PDBBM 894

AID Program No. 617-0113

PROGRAM GRANT AGREEMENT

BETWEEN THE

UNITED STATES OF AMERICA

AND THE

GOVERNMENT OF UGANDA

FOR THE

AGRICULTURAL NON-TRADITIONAL EXPORT PROMOTION PROGRAM (ANEPP)

DATE: 26 August, 1988

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COMMODITY IMPORT GRANT AGREEMENT
GRANT NUMBER 617-T-601

Dated:

Between The Government of Uganda ("Grantee")

and

The United States of America, acting through the

Agency for International Development ("A.I.D.")

Article 1: The Grant

To finance the foreign exchange costs of certain commodities and commodity-related services ("Eligible Items") necessary to help the Grantee overcome shorter term constraints to its long-term economic development, the United States, pursuant to the Foreign Assistance Act of 1961, as amended, agrees to grant the Grantee not to exceed Twelve Million Five Hundred Thousand United States dollars Dols.12,500,000 ("Grant").

Article 2: Definition Of The Program

The Program, which is further described in Annex 1, will consist of mutually agreed upon allocations of Grant funds to provide financing to the private sector to import the inputs and intermediate goods needed to increase the production and export of non-traditional exports and to demonstrate that the private sector has the capacity to export, when stimulated by adequate incentives and support.

Within the limits of the above definition of the Program, elements of the amplified description stated in Annex 1 may be changed by written agreement of the authorized representatives of the Parties named in Section 9.2, without formal amendment of this Agreement.

Article 3: Conditions Precedent to Disbursement

SECTION 3.1. Conditions Precedent to First Disbursement. Prior to the first disbursement of the first tranche of Seven Million Five Hundred Thousand U.S. dollars (Dols.7,500,000) under the Grant, or to the issuance by A.I.D. of documentation pursuant to which disbursement will be made, the Grantee will, except as the Parties may otherwise agree in writing, furnish to A.I.D., in form and substance satisfactory to A.I.D.:

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(a) The name of the person holding or acting in the office of the Grantee and of any additional representatives, together with a specimen signature of each person certified as to its authenticity; and a statement representing and warranting that the named person or persons have authority to act as the representatives of the Grantee pursuant to Section 9.2.

(b) An opinion of counsel acceptable to A.I.D. that this Agreement has been duly authorized and/or ratified by, and executed on behalf of, the Grantee, and that it constitutes a valid and legally binding obligation of the Grantee in accordance with all of its terms.

(c) Evidence that the Grantee will review exchange rate policy in consultation with the IMF to establish an exchange rate regime that will guide the growth of the economy and overcome existing macroeconomic imbalances and that it will adjust the official exchange rate and/or formulate an exchange rate regime, as required, to create incentives to substantially increase formal, private sector exports of non-traditional commodities in which Uganda has a comparative advantage;

(d) As an interim measure and until a new foreign exchange regime has demonstrated that it will enhance formal private sector exports, evidence that the Grantee will permit the private sector to export non-traditional commodities and, in turn, immediately receive an import license of equivalent value;

(e) Evidence that the Grantee has established a "USAID Trade Promotion Credit" within the Bank of Uganda to finance imported agricultural inputs in demand by producers of non-traditional exports, and/or the imported items required by the private sector marketing agents and exporters to facilitate efficient procurement, assembly and exports;

(f) Evidence that the Grantee has streamlined its application and approval procedures for the USAID Trade Promotion Credit to ensure that each tranche of foreign exchange is disbursed within 4-5 months.

SECTION 3.2. Conditions Precedent to Additional Disbursement. Prior to the disbursement of fund~ by A.I.D. of the second tranche of Five Million United States Dollars (Dols.5,000,000) for the purpose of financing imports under this CIP, the Grantee shall furnish in form and substance satisfactory to A.I.D.:

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(a) Evidence that it has reviewed present trade licensing regulations and procedures with the aim toward streamlining the administrative procedures for granting export and import licenses to the private sector, in order to reduce bureaucratic delays and costs involved in acquiring export and import licences; and

(b) Evidence that the six month review of the ANEPP as described in Special Covenant 7.4 below has taken place.

SECTION 3.3. Terminal Date for Meeting Conditions Precedent to First Disbursement. If all the conditions specified in Section 3.1 have not been met within one hundred and twenty (120) days from the date of this Agreement, or such later date as A.I.D. may specify in writing, A.I.D., at its option, may terminate this Agreement by written notice to Grantee.

