with the goals pursued by the negotiators. Hence the importance of promoting comparative studies on management and government control of large-scale /investment projects

investment projects with a view to assessing to what extent the various government agencies are prepared for operating projects of the size of Cuajone.

#### D. CHANGES IN MARKETING POLICY (Chapter V)

27. Until 1971 the Peruvian State was not able administratively to control and regulate copper-marketing agreements and even less to assume that entrepreneurial responsibility directly. In large-scale mining the subsidiaries of transnational corporations marketed their exports through affiliates (Southern Sales and Cerro Sales). Medium and small-scale mining operated through international commercial firms (Hochschild, Grace, Philip Brothers, Tennant, etc.) and, to a limited extent, through Banco Minero.

28. Private, particularly transnational, control of marketing meant that such questions as the timing of shipments, reference quotations, refining charges, the desirability of toll contracts and swaps were subject to decisions taken by home offices.

This facilitated implementation of "transfer pricing" policies functioning basically in the case of negotiations on the cost of processing concentrates and blister, which represented 84% of Peru's copper exports up until 1970. Moreover, manipulation of shipment programmes; "tied" discount sales; application of "price-fixing"; non-declaration of "swaps" and "premiums" were obvious ways of undervaluing exports. Between 1968 and 1972 the average difference between domestic prices of exports and international prices was US\$ 195 per metric ton, which means a potential annual average loss of US\$ 40 million.

29. The State took over responsibility for marketing copper in 1971 and later, gradually until 1975, for exports of the major minerals and metals.

Commercial goals were set in an extremely generic and, in some cases, contradictory manner in that, for example, there was a conflict between diversifying markets and maximizing foreign-currency income, or between the two latter and substitution of intermediaries, in a number of cases. In any event, State intervention makes it difficult to undervalue exports and permits improved fiscal control of mining enterprises' income.

30. The public marketing enterprise (Minero-Perú Comercial) is designed to be an entity providing services to the producer and in practice becomes a sort of agent, since over 90% of its transactions are conducted in accordance with the "back to back" method, which is a contract under which the terms of sale are transferred to the producers and agreed upon with a foreign client, and a commission amounting on average to 1.8% of the FOB value of the exports is paid.

31. In general, State marketing of copper has made it possible to replace intermediaries, particularly in the case of blister and refined copper and to gain access to the markets of the socialist countries on the basis of government-to-government agreements.

Peru's international bargaining position improved substantially in the 1970s, and it may be claimed that there is such a thing as national know-how in the field of marketing minerals and mining contractual relationships. Nevertheless, it may be noted that there is a lack of government criteria for measuring the effectiveness of State entrepreneurial action.

## II. DEVELOPMENT OF PERUVIAN MINING

Peru's production structure underwent extremely significant changes from the 1950s onwards. Progress in import-substitution reduced the relative importance of primary activities, particularly in the case of agriculture. That activity's contribution to GDP, which in 1950 accounted for 24%, dropped to only 13% in 1978. On the other hand, the contribution of manufacturing rose from 17% to 25% over the same period.

Mining developed considerably from the 1950s onwards as a result of the initiation of the operation of the large copper and iron-ore deposits. Nevertheless, its contribution to GDP was relatively low. In 1950 it accounted for approximately 7%, and at the end of the 1970s it represented only approximately 9% (see table 1).

### A. TRENDS IN MINING OUTPUT

Over the past three decades it is possible to identify two periods in which mining output increased considerably as a result of the coming into operation of large-scale investment projects supported by foreign direct investment.

/Table 1



Table 1

PATTERN OF GDP BY PERCENTAGE a/

Sectors	1950	1960	1970	1978
Agriculture	23.8	18.5	15.1	13.0
Fishing	0.4	1.4	2.7	1.1
Mining	6.8	10.3	8.2	9.4
Manufactures	16.9	20.0	23.8	25.0
Construction	5.1	5.0	4.2	4.5
Other	47.0	44.8	46.0	47.0

Source: National Planning Institute.

a/ Millions of 1970 soles.

In terms of mining GDP, between 1957 and 1960 output increased at an average annual rate of 14% and between 1976 and 1978 the average annual rate of growth was nearly 17% (see table 2).

In the former period (1957-1960) the growth rate was almost double the rate recorded in the first half of the 1950s, a period in which the Marcona iron-ore deposit came into operation. In this same period the Toquepala copper-bearing deposit came into operation, under the responsibility of a consortium directed by the American Smelting and Refining Corporation (ASARCO). This was the first investment in open-cast large-scale copper mining.

In the 1960s growth in mining was modest. The average annual rate of growth in that decade was only 3.5%. That was a period in which a greater degree of development in medium-scale lead and zinc mining is noted.

Between 1970 and 1974 mining output grew even more slowly, an average annual rate of only 1.5% being recorded. Between 1974 and 1976 the rate dropped below 1.4%, but made an appreciable recovery in the period 1976-1978. In that period the Cuajone and Cerro Verde deposits came into production. The former was developed by the same consortium that had previously implemented the Toquepala project, whereas the latter was the first large-scale investment project for which the State was responsible, through the Minero-Perú enterprise, which was established to execute public investment projects in 1971.

Table 2

GDP GROWTH RATES a/

Periods	Mining	Manufactures	GDP
1950-1960	15.0	9.3	6.4
1950-1956	8.3	6.8	5.3
1957-1960	14.0	6.4	5.1
1960-1966	3.4	9.0	6.7
1967-1969	2.5	4.4	2.0
1960-1970	9.5	10.3	7.1
1970-1974	1.5	7.7	6.0
1974-1976	-1.4	4.5	3.2
1976-1978	16.6	-1.3	-0.1

Source: Prepared on the basis of figures supplied by the National Planning Institute (INP).

a/ Millions of 1970 soles.

In those two years mining output grew at an annual rate of 16.6%, during a period in which the Peruvian economy was in recession. The growth in the mining product thus made it possible to set off the sharp fall in the rest of the economy.

The data made available makes it possible to conclude that large-scale development of Peruvian mining occurred subsequently to the promulgation of the 1950 Code. The legislation in question, which was imbued with a liberal concept, gave great incentives to foreign investment. The 1950 Mining Code was in effect until 1970, when it was replaced by legislation that stressed State control and attached greater importance to entrepreneurial action by the State in mining, refining and marketing minerals.

However, it should be pointed out that large-scale copper mining was developed largely as a result of implementation of the incentives provided for in the Mining Code. The last large-scale private investment project executed in Peru under that Code was the Cuajone Project.

## 1. Development of copper mining

Prior to the promulgation of the 1950 Mining Code, copper output did not exceed 30 000 metric tons fine per year. From the 1960s onwards there was accelerated growth in copper output as a result of the putting into operation of the Toquepala deposit. At the beginning of that decade copper output was 182 000 metric tons of fine copper per year. At the beginning of the 1970s average annual output exceeded 240 000 metric tons fine (see table 8 on page ...).

Until the middle of the 1970s copper output depended largely on the underground mines of the central sierra and the Toquepala open-cast deposit. The putting into operation of Cuacone, which is also an open-cast mine meant appreciable growth in output. The deposit in question which was put into operation in 1976 strengthened national output, since an annual average of approximately 360 000 metric tons fine was produced from the second half of the 1970s onwards.

In the past three decades copper mining has been controlled by two large enterprises: Cerro Pasco Corporation and Southern Peru Copper Corporation. The former (Cerro Verde), was a subsidiary of Cerro Corporation until 1973, when it was expropriated by the Peruvian State and became the Empresa Minera del Centro (CENTROMIN), while the latter (Toquepala and Cuacone) continued to be a subsidiary of a consortium headed by the American Smelting and Refining Corporation.

In 1977 these two enterprises controlled 87% of copper output and produced somewhat over 290 000 metric tons per year (see table 3). The average annual output of medium-scale mining is approximately 40 000 metric tons, and medium-scale mining basically supplies copper concentrates to the CENTROMIN refinery, in the central sierra of the country.<sup>1/</sup>

Growth in the output of refined copper was slow until the middle of the 1970s. The growth in output that took place in the 1960s resulted in processing only into blister. The result of the establishment of the Ilo Foundry, belonging to Southern Peru, was that processing into blister became the predominant degree of processing from the beginning of the 1960s until the middle of the following decade. In 1960 blister output accounted for 74% of copper output (see table 4). From the second half of the 1970s onwards the relative importance of blister output in total copper output dropped as a result of the initiation of operation of the Ilo Refinery belonging to the State. In 1977 approximately 53% of Peruvian output was refined copper, while 43% was blister.

<sup>1/</sup> In the category of medium-scale mining there are enterprises in which there is a foreign controlling interest, such as Northern, Chapi and Katanga, which are the largest exporters in that category of enterprises.

Table 3

BREAKDOWN OF COPPER OUTPUT BY SCALE OF PRODUCTION UNIT  
(Thousands of metric tons of fine copper)

Metric tons of fine copper	1968	1970	1975	1977
Total	211.1	220.2	175.7	336.4
Large-scale mining	79%	74%	71%	87%
Medium-scale mining	18%	23%	27%	12.6%
Small-scale mining	3%	3%	2%	0.4%

Source: National Planning Institute.

Table 4

PATTERN OF COPPER OUTPUT  
(Thousands of metric tons fine)

Copper	1950	1960	1970	1977
Total	30 050	181 700	220 200	336 400
Refined	69%	16%	16%	53%
Blister	8%	74%	64%	43%
Concentrates and ores	23%	10%	20%	4%

Source: National Planning Institute.

/Consequently, in

Consequently, in 1977 the share of concentrates and ores in total sales dropped to only approximately 4%, not only owing to greater growth in large-scale mining, but also owing to the drop in the output of medium- and small-scale mining. Factors contributing to that drop were low prices in the period 1976-1977 and, above all, the inadequate domestic financing system.

Although it is true that there has been a substantial improvement in the degree of processing of national output, domestic consumption of refined copper continued to be extremely low, absorbing approximately 9.5% of national stocks in 1977 (see table 5). The greater part is used for the manufacturing of wire rod, which is mostly exported to the markets of LAFTA and Central America.

In the 1970s the Cerro de Pasco Corporation (Cerro Verde) was expropriated, which made it possible to increase national control over copper output. However, it may still be noted that one single foreign enterprise predominates. The enterprise in question is Southern Peru Corporation, whose chief shareholder is the American Smelting Corporation and which controlled 78% of Peruvian copper output in 1978 (Toquepala and Cuajone). The share of the State was only 9%, through CENTROMIN and Mineró-Perú, and the remainder was accounted for by enterprises in the category of medium- and small-scale mining (see table 6).

Table 5

DOMESTIC CONSUMPTION OF REFINED COPPER  
(Metric tons)

	1960	1965	1968	1970	1976	1977
(1) Output	29 072	40 994	33 087	35 293	131 675	178 292
(2) Consumption <u>a/</u>		2 012	3 304	3 164	9 400	17 000
(3) 2/1		5%	10%	9%	7%	9.5%

Source: Ministry of Energy and Mines.

a/ Probably also includes semi-processed products, such as copper rod, destined for export.

/Table 6

Table 6

SHARE OF FOREIGN ENTERPRISES IN COPPER OUTPUT  
(Percentages)

	1950	1960	1970	1977
Southern Peru Corporation	-	71	58	78
Cerro de Pasco Corporation	78	18	22	-
Public enterprises <u>a/</u>	-	-	-	9
Other (private domestic enterprises)	22	11	20	13

Source: Ministry of Energy and Mines.

a/ Cerro Verde and CENTROMIN.

However, there could be a relative reduction in State participation in coming years, if the policy of cutting back entrepreneurial action by the State that is promoted by the new Government of Peru prospers. The policy in question could have a decisive impact on national control of the copper industry, since the deposits that are currently under State control would be turned over to foreign investors. This would have a perceptible impact on the conduct of foreign trade, since copper will continue to be Peru's main export product in the 1980s.

The public sector, through CENTROMIN and Minero-Perú, generates only 20% of the value of total copper exports; CENTROMIN has the monopoly of the export trade in copper rod, and Minero-Perú (Cerro Verde) and CENTROMIN account for 37% of exports of refined copper (see table 7). Exports of blister are entirely controlled by Southern, while the exportation of concentrates and ores is entirely under the control of other foreign enterprises, such as Northern Mining Corporation, which is also a subsidiary of the American Smelting and Refining Corporation.

In short, although the State succeeded in increasing its share of copper mining and raising the level of processing of mineral products, the private sector's share, particularly that of Southern Peru, is decisive.

Table 7

DISTRIBUTION OF COPPER EXPORTS BY TYPE OF OWNERSHIP  
(Percentage of the value of total exports)

Sectors	1978	1979
<u>Private</u>	100	80
Copper rod	100	-
Refined	100	63
Blister	100	100
Concentrates and ores	100	100
<u>Public</u>	-	20
Copper rod	-	100
Refined	-	37
Blister	-	-
Concentrates and ores	-	-

Source: Minero-Perú Comercial (MINPECO).

2. Other minerals

The promotional measures provided for in the 1950 Mining Code permitted considerable progress in lead and zinc mining, since the share of national capital in medium and small-sized enterprises increased considerably.

Lead and zinc output grew steadily between 1950 and 1970. Lead output, which was only 62 000 metric tons of fine lead in 1950, grew to somewhat over 100 000 metric tons of fine in the period in question; while zinc output increased over fourfold, rising from 88 000 metric tons fine to 360 000 metric tons fine at the beginning of the 1970s. In that decade lead output grew at a slower rate than that of zinc. Between 1970 and 1978 lead output increased by only 19 000 metric tons fine, whereas zinc output increased by nearly 100 000 metric tons fine (see table 8).

However, the rise in the output of the two minerals in question did not lead to a parallel increase in national refining capacity, since the greater mine output resulted in a substantial increase in exports of concentrates and in a reduction in the share of refined lead and zinc in total exports.

Table 8

TRENDS IN MINING OUTPUT  
(Thousands of metric tons fine)

Products	1947	1950	1960	1970	1978
Copper	22 000	30 000	182 000	243 000	366 000
Lead	55 000	62 000	132 000	164 000	183 000
Zinc	58 000	88 000	178 000	360 000	458 000
Silver	340	420	940	1 240	1 243
Iron ore	-	-	3 600 000	6 249 000	3 458 000

Source: Ministry of Energy and Mines.

This situation prompted the Government of Peru to promote the expansion and modernization of lead and zinc refining facilities in the central sierra, under the responsibility of the public enterprise CENTROMIN-PERU. It was also decided that a new refinery, which will come on stream in a few years and produce somewhat over 100 000 metric tons of refined zinc, should be built at Cajamarquilla.

Mining of iron ore started in 1952 with the signing of an agreement between the Utah Construction Corporation and the Government of Peru. In 1953 Utah ceded its rights to the Marcona Mining Company, which was established specifically to mine iron ore in the Marcona deposit. Utah took 80% of the capital, and the rest went to the Cyprus Mines Corporation. It is interesting to note that this agreement was the first major agreement to be signed under the Mining Code.

The Marcona deposit came into operation in the second half of the 1950s, and by the beginning of the 1970s it was producing 3 600 000 metric tons fine. By the beginning of the 1970s production exceeded 6 000 000 metric tons fine, and it reached 8 000 000 metric tons in 1975, the year in which the Marcona Mining Company was expropriated. As a result of that expropriation decision, the Government of Peru embarked on a difficult negotiation process and was the victim of a serious boycott on the principal iron-ore markets, particularly from August 1976 onwards. The strained relations that began with the expropriation of Marcona coincided with the crisis on the world steel market, which resulted in a significant reduction in



reduction in use of installed capacity in the iron and steel industry. This had a serious impact on Peru, and there was a significant reduction in output and exports of iron ore. At the beginning of 1978 iron-ore output had dropped to a level below that of 1960, amounting only to 3 458 000 (see table 8). Iron ore output has not really recovered, and the importance of iron ore in mineral exports has dropped considerably.

#### B. SIGNIFICANCE OF MINERAL EXPORTS

The impact that investment had on large-scale mining resulted in a considerable change in the composition of Peruvian exports. Until 1950 mineral exports accounted for only 20% of total exports. As a consequence of the completion of large-scale projects for investment in copper and iron ore in 1960, mineral exports represented 36% of Peruvian exports (see table 9).

Table 9

#### SHARE OF MINERAL EXPORTS IN THE VALUE OF TOTAL EXPORTS (Millions of dollars)

Years	National exports	Mineral exports <u>a/</u>	Share of minerals (%)
1950	198	40	20
1960	444	160	36
1970	1 034	462	44
1978	1 941	747	38
1979	3 467	1 397	40

Source: Central Reserve Bank.

a/ Only includes copper, lead, silver, zinc and iron ore.

/From the

From the 1960s onwards the performance of mineral exports started to determine the general state of the economy, not only owing to the great economic power that was concentrated in the hands of the transnational corporations controlling over 80% of mineral exports, but also owing to the vulnerability of the production pattern in the context of fluctuations in the international economy. This was so merely owing to the fact that the system of import substitution encouraged the development of an industry that consumed foreign currency as a result of its dependence on provision of inputs and capital goods from abroad. In addition to that, there is the traditional inadequacy of agricultural output, which made it necessary to raise food imports considerably. Mining therefore became the chief source of foreign currency, reaching approximately 44% of Peruvian exports in 1970, in an economy in which availability of foreign currency is a sensitive factor as regards that economy's general functioning.

The new mining investment in the 1950s, particularly development of large-scale copper mining, changed the relative balance that existed at that time in the composition of mineral exports. With a number of fluctuations resulting from variations in international prices, the share of copper, silver, zinc and lead was between 20% and 30% (see table 10).

Table 10

SHARE OF THE MAIN MINERAL PRODUCTS IN THE TOTAL VALUE  
OF SECTORAL EXPORTS

(Percentage of total)

Products	1950	1960	1970	1979
Copper	25	49	60	45
Silver	20	13	6	29
Lead	30	12	8	9
Zinc	25	9	10	11
Iron ore	-	17	16	6

Source: Central Reserve Bank.

/Completion of

Completion of the Toquepala project put an end to that balance towards the end of the 1960s. In 1960 copper accounted for 49% of mineral exports. The share of lead and zinc dropped as a result of the surge in copper mining and the beginning of iron-ore exports. The dominant trend in copper continued, and it is important to draw attention to the reduction in the role played by exports of iron ore as a result of the expropriation of the Marcona Mining Company and the crisis on the world steel market. However, in 1979 the relatively greater importance of silver owing to the upwards trend on the world market may be noted.

It is, at the same time, important to make a number of remarks regarding the behaviour of the volume of mineral exports. The course taken by this indicator in the past decade reveals a certain stability with regard to the volume of exports of zinc, in contrast with the constant fluctuations in the volume of lead. The growth observed in the exportable supply of the latter mineral is closely related to the outstanding increase in prices that took place in the last three years of the 1970s. This factor is extremely important, if account is taken of the fact that the share of medium-scale mining in both lead and zinc mining is significant. The volume of exports of lead was further reinforced by the rise in silver prices, since it should not be forgotten that Peru's lead concentrates have a high silver content (see table 11).

Table 11

TRENDS IN THE VOLUME OF MINERAL EXPORTS

(Base 1970=100)

Products	1970	1974	1975	1976	1977	1978
Copper	100	86	70	84	155	161
Zinc	100	128	122	128	130	131
Silver	100	107	92	106	105	106
Iron ore	100	87	60	76	62	43
Lead	100	103	80	161	161	108

Source: CIEPA, Report of the Peruvian Economy, 1978.

/At the

At the same time, the impact on medium and small-scale mining of replacement by the State of the former marketing channels should not be disregarded. The international traders granted advances for future exports to be used as working capital, which enabled small enterprises in particular to solve their liquidity problems. They thus often financed medium and small investment projects by keeping future export balances "captive". Commercial intervention by the State did not result in rapid financing machinery, since the State restricted itself to providing producers with financing once the product was delivered to their warehouses. The financing of production was left almost entirely in the hands of a development bank with limited resources and the former financial circuit was eliminated without anything being put in its place.

