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A.I.D. NPA No. 641-T-604
A.I.D Program No. 641-0125

**PROGRAM
GRANT AGREEMENT
BETWEEN
THE REPUBLIC OF GHANA
AND
THE UNITED STATES OF AMERICA
FOR
TRADE AND INVESTMENT**

Dated: SEPTEMBER 30, 1992

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PROGRAM GRANT AGREEMENT

Grant Number 641-0125

Dated: September 30, 1992

Between

The Republic of Ghana ("Grantee")

and

The United States of America, acting through the
Agency for International Development ("A.I.D"),

Together referred to as the "Parties."

Article 1: The Program

SECTION 1.1: Definition of the Program. The Trade and Investment Program (T.I.P.) ("the Program") is a five year program consisting of economic assistance to address the constraints that limit private sector investment and production for export which will enable Ghana to increase non-traditional exports. The Program will result in firmly establishing Ghana as a competitive exporter of non-traditional products by 1997. To accomplish this the Program aims to assist the public and private sectors in overcoming the policy, technical, and institutional constraints limiting non-traditional export growth. The Program described in this Agreement will effect policy and regulatory reforms to:

- (1) improve the policy framework for trade and investment;
- (2) reduce regulatory and administrative transaction costs which have impeded the operations of export firms; and
- (3) improve the export support services provided by the public sector to exporting firms.

The Program is complemented by a Project component, an integral part of the Program and governed under a separate Project Grant Agreement (A.I.D. Project No. 641-0126), which will provide assistance to the public sector institutions in implementing the policy and regulatory reform conditionality required under the Program and assistance to the private sector to improve the institutional and technical

capacity of firms to export non-traditional products.

SECTION 1.2: Incremental Nature of Program Funding. A.I.D.'s contribution to the Program will be provided in increments, the initial one being made available in accordance with Section 1.3 of this Agreement. Subsequent increments will be subject to availability of funds to A.I.D. for this purpose, and to the mutual agreement of the Parties, at the time of a subsequent increment, to proceed. It is planned that over the life of the Program, A.I.D. will contribute \$60,000,000 under this Agreement and \$20,000,000 under the complementary Project Grant Agreement (A.I.D. Project No. 641-0126).

SECTION 1.3: The Grant. Pursuant to the Foreign Assistance Act of 1961, as amended, A.I.D. agrees to grant the Government of the Republic of Ghana under the terms of this Agreement, not to exceed eight million United States dollars (\$8,000,000) ("Grant"). It is planned that the Grant will be disbursed to the Grantee upon satisfaction of the conditions precedent to disbursement.

Article 2: Conditions Precedent to Disbursement

SECTION 2.1. Conditions Precedent. Prior to the disbursement of \$ 5 million under the first tranche of program funds, or to the issuance by A.I.D. of documentation pursuant to which disbursement will be made, the Grantee will, except as the Parties may otherwise agree in writing, furnish to A.I.D., in form and substance satisfactory to A.I.D.:

- 1) Specimen signatures of the responsible officers for TIP on behalf of the Ministry of Finance and Economic Planning (MFEP) and the Ministry of Trade and Tourism (MOTT); and the name of the banks and numbers of the bank accounts to be used to transfer US dollars during implementation.
- 2) Evidence that the Trade and Investment Oversight Committee (TIOC) and the Trade and Investment Management Unit (TIMU) have been established along with an action plan and proposed budget for 1993.
- 3) Evidence that the Trade Policy Unit (TPU) of the Ministry of Trade and Tourism has been established, along with an action plan and proposed budget for 1993.
- 4) Evidence that the Foreign Investment Advisory Service (FIAS) has been requested to assist Ghana in developing an Investment Promotion Statement (IPS).
- 5) Evidence that non-traditional exporters are allowed to sell foreign exchange at the highest legal exchange rate.

- 6) Agreement that the GOG will formulate a strategic plan for the promotion of exports.
- 7) Evidence that the GOG has established and funded an environmental monitoring plan to monitor the possible impact of program activities on the environment.

SECTION 2.2. Conditions Precedent to Second Disbursement. Prior to the disbursement of \$13.0 million under the second tranche of program funds, the Grantee will, except as the Parties may otherwise agree in writing, furnish to A.I.D., in form and substance satisfactory to A.I.D.:

- 1) An action plan and proposed budget for TIMU for 1994 and disbursement data for 1993.
- 2) An action plan and proposed budget for the TPU for 1994 and disbursement data for 1993.
- 3) Evidence that the Investment Promotion Statement (IPS) is being developed.
- 4) An approved Strategic Plan for the promotion of exports with an action plan and proposed budget for 1994.
- 5) Evidence that the environmental monitoring plan is being implemented.
- 6) A Strategic Plan to streamline export processing and export clearance documentation.
- 7) Evidence that regulations for a streamlined duty and tax relief system for imported inputs used by direct and indirect exporters have been issued.
- 8) Evidence that the GOG has published i) a handbook of import and export procedures; ii) exchange control regulations; and iii) direct foreign investment regulations for foreign participation.
- 9) Evidence that the requirement making first time exporters pre-pay their foreign exchange surrender requirements has been eliminated.
- 10) Evidence that all minimum price guidelines for foreign exchange retention have been eliminated.

