

PD-BAQ 768

AID LOAN NO. 611-0070

611-K-009

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611-K-009

Zambia FY 83

CIP

LOAN AGREEMENT

(ZAMBIA PROGRAM LOAN)

BETWEEN THE

REPUBLIC OF ZAMBIA

AND THE

UNITED STATES OF AMERICA

DAILED: 3rd August, 1983

Appropriation: 72-1131037  
Budget Plan Code GESA-83-31611-KL32  
(Allotment 337-61-611-00-57-31)

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COMMODITY IMPORT LOAN AGREEMENT

Loan Number: 611-0070

Dated: 3rd August, 1983

Between

THE REPUBLIC OF ZAMBIA ("Borrower")

and

THE UNITED STATES OF AMERICA, acting through the  
AGENCY FOR INTERNATIONAL DEVELOPMENT ("AID")

ARTICLE 1:

The Loan

To finance the foreign exchange costs of certain commodities and commodity-related services ("Eligible Items") necessary to promote the economic stability of the Republic of Zambia, the United States, pursuant to the Foreign Assistance Act of 1961, as amended, agrees to lend the Government of the Republic of Zambia under the terms of this Agreement, an amount not to exceed Fifteen Million United States ("US") Dollars (\$15,000,000) ("Loan"). The aggregate amount of disbursements under this Loan is referred to as "Principal".

ARTICLE 2:

Loan Terms

SECTION 2.1 Interest. The Borrower will pay to AID interest which will accrue at the rate of two percent (2%) per annum for ten (10) years following the date of the first disbursement hereunder and at the rate of three percent (3%) per annum thereafter on the outstanding balance of Principal and on any due and unpaid interest. Interest on the outstanding balance will accrue from the date (as

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defined in Section 5.5) of each respective disbursement, and will be payable semiannually. The first payment of interest will be due and payable no later than six (6) months after the first disbursement hereunder, on a date to be specified by AID.

SECTION 2.2 Repayment. The Borrower will repay to AID the Principal within forty (40) years from the date of the first disbursement of the Loan in sixty-one (61) approximately equal semiannual installments of Principal and interest. The first installment of Principal will be payable nine and one-half (9.1/2) years after the date on which the first interest payment is due in accordance with Section 2.1. AID will provide the Borrower with an amortization schedule in accordance with this Section after the final disbursement under the Loan.

SECTION 2.3 Application, Currency and Place of Payment.

All payments of interest and Principal hereunder will be made in United States dollars and will be applied first to the payment of interest due and then to the repayment of Principal. Except as AID may otherwise specify in writing, payments will be made to the Controller, Office of Financial Management, Agency for International Development, Washington, DC 20523, USA, and will be deemed made when received by the Office of Financial Management.

SECTION 2.4 Prepayment. Upon payment of all interest and any refunds then due, the Borrower may repay, without penalty, all or any part of the Principal. Unless AID otherwise agrees in writing, any such prepayment will be applied to the installments of Principal in the

inverse order of their maturity.

SECTION 2.5 Renegotiation of Terms.

(a) The Borrower and AID agree to negotiate, at such time or times as either may request, an acceleration of the repayment of the Loan in the event that there is any significant and continuing improvement in the internal and external economic and financial position and prospects of the Republic of Zambia, which enables the Borrower to repay the Loan on a shorter schedule.

(b) Any request by either Party to the other to so negotiate will be made pursuant to Section 8.3, and will give the name and address of the person or persons who will represent the requesting Party in such negotiations.

(c) Within thirty (30) days after delivery of a request to negotiate, the requested Party will communicate to the other, pursuant to Section 8.3, the name and address of the person or persons who will represent the requested Party in such negotiations.

(d) The Representatives of the Parties will meet to carry on negotiations no later than thirty (30) days after delivery of the requested Party's communication under Sub-section (c). The negotiations will take place at a location mutually agreed upon by the representatives of the Parties, provided that, in the absence of mutual agreement, the negotiations will take place at the office of Borrower's Minister of Finance in the Republic of Zambia.

SECTION 2.6 Termination on Full Payment. Upon payment in full of the Principal and any accrued interest, this Agreement and all obligations of the Borrower and AID under it will cease.