A question that deserves closer attention is that of the behaviour of iron-ore exports. The volume of such exports dropped by half in the course of the 1970s. This happened, as already mentioned, owing to the international crisis that resulted in a significant reduction in use of installed capacity in the major steel works, and owing to the precarious marketing infrastructure established by the State as a result of expropriation of the Marcona Mining Company. Nevertheless, it should also not be forgotten that on the iron-ore market the geographic location of the suppliers is of decisive importance, since transport is a determining factor in the establishment of commercial contractual relationships. In Peru the availability of transport was controlled by the Marcona Mining Company, and it was extremely difficult to fill that gap. This was perhaps one of the more important factors that prompted the Government of Peru to seek to reach an agreement with that enterprise.

Owing to its geographic location Peru had access to the Japanese market and to the west coast of the United States under conditions that were even relatively competitive, considering the poor quality of Peruvian iron ore. Possibilities on the European markets are limited owing to the better position of Brazil and Venezuela, among the Latin American suppliers. However, as became clear at times when tension was greatest, Peru was only a marginal supplier. There was little point in Japanese users supporting Peru in its trade negotiations, if they were thus jeopardizing their relations with more important suppliers as a result of the constant pressure exerted by the Marcona Mining Company.

/The difficulties

The difficulties were largely overcome when an agreement was reached with the Marcona Mining Company, but from 1976 onwards the world steel markets rapidly became depressed. The international situation continued to be difficult for iron-ore exporters, which explains why Peru has not been able to regain the levels it was exporting prior to the international crisis.

The indicators supplied in this section show that the performance of mineral exports has a decisive impact on the general functioning of the economy. The purchasing power of Peruvian exports is therefore strongly influenced by fluctuations on the world mineral market. It may be therefore concluded that mineral exports have a strategic character with regard to the types of interrelationships developed with the international economy over the past three decades.

#### C. SHARE OF PERU IN WORLD COPPER OUTPUT AND WORLD TRADE IN COPPER

Peru may be regarded as a major copper producer, in view of its current output and its potential in the coming years. The Peruvian share of international output increased substantially (from 2.6% in 1975 to 4.4% in 1978) owing to the initiation of operation of the Cuajone and Cerro Verde deposits (see table 12). Construction of the Ilo Refinery and greater capacity to produce blister also enabled Peru to raise the level of copper processing and to improve its relative position with regard to world output. Its share of world output of blister in fact increased from 2% in 1975 to 3.9% in 1978. With regard to world output of refined copper, in 1975 Peru only accounted for 0.85% of world output, while its share rose to 2.1% in 1978. The improvement in its share of the CIPEC countries' output was even more marked (in the period 1975-1978 its share of mining output rose from 6.8% to 12%, its share of blister output rose from 7% to 13.2% and its share of output of refined copper rose from 4% to 10.2%). (see table 13).

Table 12

SHARE OF PERU IN WORLD COPPER OUTPUT  
(Thousands of metric tons fine and percentages)

	1975	1978	1979 <u>b/</u>	1980 <u>b/</u>	1981 <u>b/</u>
<b>I. <u>Mine output</u></b>					
(a) World output	7 358	9 073	9 397	9 870	10 153
(b) Peruvian output	189	400	390	400	431
(c) b/a	2.56	4.40	4.15	4.05	4.24
<b>II. <u>Output of blister c/</u></b>					
(a) World output	7 977	9 797	10 142	10 417	10 859
(b) Peruvian output	161	383	373	383	388
(c) b/a	2.01	3.90	3.67	3.67	3.57
<b>III. <u>Output of refined copper</u></b>					
(a) World output	8 400	11 025	11 135	11 438	11 980
(b) Peruvian output	72	233	233	243	343
(c) b/a	0.85	2.11	2.09	2.12	2.88

Source: Prepared on the basis of CIPEC figures.

a/ Refers to production capacity.

b/ Estimates and projections.

c/ Part of the output of blister is used to produce refined copper.

Table 13

SHARE OF PERU IN THE OUTPUT OF THE COUNTRIES OF THE INTERGOVERNMENTAL  
COUNCIL OF COPPER EXPORTING COUNTRIES (CIPEC)

(Thousands of metric tons fine and percentages)

	1975	1978	1979 <u>a/</u>	1980 <u>a/</u>	1981 <u>a/</u>
<u>Mine output</u>					
(a) CIPEC output	2 766	3 337	3 470	3 520	3 571
(b) Peruvian output	189	400	390	400	431
(c) b/a	6.83	11.98	11.23	11.36	12.06
<u>Output of blister b/</u>					
(a) CIPEC output	2 309	2 893	3 018	3 083	3 155
(b) Peruvian output	161	383	373	383	388
(c) b/a	6.97	13.23	12.35	12.42	12.29
<u>Production of refined copper</u>					
(a) CIPEC output	1 792	2 268	2 288	2 368	2 545
(b) Peruvian output	72	233	233	243	343
(c) b/a	4.01	10.27	10.18	10.26	13.47

Source: Prepared on the basis of CIPEC figures.

a/ Estimates and projections.

b/ See note c/ in table 12.

/However Peru's

However Peru's share of world trade in copper concentrates and refined copper may be regarded as having little significance (5% in 1977) (see table 14). Nevertheless, as a supplier of blister it accounts for approximately 14% of Western imports. With the exception of the markets of Belgium (6%), Italy (8%) and the United States (12%), it may be said that it remains a marginal supplier on the refined copper markets. On the other hand, where blister is concerned, it contributes 42% of France's imports, 57% of Spain's purchases and 75% of Japan's imports. It is, however, important to stress that Peru's contribution to Western consumption of refined copper is lower than that of the other countries members of CIPEC. Lastly, it should be added, that as a supplier of concentrates, Peru is relatively important only on the United States market.

#### D. PATTERN OF OWNERSHIP AND PRESENCE OF FOREIGN CAPITAL

From the 1970s onwards a considerable change took place in the pattern of ownership in the Peruvian economy, particularly in the mining sector. This change arose from the process of agrarian reform, as a result of which the foreign-owned latifundia were expropriated and turned into co-operatives; from the expropriation of large fishing, industrial, mining, banking, financial and commercial enterprises; and from the further development of entrepreneurial action by the State.

Around 1968 the share of foreign capital in the formation of Peru's GDP was 31%, while the State and national capital contributed 13% and 56%, respectively, (see table 15). According to available data, in 1975 there was a drop in the share of foreign capital, which contributed only 21% of Peru's GDP while the share of the State rose to 23%. The share of national private capital remained at 56%, but there was a great increase in the contribution made by associative forms of ownership.

In the mining sector the share of the State increased appreciably. In 1968 the State contributed only 1% of mining GDP, through production units linked to the development banks. In 1975, as a result of the expropriation of the Marcona Mining Company and Cerro de Pasco Corporation and increased entrepreneurial action by the State, its contribution to formation of mining GDP was 50% (see table 16). The policy of nationalization in the mining sector resulted in a considerable drop in the share of foreign enterprises. In fact, the contribution of such enterprises to mining GDP dropped from 87% in 1968 to only 33% in 1975. It is important to add that in that period the share of national private capital increased from 12% to 17% of mining GDP.



Table 14  
SHARE OF PERUVIAN EXPORTS IN THE IMPORTS OF THE MAIN CONSUMER OF COPPER, 1977

(Thousands of tons of fine copper and percentages)

Consumers	Refined copper			Blister			Concentrates		
	Imports	Peruvian exports	Per-cent age	Imports	Peruvian exports	Per-cent age	Imports	Peruvian exports	Per-cent age
Germany, Federal Republic	410	4	1	131	5	4	197	4	2
Argentina	36	3	8	-	-	-	-	-	-
Belgium	302	18	6	230	1	-	6	-	-
Brazil	170	22	13	-	-	-	-	-	-
China, People's Republic	70	2	3	102	27	26	30	-	-
Spain	24	-	-	21	12	57	44	-	-
United States of America	355	43	12	60	7	12	80	10	12
France	338	6	2	24	10	42	-	-	-
United Kingdom	368	16	4	66	13	20	-	-	-
Italy	288	22	8	15	1	7	-	-	-
Japan	201	6	3	40	30	75	730	23	3
Sweden	66	2	3	-	-	-	17	1	6
<u>World importation a/</u>	<u>3 218</u>	<u>167</u>	<u>5</u>	<u>972</u>	<u>140</u>	<u>14</u>	<u>1 295</u>	<u>62</u>	<u>5</u>

Source: Calculated on the basis of figures supplied by CIPEC and MINPECO.

a/ Includes the People's Republic of China, but excludes the remaining countries with centrally-planned economies.

/Table 15

Table 15

SHARE OF ENTERPRISES IN FORMATION OF NATIONAL GDP,  
BY TYPE OF OWNERSHIP  
(Percentages)

Type of ownership	1968	1975
Foreign enterprises	31	21
Public enterprises	13	23
Private enterprises	55	46
Associative enterprises	1	10

Source: INP, Concentración de la Producción y Estructura de Propiedad. Report No. 040-76-INP-OIP, July 1976.

Table 16

SHARE OF ENTERPRISES IN FORMATION OF MINING GDP,  
BY TYPE OF OWNERSHIP

Type of ownership	1968	1975
Foreign enterprises	87	33
Public enterprises	1	50
Private domestic enterprises	12	17

Source: INP, Concentración de la Producción y Estructura de Propiedad. Report No. 040-76-INP-OIP, July 1976.

United States capital was that most affected by the nationalization policy, since subsidiaries of United States enterprises controlled over 90% of the mining GDP produced by foreign enterprises. Capital of French and Japanese origin was not affected to a great extent because it was invested only in medium-scale mining.

/However, it

However, it should be noted that the figures provided do not cover the contribution made by the Cuajone copper deposit, which came into operation in 1976; this means that the share of foreign capital in mining GDP may currently be estimated at a little over 45%.

The 1971 mining legislation provided for machinery to ensure the inclusion of workers in the ownership and management of the enterprises in question, which was not welcomed by private investors. This was one of the most difficult issues to negotiate with foreign investors interested in going ahead with investment projects in large-scale mining.

Mining associations, which paid workers 10% of the income generated before tax, were established in all enterprises. Of that percentage approximately 4% was applied directly as distribution of gains and approximately 6% was set aside for the purpose of purchasing shares. The latter percentage was destined for expanding capital as a result of reinvestment or, where that was not appropriate, for purchasing shares from private investors.

Although this machinery did not substantially alter the capital structure of the enterprises, owing to the reinvestment made by private partners, it was a factor that helped to discourage the inflow of further foreign investment. In addition to that, account must be taken of the entrepreneurial intervention by the State in marketing, an issue that foreign investors regard as a strategic factor affecting their investment decisions.

Implementation of a nationalist policy had a decisive impact on foreign investment from the United States, whose mining interests in Peru represented 57% of the sectoral total invested in Latin America in 1976 (see table 17). With the exception of the Cuajone project, which was also financed by capital from the United Kingdom, the Netherlands and Japan, in the period under consideration there was no new investment by enterprises of United States origin. On the contrary, it could be said that the major transnationals of that country displayed a hostile attitude towards the growing involvement of the State in the development of the mining sector, giving way to Japanese investors, who were the ones that displayed the greatest interest in co-operating with the State in implementing the investment project programmed by the latter. However, throughout the 1970s it was not possible to conclude any further agreements.

Table 17

DISTRIBUTION OF THE CUMULATIVE VALUE OF UNITED STATES INVESTORS' CAPITAL  
IN LATIN AMERICA AND IN THE MINING OF THE REGION (1976)

(In millions of dollars)

Countries	Total investment	%	Investment in mining	%
Argentina	1 138	8	50	7
Brazil	3 760	26	94	13
Chile	287	2	25	3
Colombia	617	4	18	2
Mexico	2 854	20	83	11
Panama	1 604	11	-	-
Peru	900	6	412	57
Venezuela	1 804	12	21	3
Other	1 632	11	27	4
<u>Total</u>	<u>14 597</u>	<u>100</u>	<u>729</u>	<u>100</u>

Source: Taken from IMP, Caracterización de la Realidad Nacional, on the basis of data provided by the United States Department of Commerce, Washington, 1976. Lima, January 1978.

At the same time, it is important to note that up until the 1970s there were no major conflicts with foreign capital because the State only played the role of a promoter of private activities, giving special guarantees to foreign capital. On the other hand, from the 1970s onwards there was a greater degree of both administrative and entrepreneurial intervention by the State, greater demands were made on those holding mining concessions, and there was a policy aimed at bringing the chief investment projects on hand under national control.

### III. LEGAL AND POLITICAL FRAMEWORK OF MINING NEGOTIATIONS

It is possible to distinguish two periods with regard to the legal and political framework of mining negotiations in the past three decades: one starting with the promulgation of the new 1950 Mining Code, and the other starting with the Military Government in 1970.

During the first period, the management of the economy was marked by a liberal approach in which the State was regarded merely as an entity promoting development and not as an entity that was a motor for development. In the context of that approach, the aim of economic policy was to provide private investment, particularly foreign investment, with a climate of confidence. It was assumed that the country was not in a position to go ahead by itself with implementation of large-scale investment projects. The low level of domestic saving and the scale of financial resources called for by mining, as well as the lack of a national technological basis, placed a constraint on State intervention from the government's viewpoint. Moreover, in the years in question there was no mining entrepreneurial group in Peru with a relatively high level of independence.

The weak national mining group was closely linked with foreign interests, both from the financial and from the commercial point of view. National mining interests did not have direct access to international markets. From the 1950s onwards this entrepreneurial group would go through a long transitional process that would last until the early 1970s.

In the period starting in 1970 there was a radically different approach to the role of the State. Nearly 20 years had elapsed since the initiation of large-scale mining operations, and there was a realization that the country was not deriving full benefit from exploitations of its natural resources. Government policy focused on increasing the volume of surpluses channelled to the State and on guaranteeing a greater degree of independence with regard to decisions affecting exploitation of natural resources.

#### A. LEGAL AND POLITICAL FRAMEWORK IN THE PERIOD 1950-1970

Between 1945 and 1948 there had been a fleeting instance of State intervention in the conduct of the Peruvian economy, aimed at promoting the process of import-substitution. For the first time in many years the need to abandon the old thesis of economic liberalism began to be assessed in economic management.

An exchange-control policy aimed at achieving better use of foreign currency holdings at a time when there were balance-of-payments difficulties was implemented. In keeping with that aim, an increasingly protectionist approach was adopted, in contrast to the free-trade approach that had predominated for a number of decades.

This fleeting instance of State intervention came to an end with the change of Government in October 1948, which gave rise to a Military Government; on the basis of a general election called in 1950, that Government remained in office until July 1956. The so-called "eight-year period" meant a return to the liberal policy that had predominated in Peru over a period reaching even further back than 1945. This return was in keeping with the social basis that formed the new régime's foundation, in other words, the groups of agricultural and mineral exporters and the major traders grouped in the Lima Chamber of Commerce.

The new régime established a set of incentives to foreign involvement. The country had a wide range of unexploited natural resources, particularly mineral resources. The favourable prospects that became apparent after the Korean War and the steady growth in the world economy from the 1950s onwards, boosted demand for raw materials, which made direct investment in natural resources in the developing countries attractive.

The new régime shaped general State policy in such a way that it was in keeping with the major trends in international capitalism. The mineral resources with which the country was endowed would make it possible to change the pattern of exports, which in the years in question were basically made up of agricultural products (sugar and cotton), and to evolve new ways of integrating the country into the international economy.

/The mining

The Mining Code was promulgated in 1950, and in 1952 the Petroleum Act was promulgated, both being based on a strictly liberal system. It was a question of facilitating the inflow of foreign capital by making exploitation of natural resources attractive through guarantees as to tax and exchange stability, in the context of a political climate that would give investors long-term security. These legal instruments were fully in keeping with the strategies of the transnational corporations, which embarked on a period of rapid international expansion in the 1950s.

In that decade in most developing countries agreements concerning exploitation of natural resources granted rights that were extremely favourable to concessionaires. The concessions covered large mining areas. Decisions concerning the desirability of exploitation were made almost exclusively by the home offices. The ability of national States to set more favourable terms for exploitation was therefore limited, and Peru was no exception to that rule. Frequently, the concessions were granted for periods of up to 50 and 60 years, or more.

In general, payments made by concessionaires were set on the basis of the physical units produced or on the basis of the value of the mine's output. However, the latter method was the most common formula in agreements on the mining of metallic minerals. These payments took various forms: royalties on the value of output, in the form of a fixed payment that did not depend on international prices; graduated royalties based on the enterprises earnings level, etc.

The 1950 Mining Code is in keeping with the transnational corporations interests. It reaffirmed the legal form of the mining concession and did not accord due importance to the principle of "protection of labour by the concession". It did, however, establish that mineral substances and the soil and the subsoil were State property, while recognizing acquired rights. This policy amounted to an endorsement of the interests of the Cerro de Pasco Corporation.

A real right is granted under the mining concession. Legally speaking, the concessionaires assume the State's rights, since they may use, enjoy, and freely dispose of, the goods resulting from mining activities and the areas granted. The concessions were regarded as being in the public interest,

/and the

and the concessionaires could therefore request expropriation for the benefit of their enterprises. The powers in question led to a series of lawsuits with the peasant communities adjoining the mining areas.

The concessions were granted for an indefinite period. The only grounds on which a concession could lapse were non-payment of ground rent for two consecutive years, or abandonment of the concession. By paying a small ground rent, Peruvian or foreign enterprises could keep large areas as a reserve for future mining indefinitely, while the State had no powers to withhold or withdraw concessions. It is true that the State could issue a special provision for that purpose. However, the policy was precisely that the State should not keep potentially exploitable deposits under its control.

In the 1950s use of tax machinery began to take on greater importance. The machinery in question was accepted owing to the fact that it was linked to mining earnings. However, in the developing countries use of tax instruments is more complex than the fixed-payment method. Tax machinery calls for a good inspection capacity, not only for monitoring and collecting revenue, but also, for example, for checking the actual sales prices of mineral products. Such monitoring is even more complicated in cases where countries offer mineral concentrates on the world market, as most developing countries did in the 1950s.

On the other hand, tax instruments offer greater advantages to transnational corporations than royalties or fixed payments. Tax machinery is linked to earnings and is therefore more adaptable, for example, to transfer-pricing policies.

Furthermore, the Mining Code guaranteed concessionaires tax stability for a period of 25 years following signature of the concession agreement. During that period only taxes recognized upon signature of the concession agreement were payable. Express provision was made for tax stability in respect of exports, which restricted the State's ability to benefit, for example, from extraordinary earnings resulting from exceptional market conditions.

/The charges



The charges provided for in the Mining Code were of a dual nature. A number of the charges in question were at a set rate as in the case of the ground rent, which was payable once a year; the fee for exploration rights; and the surcharge, which was a type of fine payable by concessionaires who had not carried out a minimum of investment per hectare explored. Other payments were variable and linked to the outcome of the financial year, and were of a tax nature. A central piece of machinery was the tax on profits, which could vary in accordance with the legislation in effect. However, as mentioned above, the concessionaire only paid the level of tax provided for in the mining agreements.

The Mining Code also provided for a system of advances on the tax on profit, representing 4% of the value of mining output. Under the system in question, an adjustment was made at the end of the financial year by setting off one balance against the other. The purpose of this system was to alleviate liquidity problems that could arise in fiscal management. It was always a source of conflict between the State and the mining groups because, at times of fiscal crisis, the requirement that advances should be paid was taken further than provided for in the legislation. It was for this reason that the mining groups strongly criticized the fiscal expansion policy. In any event, the Code gave the State the power to discontinue the advance payments in cases where this was necessary owing to market conditions.