- 11) Evidence that the Ghana Export Promotion Council requirement for Internal Revenue Service Certificate, for first time exporters, as a prerequisite to exporting is eliminated.
- 12) Evidence that income tax benefits have been extended to export marketing firms, as well as producers.
- 13) Evidence that the Investment Code has been changed to reflect the elimination of most fiscal incentives which will become transparent as a part of tax code; GIC approval of investments has been removed; and the recommendations of the Private Sector Advisory Group (PSAG) have been implemented.
- 14) Evidence that the Bank of Ghana has established an Export Credit Guarantee Fund (ECGF) administered in accordance with an agreed framework.
- 15) Evidence that the following recommendations of the Private Sector Advisory Group (PSAG) regarding investment have been approved:
 - i) The negative list that reserves areas for domestic investment be reduced to four.
 - ii) The minimum foreign capital requirement for a joint venture with a Ghanaian partner be reduced to \$10,000.
 - iii) The minimum foreign capital requirement for investment in export trading be waived.
 - iv) The registration of firms be simplified by the adoption of a new and single form, the GH/92/01 and registration is through the Registrar General's Department. The GOG shall introduce and support legislation to abolish the manufacturing license and repeal the Manufacturers Industry Act of 1971 (Act 356) so that no registration and approval from GIC will be required.

SECTION 2.3. Conditions Precedent to Third Disbursement. Prior to the disbursement of \$17.0 million under the third tranche of program funds, the Grantee will, except as the Parties may otherwise agree in writing, furnish to A.I.D., in form and substance satisfactory to A.I.D.:

- 1) An action plan and proposed budget for 1995 for TIMU along with disbursement figures for 1994.

- 2) An action plan and proposed budget for 1995 for TPU along with disbursement figures for 1994.
- 3) An action plan and proposed budget for 1995 for the implementation of the export promotion strategy along with disbursement figures for 1994.
- 4) Evidence that the GOG has approved a FIAS-approved Investment Promotion Statement along with an action plan and proposed budget for 1995 to implement the strategy.
- 5) Evidence that the Strategic Plan to streamline export processing and documentation requirements is being implemented.
- 6) Evidence that the streamlined system of duty and tax relief for exporters is being implemented.
- 7) Evidence that the environmental monitoring plan is being implemented.
- 8) Evidence that the Export Credit Guarantee Fund is being implemented.
- 9) Evidence that GOG has developed and initiated a review of Ghanaian commercial codes, business regulations, lending instruments and other relevant legal and commercial documentation in the context of international conventions and standards regarding commercial transactions, corporate and tax regulation, and financial disclosure requirements.

SECTION 2.4: Conditions Precedent to Fourth Disbursement. Prior to the disbursement of \$13.0 million under the fourth tranche of program funds, the Grantee will, except as the Parties may otherwise agree in writing, furnish to A.I.D., in form and substance satisfactory to A.I.D.:

- 1) An action plan and proposed budget for 1996 for TIMU along with disbursement data for 1995.
- 2) An action plan and proposed budget for TPU for 1996 along with disbursement data for 1995.
- 3) An action plan and proposed budget for the implementation of the export promotion strategy for 1996 along with disbursement data for 1995.
- 4) An action plan and proposed budget for implementing the IPS for 1996 along with disbursement data for 1995.

- 5) Evidence that the Strategic Plan to streamline export processing and documentation requirements is being implemented.
- 6) Evidence that the Export Credit Guarantee Fund is being implemented.
- 7) Evidence that the streamlined system of duty and tax relief for exporters is being implemented.
- 8) Evidence that the environmental monitoring plan is being implemented.
- 9) Evidence that the GOG has proposed regulatory reform and, where possible, begun implementation of recommendations of the review commissioned pursuant to Section 2.3(9) of this Agreement.

SECTION 2.5: Conditions Precedent to Fifth Disbursement. Prior to the disbursement of \$12.0 million under the fifth tranche of program funds, the Grantee will, except as the Parties may otherwise agree in writing, furnish to A.I.D., in form and substance satisfactory to A.I.D.:

- 1) An action plan and proposed budget to TIMU for 1997, along with disbursement figures for 1996.
- 2) An action plan and proposed budget for TPU for 1997, along with disbursement figures for 1996.
- 3) An action plan and proposed budget for 1997 for the implementation of the export promotion strategy, along with disbursement figures for 1996.
- 4) An action plan and proposed budget for implementing the IPS along with disbursement data for 1996.
- 5) Evidence that the streamlined system of duty and tax relief for exporters is being implemented.
- 6) Evidence that the Strategic Plan to streamline export processing and documentation requirements is being implemented.
- 7) Evidence that the environmental monitoring plan is being implemented.
- 8) Evidence that the Export Credit Guarantee Fund is being implemented.