SECTION 3.4. Notification. When A.I.D. has determined that the conditions precedent specified in Sections 3.1 and 3.2 have been met, it will promptly notify the Grantee.

Article 4: Procurement, Eligibility, and Utilization of Commodities.

SECTION 4.1. A.I.D. Regulation 1. This Grant and the procurement and utilization of commodities and commodity-related services financed under it are subject to the terms and conditions of A.I.D. Regulation 1 as from time to time amended and in effect, except as A.I.D. may otherwise specify in writing. If any provision of A.I.D. 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 Grant shall be those mutually agreed upon by the Parties and specified in Annex I or in the Implementation Letters issued to the Grantee in accordance with Section 8.1 of this Agreement. Commodity-related services as defined in A.I.D. Regulation 1 are eligible for financing under this Grant. Eligible Items will be subject to the requirements and Special Provisions of Parts I, II, and III of the A.I.D. Commodity Eligibility Listing which will be transmitted with the first Implementation Letter. Other commodities or services shall become eligible for financing only with the written agreement of A.I.D. A.I.D. may decline to finance any specific commodity or commodity-related service when in its judgment such financing would be inconsistent with the purposes of the Grant 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 935 of the A.I.D. Geographic Code Book as in effect at the time orders are placed or contracts are entered into for such Eligible Items, except as otherwise provided by AID policy directive 88 STATE 105351 and as A.I.D. 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 this Grant if they were procured pursuant to orders or to contracts firmly placed or entered into prior to the date of this Agreement, except as A.I.D. may otherwise agree in writing.

SECTION 4.5. Procurement by Private Sector. Private sector procurements under Dols.1,000,000 may be conducted in accordance with negotiated procurement procedures as set forth in Section 201.23 of A.I.D. Regulation 1. Procurements over Dols.1,000,000 must be referred to A.I.D. for a determination as to whether negotiated or formal A.I.D. Regulation 1 procedures shall apply. However, the importer may elect to procure through the formal competitive procedures of Section 201.22 of A.I.D. Regulation 1 whether required or not.

SECTION 4.6. Special Procurement Rules.

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

(b) All international air shipments financed under this Grant will be on carriers holding U.S. certification to perform the services, to the extent such carriers are available, unless shipment would, in the judgment of the Grantee, and approved by A.I.D. in writing, be delayed an unreasonable time awaiting a U.S. flag carrier either at point of origin or transshipment.

SECTION 4.7. Utilization of Commodities.

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

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(i) accurate arrival and clearance records are maintained by customs authorities; commodity imports are promptly processed through customs at ports of entry; such commodities are removed from customs and/or bonded warehouses within ninety (90) calendar days from the date the commodities are unloaded from the vessel at the port of entry, unless the importer is hindered by force majeure or A.I.D. 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 A.I.D. by reason of force majeure or special market conditions or other circumstances.

(b) Grantee will assure that commodities financed under this Grant will not be reexported in the same or substantially the same form, unless specifically authorized by A.I.D.

SECTION 4.8. Shipping

(a) Commodities which are to be transported to the territory of the Grantee may not be financed under this Grant if transported either: (1) on an ocean vessel or aircraft under flag registry of a country which is not included in A.I.D. Geographic Code 935 as in effect at the time of shipment, or (2) on an ocean vessel which A.I.D., by written notice to the Grantee, has designated as ineligible, or (3) under an ocean or air charter which has not received prior A.I.D. approval.

(b) Unless otherwise authorized, A.I.D. will finance only those transportation costs incurred on aircraft or ocean vessels under flag registry of the United States of America.

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

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SECTION 4.9. Insurance. Marine insurance on commodities financed by A.I.D. under this Grant may also be financed under this Grant provided that such insurance is placed in a country included in the Geographic Code authorized in Section 4.3 of this Agreement, in accordance with the applicable provisions of A.I.D. Regulation 1, Subparts B and C.

Article 5: Disbursement

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

SECTION 5.2. Other Forms of Disbursement Authorization. Disbursements of the Grant may also be made through such other means as the Parties may agree to in writing.

