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AGREEMENT BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF THE REPUBLIC OF KENYA
FOR SALES OF AGRICULTURAL COMMODITIES

The Government of the United States of America and the Government of the Republic of Kenya agree to the sale of agricultural commodities specified below:

Recognizing the desirability of expanding trade in agricultural commodities between the United States of America (hereinafter referred to as the Exporting Country) and the Republic of Kenya (hereinafter referred to as the Importing Country) and with other friendly countries in a manner that will not displace usual marketings of the Exporting Country in these commodities or unduly disrupt world prices of agricultural commodities or normal patterns of commercial trade with friendly countries;

Taking into account the importance of developing countries of their efforts to help themselves toward a greater degree of self-reliance, including efforts to meet their problems of food production and population growth;

Recognizing the policy of the Exporting Country to use its agricultural productivity to combat hunger and malnutrition in the developing countries, to encourage these countries to improve their own agricultural production, and to assist them in their economic development;

Recognizing the determination of the Importing Country to improve its own production, storage, and distribution of agricultural food products, including the reduction of waste in all stages of food handling;

Desiring to set forth the understandings that will govern the sales of agricultural commodities to the importing country pursuant to Title I of the Agricultural Trade Development and Assistance Act, as amended (hereinafter referred to as the Act), and the measures that the two Governments will take individually and collectively in furthering the above-mentioned policies;

Have agreed as follows:

PART I - GENERAL PROVISIONS:

ARTICLE I

A. Agreement to Finance Commodity Sales.

The Government of the Exporting Country undertakes to finance the sale of agricultural commodities to purchasers authorized by the Government of the Importing Country in accordance with the terms and conditions set forth in this Agreement.

B. Purchase Authorizations.

The financing of the agricultural commodities listed in Part II of this Agreement will be subject to:

1. The issuance by the Government of the Exporting Country of purchase authorizations and their acceptance by the Government of the Importing Country; and
2. The availability of the specified commodities at the time of exportation.

C. Application for Purchase Authorizations.

Application for purchase authorizations will be made within 90 days after the effective date of this Agreement, and, with respect to any additional commodities or amounts of commodities provided for in any amendment to this Agreement, within 90 days after the effective date of such amendment to this Agreement. Purchase authorizations shall include provisions relating to the sale and delivery of such commodities, and other relevant matters.

D. Delivery Periods.

Except as may be authorized by the Government of the Exporting Country, all deliveries of commodities sold under this Agreement shall be made within the supply periods specified in the commodity table in Part II.

E. Maximum Export Values.

The value of the total quantity of each commodity covered by the purchase authorizations shall not exceed the maximum export market value specified for that commodity in Part II. The Government of the Exporting Country may limit the total value of each commodity to be covered by purchase authorizations as price declines or other marketing factors may require, so that the quantities of such commodity sold will not substantially exceed the applicable approximate maximum quantity specified in Part II.



F. Ocean Freight.

The Government of the Exporting Country shall bear the ocean freight differential for commodities the Government of the Exporting Country requires to be transported in United States Flag Vessels. The ocean freight differential is deemed to be the amount, as determined by the Government of the Exporting Country, by which the cost of ocean transportation is higher (than would otherwise be the case) by reason of the requirement that the commodities be transported in United States flag vessels. The Government of the Importing Country shall have no obligation to reimburse the Government of the Exporting Country or deposit local currency of the Importing Country for the Ocean Freight Differential borne by the Government of the Exporting Country.

G. Transportation Letters of Credit.

Promptly after contracting for United States flag shipping space to be used for commodities required to be transported in United States flag vessels, and in any event not later than presentation of vessel for loading, the Government of the Importing Country or the purchasers authorized by it shall open a letter of credit, in United States Dollars, for the estimated cost of ocean transportation for such commodities.

H. Termination Due to Changed Circumstances.

The financing, sale, and delivery of commodities under this Agreement may be terminated by either Government if that Government determines that because of changed conditions the continuation of such financing, sale, or delivery is unnecessary or undesirable.