ARTICLE 3:

Conditions Precedent to Disbursement

SECTION 3.1. Conditions Precedent. Prior to the first disbursement under this Loan, or to the issuance by AID of documentation pursuant to which disbursement will be made, the Borrower will, except as the Parties may otherwise agree in writing, furnish to AID, in form and substance satisfactory to AID:

(a) An opinion of the Attorney General of the Republic of Zambia acceptable to AID that this Agreement has been duly authorized and/or ratified by, and executed on behalf of, the Borrower, and that it constitutes a valid and legally binding obligation of the Borrower in accordance with all of its terms;

(b) A statement representing and warranting that the named person or persons have the authority to act as the representative or representatives of the Borrower pursuant to Section 8.2, together with specimen signature of each person certified as to its authenticity;

(c) A procurement plan including the procedures by which all procurement financed under this Loan will be carried out, the criteria and procedures for determining importer eligibility, and the mechanism for publicizing procurement and making awards.

(d) The Borrower must assure that Nitrogen Chemicals of Zambia has timely access to all raw fertilizer and other related materials needed for the finished product which are not financed under the AID Commodity Import Program.

SECTION 3.2. Notification. When AID has determined that the conditions precedent specified in Section 3.1 have been met, it will promptly notify the Borrower.

SECTION 3.3. Terminal Date for Conditions Precedent. If all the conditions specified in Section 3.1 have not been met within ninety (90) days from the date of this Agreement, or such later date as AID may specify in writing, AID, at its option, may terminate this Agreement by written notice to the Borrower.

#### ARTICLE 4:

##### Procurement, Eligibility, and Utilization of Commodities

SECTION 4.1. AID Regulation 1. This Loan and the procurement and utilization of commodities and commodity-related services financed under it are subject to the terms and conditions of AID Regulation 1 as from time to time amended and in effect, except as AID may otherwise specify in writing. If any provision of AID Regulation 1 is inconsistent with a provision of this Agreement, the provision of this Agreement shall govern.

SECTION 4.2. Eligible Items. The commodities eligible for financing under this Loan shall be those mutually agreed upon by the Parties for use in the agricultural sector and specified in the Implementation Letters issued to the Borrower in accordance with Section 8.1 of this Agreement. Commodity-related services as defined in AID Regulation 1 are eligible for financing under this Loan. Eligible items will be subject to the require-

ments and Special Provisions of Parts I, II and III of the AID Commodity Eligibility Listing which will be transmitted under Implementation Letter. Other commodities or services shall become eligible for financing only with the written agreement of AID. AID may decline to finance any specific commodity or commodity-related service when in its judgement such financing would be inconsistent with the purposes of the Loan or of the Foreign Assistance Act of 1961, as amended.

SECTION 4.3. Procurement Source. All Eligible Items shall have their source and origin in Code 000 of the AID Geographic Code Book as in effect at the time orders are placed or contracts entered into for such Eligible Items, except for charges related to ocean transportation in accordance with Section 4.9 of this Agreement or, except as AID may specify in Implementation Letters or as it may otherwise agree in writing.

SECTION 4.4. Eligibility Date. No commodities or commodity-related services may be financed under the Loan if they were procured pursuant to orders or contracts firmly placed or entered into prior to the date of this Agreement, except as AID may otherwise agree in writing.

SECTION 4.5. Procurement for Public Sector. With respect to procurement under this Loan by or for the Borrower, its departments and instrumentalities, the provisions of Section 201.22 of AID Regulation 1 regarding formal competitive bid procedures will apply unless AID otherwise agrees in writing.

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SECTION 4.6 Special Procurement Rules.

(a) None of the proceeds of this Loan may be used to finance the purchase, sale, long-term lease, exchange or guaranty of a sale of motor vehicles unless such motor vehicles are manufactured in the United States, except as AID may otherwise agree in writing.

(b) The source and origin of ocean and air shipping will be deemed to be the ocean vessel's or aircraft's country of registry at the time of shipment.