Although, it is true that the general policy was to relate fiscal participation to the economic and financial results of mining activities, the Code also made provision for certain exceptional régimes. The most important such régime and the one that was subsequently the most controversial was the "marginal" deposits tax system. The Code did not specify the technical properties of a deposit classified in the marginal category, although it was obvious that the metal content should be the fundamental criterion. In the case of marginal deposits, the State concluded special agreements under which the investor had to pay only between 10% and 20% of the tax on profits. In order to avail themselves of this incentive investors had to apply all their initial profits to amortization of their investment, and the special régime came to an end once the capital had been amortized. The special régime gave

/rise to

rise to considerable controversy in the 1960s. The main source of the conflict was the Toquepala copper deposit, which was regarded as marginal, thus giving Southern Peru tax advantages.

No substantial changes were made in mining legislation until the middle of the 1960s. Priority was given to expanding the exportable supply, and negotiations were therefore taken up with the transnational corporations that had unexploited concessions (American Smelting, Anaconda and Cerro de Pasco, among others). However, there was a climate of uncertainty as a result of the slow progress made in the negotiations with the International Petroleum Company. In addition to that there was an uneasiness resulting from the controversy caused by the above-mentioned special régime governing marginal deposits and the growing national consensus with regard to the inappropriateness of the Toquepala Agreement.

After a number of years the special régime was discontinued and the incentives to private investment were reinstated, with the State empowering itself to sign special mining agreements under terms, such as the following, that were extremely attractive to foreign investors. The maximum tax on profits was set at a rate equal to 25% of the taxable sum, which remained stable during the period of recovery of investment. It was, however, specified that that rate, as well as the rate at which a number of additional taxes was set, could not be lower than the overall tax rate in effect in the investors' country, or countries, of origin.

Investors were authorized to set aside reserves for amortization of machinery and equipment up to 20% per year. Authorization was given to make adjustments owing to variations in the purchasing power of the national currency, in cases where the value of that currency dropped by 5% in comparison with the preceding financial year. The guarantee that foreign currency would be available and that the products resulting from mining could be disposed of freely, providing that the requirements of the domestic markets were met, were also reaffirmed. Tax stability was reconfirmed as well, and it was specified that investors should pay only those taxes in effect upon signature of the agreements. As may be noted, these incentives were really attractive to foreign investors, who soon displayed interest in taking up negotiations with the Government of Peru.

/Moreover, the

Moreover, the mining policy of the late 1960s had been focused on facilitating the expansion of the transnational corporations that were active in mining in Peru. In the final analysis, the purpose of introducing the new promotional régime and, above all, solving the problem arising from the Toquepala Agreement, was, inter alia, to facilitate negotiations with Southern so that exploitation of the Cuajone deposit could start.

The new promotional régime authorized established enterprises to deduct from the results of their new mining operations the losses made in the three years prior to initiation of such operations.

These incentives, together with the continuing existence of the deduction owing to the "depletion factor", were important additional means of recovering new investment. Deductions owing to the "depletion factor" were an old practice used by the transnational corporations that was legalized in the 1950 Mining Code. Such deductions were not really justified, because the non-renewable resource belonged to the State. Mining enterprises were allowed to make a completely tax-free deduction of up to 15% of profits. Deductions could even rise to 50%; through an express decision on the part of the Government. This was basically an incentive aimed at promoting reinvestment by mining enterprises, which deprived the State of a considerable volume of resources.

The Mining Code and the amendments made to its promotional instruments encouraged penetration by the transnational corporations in that their investment was given special treatment. If the transnational corporations had been made subject to the general régime of the Mining Code they would have had to pay an average tax rate of 40% on taxable profits, which would have been in addition to the tax on excess profits, which was eliminated by the Code. In practice, the tax rate was as low as approximately 5.5%, despite the fact that during the period in which the Mining Code was in effect amendments were made that potentially raised the rate to 10%, and in spite of the fact that in a number of concession agreements the rate was set at 20%. However, the deductions permitted by mining legislation, particularly the "depletion factor", had a considerable impact on the volume of fiscal resources collected.<sup>1/</sup>

---

<sup>1/</sup> See J.C. Bossio, "Cambios en la Política Minero-Metalúrgica", published in Cambios Estructurales en el Perú, Fundación Ebert, 1976.

The above-mentioned incentives were applicable during the period of recovery of investment, which was set at 10 years, with the possibility of being extended for three years. However, in practice the investor became subject to the general régime of the Mining Code after a period of 18 years. This was because there was a three-year period for putting mines into operation, which could be extended for up to two further years, and a ten-year period for recovery of investment, which could be extended for up to three years.

Consultations and discussions on the new promotional régime were held with potential investors, thus paving the way for negotiation of future special mining agreements. Southern and Cerro de Pasco, which were partners in implementing the Cuajone project, voiced satisfaction with the new provisions and began to negotiate exploitation of the deposit in question in the second half of 1958.

The Mining Code had a decisive impact in promoting the penetration of foreign capital into mining. United States investment in mining grew considerably in the period 1950-1968, rising from US\$ 55 million to US\$ 421.0 million (see table 18). The growth rate in that period was higher than that of other United States interests in other production sectors. For example, investment in manufacturing grew at an average annual rate of 2.8%, while in mining the growth rate was 3.6%. At the same time, in the same period United States investment in petroleum dropped by a little over 50%, in comparison with the capital accumulated in 1950.

The higher growth rate of investment in mining considerably changed the sectoral pattern of United States investment in Peru. Mining, which in 1950 accounted for only 33% of the total capital invested by the United States in Peru, accounted for 6% in 1968 (see table 19).

In spite of the attractive incentives provided for in the Mining Code there was no further foreign investment of national importance in the 1960s. Southern Peru, which had invested over US\$ 250 million in Toquepala, kept the adjoining deposits of Quellaveco and Cuajone in reserve. Negotiations would be taken up on the latter towards the middle of 1968, leading to an exploitation agreement in December 1969.

Table 18

PERU: CUMULATIVE DIRECT INVESTMENT OF THE UNITED STATES  
(Millions of dollars)

Years	Mining	Petroleum	Manufactures	Other	Total
1950	55.1	a/	15.5	74.4	145
1960	251.0	79	35.0	81.0	446
1965	263.0	60	79.0	113.0	515
1966	262.0	29	93.0	134.0	518
1967	340.0	38	98.0	129.0	605
1968	421.0	39	96.0	136.0	692

Source: Survey of Current Business, taken from "Mito de la Ayuda Exterior", Carlos Malpica.

a/ Included in mining.

Table 19

SHARE OF MINING IN CUMULATIVE DIRECT INVESTMENT OF THE UNITED STATES IN PERU  
(Millions of dollars and percentages)

Years	Total investment	Investment in mining
1950	145	38% a/
1960	446	56%
1965	515	51%
1966	518	50%
1967	605	56%
1968	692	61%

Source: Prepared on the basis of table 18.

a/ Includes petroleum.

/Until the

Until the end of the 1960s there was no further interest in the Cerro Verde deposit, which, together with the Santa Rosa deposit, was kept in reserve by Anaconda. The Cobriza deposit, which was held by the Cerro de Pasco Corporation, was in the process of being studied. The Michiquillay deposit was also among the reserves of the American Smelting Corp., and there were still no feasibility studies on it. Large copper deposits were thus awaiting investment decisions by the chief transnational mining enterprises.

#### B. THE LEGAL AND POLITICAL FRAMEWORK OF THE 1970s

The change of government that took place in 1968 resulted in a markedly nationalist political process, which set important economic and social reforms in motion. Only six days after it had come to power, the Revolutionary Government of the Armed Forces expropriated the facilities of the International Petroleum Company (IPC), following a long and bitter dispute.

The expropriation of IPC did little to lessen the uncertainty, lack of confidence and hesitancy of foreign investors, despite the fact that putting an end to the long-standing conflict between the Government of Peru and IPC was one of the demands made by those circles. However, the way in which the new Government approached the dispute, practically confiscating the property of IPC, strained relations with the Government of the United States. The United States Government even considered implementing the Hickenlooper amendment, which opposed the export of sugar to the American market.

In that context, negotiations with foreign investors were affected by political pressures. However, the Government took up negotiations once again with Southern on exploitation of the Cuajone copper deposit, which was subsequently the subject of an agreement signed under the 1950 Mining Code, in spite of the fact that it had been stressed in frequent official statements that that Code gave disproportionate privileges to investors.

The Cuajone negotiations were outside the context of redefinition of mining policy and were in keeping with the Government's wish not to become isolated in view of the possibility that the United States could adopt a hostile policy. At least that is the way in which those most involved in the Cuajone negotiations generally interpreted the situation.

/According to

According to the Government's analysis, the Mining Code's excessive liberality enabled concessionaires to keep deposits in reserve indefinitely, thus affecting expansion of the exportable supply, which was one of the chief goals of the new mining policy. At the same time, the low level of processing of output gave mining the characteristics of an enclave. In the Government's view, that situation was not in keeping with national interests and only benefited the transnational corporations.<sup>1/</sup>

In large-scale mining, non-intervention by the State as an entrepreneur meant that the transnational corporations had extensive political and economic power, in view of the strategic nature of mining in the context of the Peruvian economy. Since penetration by the transnational corporations affected all the activities involved in the industry, it resulted, in the Government's view, in a higher degree of dependency than that in other production sectors. Marketing was used as a means for undervaluing exports and for obtaining financing for the transnational corporations' projects in other areas of the world. In short, as the Government saw it, subordination to, and dependence on, foreign interests resulted chiefly from extractive activities, particularly mining. Their importance was such that they affected the economy as a whole.<sup>2/</sup>

In the context of this view of mining problems, the goals of the new Government policy were that mining should make a greater contribution to the country's development through an increase in the level of processing of output and through promotion of exploitation of deposits that were kept in "reserve" by the transnational corporations. The aim was also to increase State participation in entrepreneurial activities, to improve machinery and instruments for managing and monitoring mining activities, to expand national decision-making capacity in conducting the mining sector's affairs, and to promote development of medium and small-scale mining.

---

<sup>1/</sup> "Siete años de revolución en el sector energía y minas", Planning Office, 1975.

<sup>2/</sup> Ibid.

With a view to implementing these goals legal provisions that obliged concessionaires to initiate operation of concessions, or otherwise incur the penalty of the lapsing of the concession, in accordance with the principle of "protection for labour", were adopted. It was a question of preventing the deposits from remaining unexploited indefinitely and the desirability of investment being subject solely to decisions taken by the concessionaires. This measure was adopted in September 1969 and implemented fully in early 1970. This provision marked the beginning of a new phase in Peru's mining policy, with the initiation of major legal and administrative changes.

1. New legal framework in the period 1969-1970

In September 1969 Decree Law 17792 was adopted, the purpose of which was to accelerate initiation of exploitation of existing concessions, and concessionaires were given three months to submit the appropriate investment schedules. The concessionaires were informed that they had five years in which to start the investment projects approved by the State, and it was specified that that period could be shortened if the country's interests so required. Implementation of this provision led to the lapsing of over 4 000 mining concessions, which reverted to State control (see table 20). Most of the investment schedules approved were for projects in medium and small-scale mining, and the copper deposits that reverted to State control were those in the hands of the major transnational corporations.

In implementation of the above-mentioned provision, in 1970 transnational corporations such as Anaconda, American Smelting and Refining Corp. (ASARCO), Cerro de Pasco Corporation, and Lampa Mining Corp., which had links to Charter Consolidated, lost concessions that had in some cases been under their control for over 50 years. The value of the investment planned for their copper deposits was estimated at US\$ 1 035 million, a figure that has risen considerably in the meantime. Of the deposits in question, the only one that was actually put into operation was the Cerro Verde deposit, which was exploited directly by the State with external financing.



Table 20

## MAIN COPPER DEPOSITS THAT CAME UNDER STATE CONTROL IN 1970

(Millions of dollars)

Deposits	Planned investment <u>a/</u>	Previous concessionaire	Location
Cerro Verde	65 <u>b/</u>	Anaconda	Arequipa
Santa Rosa	70	Anaconda	Arequipa
Michiquillay	450	Asarco	Cajamarca
Tintaya	36	Cerro de Pasco	Cuzco
Quellaveco	200	Southern Peru	Moquegua
Antamina	35	Cerro de Pasco	Ancash
Chalcobamba and Ferrobamba	143	Cerro de Pasco	Apurímac
Berenguela	36	Lampa Mining	Puno
<u>Total</u>	<u>1 035</u>		

Source: "Peruvian Times: Mining Finance and Marketing Survey", 14 April 1972.

a/ The value of the investment is that corresponding to the date of reversion of the deposit.

b/ Covers only the first stage, which is currently underway.

Subsequently, in April 1970, a new legal framework for mining activities was adopted. Although copper refining was reserved for the State, the acquired rights of Cerro de Pasco were recognized. It was also stipulated that the State could sign concession agreements for the refining of other metals, and the possibility of doing the same in the case of copper was left open.

Marketing of minerals was also reserved for the State, and it was established that sales prices would be set through "quotation by Peruvian producers", which would be in keeping with the normal standards of international trade. It was specified that the final decision concerning sales areas would also be taken by the State and that business management itself would remain

/in the

in the hands of producers until such time as the corresponding State entrepreneurial machinery was established. However, it was stated that pending the establishment of such machinery the State would approve sales contracts and that it would be empowered to take the place of the selling party in such contracts in cases where the national interest so requires.

In reality, no such thing happened in practice. As was to be expected the State did not have the administrative capacity in its central government departments to inspect marketing agreements and in actual fact limited itself to giving its formal approval.

Moreover, the Peruvian Producers' Quotation was not put into effect. The original idea was that the State should set a domestic sales price and that it should receive the marketing margin resulting from the difference between the domestic price and the export price. In practice, the solution chosen was that the domestic price should be the price that applied on the chief export markets, which meant that the original trade practices remained unchanged. With regard to the tax régime, the new mining legislation eliminated the so-called "depletion factor", a privilege that had been granted to Southern in the Cuajone Agreement a few months earlier, and the incentives under Article 56 of the Mining Code were also abolished. Nevertheless, in the view of many analysts, the elimination of deductions owing to the "depletion factor" was offset by the incentives to reinvestment.

The new tax régime maintained the principle of making taxation compatible with the economic outcome of the production year in order to prevent tax standards from being independent of conditions on the world market. This approach was in keeping with the minerals producers' demand for avoidance of what they called "blind" taxation, which had applied each time the State was encountering difficulties in financing its budget.

The new normative framework reaffirmed the principles of tax stability and free disposition of foreign currency, within the limits established by the exchange-control régime in effect at that time. The duration of exploitation agreements would be no longer than the period required for recovery of investment, and it was stipulated that the surplus resulting from gross profits,

/less tax,

less tax, should be applied for that purpose. There was an extremely important change in that connexion, since the previous legislation authorized investors to deduct depreciation and amortization reserves before tax.

The exploitation agreements contained the chief principles concerning mining concessions, but also provided for a series of requirements in order to guarantee that investment schedules were respected. For example, contractors would have a maximum period of 18 months to secure financing for the investment project. If financing was not secured within that period, the agreement would be denounced and the deposit would revert to State control.

The new mining policy placed great emphasis on entrepreneurial action by the State, and the public enterprise Minero-Perú was established with a view to implementing the projects assigned to the State, either exclusively or in association with private investors. Minero-Perú was to be the State body responsible for marketing minerals, and with that purpose it would have to establish an international sales network and evaluate agreements currently in effect.

In its initial years of operation Minero-Perú devoted itself to conducting pre-investment studies and to negotiating investment projects, and within a few months it secured financing for the Cerro Verde deposit. Although training personnel in the field in question was difficult, it was even more difficult to train skilled marketing personnel, who virtually did not exist in the country. It was necessary to improvise and train officials on the job.

The most significant change resulting from new mining legislation was that concerning the role of the State. It was a question of building a State that was both entrepreneurial and normative, focusing on regaining control of activities that were of strategic importance for development of the mining industry, such as refining and marketing, and State participation in the management of large-scale investment projects. It was thus a question of orienting and controlling the expansion and the processing of the exportable supply, and the final destination of the products sold, all in keeping with the view that the mining sector should become one of the pivots of development policy.

/In any

In any event, an exclusive role for the State was not being proposed. A very specific role was assigned to private investors, and acquired rights were respected. There is a possibility of establishing common interests with the State, through the so-called Special Mining Enterprises, in which the State would have a share of only 25% of the capital, it being considered that the State contribution would be important in obtaining external financing and in improving bargaining power on the world market.

## 2. The 1971 General Mining Act

The provisions of the normative framework for the mining industry were ratified and laid down in the General Mining Act, which was promulgated in June 1971. The chief goals of the Act in question were, inter alia, to:

- (a) Make the role of mining more dynamic by making possible the initiation of the operation of new deposits, placing particular emphasis on copper mining;
- (b) Develop State entrepreneurial activities relating to the mining, refining and marketing of minerals;
- (c) Promote new types of relationship with foreign capital;
- (d) Promote development of national private activities;
- (e) Guarantee participation by workers in the ownership and management of, and profits from, mining enterprises.

The General Mining Act, which is currently in force, replaced the liberal Code of the 1950s, accentuating the interventionist and controlling character of the State. Particular emphasis was placed on control of the investment process, an area in which private entrepreneurs had enjoyed great freedom in previous years. It was established that the period for implementation of investment projects should not exceed five years, starting from the date of approval of the investment schedule; and it was made compulsory to invest a minimum amount each year. In the first year investment could not be below 30% of total investment, divided into the number of years programmed. The Act specified that the same procedure should be followed in the subsequent years, the percentages being 50% in the second year, 60% in the third year, 80% in the fourth year and 100% in the fifth year.

/The purpose

The purpose of these measures was to guarantee that investment programmes were completed within the periods laid down by the State. Regulations were extremely strict in order to prevent concessions from remaining unproductive indefinitely. Non-submission of the investment schedule once the expiration period had elapsed, non-compliance with requirements regarding minimum levels of investment, or failure to begin production at the planned rate and time were regarded in the General Mining Act as essential elements for establishing the lapsing of concessions.

The controlling and programming role that the Act attributed to the State called for the expansion and improvement of the administrative apparatus, although the effectiveness required for implementation of the new mining policy was not always achieved. Private investors did not respond favourably to the policy in question either, and many decided to abandon their concessions rather than to adapt to the policy's goods. The State suddenly found itself with a great number of deposits at its disposal that it could neither operate nor finance.

The mining policy saw Minero-Perú as a sort of holding company that would generate and implement investment projects and whose production would be managed by independent units that would be centrally co-ordinated. Currently, two projects that are in line with that concept are copper mining at the Cerro Verde unit and the Ilo copper refinery; these were the only two large-scale projects that Minero-Perú succeeded in bringing into being, with financing from international banks and with contributions from future consumers, who received guarantees concerning supplies.

It was originally intended that commercial activities should be carried out by a specialized department of Minero-Perú; that system was only in effect until the end of 1975, when Minero-Perú Comercial (MINPECO) was established as an autonomous entrepreneurial body separate from Minero-Perú. In practice, Minero-Perú became a further client of MINPECO, and the original links lapsed, as a result, there was a certain amount of dispersion and, at times, even conflict between the powers and responsibilities of the two bodies, a situation that was further aggravated when they were assigned to different administrative sectors within the Central Government. This latter situation was formally remedied in 1978, but the lack of co-ordination between their entrepreneurial policies persists.

/The General

The General Mining Act changed the traditional principles governing promotion of investment. Even although it supported the principle of tax stability and accepted the principle of free disposition of foreign currency within the limits of exchange control, it did not recognize the principle relating to free marketing of products resulting from mining, which meant that the State assumed the monopoly of foreign trade. This, together with the provision giving priority to internal requirements, had an impact on the terms of the initial negotiations with Southern, since it made it necessary to reconsider the question of the level of processing of Cuacone products. Southern had difficulties in securing financing once the political framework governing the Cuacone project had changed. However, when the Government of Peru agreed to take over only a trade-control role, which was not fully realized, Southern managed to convince financing bodies.