SECTION 5.3. Terminal Date for Requests for Disbursement Authorization. No letter of commitment or other disbursement authorization will be issued in response to a request received after twenty-four (24) months from the date of signing of this Agreement, except as A.I.D. may otherwise agree in writing.

SECTION 5.4. Terminal Date for Requests for Disbursement. No disbursement of grant funds shall be made against documentation submitted after thirty (30) months from the date of signing of this Agreement, except as A.I.D. may otherwise agree in writing.

Article 6: General Covenants

SECTION 6.1. Use of Local Currency. Grantee will establish a Special Account in Bank of Uganda and deposit therein currency of the Government of Uganda in amounts equal to proceeds accruing to the Grantee or any authorized agency thereof as a result of the sale of the Eligible Items. Funds in the Special Account may be used for such purposes as are mutually agreed upon by A.I.D. and the Grantee, provided that -

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such portion of the funds in the Special Account as may be designated by A.I.D. shall be made available to A.I.D. to meet the requirements of the United States.

SECTION 6.2. Taxation. This Agreement and the Grant will be free from any taxation or fees imposed under laws in effect in Uganda.

SECTION 6.3. Reports and Records. In addition to the requirements in A.I.D. Regulation 1, the Grantee will:

(a) furnish A.I.D. such reports and information relating to the goods and services financed by this Grant and the performance of the Grantee's obligations under this Agreement as A.I.D. may reasonably request;

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

(c) permit A.I.D. or any of its authorized representatives at all reasonable times during the above referenced three-year period to inspect the commodities financed under this Grant at any point, including the point of use.

SECTION 6.4. Completeness of Information. The Grantee confirms:

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

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

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

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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 Dollars (Dols.10,000), except as A.I.D. may otherwise agree in writing.

Article 7: Special Covenants

The Grantee covenants, unless A.I.D. otherwise agrees in writing, as follows:

SECTION 7.1. Foreign Exchange Allocation Committee. To ensure that A.I.D. funds are quickly disbursed, the Bank of Uganda shall convene a foreign exchange Allocation Committee every two weeks until the committed and undisbursed ANEPP line of credit is exhausted;

SECTION 7.2. Reduction of Role of Produce Marketing Board. The Grantee shall reduce Produce Marketing Board participation in the commercial trade of non-traditional exports to allow the private sector to demonstrate its capacity in export trade, and, if the private sector demonstrates such capacity, it shall eliminate the role of the Produce Marketing Board in commercial export trade;

SECTION 7.3. Trade Policy Analysis and Monitoring Unit. The Grantee will establish and staff a Trade Policy Analysis and Monitoring Unit within the Ministry of Planning and Economic Development with terms of reference satisfactory to A.I.D. within 4 months of signing of this Agreement;

SECTION 7.4. Periodic Program Reviews. Six and twelve months after signing of this Agreement, the Grantee will review with A.I.D. the impact of the adjusted foreign exchange regime on non-traditional exports, the rate of disbursement and the composition of commodity imports financed under the CIP component of the ANEPP, and the operational effectiveness of the Trade Policy Analysis and Monitoring Unit of the MPED. Based upon these formal program reviews, the Grantee and A.I.D. agree to consider issues and recommendations intended to improve policy and/or the institutional framework to increasingly encourage and promote private sector trade;

SECTION 7.5. Grantee Foreign Exchange Contribution to Program. The Grantee shall allocate Dols.5,000,000 of its own foreign exchange to the ANEPP Trade Promotion Credit, in order to double the quantity of foreign exchange available at the time of the second tranche for private sector importing of eligible items identified in this Agreement to be critical and necessary to increase non-traditional exports;

SECTION 7.6. Integrated Production Export Strategy. Within 12 months of establishing the Trade Policy Analysis and Monitoring Unit in the MPED, the Grantee shall complete the

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formulation of an integrated production export strategy designed to increase the productivity and trade of non-traditional exports in line with analysis and recommendations of the Unit;

SECTION 7.7. Joint Reviews of Trade Policy and Analysis Unit Studies. Within six weeks after the completion of each major study by the Trade Policy and Analysis Unit of the MPED, the Grantee shall undertake a joint review with A.I.D. of the study with the aim of implementing recommendations and/or supportive actions as appropriate, designed to increase non-traditional exports.

Article 8: Termination; Remedies

SECTION 8.1. 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.