SECTION 4.7 Financing Physical Facilities. Not more than One Hundred Thousand US dollars (\$100,000) from the proceeds of this Loan shall be used for the purchase of commodities or commodity-related services for use in the construction, expansion, equipping, or alteration of a physical facility or related physical facilities without prior AID approval, additional to the approvals required by AID Regulation 1, except as AID may otherwise agree in writing. "Related physical facilities" shall mean those facilities which, taking into account such factors as functional interdependence, geographic proximity, and ownership, constitute a single enterprise in the judgement of AID.

SECTION 4.8 Utilization of Commodities.

(a) Borrower will assure that commodities financed under this Loan will be effectively used for the purposes for which the assistance is made available. To this end, the Borrower will use its best efforts to assure that the following procedures are followed:

(i) accurate arrival and clearance records are maintained by customs authorities; commodity imports are promptly processed through customs at ports of entry in Zambia; such commodities are removed from customs and/or bonded warehouses within ninety (90) calendar days from the date the commodities are unloaded from the transportation medium at the point of discharge in Zambia, unless the importer is hindered by force majeure or AID otherwise agrees in writing; and

(ii) the commodities are consumed or used by the importer not later than one (1) year from the date the commodities are removed from customs, unless a longer period can be justified to the satisfaction of AID by reason of force majeure or special market conditions or other circumstances.

(b) Borrower will assure that commodities financed under this Loan will not be re-exported in the same or substantially the same form, unless specifically authorized by AID.

#### SECTION 4.9 Shipping.

(a) Commodities which are to be transported to the territory of the Borrower may not be financed under this Loan if transported either:

(1) on an ocean vessel or aircraft under flag registry of a country which is not included in AID Geographic Code 000 or AID Geographic Code 941 as in effect at the time of shipment; or (2) on an ocean vessel which AID, by written notice to the Borrower has designated as ineligible; or (3) under an ocean or air charter which has not received prior AID approval.

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(b) Unless otherwise authorized and except as provided below, AID will finance only those transportation costs incurred on aircraft or ocean vessels under flag registry of a country included in the Geographic Code authorized in Section 4.3 of the Agreement. If, at the time shipment is to be made, AID determines in writing that no transportation is available on ocean vessels under US registry, transportation on ocean vessels under flag registry of countries included in AID Geographic Code 941 is permitted; and if, at the time shipment is to be made, AID determines in writing that no transportation is available on ocean vessels under Code 941 flag registry, transportation on ocean vessels under flag registry included in AID Geographic Code 899 is permitted. Unless AID otherwise agrees in writing the total of such transportation costs may not exceed TWO MILLION, FIVE HUNDRED THOUSAND US dollars (US\$ 2,500,000).

(c) Unless AID determines that privately owned United States flag commercial ocean vessels are not available at fair and reasonable rates for such vessels, (1) at least fifty percent (50%) of the gross tonnage of all goods (computed separately for dry bulk carriers, dry cargo liners and tankers) financed by AID which may be transported on ocean vessels will be transported on privately owned United States flag commercial vessels, and (2) at least fifty percent (50%) of the gross freight revenue generated by all shipments financed by AID and transported to the Republic of Zambia on dry cargo liners shall be paid to or for the benefit of privately owned United States - flag commercial vessels. Compliance with the requirements of (1) and (2) of this Sub-section must be achieved with respect to both cargo transported from US ports and cargo transported from non-US ports, computed separately.

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SECTION 4.10 Insurance. Marine insurance on commodities financed by AID under this Loan may also be financed under this Loan provided that such insurance is placed in a country included in the Geographic Code authorized in Section 4.3 of this Agreement.

ARTICLE 5:

Disbursement

SECTION 5.1 Letters of Commitment to Banks. After satisfaction of the conditions precedent, Borrower may obtain disbursement of funds under this Loan by submitting Financing Requests to AID for the issuance of letters of commitment for specified amounts to one or more banking institutions in the United States designated by the Borrower and satisfactory to AID. Such letters will commit AID to reimburse the bank or banks on behalf of the Borrower for payments made by them to suppliers or contractors, under letters of credit or otherwise, pursuant to such documentation requirements as AID may prescribe. Banking charges incurred in connection with letters of commitment and disbursement shall be for the account of the Borrower and may be financed by this Loan.