The new Act confirmed that exchange policy would not be discriminatory to foreign investors and that terms of sale would be in line with those customary in international trade. In practice, the policy of setting a Peruvian Producers' Quotation was discarded, and the quotation was the same as the international reference quotations.

The tax system was structured in such a way that the tax burden reflected the results of the financial year, and it was specified that mining taxation would only be on income and that there would be no special taxes, which did not actually turn out to be the case. The foreign investor had a special status as regards tax treatment, and the taxable amount was to be the profits generated, less tax on the original source of the capital, which was to be subject to a rate of 30%. Although it is true that the deduction owing to the "depletion factor" was eliminated, the fiscal incentives authorized investors to reinvest up to 40% of their profits free of tax, thus offsetting the financial loss resulting from elimination of the "depletion factor".

The new mining legislation also covered the reform of the enterprise through the establishment of the "Mining Association", by means of which the workers could gradually acquire up to 50% of the enterprise's capital stock. However, the rate at which, and the period within which, co-ownership was achieved would depend on reinvestment decisions taken by private shareholders.

/In addition

In addition to being a method of co-management and co-ownership, this machinery constituted a virtually coercive means of promoting a greater degree of capitalization in enterprises, which was a policy that did not always yield favourable results. In reality, it was basically interference by the workers in the enterprise's decisions and, above all, the fact that the new machinery would converge with the trade unions that would have a major impact on the mining entrepreneur, rather than the redistributive nature of the Association.

The Mining Society reacted unfavourably to the new Act, questioning what, in the view of the entrepreneur, was its marked State-oriented nature. They were clearly right. The purpose of the greatest degree of government intervention in programming and supervision of investment was to coerce entrepreneurs in one way or another to accelerate their investment. Otherwise they would lose their concessions and the State would take their place in exploiting the deposits or would negotiate with new investors. In reality it was a question of building a new foundation for the relationship between the State and private capital. An extremely important role was assigned to private investors, as demonstrated by the retroactive tax and tariff incentives provided for in the Act. However, the aim was at the same time to build government apparatus with the capacity to implement mining development, rather than merely promoting it. The strengthening of the State's entrepreneurial and administrative apparatus was focused on increasing Peru's bargaining power, and great importance was therefore attached to centralizing sales capacity in one single marketing body. The State marketing monopoly was also called into question by the Mining Society, despite the fact that the idea was not to strengthen State accumulation but, rather, to improve the income of producers of minerals. In that connexion, this opposition perhaps reflected more the views of the transnational corporations, which had their own marketing networks, and those of foreign traders operating in the context of medium-scale mining. This was because there were very few national enterprises that had their own sales infrastructure.

### C. EVALUATION OF IMPACT

The data available for evaluating the impact of the changes on the legal and political framework of mining negotiations is extremely uncertain and obviously very unreliable. The statistical data published is that of the National Mining Society and is not from official sources. Moreover, the period for which data exists, 1967-1976, is not very indicative of the impact of the new mining legislation in that it was a period in which there was considerable investment in large-scale mining that actually matured after 1976.

In short, the criteria presented here should be regarded as no more than a reference. Furthermore, many factors explaining, for example, the behaviour of the "retained value" of mining and metallurgical output do not correspond exactly to the instruments used by those responsible for the country's mining policy.

Taking these remarks into account, we carried out this evaluation of results on the basis of a number of indicators that are examined below.

#### 1. Retained value of mining and metallurgical output

This indicator expresses the result of the entirety of transactions in goods and services, payment of wages and salaries, taxation, profits and reserves retained in the country by the mining enterprises, presented as a percentage of the total Gross Production Value.

The variations in the Gross Production Value of the mining and metallurgical sector in the period 1967-1976 may be seen in tables 21 and 22. The retained value of mining and metallurgical output increased considerably in the period in question, rising from 64% to 74% of Gross Production Value, with somewhat of a downward trend in the last three years of the period under consideration. The factors responsible for this increase are essentially the following:

(a) Greater use of local goods and services (from 28% to 35% of Gross Production Value between 1967 and 1976) as a result of the process of import-substitution and the policy of protecting national industry. Throughout the 1970s, for example, the National Register of Manufactures (NRM), which enabled national industry to enjoy a high degree of protection, was kept in effect.

/Table 21



Table 21

## USE OF GROSS VALUE OF MINING AND METALLURGICAL OUTPUT

(Thousands of dollars)<sup>a/</sup>

	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976
<u>Used in the country</u>	<u>199 218</u>	<u>272 795</u>	<u>315 004</u>	<u>331 969</u>	<u>297 112</u>	<u>370 235</u>	<u>570 972</u>	<u>618 922</u>	<u>510 178</u>	<u>545 670</u>
Wages and salaries	61 923	69 294	82 226	99 446	101 705	119 432	148 109	197 694	219 179	208 644
Taxes	41 643	68 257	86 791	88 427	50 046	55 463	125 080	113 923	25 334	77 067
Goods and services	56 220	73 536	77 224	93 015	96 749	123 282	155 601	162 920	193 818	191 124
Reinvestment reserves	16 587	37 090	39 050	16 804	15 467	21 599	48 501	52 973	13 430	16 945
Net profits	9 072	9 958	13 278	15 168	6 708	10 650	29 875	25 293	20 234	21 656
Depreciation and write-offs	3 694	4 933	6 685	7 976	14 545	19 963	23 467	22 800	28 117	11 492
Royalties	9 374	8 990	9 105	10 027	8 206	8 552	9 589	11 434	2 147	4 352
Interest	703	737	645	1 106	1 267	2 443	3 250	3 905	3 324	7 454
Mining association	-	-	-	-	2 189	8 022	24 965	25 518	4 195	6 271
Technological Institute	-	-	-	-	230	829	2 535	2 462	391	661
<u>Used abroad</u>	<u>113 192</u>	<u>129 321</u>	<u>137 366</u>	<u>127 983</u>	<u>95 042</u>	<u>91 746</u>	<u>134 876</u>	<u>152 933</u>	<u>160 601</u>	<u>194 224</u>
Goods and services	30 158	47 441	46 657	51 636	46 035	54 495	78 907	87 725	118 791	147 282
Profits remitted	54 636	47 694	49 608	32 319	9 820	8 229	29 483	37 938	18 677	17 717
Depreciation and write-offs	25 584	30 636	38 220	42 000	36 998	26 694	22 798	22 866	18 148	11 236
Interest	2 814	3 550	2 861	2 028	2 189	2 328	3 688	4 404	4 985	17 989
<u>Total gross value of output</u>	<u>312 410</u>	<u>402 116</u>	<u>452 370</u>	<u>459 952</u>	<u>392 154</u>	<u>461 981</u>	<u>705 848</u>	<u>771 855</u>	<u>670 779</u>	<u>739 894</u>

Source: 1967-1973: Perú Minero 1974 - National Mining Society, Daniel Rodríguez Hoyle, Editor.

1974-1975: Estimates on the basis of figures supplied by the Ministry of Energy and Mines and the National Mining Society.

<sup>a/</sup> Interannual comparison is complicated by the fact that it is a question of current values.

Table 22

INDICATORS OF THE RESULTS OF CHANGES IN THE LEGAL AND POLITICAL  
FRAMEWORK OF MINING NEGOTIATIONS

	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976
Total retained value of mining and metallurgical output (percentage of gross value of output)	64	68	70	72	76	80	81	80	76	74
Percentage of income from labour of gross domestic product	27	25	25	31	42	45	37	43	62	53
Percentage of income from capital of gross domestic product	54	51	48	40	38	35	36	35	30	27
Percentage of State income of gross domestic product	19	24	27	29	20	20	27	22	8	19
Percentage of income tax of global profits	22	37	43	55	53	46	45	40	15	26
Percentage of distributable profits of global profits	62	38	35	33	22	21	24	26	59	47
Transfer abroad of income from capital as a percentage of cumulative gross domestic investment	10	10	10	8	5	3	4	4	3	2
Index of net-currency balance of the mining and metallurgical sector (1967 = 100)	100	115	123	139	100	126	181	219	151	194
Index of gross domestic investment (1967 = 100)	100	98	106	109	123	128	151	176	192	227

Source: Calculated on the basis of the data provided in table 21 and figures supplied by the Ministry of Energy and Mines.

/In fact,

In fact, national entrepreneurs requested that the goods that they produced locally should be included in this register, and imports were thus automatically prohibited.

(b) The greater share of wages and salaries in the Gross Production Value (an increase from 31% to 38%) and the distribution of equity and gains resulting from participation by workers in ownership and management of mining enterprises.

(c) Tax incentives to reinvestment of profits, which offset the "depletion-factor" facilities provided for in the Mining Code of the 1950s.

(d) Control of marketing of minerals by the State and the fact that freight was set aside for the national merchant navy.

(e) Nationalization of transnational enterprises in large-scale mining.

(f) The greater added value of mineral exports resulting from the extension of the country's refining capacity.

Nevertheless, the share of retained value in the Gross Production Value of the mining and metallurgical sectors stagnated somewhat towards the end of the first half of the 1970s and even fell considerably in the last two years of the period in question. This was due to the increase in imports of capital goods for a number of large-scale investment projects (Cuajone, Cerro Verde and the Ilo Refinery) and a greater volume of remittances of amortization and interest payments on loans received for that purpose, as well as the repatriation of capital and profits retained in expropriated enterprises. It is also possible that the retained value dropped as a result of higher refining charges abroad, in the particular case of Cuajone blister.

## 2. Distribution of mining and metallurgical GDP

This indicator enables us to assess the proportion of the product received by capital, labour and the State.

During the period 1967-1976 (see table 22) there was an extremely significant increase in labour income (wages and salaries and income from the establishment of the Mining Association), from 27% to 53%, and a substantial decrease in income from capital (profits, interest, royalties, depreciation, etc.) from 54% to 27%, as well as a level of State participation that was relatively similar to that existing prior to the mining legislation of the 1970s, namely, 19%. These results could be explained in the light of the following factors, among others:

/(a) Greater

(a) Greater wage pressures as a result of the mining workers' increased organization and mobilization capacity and establishment of the Mining Association. Throughout the period 1967-1976 it may be noted that earned income increased from 27% to 53% of GDP. There was a steady increase until 1975, the year in which the Peruvian economy entered a crisis. From 1976 onwards there was a considerable drop in participation by mining workers, which may be attributed to the hardening of the Government's labour policy and to the implementation of successive devaluations, which must have reduced the volume of resources received by the labour force even further.

(b) Tax incentives for reinvestment of earnings, instability of international prices, and an inadequate policy for channelling services to the State. In connexion with the latter, for example, although it is true that taxation increased, the State not only granted tax exemptions but based the share of the Mining Association on gross profits, which had an impact on taxable income.

### 3. Distribution of the profits of the mining and metallurgical sector

This indicator shows the share of capital (reinvestment reserves and distributable profits), of the State (income tax and contribution to the Institute of Mining Technology) and of labour (share in profits) in the overall profits of the mining and metallurgical sector.

It may be seen from table 23 that the mining enterprises reacted favourably to tax incentives to encourage reinvestment of earnings, retaining approximately 20% of total profits for that purpose. At the same time, it may be noted that the volume of resources obtained from income tax largely varied in accordance with changes in international prices, and the level of taxation was thus linked to the outcome of the financial year. Hence, for example, the drop noted from 1974 onwards. There were similar variations in labour participation through the machinery of the Mining Association.

In any event, the legislation of the 1970s increased State participation in total profits of the mining enterprises and promoted a greater level of saving through tax incentives, of which the enterprises in large-scale mining availed themselves in particular. All this undoubtedly reduced the margin of distributable profits.

/Table 23

Table 23  
 DISTRIBUTION OF THE PROFITS OF THE MINING AND METALLURGICAL SECTOR  
 (Percentages)

	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976
<u>Global profits</u>	<u>100.00</u>	<u>100.00</u>	<u>100.00</u>	<u>100.00</u>	<u>100.00</u>	<u>100.00</u>	<u>100.00</u>	<u>100.00</u>	<u>100.00</u>	<u>100.00</u>
Reinvestment reserves	15.53	24.50	21.91	11.97	21.12	23.91	19.35	21.99	19.58	19.84
Mining association	-	-	-	-	2.81	8.69	10.08	10.78	6.02	7.00
Technological Institute	-	-	-	-	0.02	1.10	1.20	0.82	0.58	0.79
Income tax	22.33	37.08	42.69	54.92	53.52	45.65	45.56	40.24	15.06	25.68
Distributable profits	62.14	38.42	35.40	33.11	22.53	20.65	23.81	26.17	58.76	46.69

Sources Calculated on the basis of table 21.

14. Transfer

#### 4. Transfer abroad of income from capital

This indicator is important in that the purpose of the legislation of the 1970s was to promote a greater degree of capitalization of surpluses in the Peruvian economy. Hence the incentives to reinvestment of profits and the readjustments in income-tax rates. Moreover, at certain points temporary rates were set with a view to securing part of the earnings resulting from exceptional market situations.

It may be seen clearly from table 22 that the ratio between the transfer of income from capital (interests, profits, depreciation, etc.) and cumulative gross domestic investment dropped considerably in the period 1967-1976. The reduction in question is attributable to the nationalization of subsidiaries of transnational corporations, implementation of a number of major investment projects, fiscal incentives to reinvestment, and the progressive nature of income tax.

#### 5. Net foreign-currency balance

This indicator expresses the result of the foreign transactions in goods and services conducted by the mining and metallurgical sector and reflects the volume of foreign currency contributed to the Peruvian economy. There was an increase of 94% in this contribution in the period 1967-1976, although a significant deterioration was noted in the years in which there was a downward trend in international prices (see table 22). However, the period for which data is available is not very representative in that there was no major change in the volume of exportable supply, whereas there was a considerable change in the volume of imports as a result of the starting of a number of investment projects. Consequently, the net foreign-currency balance basically depended on the "price factor", which falls outside the sphere of national decisions.

#### 6. Variations in domestic gross investment

This indicator reflects the reaction of the principal economic agents to the changes that took place in the legal and political framework of mining negotiations. Although it is true that the value of cumulative gross domestic investment more than doubled in the period 1967-1976, it is possible to distinguish two extremely clear periods (see table 22), one from 1967 to 1970, /in which

in which the value of investment remained virtually unchanged, and another from 1971 to 1976. During the former period there was a climate of uncertainty resulting from the questioning of the Toquepala Agreement by Parliament, the changes made in the promotional régime of the Mining Code and, lastly, the radical change of government in 1968. The only large-scale private investment project started from the 1970s onwards was the Cuacone Project, but that project was implemented under the former 1950 Mining Code. That investment represented nearly 97% of the new private investment made in the sector in the period 1971-1976 and approximately 70% of new mining investment.

The new mining legislation was not attractive to foreign investors. The aspects questioned the most were the "Mining Association" and the State monopoly of marketing. Despite its ineffectiveness, in practice the latter would be an important instrument for neutralizing the transnational corporations' transfer-pricing policies, a factor that had an impact on new investment.

Broadly speaking, the results of the new mining legislation may be regarded as positive in terms of the indicators selected, which in turn appears to reflect an improvement in the way in which the public apparatus is organized, with a capacity to generate, negotiate and manage large-scale investment projects, and to gain more independent access to the world market. This is an important asset that cannot be disregarded.

#### IV. NEGOTIATIONS WITH SOUTHERN PERU COPPER CORPORATION ON THE TOQUEPALA AND CUAJONE AGREEMENTS

Southern exploits the Cuacone and Toquepala copper deposits located in the Department of Moquegua near the Chilean border. The enterprise in question was established in 1952 with capital stock of US\$ 33 million. Of that capital stock only US\$ 19 million was actually contributed, since under the legislation of the 1950s it was possible to assess as a capital contribution deposits registered and granted as concessions. The principal shareholder of Southern is the American Smelting and Refining Company (ASARCO), which holds 51.5% of the capital stock. Cerro Corporation controls 22.25%, while Phelps Dodge and Newmont Mining control 16% and 10.25% respectively.

/A. THE

#### A. THE TOQUEPALA AGREEMENT

Southern's first large investment was in the Toquepala deposit. This deposit is located only 24 km to the south-east of Cuacone and 16 km from Quellaveco, making a geological triangle, which makes exploitation of each of the projects in question somewhat interdependent. The Toquepala mining agreement is therefore an important precedent as regards negotiation of the Cuacone Agreement.

Exploration of this mining area began a little before the 1940s. Cerro Corporation and, subsequently, Northern were the first enterprises interested in mining the area.

The Toquepala Agreement was signed on 11 November 1954 in accordance with the regulations governing marginal deposits set forth in the Mining Code. Subsequently, in April 1955, the Agreement was extended, with a specification being made as regards Southern's plans and rights concerning exploitation of the Cuacone deposit.

The definition of marginal deposits was not sufficiently explicit in the mining legislation of the 1950s. The general consensus was that for that purpose account should be taken of mineral content and its commercial value. However, it was questionable whether, on the basis of those criteria, Toquepala merited such treatment. What is certain is that the deposit was regarded as marginal and that the Agreement granted Southern considerable tax benefits. However, the technical report recommended that a clause concerning a reference price should be included,<sup>1/</sup> so that if the average prices recorded for each shipment were equal to, or higher than, the limit, Toquepala would lose its status as a marginal deposit.

It was important to have a standard of assessment, since status as a marginal deposit enabled investors to pay only between 10% and 20% of tax on profits payable under the Mining Code's tax régime.

---

<sup>1/</sup> It was proposed that the reference price should be the average copper quotation over the past 54 years.

/Toquepala was



Toquepala was given marginal status without account being taken of the treatment given to a number of similar mines in other countries. For example, at that time virtually all the opencast mines exploited in the United States produced a lower mineral content than that of Toquepala, and did not receive preferential treatment.

In the view of a number of analysts, "the fraudulent aspect of the Agreement lay in the fact that a deposit such as Toquepala, which had an average mineral content of 1% and was exploited in accordance with the opencast system, could not be regarded as marginal in any country... particularly in view of the fact that in the first year of operation the average copper content attained 1.7% and in the six following years the average copper content still reached 1.3%".<sup>1/</sup> The Toquepala Agreement was heavily criticized as soon as it took effect in 1954; however, it was only in August 1965, when an Investigative Commission was established in Parliament, that the Agreement was officially called into question. The Parliamentary Commission brought out its report in February 1966, drawing attention to a series of irregularities, including the following:

(a) The refusal to provide accounting data to the Investigative Commission;  
(b) The keeping of double, and even triple accounts. In that connexion, the report drew attention to the fact that there were considerable discrepancies between the balance submitted to the Tax Inspectorate of Peru and that submitted to the Securities and Exchange Commission of the United States. For example, in Peru the total expenditure made by Southern showed an overvaluation of US\$ 66 million in comparison with the accounting reports submitted in the United States (US\$ 135 million and US\$ 69 million, respectively, in the period 1960-1965).

(c) The assessment of reserves on the basis of the "depletion factor" represented an undervaluation in the United States. The actual reserve declared in Peru was US\$ 46 million, whereas only US\$ 1.5 million was declared in the United States.<sup>2/</sup>

---

<sup>1/</sup> Carlos Malpica, Los Dueños del Perú, Editorial Peisa, 1970.

<sup>2/</sup> See Malpica, ibid. It is important to point out that deductions owing to the depletion factor represented 10% of sales, while tax paid represented only approximately 7%. This comparison gives an idea of the level of the deductions in question in terms of resources not collected by the State. Sales amounted to US\$ 448 million between 1960 and 1965.

Despite these irregularities, the Parliamentary Commission did not recommend that any form of action should be taken against Southern and restricted itself to permitting the Executive to have Toquepala considered within the context of the Mining Code's general tax régime in the future, authorizing it to sign a new agreement. This new agreement was signed on 11 June 1968, it being stated that Quellaveco and Cuacone would be the subject of a new contractual relationship.