SECTION 8.2. Suspension. If at any time

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

(b) Any representation or warranty made by or on behalf of the 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 the 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 the Grantee or any of its agencies and the Government of the United States or any of its agencies;

then, in addition to remedies provided in A.I.D. Regulation 1, A.I.D. may:

(1) Suspend or cancel outstanding commitment documents to the extent that they have not been utilized through irrevocable commitments to third parties or otherwise, or to the extent that A.I.D. has not made direct reimbursement to the Grantee thereunder;

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

(3) at A.I.D.'s expense, direct that title to goods financed under the Grant be vested in A.I..D. if the goods are in a deliverable state and have not been offloaded in ports of entry of Uganda;

SECTION 8.3. Cancellation by A.I.D. If, within sixty (60) days from the date of any suspension of disbursements pursuant to Section 8.2, the cause or causes thereof have not been corrected, A.I.D. may cancel any part of the Grant that is not then disbursed or irrevocably committed to third parties.

SECTION 8.4. Refunds.

(a) In addition to any refund otherwise required by A.I.D. pursuant to A.I.D. Regulation 1, if A.I.D. determines that any disbursement is not supported by valid documentation obtained from the Grantee 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, A.I.D. may require the Grantee to refund the amount of such disbursement in U.S. dollars to A.I.D. within sixty (60) days after receipt of request therefor. Refunds paid by the Grantee to A.I.D. resulting from violations of the terms of this Agreement shall be considered as a reduction in the amount of A.I.D.'s obligation under the Agreement and shall be available for reuse under the Agreement if authorized by A.I.D. in writing.

(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 8.5. 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 9: Miscellaneous

SECTION 9.1. Implementation Letters. From time to time, for the information and guidance of both parties, A.I.D. will issue 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.

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SECTION 9.2. Representatives. For all purposes relevant to this Agreement, the Grantee will be represented by the individual holding or acting in the office of the Minister of Finance and A.I.D. will be represented by the individual holding or acting in the office of Director, USAID/Kampala, 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 9.3. 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 — Minister of Finance

Address:

P. O. Box 8147
Kampala, Uganda

To A.I.D.: — Mission Director

Address:

USAID Mission
P. O. Box 7007
Kampala, Uganda

- 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
BY: ______________________
TITLE: Mission Director

THE REPUBLIC OF UGANDA
BY: ______________________
TITLE: Minister of Finance

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PROJECT DESCRIPTION

The goal of the ANEPP program is to assist the Government of Uganda to increase output, incomes and employment through private sector development. Program financing will be used to purchase inputs needed to increase the production of non-traditional exports and to develop private sector and GOU institutional capacity.

The purpose of the program is to increase the country's nontraditional exports in the long term. The beneficiaries of the program will be those involved in production and trade as well as the consumers and end-users of the imports. Under the planned export and import scheme, the program will (1) provide the private sector with the necessary incentives for increasing the range and volume of nontraditional exports; and (2) demonstrate through direct involvement in formal export trading activities that the private sector can enhance economic growth in Uganda. The principle beneficiaries of this scheme will be the farmers, marketing agents, exporters and end-users of imports. Through the C.I.P. program, farmers, local industries, and exporters will benefit from the program.

The $12.5 million CIP component will be disbursed to the Bank of Uganda (BOU) in two tranches. Under this program, agricultural seed, fertilizer, raw jute or jute bags, steel for the manufacture of agricultural hand tools and farm implements and packing materials for exported commodities will be eligible for financing. The $1.5 million technical assistance project will finance a long-term trade economist, short-term consultants, office support and other costs for training and conferences. In addition to USAID funding, the GOU will contribute to the CIP component U.S. $5 million of its own funds to increase the amount of foreign exchange available to the private sector. This GOU contribution of hard currency is viewed as a significant indicator of government support for increasing exports in general and this program in particular.

The GOU entities responsible for implementation of the program are: (1) the Ministry of Planning and Economic Development (MPED), the lead GOU entity in the overall implementation of this program; (2) the Ministry of Commerce (MC), responsible for import and export licensing, international trade agreements, barter trade and export promotion; (3) the Bank of Uganda (BOU). implementing the Open General License (OGL) system which is supported by foreign exchange under the IBRD Economic Recovery Credit; and also responsible for administering the USAID Trade Promotion Credit supported by this grant; and (4) the Ministry of Finance (MFIN), responsible for import duties assessed on DFA financed imports.

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