SECTION 2.6: Notification. When A.I.D. has determined that the conditions

precedent specified in Sections 2.1, 2.2, 2.3, 2.4, and 2.5 have been met, it will promptly notify the Grantee.

SECTION 2.7: Terminal Dates for Conditions Precedent

Except as A.I.D. may otherwise agree in writing, the terminal dates for meeting the conditions to disbursement of the five tranches of the Grant shall be as follows:

- (1) For the first tranche, four months from the date of this Agreement;
- (2) For the second tranche, twelve months from the date of the notification that the conditions specified in Section 2.1 have been met;
- (3) For the third tranche, twelve months from the date of the notification that the conditions specified in Section 2.2 have been met;
- (4) For the fourth tranche, twelve months from the date of the notification that the conditions specified in Section 2.3 have been met;
- (5) For the fifth tranche, twelve months from the date of the notification that the conditions specified in Section 2.4 have been met;

If all the conditions specified with respect to a tranche of the Grant have not been met within the period specified above, or such other date as A.I.D. may specify in writing, A.I.D., at its option, may terminate this Agreement by written notice to Grantee.

Article 3: Disbursement

SECTION 3.1: Disbursement of the Grant. After satisfaction of the conditions precedent, the Grantee may request A.I.D. to disburse funds under the Grant. After review and approval of the documentation submitted by the Grantee, A.I.D. will promptly deposit the funds in the Separate Dollar Account designated by the Grantee.

SECTION 3.2: Date of Disbursement. Disbursement of funds by A.I.D. will be deemed to occur on the date A.I.D deposits the funds in accordance with Section 4.1.

Article 4: The Separate Dollar Account

SECTION 4.1: Utilization. Funds disbursed under the Grant shall be deposited in a Separate Dollar Account in a United States bank, which account shall be established solely for such funds. Such funds shall not be commingled with funds from any other source. Except as A.I.D. may otherwise determine in writing, such funds will be auctioned through the Inter-bank System administered by the Bank of Ghana.

SECTION 4.2. Interest on the Separate Dollar Account. It is the sense of the Parties that funds disbursed under the Grant will, to the extent possible, be held by the Grantee in an interest-bearing account, pending actual utilization of such funds. All interest earned by the Grantee on such account shall be used only for the purpose permitted under Section 4.1.

SECTION 4.3: Books and Records. The Grantee will maintain financial records, in accordance with generally accepted accounting principles, to assure compliance with this Agreement. Such records shall be maintained for at least three years after the date of last utilization by the Grantee of funds from the Separate Dollar Account and shall be made available upon request for examination at any reasonable time by authorized representatives of A.I.D. Financial records shall be suitable, at a minimum, to document the withdrawal and disposition of funds from the Separate Dollar Account for those purposes permitted under Section 4.1.

SECTION 4.4: Reports. Unless A.I.D. agrees otherwise in writing, the Grantee will furnish to A.I.D., in form and substance satisfactory to A.I.D., quarterly reports on the uses of funds from the Separate Dollar Account. The first report will be due three months after the initial disbursement under the Grant and subsequent reports shall be furnished to A.I.D. at ensuing three-month intervals until the Grantee has satisfactorily reported on the uses of all funds in the Separate Dollar Account. In the report, the Grantee shall certify that books and records relating to the use of the funds in the Separate Dollar Account are being maintained or caused to be maintained, in accordance with Section 4.3 of this Agreement. Within sixty days of receiving each report, A.I.D. will advise the Grantee whether or not the reported uses of the Separate Dollar Account are acceptable in accordance with Section 4.1. Within thirty days of being notified by A.I.D. that a reported use of the Separate Dollar Account is unacceptable, the Grantee shall redeposit in the Separate Dollar Account an amount equal to any funds applied to the unacceptable use.

Article 5: Trust Fund Appropriation

SECTION 5.1: Trust Fund Appropriation. The Grantee agrees, during the life of the Program, to appropriate annually \$1.0 million equivalent in local currency from the Government of Ghana's General Budget to A.I.D. to fund a portion of the local currency operational costs of the A.I.D. Mission and Field Support Unit. The Grantee shall make quarterly disbursements to A.I.D. upon A.I.D.'s submission of a quarterly request for funds including an estimate of A.I.D.'s quarterly financing requirements, 30 days prior to the end of each Government of Ghana fiscal year quarter. The transfer of funds to A.I.D. shall be made by check payable to the United States Disbursing Officer.