In addition to treatment as a marginal deposit, what was also being called into question in the renegotiation of the Toquepala Agreement was the desirability of maintaining the preferential treatment provided for under article 56 of the Mining Code. At the same time, the initiation of operation of new deposits by foreign investors, particularly of Cuacone and Quellaveco, depended on the way in which the Government solved the Toquepala problem. It is clear that the Government was concerned that reviewing an agreement signed in accordance with current legislation would have a negative impact on its international credibility. The stability provided during the period of recovery of investment was being called into question, and that would project a negative image to investors. This was why the amendments to the Mining Code's promotional régime were made in consultation with potential investors, particularly with Cerro de Pasco and Southern.

#### B. THE CUAJONE AGREEMENT

The Cuacone deposit was initially explored by Cerro de Pasco Corporation (referred to as Cerro, from now on) between 1952 and 1945. Southern, which was established in 1952 with the participation of Cerro, took over the rights to that concession and stepped up exploratory activities. Exploration of the deposit was completed in the middle of the 1960s, Boyles Brothers-Diamantina being given the responsibility for drilling. In 1966, once the drilling programme had been completed, study of the development of the mine was taken up, a task in which there was direct co-operation with the mining departments of Southern, ASARCO, Phelps Dodge and Newmont Mining.

/Formal negotiations

Formal negotiations on the exploitation of Cuacone began in June 1968, following the amendment of the Mining Code's promotional régime and four months prior to the installation of the Government of the Armed Forces. The negotiations lasted 18 months, as the Cuacone Agreement was signed in December 1969.

#### 1. Framework of the negotiations

The general framework of the Cuacone negotiations is highly complex. When these negotiations were taken up in June 1968 Peru was going through a series of political and economic crises. The Government had negotiated a number of stand-by arrangements with the International Monetary Fund (IMF) in order to alleviate the country's balance-of-payments problems, and the rescheduling of the external debt was in the process of being agreed upon. Parliament had given the Executive special powers to implement an emergency economic programme, in the context of which the negotiations with Southern had priority.

The coming to power of the new Government in October 1968 changed the framework within which the negotiations were being conducted and brought them to a temporary halt. The expropriation of the International Petroleum Company marked the beginning of a period of conflict with the United States, which delayed resumption of talks with Southern. The Government attempted to avoid being isolated internationally as a result of the pressure exerted by the United States. It wished to show international bankers that a number of foreign investors had confidence in Peru's future political and economic course. This concern strengthened Southern Peru's bargaining power.

Furthermore, the new administration had informed IMF of its intention to continue the economic stabilization programme agreed to by the preceding Government. Thus, in 1969 the Government fully honoured its commitments to IMF and fully complied with the terms of the agreement on multilateral refinancing of the public debt that was ultimately reached in November 1969.

/There is

There is no doubt that the intention of the Government of Peru to reach an agreement with Southern facilitated these financial negotiations. According to a number of the principal persons involved, who were interviewed by the author of this paper, the signing of the Cuajone Agreement was presented as a condition for securing the confidence and support of the international banks. Consequently, in the Cuajone negotiations there were not only factors relating to contractual conditions, but also both explicit and implicit forms of political pressure that affected the negotiators' initial goals. This would appear to provide a partial explanation for the discrepancies that may be noted between the clauses of the Agreement and the provisions of the mining legislation of the 1970s.

These discrepancies arise from the fact that the Cuajone Agreement was signed in accordance with the amendments made to the Mining Code in 1968 concerning the promotional régime for foreign investment, which met with the approval of the principal creditors and international companies. This may be seen clearly from the reference made in the Agreement to the 1968 provisions, to the effect that those provisions would facilitate financing of the project.

## 2. Guarantees that the Agreement provides to investors

The guarantees given to Southern in the Cuajone Agreement concern free disposition of foreign currency, freedom concerning marketing, tax stability, the applicability of preferential customs treatment, and full autonomy regarding the project's financial management. Nevertheless, with regard to the latter issue, the Government only undertakes to support financing negotiations, excluding the possibility of any endorsement.

Together with these guarantees, the State undertakes to facilitate utilization of natural resources essential to exploitation of the minerals in question,<sup>1/</sup> and to expropriate any adjoining land considered necessary.

---

<sup>1/</sup> The Agreement gives top priority to Southern with regard to utilization of water, since it regards exploitation of the deposit as being a national priority. This authorization applies regardless of whether or not the water resources are used for irrigation.

(a) Free disposition of foreign currency and project financing

(i) Foreign currency. This guarantee applied during the period of recovery of investment, it being established that the enterprise will always receive the most favourable exchange treatment. The machinery provided for this purpose is the following: sales income should be used to open two accounts in a United States bank, one devoted to recovery of investment, into which amortization and interest payments and other payments agreed upon in the relevant financing agreements may be made, and another account containing the surpluses remaining once deductions have been made and paid into the first account. Southern is absolutely free to draw on the account for recovery of investment in order to honour its commitments to creditors. The resources paid into the second account return to Peru through the Central Reserve Bank, which transfers them to an income account of Southern and makes out the corresponding foreign currency certificates, which may be freely disposed of in accordance with the current provisions of the exchange régime.<sup>1/</sup>

The Agreement clearly stipulates that the Central Reserve Bank of Peru must send an irrevocable authorization to a United States bank <sup>2/</sup> concerning the opening of the first account, specifying that that account is for receiving deposits belonging to Southern and for making payments in accordance with instructions given by that enterprise alone. The authorization also includes permission to draw monthly sums on the account, subject to the availability of funds and the planned schedule of remittances. The purpose of this irrevocable authorization is to avoid any particular interpretation being made of the provisions of the Mining Code, which authorize the State to monitor all the technical, economic, financial, administrative and commercial operations of the enterprises parties to agreements. The project's creditors and investors were thus protected against the possibility of a unilateral act on the part of the Government of Peru. The involvement of an extensive network of commercial banks, co-ordinated by Chase Manhattan, would facilitate an embargo on sales.

---

<sup>1/</sup> At the time when the Agreement was signed there was an exchange-control system, and this was the reason why Southern took precautions to ensure that it could honour its financial commitments.

<sup>2/</sup> It was subsequently decided that it should be the Chase Manhattan Bank, which has close links with the transnational mining corporations.

(ii) Financing of the project. Southern signed financing agreements in an amount of US\$ 404 million, and the final investment in the Cujajone Project was over US\$ 620 million.<sup>1/</sup> The breakdown of the credits was as follows (in millions of dollars):

1. Chase Manhattan Bank, in association with 28 banks <sup>2/</sup>	200
2. Long-term loans for equipment and materials	
- Export-Import Bank	55
- Wells Fargo Bank	16
- J. Henry Schroeder Banking	10
- Suppliers	49
<u>Subtotal</u>	<u>130</u>
3. Banco de Crédito del Perú (acting as an agent of Irving Trust Co., Manufacturer Hannover Trust and Marine Midland Bank)	15
4. IFC (World Bank)	10
5. Advances from Cujajone purchasers	54
<u>Total</u>	<u>404</u>

Future consumers signed long-term agreements in order to guarantee that they had at least 100 000 tons of copper per year; among those consumers, of particular note were purchasers from Japan and the United Kingdom, particularly Billiton Metallurgie, which was associated with Southern in the project. Southern controls 88.5% of the Cujajone project, and Billiton controls the remaining 11.5%.

Once financing in an amount of US\$ 404 million had been secured, the remaining US\$ 216 million was met by means of capital contributed by Southern (US\$ 191 million) and Billiton (US\$ 25 million) themselves.

As may be noted, there are many interests at stake in the Cujajone Agreement. From the middle of the 1960s onwards the trend was always to involve the greatest possible number of parties in the financing of mining projects.

---

<sup>1/</sup> The initial investment was originally estimated at only US\$ 355 million.

<sup>2/</sup> The Consortium includes Austrian, Belgian, Canadian, French, Italian, Japanese, United Kingdom and United States banks.

Earlier the transnational corporations made their own capital contributions and secured the remainder on the capital markets. Now co-operative strategies are based on involving not only the subsidiary and the host country, but also consumers, the chief commercial banks (many of which, such as Chase Manhattan and Morgan, have holdings in transnational mining corporations), influential international bodies (World Bank) and official agencies of the industrialized countries (Eximbank, Overseas Private Investment). These interrelationships spread the investment risk and make the possibility of expropriation more complex owing to the fact that the transnational corporations and financiers have replacement machinery ready in the event of any expropriation decision by the host Government.

The many interests involved in the financing of Cuaajone also meant that Southern had to ensure that it had adequate guarantees in the Agreement with the Government concerning free disposition of foreign currency. This important aspect of the Agreement is considered in the following section.

(b) Freedom with regard to marketing

The Agreement lays down only the general principles that must be complied with in the marketing process. These principles concern normal practice in international trade, Southern's freedom to refuse commercial terms less favourable than prevailing market conditions and, in general, free disposition of the products resulting from mining activities. The sole restriction on these guarantees, which however became extremely important subsequently, was that priority should be given to domestic requirements.

The Government's subsequent decision in 1970 to assume the monopoly of refining and marketing copper in all its forms affected the agreement with Southern as regards freedom concerning sales and the degree of processing of the ore. As already mentioned, Southern was only interested in producing blister in the foundry that it was operating at the port of Ilo. This situation changed in 1971 when the public enterprise, Minero-Perú, took up studies on the construction of the Ilo Refinery.

/The State

The State refinery was designed to produce 150 000 metric tons per year and was located halfway along the railway connecting the port of Ilo and Southern's foundry. The investment exceeded US\$ 60 million, and financing was obtained through long-term sales commitments to the Japanese group Mitsu-Furakawa. The refinery was designed to process Toquepala and Cuaajone copper.

This decision changed Southern's original plan, since it was in its interest to sell only blister, and affected the negotiations on the financing of Cuaajone owing to the fact that Southern had offered Cuaajone blister to refineries abroad. When Minero-Perú announced that its refinery would process a major portion of the Cuaajone material a number of financiers lost interest in the project. Following arduous negotiations, only Billiton, a subsidiary of Shell, and a number of United Kingdom and Japanese firms (Enfield Refining, Mitsui, etc.) were involved.

The consumers involved had to sign a toll contract with the Ilo Refinery and to agree that part of the copper should go to certain financiers in the form of blister.

At the same time, the existence of the State marketing monopoly obliged Southern to sign tripartite commercial agreements (Southern, clients and the State). In these agreements the State set aside for itself a controlling function and a share equal to 1.36% of the FOB value of sales. In actual fact this share amounted to a tax, since MINPECO did not provide any services to Southern and, moreover, never set up a system to monitor its operations.

The Cuaajone commercial agreements are not in line with the general principles laid down in the Exploitation Agreement. In the latter it is stated that freedom regarding marketing shall be granted provided that products are sold at the prevailing price on the market of destination, whereas the commercial agreements grant discounts to those financing the project.

However, the State's sole form of involvement in these tripartite agreements renders it unable to make protests in that connexion, which however does not mean that it may not request renegotiation of such agreements.

In short, although it is true that a guarantee is made regarding freedom of marketing, the course taken by politics made it necessary to reconsider

/various aspects



various aspects of the spirit of the Agreement, which may be regarded as progress with regard to the bargaining power of the Government of Peru, even although this is not always reflected in the commercial terms.

(c) Tax stability

During the period of recovery of investment the Southern Peru Copper Corporation was exempted from any additional tax created, or to be created, other than those agreed upon in the Agreement. This exemption includes any tax that could affect marketing.1/

In that context, a single tax rate equal to 47.5% of taxable income was set.2/ In the six years following the investment-recovery period the maximum rates in effect at the time of the signing of the Agreement are taken as a basis, which results in a tax of 54.5%.

Nevertheless, during those years Southern may continue to make deductions owing to the "depletion factor", which could possibly be applied to other investments.3/

In general, the Agreement authorizes Southern to make a series of deductions, a number of which are normal practice in such negotiations, such as the authorization to deduct losses resulting from exchange-rate fluctuations.4/

However, other exemptions and deductions aimed at making investment more attractive are granted. Such exemptions and deductions are, inter alia, the authorization to deduct from income losses incurred in the five years preceding the signing of the Agreement; tax exemption for gains resulting from the revaluation of assets; tax exemption in respect of financial transactions; and the authorization to regard expenditure on preparing and developing the mine as investment.

---

1/ The Agreement specifies taxes in respect of which no exemption may be granted, such as those relating to labour legislation and ground rent.

2/ Concerns taxes on legal entities and the tax payable by holders of foreign investment.

3/ It is considered that Southern has not given up the idea of exploiting Quellaveco, a concession that it has had for a long time. This possibility is strengthened by the fact that the Quajone infrastructure projects would facilitate its exploitation. In these circumstances, Southern would have the first option if the State were to offer that deposit as a concession once again.

4/ In the event that there are exchange-rate losses, they may be regarded as investment.

The guarantee of tax stability thus meets the requirements of the transnational corporations, in addition to fiscal incentives aimed at reducing taxable income.

(d) Preferential customs treatment

The Cuajone Agreement grants Southern exemptions from customs duties and facilities for the temporary importation, sale or re-exportation of the equipment and machinery imported during the construction stage.

Furthermore, what might be called a "competitiveness condition" for the acquisition of goods of national origin is also included. This condition releases Southern from any purchase that is not in line with international technical specifications and prices.<sup>1/</sup> However, preferential treatment for acquisitions from LAFTA countries is permitted, although this is not formalized in the Agreement.<sup>2/</sup>

Generally speaking, the exemptions granted in this category are also in line with the most recent practice in mining negotiation.

3. Governmental regulation and control machinery

A mining project of the scale of Cuajone involves a series of areas in public administration, which do not always have sufficient personnel or adequate infrastructure for fulfilling the supervision or monitoring functions assigned to them in the contractual instruments.

The Agreement involves the customs, tax and exchange administrations and all bodies concerned with the supervision, regulation and monitoring of investment programmes. The latter are concerned, inter alia, with the exploitation and conservation of natural resources; the development of physical and energy infrastructure; transport; and study of the impact of investment on regional development.

---

<sup>1/</sup> The "competitiveness condition" stipulates that the price of the national product shall not exceed 25% of the CIF value of the goods offered by foreign suppliers.

<sup>2/</sup> Governmental authorization is required when it is a question of goods produced in the country.

/In the

In the case of Cuajone, it could be noted that there was not always adequate co-ordination among bodies concerned with investment. Perhaps a marked sectoralism, which affected the establishment of an overall strategy for supervision of the project, outweighed other considerations. However, there is no study evaluating the degree of effectiveness shown by the public administration in the supervision and monitoring of responsibilities assigned to it under the Agreement.

A number of the forms of governmental regulation and control machinery that are customary in mining concession agreements are described below. The Cuajone Agreement stipulates a set of regulations and control norms and machinery aimed at evaluating project implementation and, where necessary, reorienting it. These norms and machinery are covered in the various clauses of the Agreement, and it is therefore desirable to classify them in terms of their purpose or goals.

(a) Investment

Within this category there are provisions relating to monitoring of investment programmes and inspection of projects. These regulations are of a technical character and are the responsibility of departments that go beyond the administrative sphere of the mining sector (regulations on water use; construction of railways, roads and tunnels; energy infrastructure, etc.).

This category also includes implementation norms relating to investment expenditure. For example, the minimum amount of investment for the first 18 months was set at US\$ 25 million, and a period of six and a half years was set for concluding engineering projects, on penalty of the lapsing of the concession. It is also stipulated that Southern has 18 months to secure financing and that at least 60% of the sums foreseen in the investment schedule must be invested.

(b) Economic and financial transactions

These forms of machinery concern the monitoring of transactions carried out in implementation of the project. Their nature depends on the type of transactions concerned. There are types of machinery for foreign-trade transactions (registration at the Central Bank of documents authorizing imports; administrative certificates relating to the importation of goods; permits to import goods duty free; special accounting registration of imported goods, etc.).

/Other forms

Other forms of machinery are of a financial nature, among which attention may be drawn to the following: restrictions on interest rates;1/ registration of credit transactions; the surrender of credits in foreign currency to the Central Bank for the purpose of exchange control, etc.

Lastly, there is accounting machinery, among which it is important to refer to accounting registration norms 2/ and accounting definitions.3/

---

1/ The interest rate may be no higher than the preferential rate prevailing on the market where the credit is obtained, plus a surcharge of 3% for administrative costs and external commissions, not including the commissions of the guarantor in the country.

2/ Establishment of a special ledger to register investment. In the ledger in question deductions owing to the depletion factor, depreciation and interest on financing must be recorded. This register is extremely important for governmental supervision, since the State must establish, by means of a resolution, the final amount of investment.

3/ For example, the definition of the concept of the "Investment Recovery Fund" is given, which according to the Agreement is as follows:

$$IRF = Da + Df + Am + It + R$$

Therefore:

IRF = Investment Recovery Fund

Np = Net profits after tax (Te - Tp)

Te = Taxable earnings

Tp = Tax on profits

Da = Depreciation of fixed assets

Df = Depletion factor (15% of the value of the products)

Am = Amortization of cost of preparing the mine

It = Interest on loans regarded as part of investment

R = Ordinary or extraordinary reserves of the enterprise

Taxable earnings are, in turn, defined by means of the following equation:

$$Te = Ic - Oc - Da - Df - Am - It$$

In which Ic is income and Oc is operation costs, and the remaining variables are as defined above.

//(c) Inspection

(c) Inspection of income

The Cujone Agreement establishes a "price condition", which must be met in marketing products. It is stipulated that prices may be no lower than those prevailing on the products' market of destination. It is, however, difficult to monitor compliance with that condition. The State would be required to make comparisons in the case of each shipment. Moreover, in the case of long-term sales contracts it is possible, as in the case of Cujone, for blister processing charges, for example, to be much higher or much lower than those prevailing on the market. For this and other reasons inspection of income is extremely complicated, which however does not justify the fact that MINPECO did not make an attempt to verify the prices declared by Southern.

In that respect, which is perhaps the most important aspect, the Peruvian experience cannot be regarded as very encouraging. For example, Southern was submitting tax returns with provisional bills,<sup>1/</sup> owing to the time lag relating to "price-fixing", stipulated in commercial agreements. This repeated practice violates tax administration norms, as well as export control provisions.

---

<sup>1/</sup> This practice was proved in reports of the Planning Office of MINPECO for 1976 and 1977.

## V. CHANGES IN MARKETING POLICY: BARGAINING POWER AND PROFITS

### A. MARKETING METHODS PRIOR TO THE 1970s

In Peru, as in other countries, international marketing methods were closely linked to the nature of the mining enterprises. Transnational enterprises in large-scale mining operated through their own subsidiaries, while the products of medium-scale mining were marketed through international traders, and those of small-scale mining were basically marketed through the Banco Minero. The principal commercial decisions of the transnational corporations and the international intermediaries cover all the main aspects of marketing, namely: (a) margins of difference between the purchase prices paid by the domestic producer and actual prices on the world markets of destination; (b) discounts agreed upon for processing costs and the desirability of hiring refining capacity abroad (toll); (c) the timing of shipments and the decision to exchange geographic supply locations in order to maximize the commercial yields of similar products (swaps); and (d) the destination of exports and the type of international quotations used as a reference.

Until the early 1970s the declared value of exports was generally based on what could be called a price for domestic producers. This price was set by commercial intermediaries and by the transnational corporations' home offices, and was not necessarily in line with market prices. The level of the price resulted from negotiation between the intermediary and producer, or from an apparent commercial transaction between the home office and the subsidiary. The State was virtually unable to verify whether or not exports were undervalued. Commercial agreements were registered as a matter of form because it was not possible to assess whether the processing charges agreed upon were appropriate; whether the due price was paid for the metal content of the mineral; or whether the price was actually in line with world market trends. Swaps were not declared by the commercial intermediaries and were generally transactions between agencies of one and the same firm.