SECTION 5.2 Other Forms of Disbursement Authorizations.

Disbursements of the Loan may also be made through such other means as the Parties may agree in writing.

SECTION 5.3 Terminal Date for Requests for Disbursement.

Authorizations. No letter of commitment or other disbursement authorization will be issued in response to a request received after twelve (12) months from the date of signing of this Agreement, except as AID may otherwise agree in writing.

SECTION 5.4 Terminal Date for Requests for Disbursement.

No disbursement of Loan funds shall be made against documentation submitted after eighteen (18) months from the date of signing of this Agreement, except as AID may otherwise agree in writing.

SECTION 5.5 Date of Disbursement.

Disbursements by AID will be deemed to occur on the date on which AID makes a disbursement to the Borrower or its designee, or to a bank, contractor or supplier pursuant to a letter of commitment or other form of disbursement authorization.

ARTICLE 6:

General Covenants

SECTION 6.1 Continuing Responsibilities.

The Borrower and AID shall cooperate fully to assure that the purpose of the Loan will be accomplished. To this end, the Borrower and AID shall from time to time, at the request of either party, exchange views through their representatives with regard to the Borrower's economic development and

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its progress in achieving the objectives of its economic stabilization program, including the level of current expenditures and its foreign exchange position, and the performance by the Borrower of its obligation under this Agreement, the performance of consultants and suppliers under the Loan, and other matters relating to this Agreement.

SECTION 6.2. Taxation. This Agreement and the Loan will be free from, and the Principal and interest will be paid free from, any taxation or fees imposed under laws in effect in Zambia. To the extent that any commodity procurement transaction financed hereunder is not exempt from identifiable taxes, tariffs, duties and other levies imposed under laws in effect within the Republic of Zambia, the same shall not be paid with funds provided under this Loan.

SECTION 6.3. Reports and Records. In addition to the requirements in AID Regulation 1, the Borrower will:

(a) furnish AID such reports and information relating to the goods and services financed by this Loan and the performance of the Borrower's obligations under this Agreement as AID may reasonably request;

(b) maintain or cause to be maintained, in accordance with generally accepted accounting principles and practices consistently applied, such books and records relating to this Loan as may be prescribed in Implementation Letters. Such books and records may be inspected by AID or any of its authorized representatives at all times as AID may reasonably require, and shall be maintained for three years after the date of last disbursement by AID under this Loan;

(c) permit AID or any of its authorized representatives at all

reasonable times during the three-year period to inspect the commodities financed under this Loan at any point, including the point of use.

SECTION 6.4. Completeness of Information. The Borrower confirms:

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

(b) that it will inform AID 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 discharge of responsibilities under this Agreement.

SECTION 6.5. Other Payments. Borrower affirms that no payments have been or will be received by an official of the Borrower in connection with the procurement of goods or services financed under the Loan, except fees, taxes, or similar payments legally established in the country of the Borrower.

SECTION 6.6. Minimum Size of Transaction. No foreign exchange allocation or letter of credit issued pursuant to this Agreement shall be in an amount less than Ten Thousand US dollars (\$10,000), except as AID may otherwise agree in writing.

SECTION 6.7. Generation and Use of Local Currency. Zambian Kwacha attributions to the loan (counterpart funds) shall be used to fund the agriculture sector and sub-sector activities in the GRZ's budget. The specific activities to be supported in this regard will be the subject

of discussions between the Borrower and AID and the activities will be agreed to by the parties in joint Project Implementation Letters. The Borrower shall concurrently also support a program of producer price incentives, and continue to adjust the relative consumer prices of food products to reflect real costs, in accordance with the Support Measures set forth in the Annex hereto.

ARTICLE 7:

Termination: Remedies

SECTION 7.1. Cancellation by Borrower. The Borrower may, by giving AID thirty (30) days written notice, cancel any part of the Loan which has not been disbursed or committed for disbursement to third parties.