Article 6: Covenants

SECTION 6.1: Completeness of Information. The Grantee confirms:

(a) That the facts and circumstances of which it has informed A.I.D., or caused A.I.D. to be informed, in the course of reaching Agreement with A.I.D. on this Grant, are accurate and complete, and include all facts and circumstances that might materially affect this Grant and the discharge of responsibilities under this Agreement; and

(b) That it will inform A.I.D. in a timely fashion of any subsequent facts and circumstances that might materially affect, or that it is reasonable to believe might so affect, the Grant or the discharge of responsibilities under this Agreement.

SECTION 6.2: Reports. In addition to the requirements of Section 4.4, the Grantee will furnish to A.I.D. such other reports and information relating to the Grant, the Separate Dollar Account, the Special Account and the performance of the Grantee's obligations under this Agreement as A.I.D. may reasonably request.

SECTION 6.3: Special Covenants

(a) The Grant will be free from any taxation or fees imposed under the laws in effect in the Republic of Ghana.

(b) The Grantee will propose and support legislation to abolish the manufacturing license and appeal the Manufacturers Industry Act of 1971 (Act 356).

Article 7: Termination; Remedies

SECTION 7.1: Termination. This Agreement may be terminated by mutual agreement of the Parties at any time. Either Party may terminate this Agreement by giving the other Party thirty (30) days written notice. Termination of this Agreement will terminate any obligations of the Parties with respect to funds not yet disbursed under the Grant but shall not affect obligations of the Parties with respect to funds already disbursed at the time of such termination.

SECTION 7.2: Suspension. If at any time:

(a) The Grantee shall fail to comply with any provision of this Agreement; or

(b) Any representation of warranty made by or on behalf of Grantee with respect to obtaining this Grant or made or required to be made under this Agreement is incorrect in any material respect; or

(c) An event occurs that A.I.D. determines to be an extraordinary situation that makes it improbable either that the purposes of this Grant will be attained or that the Grantee will be able to perform its obligations under this Agreement; or

(d) Any disbursement by A.I.D. would be in violation of the legislation governing A.I.D.; or

(e) A default shall have occurred under any other agreement between Grantee or any of its agencies and A.I.D. or any of its agencies;

then A.I.D. may suspend or cancel this Agreement.

SECTION 7.3: Cancellation by A.I.D. If, within sixty (60) days from the date of any suspension pursuant to Section 7.2, the cause or causes thereof have not been corrected, the A.I.D. may cancel any part of this Grant that is not then disbursed or irrevocably committed to third parties.

SECTION 7.4: Nonwaiver of Remedies. No delay in exercising or omitting to exercise, any right, power, or remedy accruing to A.I.D. under this Agreement will be construed as a waiver of such rights, powers, or remedies.

Article 8: Miscellaneous

SECTION 8.1: Implementation Letters. During the course of the Program, both Parties will issue for their information and guidance implementation letters describing the procedures applicable to the implementation of the Agreement. Except as permitted by particular provisions of this Agreement, implementation letters will not be used to amend or modify the text of this Agreement.

SECTION 8.2: Representatives. For all purposes relevant to this Agreement, the Grantee will be represented by the individual holding or acting in the office of Secretary of Finance and Economic Planning, and A.I.D. will be represented by the individual holding or acting in the office of Director, USAID/Ghana, each of whom, by written notice, may designate additional representatives. The names of the representatives of the Grantee, with specimen signatures, will be provided to A.I.D., which may accept as duly authorized any instrument signed by such representatives in implementation of this Agreement, until receipt of written notice of revocation of their authority.

SECTION 8.3: Communications. Any notice, request, document or other communication submitted by either Party to the other under this Agreement will be in writing or by telegram or cable, and will be deemed duly given or sent when delivered to such Party at the following address:

To the Grantee:

PNDC Secretary
Ministry of Finance and Economic Planning
P.O. Box M40
Accra, Ghana

To A.I.D:

Director
USAID
P.O. Box 1630
Accra, Ghana

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

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

UNITED STATES OF AMERICA THE REPUBLIC OF GHANA

By: *Kenneth L. Brown*
Name: Mr. Kenneth L. Brown
Title: Ambassador

By: *Dr. Kwesi Botchway*
Name: Dr. Kwesi Botchway
Title: PNDC Secretary
Ministry of Finance
and Economic Planning

Date: 9/30/92

Date: 30/9/92

By: *Joseph B. Goodwin*
Name: Dr. Joseph B. Goodwin
Title: Director
USAID/Ghana

By: *John Bawa*
Name: Mr. John Bawa
Title: PNDC Secretary
Ministry of Trade
and Tourism

Date: 9/30/92

Date: 30/9/92

Funds Available:

72-112/31014
GSS2-92-31641-KG39
RCN: D220089
Amount: \$8,000,000.00

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