Lastly, the destination of exports also depended on decisions taken by private companies because there were neither national export goals nor policies, in spite of the fact that fluctuations in the mining sector affected the general functioning of the economy.

### 1. Marketing in large-scale mining

The subsidiaries of transnational corporations, which in 1965 controlled 92% of copper exports, operated through commercial subsidiaries of the same transnational group or directly with their chief shareholders (see table 24). This situation permitted "transfer prices", which did not always take account of the profitability of the production unit.

Southern's commercial agreements, which were in effect up until the early 1970s, provided for a distribution of sales in proportion to the capital stock held by its shareholders. Thus, 51.5% was acquired by Southern Sales (a subsidiary of ASARCO); 22.25% by Cerro Brass (a subsidiary of the Cerro Corporation); 16% by Phelps Dodge; and 10.25% by Newmont Mining, which had transferred its commercial holdings to American Metal Climax (AMAX). AMAX, Phelps Dodge and Cerro Brass were direct consumers of Southern blister. Southern Sales, on the other hand, had toll agreements with refineries belonging to companies in Belgium and the Federal Republic of Germany (Hoboken and Norddeutsch Affinerie). The blister processed in the refineries in question was delivered to ASARCO, which sold it to Western European consumers.

In the case of Cerro de Pasco the refined copper was acquired by enterprises affiliated to Cerro Corporation and by consumers in the LAFTA countries, the United Kingdom and Japan. The blister was transferred to the subsidiary Cerro Brass (Cerro Copper and Brass), which was the major user.

### 2. Marketing in medium and small-scale mining

Enterprises in medium and small-scale mining, which in 1965 contributed approximately 7% to total sales (see table 24), generally operated through international intermediaries. The intermediaries in question basically had two ways of operating: (a) direct purchases through the setting of a price for national producers; and (b) consignment operations, in which they acted as sales agents for national producers. The chief commercial firms in Peru were Mauricio Hochschild Ltd.; Grace; Minerco, a subsidiary of Phibro; Tennant; Unión Metalúrgica; and Nachman S.A.

Table 24  
COPPER SALES BY EXPORT FIRMS  
(Thousands of tons of fine copper)

	1965		1968		1970	
	Volume	Percent age	Volume	Percent age	Volume	Percent age
<u>Producers/exporters</u>						
Southern Peru	117.2	65.6	132.1	66.1	129.8	62.1
Cerro de Pasco	38.0	21.3	44.2	22.1	43.9	21.0
Northern Mining	6.2	3.5	4.6	2.3	6.9	3.3
Minera Condestable	1.8	1.0	2.1	1.0	2.5	1.2
Minas de cobre Chapi	...	...	0.5	0.3	2.7	1.3
Minera Santander	...	...	0.3	0.2	0.3	0.1
Lampa Mining	1.7	1.0	...	...	...	...
Other	...	...	0.1	0.0	2.6	1.2
<u>Subtotal</u>	<u>164.9</u>	<u>92.4</u>	<u>183.8</u>	<u>92.0</u>	<u>188.7</u>	<u>90.3</u>
<u>Intermediaries</u>						
Mauricio Hochschild	6.9	3.9	8.8	4.4	13.0	6.2
Grace and Co.	5.4	3.0	5.5	2.8	3.5	1.7
Minerco	0.6	0.3	0.9	0.4	1.5	0.7
Tennant	0.2	0.1	...	...	0.2	0.1
Nachmann S.A.	...	...	...	...	0.2	0.1
<u>Subtotal</u>	<u>13.1</u>	<u>7.3</u>	<u>15.2</u>	<u>7.6</u>	<u>18.4</u>	<u>8.8</u>
<u>Government agencies</u>						
Banco Minera	0.6	0.3	0.8	0.4	1.8	1.0
<u>Total</u>	<u>178.6</u>	<u>100.0</u>	<u>199.8</u>	<u>100.0</u>	<u>208.9</u>	<u>100.0</u>

Source: General aspects of marketing Peruvian copper, Ministry of Industry and Trade, 1973.

/These intermediaries



These intermediaries and international traders endeavoured to obtain commercial advantages by securing the opportunity to purchase the output of medium and small-scale miners through financing facilities. In this way they obtained control of a number of mines and kept this type of producer "tied". At the same time, they formed export lots of concentrates of a widely varying quality, thus obtaining an additional advantage from the mixtures. In their transactions the timing of shipments did not change the price received for the exports. Even although the material remained in the warehouses, for statistical purposes it was already registered as an export at the original value of the transaction. The timing of the shipment depended on the profit that the intermediary expected to make on his international stock. A number of medium-scale producers exported directly, but they had little impact on exports as a whole.

Basically, small-scale mining operated with the Banco Minero. That body purchased ores to supply a number of small concentrating plants, which it managed directly; or it acquired concentrates, generally of a low copper content, which it exported to the world market. In general it acquired material of low commercial value, with a view to promoting small-scale mining, which was mixed with other material in order to achieve a higher copper content.

### 3. Transfer prices

Strictly speaking, the policy of "transfer prices" concerns trade between the subsidiaries and the home offices of one and the same transnational corporation, in a number of cases through its sales agencies. The intermediaries' transactions also included a way of transferring surpluses, but it was of a different nature. The intermediaries made their purchases at low prices and sold the product at a higher price, exploiting market fluctuations. The logic of these transactions was difficult to follow in practice, since the material was subject to a wide intermediary range.

All this was possible owing to the low level of processing of the products. It may therefore be asserted that the possibility of transfer pricing was closely linked to the characteristics of the concentrates and blister market. In general, these are less competitive markets than the market for refined copper, which facilitated price manipulation. The blister and concentrates market could be

/referred to

referred to as a discriminatory "oligopsony".<sup>1/</sup> The small number of purchasers great bargaining power resulting from the greater volume of information at their disposal regarding market trends and expectations.

In the marketing of concentrates and blister what is negotiated is processing charges, the way in which metal contents are to be paid for and the type of deductions to be made owing to impurities. The policy of transfer pricing consists in artificially inflating processing costs, in undervaluing the contents to be paid for, or in paying for only a portion of such contents, and in overestimating impurities. All these charges were negotiated discretely by the mining enterprises, and the State was entirely unable to control such transactions. The quotation period is also negotiable. In that connexion, there were normal commercial practices such as "price-fixing", whereby the purchasers set the exact date for quoting the price of the products, which has a decisive impact on the economic yield of sales.

Another approach promoted by the transnational corporations' transfer pricing policies is the granting of discounts, generally in connexion with apparently more competitive markets or in connexion with financing agreements. In addition to all these practices there is the practice of non-declaration of swap transactions and premiums obtained on certain markets.

It is not easy to determine exactly the economic scale of transfer of surpluses that doubtlessly existed. However, it may be assumed that one way of making an approximate assessment of the scale is to compare Peru's export prices with international prices. Obviously, such a comparison is relative. It may be argued that export prices do not necessarily follow market trends owing to the fact that shipments, which are agreed upon contractually, may largely coincide with periods when quotations are low. However, it may be assumed that since there are links between the subsidiaries and the home office of transnational corporations, and since the home offices are interested in reducing their supply costs, manipulation of the timing of shipments is a central component of marketing strategies. Furthermore, what was pointed out above with regard to clauses concerning price-fixing, swaps, premiums, etc., should not be forgotten.

---

<sup>1/</sup> For example, it is estimated that only 12 transnational enterprises controlled over 51% of copper-refining capacity. See: UNIDO, Mineral Processing in Developing Countries, December 1979.

This exercise is carried out in table 25, merely as an illustration, with a view to measuring such differences in the period 1968-1972. If in that period sales prices of Peruvian copper had been equal to the average annual cash sellers' quotation on the London Metal Exchange (LME), Peru would have received US\$ 40 million more each year, resulting in a potential loss of over US\$ 202 million over the five-year period. This potential loss is equal to almost one quarter of the value of investment in Cujone; practically the value of public investment in Cerro Verde; and 60% of the investment in the Ilo Refinery.

Table 25

ESTIMATES OF THE IMPACT OF TRANSFER-PRICING POLICIES ON COPPER

Years	Dollar price/metric ton fine		Dollar difference/metric ton fine	Exports (metric ton fine)	Potential loss (thousands of dollars)
	LME	Exportation			
1968	1 229.8	1 012.0	-217.8	206 531	44 982
1969	1 471.8	1 317.8	-154.0	200 523	30 880
1970	1 403.6	1 155.0	-248.6	215 572	53 591
1971	1 082.4	895.4	-187.0	193 518	36 187
1972	1 067.0	897.6	-169.4	218 467	37 008

Source: Prepared on the basis of official figures.

It is clear that this entire difference cannot be attributed to transfer-pricing policy. However, the illustrative value of this comparison consists in noting to what extent the level of processing of the ore has an impact on real income received by Peru.<sup>1/</sup>

<sup>1/</sup> In the years in question the output of refined copper was approximately 16%, on average, of total copper output. Blister and concentrates represented an average of 69% and 15%, respectively.

/In fact,

In fact, if the average price of Peruvian exports of refined copper is compared with the average price on the world market, the differences are considerably lower (see table 26). It may therefore be asserted that the lower the level of processing of products, the greater the possibility of transferring surpluses abroad.

Table 26

ESTIMATES OF THE IMPACT OF TRANSFER-PRICING POLICIES ON REFINED COPPER

Years	Dollar price/metric ton fine		Dollar difference/metric ton fine	Exports (metric ton fine)	Potential loss (thousands of dollars)
	LME	Exportation			
1968	1 229.8	1 198.2	-31.6	33 087	-1 045
1969	1 471.8	1 340.1	-131.7	32 067	-4 223
1970	1 403.6	1 405.6	+2.0	32 643	+652
1971	1 082.4	1 077.4	-5.0	28 549	-142
1972	1 067.0	1 076.5	+9.5	27 384	+260

Source: Prepared on the basis of official figures.

In short, transfer-pricing policies operated through undervaluation of metal content, particularly in the case of silver; manipulation of the shipment programme, making exports coincide with periods when quotations were low; implementation of price-fixing clauses and agreeing upon discounts; and non-declaration of swaps and premiums. All this was possible because the State was unable to identify the real marketing margin with which the transnational corporations and the commercial intermediaries were operating. Subsequently, entrepreneurial intervention by the State in marketing would make it possible to establish what this margin was and determine that it was desirable to raise the level of product processing.

/B. STATE

B. STATE INTERVENTION IN MARKETING OF MINERALS  
FROM 1972 ONWARDS

As already pointed out, the Government of Peru established the monopoly of marketing minerals in April 1970, setting up the Empresa Minera del Perú (Minero-Perú) in October of the same year to implement public investment projects and to market minerals.

This enterprise took up copper marketing on 14 October 1971, and in November of that year it was decided that the enterprise would inform the Ministry of Energy and Mines of the date upon which it would begin to be a party to marketing agreements (Supreme Decree No. 020). In the meantime, that Ministry approved private sales agreements and was in a position to reject such agreements if it felt that they were not desirable for Peru.

Minero-Perú effectively began to function in the first quarter of 1971. At that point it had succeeded in establishing a Marketing Department, which considered commercial agreements and tried to establish a number of direct government-to-government bilateral transactions. In 1971 Minero-Perú sold only 3% of the country's total mineral exports, in a value of US\$ 13 million. Nevertheless, it succeeded in gaining access to the market of the People's Republic of China and in concluding a long-term commercial agreement.

Lack of a real commercial infrastructure prompted Minero-Perú to conclude agency agreements with a number of international traders. The most important such agreement was that signed with Cerro Sales, which was in effect until December 1973.

In 1972 transactions in an amount of US\$ 232 million were carried out, which represented 55% of total national mineral exports. The transactions in question were carried out through authorized agents, and Minero-Perú was responsible for direct sales transactions in an amount of only US\$ 40 million, or 9% of total mineral exports.

At the end of 1973 exports controlled by Minero-Perú amounted to US\$ 499 million, which represented 88% of mineral exports. Of that total, Minero-Perú exported products at an approximate value of US\$ 149 million, representing 26% of total mineral exports, without intervention by its commercial agents.

/The business

The business management of the public enterprise made it possible to gain access to markets such as those of the People's Republic of China, the Soviet Union, Rumania, Czechoslovakia, North Korea, Bulgaria, Hungary and India. At the end of 1974 the sales of Minero-Perú amounted to US\$ 750 million, which meant that it controlled 91% of Peruvian mineral exports. Nevertheless, direct sales amounted to US\$ 520 million, which was equal to 63% of mineral exports.

Until 1973 marketing of minerals had been carried out by a specialized department of Minero-Perú. With the administrative reform of 1973 the Ministry of Trade was established to plan, direct, promote, co-ordinate and control activities relating to domestic and external marketing. This new administrative sector contained the sectoral marketing offices, as well as the State foreign-trade enterprises. In keeping with this new focus, the Empresa Pública de Comercialización de Minerales - Minero-Perú Comercial (MINPECO) was established. The separation of the Marketing Department of Minero-Perú gave rise to serious disagreements within the Government.1/ Towards the end of 1974 Minero-Perú was encountering serious difficulties owing to the losses it had made as a result of its venture into the futures market. Just before the organic law on MINPECO was promulgated (5 November 1974) a fire razed the Marketing Department of Minero-Perú. MINPECO came into being without any assets of its own.2/ MINPECO had to recompile its commercial data, without being able to establish exactly what commercial commitments it had taken over.

The sectoralization of foreign-trade activities exacerbated administrative co-ordination problems and gave rise to serious conflicts among the public enterprises themselves. It also prevented a coherent foreign-trade policy from actually coming into being.3/

---

1/ The Executive President of Minero-Perú resigned, stating that he was opposed to the loss of the marketing minerals by that public enterprise.

2/ The Commission responsible for transferring assets to MINPECO took over five years to establish what Minero-Perú should surrender, owing to the fact that the fire had destroyed virtually all the commercial data.

3/ The Ministry of Trade was responsible for marketing; the Ministry of Energy and Mines for output; the Ministry of Transport and Communications for transport and the Ministry of the Economy and Finance for financing. Since there was no intermediate co-ordinating body, that role had to be played by no lesser a body than the Council of Ministers.

Both the Organic Law on MINPECO and the Regulations on the Marketing of Mineral Products, which were adopted in September 1976, regarded marketing as a service to producers. For that reason the "target goal" of MINPECO is not to appropriate the margin existing between the domestic price and the real sales price on the international market, as the intermediaries do; for its services MINPECO receives a commission amounting on average to 1.7% of the FOB value of mineral exports, which is far below the agent's commission charged by intermediaries.<sup>1/</sup> Consequently, MINPECO's effectiveness should benefit the producers, both private and public. MINPECO thus acts as an agent, transferring losses and/or profits to the producers; however, owing to the fact that its commission is set in advance and that it is also compulsory, MINPECO does not have any greater incentive to raise its efficiency level.<sup>2/</sup>

Under this system, MINPECO carries out back-to-back transactions, in other words, it transmits to the national producer the terms and conditions agreed upon in a sales agreement with a foreign client in a purchase agreement with the producers. This agreement contains the terms agreed upon with the foreign purchaser, in addition to the above-mentioned commission for services rendered.

The other marketing method used by the enterprise is that of the "firm purchase". In this case, MINPECO acts on the same basis as any trader, although it enjoys the privileges that it derives from its status as a public enterprise. There is an apparent negotiation, but in practice the Peruvian producer must accept the terms and conditions offered by MINPECO. These conditions do not depend on the terms of sale obtained by the State enterprise. MINPECO may either gain or lose. These are the only transactions involving a real risk carried out by the enterprise; they represent under 10% of its total transactions.<sup>3/</sup>

---

<sup>1/</sup> It is estimated that the intermediaries' commission was generally over 4%.

<sup>2/</sup> In principle, any transaction is profitable for MINPECO, since the cost of the services it provides is so low that it would really be extremely difficult for transactions where it acts as agent to be unfavourable for it.

<sup>3/</sup> The "firm purchases" generally concern concentrates. MINPECO receives the material in its warehouses, assesses its value and pays the producer. Normally these are transactions in the category of medium and small-scale mining.

/Lastly, there

Lastly, there is a third way of operating, namely, the tender or public offer. The mechanism involved is similar to that of public bidding, in which a series of purchasers come forward and state privately the price they are willing to pay. Obviously, the sale is awarded to the party offering the best terms. This method is only used in exceptional circumstances, although recently it has been used more frequently owing to pressure exerted by private producers.

In addition, there are a number of special methods of establishing commercial contractual relationships, among which mention may be made of tripartite and third-party agreements and conversion or toll transactions.

In the tripartite agreements MINPECO intervenes as a controller and guarantor of State interests, signing the commercial agreements with the producer and with a foreign purchaser. These agreements are entered into in order to protect acquired rights or to involve potential purchasers in the financing of new mines.1/

"Third-party" agreements are those authorizing private contractual relationships, pending intervention by the State, by means of the expressed authorization of MINPECO. Such agreements have gradually been expiring.

Lastly, under toll or conversion agreements MINPECO hires the capacity of a foreign refinery to transform its "firm" purchases of concentrates into processed products.2/

Following the expropriation of Cerro de Pasco in 1973 and that of Marcona Mining in 1975, MINPECO had under its control all mineral exports of great economic significance. Nevertheless, its interference in "tripartite agreements" is not significant, as will be seen below. In practice it is restricted to collecting a commission, which could be regarded as an export tax, since MINPECO does not really provide any service to the contracting parties.3/

---

1/ The most relevant case is the one already considered, namely, Cuajone, although reference may also be made to the cases of the El Aguila mine and the agreements with Mitsui-Furukawa for the sale of material from the Ilo Refinery.

2/ The most important such agreements were the cases of Peñoles (Mexico) to refine lead and that of Outokumpu (Finland) to refine zinc concentrates.

3/ The Cuajone commercial agreements lay down sales at set prices contractually for 15 years. Southern Peru is responsible for all the logistic aspects of exportation. MINPECO's role would appear to be that of supervising the value of provisional and final bills, verifying the respective "price-fixing" agreed upon in the contract. However, it has not carried out this monitoring and has restricted itself to accepting the value declared by Southern and to collecting its commission.



The nature that the entrepreneurial intervention of the State took on had a negative impact on financing of output in medium and small-scale mining. MINPECO does not intervene in financing output, a question to which international commercial intermediaries attached great importance. Currently mining enterprises finance production through commercial and development banks (Banco Minero), which are generally not in a position to meet producers' demands with their resources. Prior to intervention by the State international traders provided financing both for working capital and for investment. MINPECO, on the other hand, grants advances only up to 50% of the estimated net value of the product deposited in its warehouses, whereas the Banco Minero does so up to approximately 60% of the estimated value. Furthermore, MINPECO has to resort to the banking system (advance accounts of the commercial banks) and use a portion of its own funds in order to finance pre-export advances.<sup>1/</sup> The financing costs are charged to the producers, and no commission is collected for the service rendered. However, in accordance with the legal requirements MINPECO must pay producers on set dates, outside the period of rotation of its receipts, and it therefore has to resort to complex negotiations with the bank in order to fulfil its limited financial responsibilities, experiencing periodic imbalances that affect its profitability.

In general, it may be asserted that State intervention in foreign trade in minerals lacks an adequate financial policy that would have made it possible to exploit greater commercial bargaining power in order to promote development of new investment projects and to provide resources to be used as working capital for medium and small-scale producers.

MINPECO has not succeeded in establishing an adequate international marketing infrastructure either. Although it is true that it has a number of offices abroad (London, New York, São Paulo and the People's Republic of China), these offices are not in a position to conclude sales and/or receive payments abroad. This is because they are not registered as commercial subsidiaries or agencies but as the "adjunct offices" of embassies. They only function as contact offices, either to provide information concerning the export supply existing or in order to expedite

---

<sup>1/</sup> The average value of these requirements has a minimum of US\$ 70 million and a short-term maximum of approximately US\$ 90 million per year with a financial cost of between US\$ 8 million and US\$ 10 million.