SECTION 7.2. Events of Default: Acceleration. It will be an "Event of Default" if the Borrower shall have failed:

(a) to pay when due any interest or installment of Principal required under this Agreement, or

(b) to comply with any other provision of this Agreement, or

(c) to pay when due any interest or installment of Principal or other payment required under any other loan, guaranty or other agreement between the Borrower or any of its agencies and AID or any of its predecessor agencies.

If an Event of Default shall have occurred, then AID may give the Borrower notice that all or any part of the unrepaid Principal will be due and payable sixty (60) days thereafter, and, unless such

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Event of Default is cured within that time:

(1) such unpaid Principal and accrued interest hereunder will be due and payable immediately, and

(2) the amount of any further disbursements made pursuant to then outstanding commitments to third parties or otherwise will become due and payable as soon as made.

SECTION 7.3. Suspension. If at any time:

(a) an Event of Default has occurred; or

(b) an event occurs that AID determines to be an extraordinary situation that makes it improbable either that the purposes of the Loan will be attained or that the Borrower will be able to perform its obligations under this Agreement; or

(c) any disbursement by AID would be in violation of the legislation governing AID; or

(d) the Borrower shall have failed to pay when due any interest, installment of Principal or other payment required under any other loan, guaranty, or other agreement between the Borrower or any of its agencies and the Government of the United States or any of its agencies; Then in addition to remedies provided in AID Regulation 1, AID may:

(1) suspend or cancel outstanding commitment documents to the extent they have not been utilized through irrevocable commitments to third parties or otherwise, giving prompt notice thereof to the Borrower;

(2) decline to issue additional commitment documents or to make disbursements other than under existing ones; and

(3) at AID's expense, direct that title to goods financed under the Loan be vested in AID if the goods are in a deliverable state and

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have not been offloaded in ports of entry of the Borrower's country. Any disbursement made under the Loan with respect to such transferred goods will be deducted from the Principal.

SECTION 7.4. Cancellation by AID. If, within sixty (60) days from the date of any suspension of disbursements pursuant to Section 7.3, the cause or causes thereof have not been corrected, AID may cancel any part of the Loan that is not then disbursed or irrevocably committed to third parties.

SECTION 7.5. Continued Effectiveness of Agreement. Notwithstanding any cancellation, suspension of disbursements, or acceleration of repayment, the provisions of this Agreement will continue in effect until the payment in full of all Principal and accrued interest hereunder.

SECTION 7.6. Refunds

(a) In addition to any refund otherwise required by AID pursuant to AID Regulation 1, if AID determines that any disbursement is not supported by valid documentation in accordance with this Agreement, or is in violation of United States law, or is not made or used in accordance with the terms of this Agreement, AID may require the Borrower to refund the amount of such disbursement in US dollars to AID within sixty (60) days after receipt of request therefor. Refunds paid by the Borrower to AID resulting from violations of the terms of this Agreement shall be considered as a reduction in the amount of AID's obligations under the Agreement and shall be available for reuse under the Agreement if authorized by AID in writing. Any refund which reduces the amount of AID assistance hereunder will be applied to the

installments of Principal in the inverse order of their maturity.

(b) The right to require such a refund of a disbursement will continue, notwithstanding any other provision of this Agreement, for three (3) years from the date of the last disbursement under this Agreement.

SECTION 7.7. Nonwaiver of Remedies. No delay in exercising or omitting to exercise any right, power, or remedy accruing to AID under this Agreement will be construed as a waiver of such rights, powers, or remedies.

ARTICLE 8:

Miscellaneous

SECTION 8.1 Implementation Letters. From time to time, for the information and guidance of both Parties, AID will issue Implementation Letters describing the procedures applicable to the implementation of this 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 Borrower will be represented by the individual holding or acting in the Office of the Minister of Finance and AID will be represented by the individual holding or acting in the position of AID Representative, Lusaka, Zambia, each of whom, by written notice, may designate additional representatives. The names of the representatives of the Borrower, with specimen signatures, will be provided to AID 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 Borrower:

Permanent Secretary  
Ministry of Finance

Mail Address:

P.O. Box 50062  
Lusaka

Alternative Address for  
Cables:

Finance Lusaka

To AID:  
Mail Address:

AID Representative  
P.O. Box 32481  
Lusaka, Zambia

Alternative Address  
for Cables:

ZA 41970  
AID Representative  
c/o American Embassy

With copy to Director,  
REDSO/ESA  
Mail Address:

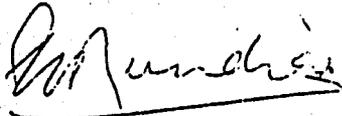
Director, REDSO/ESA  
P.O. Box 30261  
Nairobi, Kenya

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

REPUBLIC OF ZAMBIA

BY:



RT. HON. NALUMINÓ MUNDIA MCC, MP  
MINISTER OF FINANCE

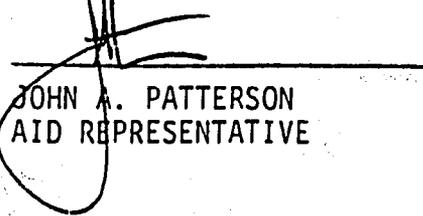
UNITED STATES OF AMERICA

BY:



NICHOLAS PLATT  
AMBASSADOR

BY:



JOHN A. PATTERSON  
AID REPRESENTATIVE

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SUPPORT MEASURES FOR THE FY 1983 COMMODITY IMPORT PROGRAM (CIP)

The Government of the Republic of Zambia will:

1. Continue to adjust the relative consumer price of food products to reflect real costs by eliminating the GRZ's maize (K120 million in 1980) and fertilizer (K50 million in 1980) subsidies in accordance with a schedule to be arranged within nine months of the signing of the Agreement.
2. Continue to improve local agriculture producer price relationships with due consideration given to the prevailing relative prices on the world market as well as Zambia's borders. The purpose of such efforts is to insure that sufficient incentives are provided to encourage production by the small scale farmers of those crops in which they have comparative advantage, such as sorghum, groundnuts, cotton, millets and cassava.
3. It is noted that the respective roles of marketing parastatals, provincial cooperative unions, and NAMBOARD have already undergone significant changes in the recent past and cooperative unions have assumed a more prominent role in handling agricultural products. The GRZ will continue to review the marketing system so as to allow the maximum cost benefits to producers and consumers.
4. Continue to expand the capacity and capabilities of the Planning Unit within the Ministry of Agriculture and Water Development to analyze pricing and other policy issues crucial to the development of the agricultural economy, with particular emphasis on the small farm sector.

As evidence of progress, the Planning Unit will continue with studies jointly agreed to by AID/Zambia and the GRZ. Examples of such studies could be:

- (I) To develop a plan for the phased reduction of the remaining maize and fertilizer subsidies;
- (II) To analyze the costs and benefits of introducing regionally differentiated pricing for all crops based on transport and handling charges;
- (III) To analyze the effect of the current policy framework on agricultural export incentives;
- (IV) To analyze how the GRZ can encourage competition and efficiency in agricultural marketing.

GRZ will keep AID/Zambia informed of what actions, if any, it will take concerning the conclusions and recommendations contained in any AID financed studies conducted as a part of the ZATPID project, within a reasonable length of time following the completion and publication of each such study.

5. Use local currency attributions from the sale of commodities imported by this Agreement to support the implementation of points (1), (2), (3), and (4) above. This will not include, however, attributions to subsidies. Capital and recurrent budget items which should receive priority consideration for assistance are those which support the provincial Cooperative Unions via the Ministry of Cooperatives; and support the Ministry of Agriculture and Water Development Research

and Extension program efforts directed to the small farm sector.

The budget line items are:

- 321. Ministry of Finance (Loans and Investments)
  - 86. Ministry of Cooperatives (for Provincial Cooperative Unions)
  - 89. Zambia Agricultural Development Bank
- 389. Ministry of Agriculture and Water Development
  - 03. Department of Agriculture
  - 04. Training Institutions
  - 05. Agricultural Research
- 386. Ministry of Cooperatives
  - 03. Cooperative College

It is agreed that if there are unforeseen events which necessitate a reordering of local currency use priorities both parties will review the agreed uses with a view toward such a reordering. Project implementation letters will be utilized to specifically identify line items or project activities in GRZ's Budget to which local currency can be attrib

August 1983.

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