/payments. Thus

payments. Thus, MINPECO cannot venture onto the world market, works with a more or less well-defined set of clients and has undertaken little to distribute its exports over a wider area.<sup>1/</sup>

In addition to these limitations there is a lack of personnel trained in foreign trade and a lack of goals and explicit policies that would make it possible to orient, and evaluate the performance of, marketing enterprises.<sup>2/</sup>

### C. COPPER MARKETING ACCORDING TO LEVEL OF PROCESSING

#### 1. Copper concentrates

It was demonstrated in chapter I that Peru's share of world demand for copper concentrates was approximately 5% in 1977 (whereas its share of demand for copper concentrates was 12% on the United States market, 6% in Sweden, 3% in Japan and 2% in the Federal Republic of Germany).<sup>3/</sup> Within this context it may be noted that in the period 1975-1978 there was an increase in the importance of the markets of Japan and Western Europe, to the detriment of the United States market, and that the socialist countries' market was instable.

It should also be added that, quite apart from the efforts that MINPECO could have made to diversify its markets, the experience gained shows that copper concentrates were acquired by a limited number of clients. Between 1972 and 1977 the 5 principal purchasers consistently acquired over 70% of exports (see table 27).

---

<sup>1/</sup> This is due to a series of bureaucratic inflexibilities imposed on it by the Central Government. MINPECO had difficulty in establishing its own scale of remuneration, did not have any budgetary autonomy, etc. Among the more strict or harmful restrictions, mention may be made of the need to resort to a Supreme Resolution, endorsed by the President of the Republic, in order to make each of the sales-campaign trips or to make any contacts abroad.

<sup>2/</sup> The goals in question are defined only in an extremely general and vague manner as "Maximización del ingreso de divisas, diversificación de mercados y sustitución de intermediarios" (see Problemática y Política del Sector Comercio, Ministry of Trade, Lima, 1977).

<sup>3/</sup> Excluding the socialist countries (see table 14).

Table 27

MAIN PURCHASES OF COPPER CONCENTRATES  
(Percentages)

Purchasers	1972	1975	1976	1977
ASARCO	27.1	34.7	34.5	14.0
Mitsubishi	15.2	-	-	-
Noranda Sales	14.3	-	-	-
Minera Santa Rosalia	9.4	-	-	-
Korea Daesong	-	27.3	-	-
Toho Zinc	5.1	-	-	-
Mitsui	-	5.2	38.7	30.7
Associated Metals	-	9.7	5.0	11.5
Metalimpex	-	7.5	4.8	8.0
Razno Import	-	-	17.0	26.3
The first five	71.1	84.4	100.0	90.5

Source: Exportaciones peruanas: Estructura Empresarial de nuestros compradores. Ministry of Trade, July 1978.

MINPECO gained access to its principal markets through direct sales to consumers, particularly in the socialist countries. However, sales to commercial intermediaries increased from 1975 onwards (see table 28). Nevertheless, this increase is not justified from the point of view of prices. It may be seen from table 29 that there is not a great difference between the average annual prices obtained from the two types of buyers. If the intermediaries had paid the average consumer price, only US\$ 4.2 million more would have been obtained during the period 1975-1978.<sup>1/</sup>

<sup>1/</sup> This comparison is made only in order to provide an example, since concentrates are dissimilar and it is therefore impossible to draw further conclusions from the point of view of prices. In any event, the similarity in prices would appear to indicate that no preference was given to the sale of higher quality concentrates.

/Table 28

Table 28

DISTRIBUTION OF EXPORTS OF COPPER CONCENTRATES,  
BY TYPE OF CLIENT

(Millions of dollars and percentages)

Type of client	1975	1976	1977	1978
Total value	30.0	20.2	21.0	60.3
Consumers	93%	86%	89%	78%
Intermediaries	7%	14%	11%	22%

Source: Prepared on the basis of figures supplied by MINPECO.

Table 29

COPPER CONCENTRATES: EXPORT PRICES BY TYPE OF CLIENT

Years	Consumers US\$/metric ton fine	Intermediaries US\$/metric ton fine	Difference US\$/metric ton fine	Potential gains/ loss a/ (Millions of US\$)
1975	331.9	113.8	218.1	4.1
1976	381.7	333.1	48.6	0.4
1977	331.2	475.9	144.7	0.6
1978	310.4	303.4	7.0	0.3

Source: Prepared on the basis of data supplied by MINPECO.

a/ Concerns what would have been received or gained if the intermediaries had paid the consumer price, with a view to replacing intermediaries.

2. Agreements concerning the distribution and processing of Cuaajone blister

(a) Distribution of sales

The contracts in question were signed by the Government of Peru (Minero-Perú), Southern Peru Copper Corp., the partners and the financiers of the Cuaajone Project in September 1974. The latter loaned resources in order to make up the amount required for investment in exchange for a future sales commitment.<sup>1/</sup> Under these agreements the distribution of Cuaajone copper was calculated on the basis of an estimated annual output of 170 000 short tons of blister, which were allocated as follows:

- (i) The first 100 000 short tons to the project financiers, distributed as follows:
- |  |        |       |
|--|--------|-------|
| Japanese group (Mitsubishi Metal Corporation, Dowa Mining Co. Ltd., Mitsui and Smelting Corp., Sumitono Metal Mining and Furukawa Company) | 30 000 | (30%) |
| <u>English group</u>   |        |       |
| Imperial Metal Industries  | 15 000 | (15%) |
| British Insulated  | 15 000 | (15%) |
| Enfield Rolling  | 10 000 | (10%) |
| Billiton Metallurgie of the Netherlands  | 30 000 | (30%) |
- (ii) Surplus production, or 70 000 short tons or more, to the partners of Southern Peru Copper Corp.

This distribution resulted from a formula reconciling the new concerns of the Government of Peru and those of the project partners and financiers. As seen in chapter III on the Cuaajone Agreement, the marketing agreements were signed after the copper refining and marketing monopolies were decreed. This situation had an impact on the original sense of the Agreement, since investors were interested only in processing blister locally. When the State intervened investors and financiers had to negotiate compromise formulas with the Government. These compromise formulas are apparent in the Agreements under consideration.

<sup>1/</sup> See chapter III/2.

Ultimately, agreement was reached that approximately 60% of the first 100 000 short tons should be processed as blister and sold to the project's financiers, who had agreed to participate in exchange for refining the material in question in their own plants or through toll contracts with other refineries.<sup>1/</sup> The remaining 40% would be processed in the form of cathodes in the State-owned Ilo Refinery. For that purpose Enfield Rolling of the United Kingdom and Billiton Metallurgie of the Netherlands signed toll contracts with the refinery in question for 25% and 75%, respectively, of the cathodes.

Moreover, the partners of Southern Peru Copper Corp., signed a similar contract with the Ilo Refinery to transform into cathodes the output exceeding the 100 000 short tons of blister to which they are entitled under the above-mentioned agreement. The marketing agreements cover periods of 5 to 7 years in the case of Southern partners and 15 years in the case of project financiers.

(b) Blister quotations

The international quotation taken as a reference is that of the London Metal Exchange (LME),<sup>2/</sup> which is used in paying for remunerable content, from which the deduction agreed upon contractually must be subtracted. Cuacone blister is paid for on the basis of approximately 99.6% copper, in accordance with the LME quotation for electrolytic copper bars, subject to the "price-fixing" machinery.

This machinery operates as follows: the price-fixing period corresponds to the two months following the arrival date of the shipments; within this period the purchaser may set the date of quotation for no more than 25% of the shipment on one day or 60% in one week. For this purpose the purchaser takes the official LME quotation and communicates to MINPECO and Southern Peru the corresponding figures.<sup>3/</sup> With this machinery it is the purchaser who sets the quotations in respect of which the agreed deductions will be made in order to arrive at the price

---

1/ The Japanese group takes a total of 50%, and the other half goes to British Insulated and Imperial Industries in equal parts. Any expansion of the Ilo Refinery is subject to renegotiation of these agreements, to a higher level of processing of Toquepala material, or to exploitation of adjoining deposits.

2/ This quotation was equal to the so-called "Peruvian Producers' Quotation" laid down in the General Mining Act.

3/ Owing to the time difference, the quotation of the preceding day is applicable, since the communication must be made before mid-day.

of blister.<sup>1/</sup> This clause was accepted under pressure from the partners and financiers of the project, in spite of the fact that Minero-Perú had adopted the policy of not signing contracts with such machinery. Moreover, within CIPEC this clause is regarded as being detrimental to the commercial interests of the copper-exporting countries. It is obviously a clause that favours the purchaser, since, should it be decided that the clause should not be implemented, the purchaser may opt for a "marketing discount", entitling him to a discount of 1% of the value of the copper quotation, set on the basis of a base year selected by the purchaser. This machinery could actually be considered in the context of "transfer pricing" policies for the benefit of foreign enterprises, partners or project financiers.

It is not feasible to monitor "price-fixing", since it corresponds to each of the shipments made by Southern Peru. A special monitoring process should therefore be set up within MINPECO, with ongoing registration of price fixing, in order to ascertain whether the quotations included in each of the provisional and final bills actually correspond to the "fixing" announced. Such monitoring would be essential for MINPECO in order to avoid the undervaluing of exports and to ascertain whether the commission it receives is correct or not. However, such a system has not been put into operation.

Once the basic reference quotation has been set, the processing charges are deducted. In the case of the Japanese Group, these charges were negotiated in yen, with the result that costs have risen dramatically owing to the successive revaluations of the yen. Such agreements are therefore the most inappropriate for the Peruvian economy. In addition to such charges, periodic adjustments must be made owing to changes in labour costs, and in the cost of fuel and electric power in the industrialized countries' processing plants. Readjustments are made for each 1% variation in these cost components. In short, the Cuajone blister quotation agreed upon in the commercial agreements concerning the financing of the project clearly favoured the financiers, who thus received an additional return on their capital.

---

<sup>1/</sup> The prices set must be communicated by telex. If problems arise, the prices set are transmitted to the International Metal Company, which acts as a depositary of the prices, guaranteeing that they were actually set.

### 3. Marketing of blister

Southern controls not only blister output resulting from the processing of Cuajone ore, whose sales were considered in the preceding section, but also that resulting from its old Toquepala mine. Between 1975 and 1978 there was a sharp increase in the exportation of Cuajone blister, which reached the level of approximately 75% of the total in the last year of the period in question, to the detriment of Toquepala blister (25%) (see table 30). Southern's Toquepala and Cuajone projects are governed by different legal frameworks as regards marketing. The frameworks in question are, respectively, the 1971 General Mining Act and the 1950 Mining Code. The difference is that MINPECO only has direct powers in respect of exports from Toquepala and acts merely as a guarantor of State interests in the case of Cuajone (as seen in the preceding section). It is therefore interesting to compare the business management of Southern Peru with regard to Cuajone and that of MINPECO with regard to sales of Toquepala, since the two operate according to different marketing standards, although with similar products.

Table 30

#### DISTRIBUTION OF EXPORTS OF BLISTER (Thousands of metric tons and percentages)

Exportable supply, by enterprise	1975		1978	
	Vol.	%	Vol.	%
CENTROMIN	12.4	14	-	-
Southern Peru	74.7	86	134.4	100
Toquepala	74.7	86	33.5	25
Cuajone	-	-	100.9	75
<u>Total</u>	<u>87.1</u>	<u>100</u>	<u>134.4</u>	<u>100</u>

Source: Prepared on the basis of data supplied by MINPECO.



The first difference noted is in the geographic destination of the exports, which is connected with the marketing agreements signed. In the period 1976-1978 MINPECO increased the socialist countries' share in its sales of Toquepala blister from 80% to 92%, the most important clients being the People's Republic of China and Yugoslavia (64% and 20% of total sales in 1978) (see table 31). On the other hand, Southern's exports of Cuacone were largely centred on the markets of the capitalist countries (91% of total sales in 1978). The main markets were those of the United Kingdom (13%), the United States (35%) and Japan (37%).

The difference in the regional focus of the destination of the exports is reflected in their commercial yield. Table 32 shows that there are major price differences. In 1978 the price difference might have been greater if the Toquepala strike had not taken place.<sup>1/</sup> If the total volume of exports of Cuacone blister had been sold even at the average price obtained by MINPECO for Toquepala blister, Peru could have received an additional sum of over US\$ 17 million over the period 1976-1978.

The lower return on Southern's exports is attributable to the refining charges negotiated with the Cuacone project's partners and financiers, when marketing agreements linked to financing were signed. The most obvious example is that of the refining charges negotiated with the companies belonging to the Japanese Group (Mitsubishi Metal Corp., Dowa Mining, Mitsui Mining, Sumitomo Metal and Furukawa). As already stressed, these processing charges were negotiated in yen and were linked to Japan's inflation indexes.<sup>2/</sup>

---

<sup>1/</sup> The paralysation of Toquepala resulted in a considerable lag in the MINPECO shipment programme. This made it necessary to deliver material on the basis of 1977 quotation periods in 1978, with the result that it was not possible to take adequate advantage of the upward trend that was beginning on the world market. Moreover, MINPECO had to sell 65 000 additional metric tons of concentrates owing to the strike at the Ilo Foundry, all of which resulted in lower returns than anticipated. On the other hand, Cuacone blister took advantage of the most favourable quotation periods and yet could not achieve the same returns, which shows how unfavourable the agreements were under market conditions.

<sup>2/</sup> Publications with established reputations, such as the Metal Bulletin, have stated that the levels of the processing charges negotiated with Japan were absurd, given the market conditions. MINPECO apparently tried to renegotiate the charges in question, but without any significant results.

Table 31

DESTINATION OF EXPORTS OF TOQUEPALA AND CUAJONE BLISTER (1976-1978)  
(Thousands of metric tons of fine copper and percentage of total)

Purchasing country	1976		1978	
	Toquepala	Cuajone	Toquepala	Cuajone
Total (in thousands of metric tons fine)	22.0	17.4	33.5	100.9
Percentage of total:				
Federal Republic of Germany	-	-	1.19	-
Belgium	-	6.89	-	3.36
Spain	-	5.74	-	2.18
France	-	-	-	0.89
United Kingdom	3.63	32.18	-	13.47
Netherlands	-	9.21	-	-
United States	16.37	-	4.77	34.98
Japan	-	45.98	2.40	36.60
Subtotal	<u>20.00</u>	<u>100.00</u>	<u>7.17</u>	<u>91.48</u>
People's Republic of China	70.90	-	63.88	-
Hungary	-	-	3.00	-
German Democratic Republic	9.10	-	-	-
Soviet Union	-	-	4.47	-
Yugoslavia	-	-	20.29	8.52
Subtotal	<u>80.00</u>	-	<u>91.64</u>	<u>8.52</u>

Source: Prepared on the basis of data supplied by MINPECO.

Table 32

BLISTER: COMPARISON AMONG AVERAGE FOB TOQUEPALA AND CUAJONE EXPORT PRICES  
(US\$/metric ton)

	1976	1977	1978
Toquepala	1 253.8	1 191.0	1 175.1
Cuajone	1 133.0	1 062.6	1 137.2
Difference	120.8	128.4	37.9
Potential loss (thousands of dollars) a/	2 101.9	11 183.6	3 824.1

Source: Prepared on the basis of data supplied by MINPECO.

a/ Represents what Peru would not have received if the total of Cuajone exports had been sold at the average price of Toquepala blister marketed by MINPECO.

/An estimate

An estimate of what Peru would not have had to pay if the processing charges for Cuacone blister had been similar to those for Taquepala blister may be found in table 33. The potential losses during the period 1976-1978 amounted to over US\$ 21 million, of which 48% and 23%, respectively, is accounted for by Japanese buyers and the partners of Southern Peru Copper Corp.

It is clear that the processing charges for Cuacone blister are prejudicial to Peru's commercial interests and are largely responsible for the price discrepancies existing among products that do not obtain similar marketing terms, even although they are similar. The other factors to which the differences in commercial returns are attributable are the existence of "price-fixing clauses", which were explained earlier, and the discounts granted to the partners and financiers of the Cuacone project. It is therefore odd that MINPECO, being a relatively better seller than Southern, does not take advantage of its greater effectiveness in the country's interest, since for its services it collects from Southern a meagre commission of approximately 2%, thus contributing to that foreign enterprise's private capital formation.

The State is also responsible for marketing CENTROMIN blister, whose prices were considerably higher than those obtained by Southern for Cuacone blister. Table 34 gives the price differences, which exceeded US\$ 911 and US\$ 792 per ton, respectively, in 1976 and 1977. However, the comparison could be called into question owing to the fact that the volume of exports of CENTROMIN blister was low and the exports were sold under exceptional market conditions. This is true in the case of 1977, when exports amounted only to 1 500 metric tons and were sold to traders who channelled them to Portugal and Japan. But the argument is not as valid in the case of 1976, when there was a comparative improvement in the London market prices. In addition there is the fact that the two products were sold on the basis of this reference quotation. Moreover, the volume argument takes on less importance, if account is taken of the fact that the volume of exports of CENTROMIN blister equalled 40% of exports of Cuacone blister.

Despite MINPECO's limitations relating to commercial infrastructure, that enterprise succeeded in raising its direct sales to consumers from 66% in 1975 to 88% in 1978, thus reducing the intermediaries' relative share (see table 35). The prices obtained in direct sales were considerably higher than those obtained in sales through intermediaries (see table 36).

Table 33

ESTIMATE OF THE POTENTIAL LOSS RESULTING FROM THE REFINING CHARGES  
NEGOTIATED FOR CUAJONE BLISTER

(Thousands of dollars)

	1976	1977	1978	1976-1978
(1) <u>Japanese group</u> - total	1 088	3 927	5 396	10 411
Average annual processing charges US\$/metric ton	229	255	305	...
Difference compared with Toquepala US\$/metric ton	136	137	198	...
(2) <u>United Kingdom group</u> - total	472	1 037	2 096	3 605
Average annual processing charges US\$/metric ton	143	155	191	...
Difference compared with Toquepala US\$/metric ton	50	37	84	...
(3) <u>Billiton of the Netherlands</u> - total	-	2 583	85	2 668
Average annual processing charges US\$/metric ton	-	202	202	...
Difference compared with Toquepala US\$/metric ton	-	84	95	...
(4) <u>Patterns of Southern</u> - total	-	-	4 901	4 901
Average annual processing charges US\$/metric ton	-	-	209	...
Difference compared with Toquepala US\$/metric ton	-	-	102	...
(5) Total <u>a/</u>	1 560	7 457	12 478	21 585

Source: Prepared on the basis of data supplied by MINPECO.

a/ The estimate indicates the refining charges that Peru would not have paid if the Cuacone blister had been sold at the average processing rates negotiated by MINPECO for Toquepala blister.

Table 34

BLISTER: COMPARISON BETWEEN THE AVERAGE FOB EXPORT PRICES  
OF CENTROMIN AND CUAJONE  
(US\$/metric ton)

	1976	1977
CENTROMIN	2 044	1 854
Cuajone	1 133	1 062
Difference	911	792
Potential loss (thousands of dollars) a/	15 851	68 983

Source: Prepared on the basis of figures supplied by MINPECO.

a/ Represents what Peru would not have received if the total of Cuajone exports had been sold at the average price of CENTROMIN blister marketed by the State.

Table 35

DEGREE OF COMMERCIAL INTERMEDIATION IN STATE SALES OF BLISTER  
(Thousands of metric tons fine and percentages)

	1975		1978	
	Volume	%	Volume	%
<u>Consumers</u>	57.3	66	29.4	88
Toquepala	52.3	60	29.4	88
CENTROMIN	5.0	6	-	-
<u>Intermediaries</u>	29.8	34	4.1	12
Toquepala	22.4	26	4.1	12
CENTROMIN	7.4	8	-	-

Source: Prepared on the basis of data supplied by MINPECO.

Table 36

BLISTER: AVERAGE PRICES PAID BY INTERMEDIARIES AND CONSUMERS  
(US\$/metric ton fine)

	Consumers	Intermediaries	Difference
<u>1978</u>			
Toquepala	1 179.4	1 144.2	35.2
<u>1977</u>			
Toquepala	1 196.1	1 183.2	12.9
CENTROMIN	-	1 854.5	-
<u>1976</u>			
Toquepala	1 247.0	1 372.4	-125.4
CENTROMIN	2 123.9	1 905.0	218.9
<u>1975</u>			
Toquepala	1 044.0	999.2	44.8
CENTROMIN	1 960.1	1 882.3	77.8

Source: Prepared on the basis of data supplied by MINPECO.

4. Marketing of refined copper

In the period 1975-1978 the share of public enterprises in exports of refined copper dropped from 61% to only 37%, owing to growth in Southern's transactions (see table 37). Once production has begun at the Cuajone deposit, in 1977 Southern controlled 71% of exports of refined copper, but the following year the State's share rose owing to production of Cerro Verde cathodes, and Southern's share dropped to 63% of national exports. Nevertheless, owing to the State monopoly of copper marketing, through MINPECO the State controlled 58% of national exports (see table 38).

Table 37

EXPORTS OF REFINED COPPER  
(Thousands of metric tons)

Exports	1975		1978	
	Volume	%	Volume	%
CENTROMIN wirebars	18.0	42	26.0	16
Cerro Verde cathodes	-	-	28.0	17
CENTROMIN cathodes	2.3	6	5.1	3
MINPECO toll	5.6	13	1.1	1
<u>State subtotal</u>	<u>25.9</u>	<u>61</u>	<u>60.2</u>	<u>37</u>
Cuajone cathodes	-	-	69.1	42
Toquepala cathodes	16.5	39	34.4	21
<u>Southern subtotal</u>	<u>16.5</u>	<u>39</u>	<u>103.5</u>	<u>63</u>
<u>National total</u>	<u>42.4</u>	<u>100</u>	<u>163.7</u>	<u>100</u>

Source: Prepared on the basis of data supplied by MINPECO.

Table 38

REFINED COPPER: STATE TAXATION ON MARKETING  
(Percentages)

	1975	1978
(a) <u>MINPECO</u>	<u>100</u>	<u>58</u>
<u>Wirebars</u>	42	16
<u>Cathodes</u>	58	42
(b) <u>Southern</u>	-	<u>42</u>
<u>Cathodes</u>	-	42
(c) <u>Total</u>	<u>100</u>	<u>100</u>

Source: Prepared on the basis of data supplied by MINPECO.

/(a) Value

(a) Value retained as a result of copper refining

In the 1970s the Government of Peru placed greater emphasis on achieving a higher level of copper processing. This policy led to the construction of the Ilo Refinery for processing Cuacone and Toquepala blister.<sup>1/</sup>

Minero-Perú, which was responsible for the administration of the refinery, signed toll contracts with Southern in 1974.<sup>2/</sup> These agreements took effect in July 1975, the month in which the refinery began to function. The economic terms obtained by State, which are negotiable every two years, may be regarded as extremely favourable, since they are generally above average market costs. This made it possible to guarantee that the refinery would be profitable and to obtain an additional surplus from Southern Peru. Income from refining charges, negotiated during the period 1975-1978, exceeds US\$ 78 million, and it is estimated that there was an exceptional income of US\$ 18 million.<sup>3/</sup> (See table 39.)

Nevertheless, the value retained <sup>4/</sup> as a result of processing Southern's copper has been dropping considerably in recent years, owing to the fact that the charges for refining Cuacone blister by far exceeded average market costs (see table 40). In the period 1976-1978 the retained value dropped from 76% to only 48% of the total refining charges paid by Southern (see table 41). This reduction is attributable to the increase in refining charges paid abroad for processing the Cuacone blister agreed upon in the context of project financing. There is no doubt whatsoever that it is necessary to expand the Ilo Refinery in order to process all Toquepala and Cuacone blister. However, such expansion would largely depend on renegotiation of the commercial agreements with the financiers of the Cuacone Project.

---

<sup>1/</sup> Previously there was only the La Oroya refinery, which was constructed by Cerro de Pasco Corporation in 1947 in order to obtain electrolytic copper.

<sup>2/</sup> Southern rented the plant capacity of the Ilo Refinery for processing a volume laid down contractually in the commercial agreements concerning project financing.

<sup>3/</sup> Exceptional income is understood as the income received in excess of average costs in the international markets.

<sup>4/</sup> The value retained as a result of refining, which is equal to charges paid in the country, is defined here as a percentage of total refining charges.



Table 39  
ESTIMATION OF INCOME FROM THE ILO STATE REFINERY  
(Thousands of dollars)

	1975	1976	1977	1978
<u>Toquepala</u>				
Blister consignments (metric tons)	35 297	76 607	46 341	42 499
Refining charges (US\$/metric ton)	196.7	205.7	234.5	230.0
Value (thousands of dollars)	6 942.9	15 751.0	10 866.9	9 774.7
<u>Cuajone</u>				
Blister consignments (metric tons)	-	2 419	76 378	67 463
Refining charges (US\$/metric ton)	-	205.7	234.5	230.0
Value (thousands of dollars)	-	497.5	17 910.6	15 516.4
<u>Paipote a/</u>				
Blister consignments (metric tons)	-	5 000	-	-
Refining charges (US\$/metric ton)	-	190.0 <sup>b/</sup>	-	-
Value (thousands of dollars)	-	950.0	-	-
<u>Total</u>	<u>6 942.9</u>	<u>17 205.5</u>	<u>28 777.5</u>	<u>25 291.1</u>

Source: Prepared on the basis of data supplied by MINPECO.

a/ Chilean blister purchased by Minero-Perú.

b/ Estimated in terms of the spot market value.

Table 40  
REFINING COSTS PAID BY SOUTHERN  
(US\$/metric ton)

	1976	1977	1978
Ilo Refinery	206	234	230
Foreign refinery			
(a) Negotiated by MINPECO for Toquepala blister	93	118	107
(b) Negotiated by Southern for Cuajone blister	183	205	231
Average on the international spot market	190	180	140

Source: Prepared on the basis of data supplied by MINPECO.

Table 41  
VALUE RETAINED IN THE COUNTRY AS A RESULT OF THE REFINING  
OF BLISTER BY THE SOUTHERN COPPER  
CORPORATION  
(Thousands of dollars)

	Value		
	1976	1977	1978
A. <u>Total refining charges (B+C)</u>	21 496	52 652	52 243
B. <u>Payments to the Ilo refinery</u>	16 256	28 777	25 291
Cuajone	498	17 910	15 516
Toquepala	15 758	10 867	9 775
C. <u>Payments to foreign refineries</u>	5 240	23 875	26 952
Cuajone	3 194	17 859	23 372
Toquepala	2 046	6 016	3 580
D. <u>Retained value (B/A)</u>	76%	55%	48%

Source: Prepared on the basis of data supplied by MINPECO.

/In fact,

In fact, it is not easy to prepare sales strategies for world markets subject to constant changes in international quotations. If greater profits are to be obtained, in line with the logic of the calculation made, it would be necessary to have an extensive trade infrastructure and rapid and systematic information, which are assets that MINPECO does not have at its disposal. As already indicated, that enterprise basically operates on the basis of "regular delivery" agreements, in order to guarantee a relatively stable inflow of foreign currency. A bold strategy would be to take advantage of market fluctuations by taking a more speculative approach to commercial transactions; to take advantage of the urgent need of certain consumers or traders and to sell at a premium; or to carry out timely swap transactions. All that calls for a sound understanding of trade and flexibility in handling financial matters in order to be able to take effective action on the futures markets. In short, once again it is clear that the goals assigned to MINPECO were out of proportion with both the resources and the powers allocated to it.

(b) Destination of exports and assessment of the endeavour to diversify markets

In the period 1975-1978 the greater proportion of exports of refined copper went to the markets of Western Europe, the United States and Japan (33%, 30% and 17%, respectively, in 1978), although an increase in sales within LAFTA was noted (from 7% in 1976 to 15% in 1978). There was a considerable decrease in exports to the socialist countries (from 26% in 1975 to 5% in 1978), and volumes were unstable (see table 42).

Until 1975 national supply was made up solely of CENTROMIN wire rod and Toquepala cathodes.<sup>1/</sup> Construction of the Ilo Refinery and the initiation of production of Cerro Verde cathodes considerably expanded the national supply of refined copper.

Sales on the LAFTA and Western European markets were more advantageous than those on the markets of the socialist countries and the United States. For example, in 1978 the two former markets were outstanding owing to the average price of US 58.5 cents and US 58.0 cents per pound respectively, whereas on the latter two markets the average price was only US 56.4 cents and US 55.4 cents per pound.

---

<sup>1/</sup> In 1975 output of Toquepala cathodes was very low, since the Ilo Refinery began to operate in that year. In actual fact, the cathodes in question were produced in the last quarter of the year.

Table 42

DESTINATION OF EXPORTS OF REFINED COPPER

(Thousands of tons)

	1975		1976		1977		1978	
	Volume	Per- cent age	Volume	Per- cent age	Volume	Per- cent age	Volume	Per- cent age
<u>Western Europe</u>	<u>8.2</u>	<u>22</u>	<u>62.3</u>	<u>52</u>	<u>71.5</u>	<u>43</u>	<u>53.9</u>	<u>33</u>
Centromin wirebars	1.8	5	2.9	2	3.4	2	4.0	2
Cerro Verde cathodes	-	-	-	-	1.2	1	2.2	1
Centromin cathodes	-	-	-	-	-	-	-	-
Toquepala cathodes	6.4	17	58.3	48	25.8	15	16.6	10
Cuajone cathodes	-	-	1.1	1	41.1	25	31.1	20
<u>Socialist countries</u>	<u>9.4</u>	<u>26</u>	<u>20.9</u>	<u>17</u>	<u>19.5</u>	<u>12</u>	<u>8.3</u>	<u>5</u>
Centromin wirebars	9.4	26	19.7	16	16.8	9	6.6	4
Cerro Verde cathodes	-	-	-	-	-	-	1.7	1
Centromin cathodes	-	-	1.2	1	2.7	1	-	-
Toquepala cathodes	-	-	-	-	-	-	-	-
Cuajone cathodes	-	-	-	-	-	-	-	-
<u>United States</u>	<u>11.2</u>	<u>30</u>	<u>21.2</u>	<u>18</u>	<u>43.7</u>	<u>26</u>	<u>48.0</u>	<u>30</u>
Centromin wirebars	1.0	2	-	-	2.5	1	1.8	1
Cerro Verde cathodes	-	-	-	-	4.6	3	14.8	9
Centromin cathodes	-	-	-	-	-	-	-	-
Toquepala cathodes	10.0	28	19.0	16	12.0	7	3.2	2
Cuajone cathodes	-	-	2.2	2	24.6	15	28.2	18
<u>Asia (Japan)</u>	-	-	<u>7.4</u>	<u>6</u>	<u>16.0</u>	<u>3</u>	<u>27.2</u>	<u>17</u>
Centromin wirebars	-	-	-	-	-	-	-	-
Cerro Verde cathodes	-	-	-	-	-	-	11.0	7
Centromin cathodes	-	-	-	-	-	-	-	-
Toquepala cathodes	-	-	7.4	6	6.0	3	6.4	4
Cuajone cathodes	-	-	-	-	-	-	9.8	6
<u>LAFTA</u>	<u>8.0</u>	<u>22</u>	<u>7.7</u>	<u>7</u>	<u>26.3</u>	<u>16</u>	<u>25.0</u>	<u>15</u>
Centromin wirebars	5.8	16	6.9	6	14.3	8	13.3	8
Cerro Verde cathodes	-	-	-	-	-	-	-	-
Centromin cathodes	2.2	6	-	-	1.6	1	3.5	2
Toquepala cathodes	-	-	0.8	1	10.4	7	8.2	5
Cuajone cathodes	-	-	-	-	-	-	-	-
<u>Total exports</u>	<u>36.7</u>	<u>100</u>	<u>119.5</u>	<u>100</u>	<u>167.0</u>	<u>100</u>	<u>162.4</u>	<u>100</u>

Source: Prepared on the basis of data supplied by MINPECO.

/(c) Replacement

(c) Replacement of intermediaries

MINPECO made a major effort to reduce the level of commercial intermediation. Whereas in 1975 53% of refined copper was sold to "intermediaries", by the end of 1978 such sales had dropped to only 31%. This effort may be seen basically in exports of Toquepala cathodes and CENTROMIN wirebar, since the "intermediaries" had a major share of exports of Cerro Verde cathodes (see table 43).

Table 43

DEGREE OF COMMERCIAL INTERMEDIATION IN STATE EXPORTS OF  
REFINED COPPER

(Thousands of metric tons)

	1975		1978	
	Volume	%	Volume	%
<u>Consumers</u>	16.2	47	61.0	69
CENTROMIN wirebars	13.9	40	22.6	26
Cerro Verde cathodes	-	-	4.0	4
Toquepala cathodes	2.3	7	34.4	39
<u>Traders</u>	18.3	53	27.1	31
CENTROMIN wirebars	4.1	12	3.1	4
Cerro Verde cathodes	-	-	24.0	27
Toquepala cathodes	14.2	41	-	-

Source: Prepared on the basis of data supplied by Minero-Perú Comercial.

Currently, MINPECO's offers may be compared with those made by direct consumers. In making the sales in question, MINPECO seeks the most appropriate marketing method, giving priority to the goal of maximizing the inflow of foreign currency. In general, the transactions in question are carried out in small lots under favourable market conditions. When there is a "buyers market", the intermediaries sometimes offer better purchasing terms, owing to the fact that they have urgent procurement requirements in order to meet their commercial commitments. However, such situations always arise from emergencies and do not constitute a general rule, since they run counter to the intermediaries' logical economic needs.

/MINPECO's experience

MINPECO's experience in replacing intermediaries in the period 1975-1978 may be regarded as positive. The endeavour to replace intermediaries may be assessed by comparing the respective prices obtained and the resulting values. According to this illustrative calculation, in the period considered the assumed gain for Peru from direct sales in comparison with sales to intermediaries was nearly US\$ 3 million (see table 44). Consequently, although at certain points it may be profitable to use intermediaries, the figure indicated shows that, at least over a period of four years, the result was that consumers paid higher prices. This is undoubtedly due to the fact that their requirements are more stable, unlike the intermediaries' needs.

(d) Comparison of real prices and world market prices

Another, equally relative, method of measuring the effectiveness of State marketing is to compare the average FOB prices of exports with average market prices. The difference would indicate to what point the public enterprise had the necessary market capacity to take advantage of the most favourable markets. In reality, MINPECO has a very small margin of freedom to do this, since its sales strategy is geared to national producers' production plans, particularly those of CENTROMIN and Southern. Paralysis of, or a lag in, their programmes can have a considerable impact on exports returns.

The exercise carried out in respect of Toquepala and Cerro Verde cathodes and CENTROMIN wire rod shows a negative difference of approximately US\$ 3.5 million for the entire period 1976-1978 (see table 45). While once again acknowledging the relative nature of the comparison, it could be asserted that MINPECO could have increased its income further in the period under consideration. The fact that it did not do so is not attributable solely to that public enterprise, but also to the marketing system in existence, since, inter alia, the calculations in question suggest that there was not adequate co-ordination between the export strategy and production programming.

(e) Comparison between State marketing and marketing by Southern

Lastly, it is interesting to compare the sales term for Toquepala and Cuajone cathodes, since they are the result of different marketing methods. As already explained, the long-term agreements signed for Cuajone cathodes include discounts to project partners and financiers (US\$ 20/metric ton) and are subject, as is blister, to price-fixing clauses.

Table 44

ESTIMATION OF THE VALUE OF SUBSTITUTION OF INTERMEDIARIES  
(Dollars per ton, thousands of dollars and tons)

	Price paid by consumers	Price paid by intermediaries	Difference	Volume	Estimated value
<u>CENTROMIN wirebars</u>					
1975	1 216	1 220	4	13 900	-55 a/
1976	1 327	1 666	339	29 300	-9 932
1977	1 297	1 259	38	34 300	1 303
1978	1 274	1 258	16	22 600	361
<u>Toquepala cathodes</u>					
1975	1 130	1 225	95	2 300	-218
1976	1 260	1 112	148	76 500	11 322
1977	-	-	-	-	-
1978	-	-	-	-	-
<u>Cerro Verde cathodes</u>					
1975	-	-	-	-	-
1976	-	-	-	-	-
1977	1 100	1 111	11	1 000	-11
1978	1 300	1 300	-	4 000	-
<u>Gain/loss</u> (over the entire period)	-	-	-	-	2 770

Source: Calculated on the basis of data supplied by MINPECO.

a/ The minus sign indicates what would not have been received if the intermediaries had paid the average price paid by consumers.

Table 45

COMPARISON BETWEEN EXPORT PRICES AND REFERENCE MARKET QUOTATIONS  
(In US\$/metric ton and thousands of dollars gained/lost)

	1976	1977	1978
(1) Toquepala cathodes	56.5	57.6	56.4
Reference quotation <u>a/</u>	59.2	56.5	58.9
Potential gain/loss (+)	-4 938.0	+1 366	-1 954
(2) Cerro Verde cathodes	-	50.6	59.0
Reference quotation <u>b/</u>	-	51.0	58.0
Potential gain/loss (+)	-	-50	+636
(3) CENTROMIN wire rod	60.5	58.6	57.7
Reference quotation <u>c/</u>	60.9	56.5	58.9
Potential gain/loss (+)	-323	+1 750	-699
(4) Total gain/loss (+)	-4 615	+3 066	-2 017

Source: Prepared on the basis of data supplied by MINPECO and official quotations.

a/ Equivalent to the LME Wirebar Settlement, less 1.15 lb/metric ton for the cost of transforming cathodes into wirebars in 1976. In the following years the point of reference is LME Wirebar Settlement.

b/ Equivalent to the LME Wirebar Settlement quotation, less a discount of 10 lb/metric ton, since the cathodes in question were of an inferior quality to that of conventional electrolytic cathodes.

c/ Equivalent to the LME Settlement for bars.

/The considerably



The considerably different market conditions mean that it is not possible to draw definitive conclusions from the comparison between the prices of the two products. The price comparison for 1977 reveals that if the Cuajone cathodes had been sold at the average prices obtained by the State, Peru would have received an additional US\$ 4 million. In 1978, on the other hand, if the Cuajone cathodes had been sold at the average prices of Toquepala, Peru would have lost approximately US\$ 2.4 million (see table 46). This does not necessarily mean that the terms agreed upon by MINPECO were inferior to those negotiated by Southern. The lower price is attributable to non-compliance with Southern's delivery schedule, owing to labour disturbances, and to the postponement of quotas corresponding to the last months of 1978. The Ilo Refinery, which did not meet the requirements of its output schedule, also bears responsibility for this lower price. Moreover, in the year in question the final deliveries were made to the contractors of the Ilo Refinery (Mitsui-Furukawa), whose commercial agreements provided for discounts of US\$ 112 per ton.<sup>1/</sup>

Table 46

COMPARISON BETWEEN FOB PRICES FOR TOQUEPALA AND CUAJONE CATHODES  
(US\$/metric ton of refined copper)

Markets	1977		1978	
	Toquepala	Cuajone	Toquepala	Cuajone
LAFTA	60.0	-	56.6	-
Western Europe	57.7	55.2	55.1	59.4
Socialist countries	54.0	-	-	-
United States	57.4	54.4	56.8	56.6
Japan	53.7	-	58.9	63.3
<u>Weighted average</u>	57.6	54.9	56.4	58.8

Source: Prepared on the basis of data supplied by MINPECO.

<sup>1/</sup> See MINPECO, Evaluación de los Objetivos Específicos del Programa de Comercialización 1978. Planning Office, April 1978, p. 19.