ARTICLE II

A. Initial Payment.

The Government of the Importing Country shall pay, or cause to be paid, such initial payment as may be specified in Part II of this Agreement. The amount of this payment shall be that portion of the purchase price (excluding any ocean transportation costs that may be included therein) equal to the percentage specified for initial payment in Part II, and payment shall be made in United States Dollars in accordance with the applicable purchase authorization.

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B. Currency Use Payment.

The Government of the Importing Country shall pay, or cause to be paid, upon demand by the Government of the Exporting Country in amounts as it may determine, but in any event no later than one year after the final disbursement by the Commodity Credit Corporation under this Agreement, or the end of the supply period, whichever is later, such payment as may be specified in Part II of this Agreement pursuant to Section 103(B) of the Act (hereinafter referred to as the currency use payment). The currency use payment shall be the amount financed on credit terms by the exporting country equal to the percentage specified for currency use payment in Part II.

Payment shall be made in accordance with Paragraph E, and for purchases specified in subsection 104(A), (B), (E), and (H) of the Act, as set forth in Part II of this Agreement. Such payment shall be credited against (A) the amount of each year's interest payment due during the period prior to the due date of the first installment payment, starting with the first year, plus (B) the combined payments of principal and interest starting with the first installment payment, until the value of the currency use payment has been offset. Unless otherwise specified in Part II, no requests for payment will be made by the Government of the Exporting Country prior to the first disbursement by the Commodity Credit Corporation of the Exporting Country under this Agreement.

C. Type of Financing.

Sales of the commodities specified in Part II shall be financed in accordance with the type of financing indicated therein. Special provisions relating to the sale are also set forth in Part II.

D. Credit Provisions Applicable to Sales to be Financed on Credit Terms When Such Financing Terms Are Specified in Part II.

1. With respect to commodities delivered in each calendar year under this Agreement, the principal of the credit (hereinafter referred to as the principal) will consist of the dollar amount disbursed by the Government of the Exporting Country for the commodities (not including any ocean transportation costs).

The principal shall be paid in accordance with the payment schedule in Part II of this Agreement. The first installment payment shall be due and payable on the date specified in Part II of this Agreement. Subsequent

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installment payments shall be due and payable at intervals of one year thereafter. Any payment of principal may be made prior to its due date.

2. Interest on the unpaid balance of the principal due the Government of the Exporting Country for the commodities delivered in each calendar year shall be made as follows:

(a.) In the case of dollar credit, interest shall begin to accrue on the date of last delivery of these commodities in each calendar year. Interest shall be paid not later than the due date of each installment payment of principal, except that if the date of the first installment is more than a year after such date of last delivery, the first payment of interest shall be made not later than the anniversary date of such date of last delivery, and thereafter payment of interest shall be made annually and not later than the due date of each installment payment of principal.

(b.) In the case of convertible local currency credit, interest shall begin to accrue on the date of dollar disbursement by the Government of the Exporting Country. Such interest shall be paid annually beginning one year after the date of last delivery of commodities in each calendar year, except that if the installment payments for these commodities are not due on the same anniversary of such date of last delivery, any such interest accrued on the due date of the first installment payment shall be due on the same date as the first installment, and thereafter such interest shall be paid on the due dates of the subsequent installment payments.

3. For the period of time from the date the interest begins to the due date for the first installment payment, the interest shall be computed at the initial interest rate specified in Part II of this Agreement. Thereafter, the interest shall be computed at the continuing interest rate specified in Part II of this Agreement.

E. Payment Provisions Applicable to Sales to be Financed on Credit Terms When Such Financing Terms Are Specified in Part II.

All payments shall be made in United States Dollars or, if the Government of the Exporting Country so elects,

1. the payments shall be made in readily convertible currencies of third countries at a mutually agreed rate of exchange and shall be used by the Government of the Exporting Country for payment of its obligations or, in the case of

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currency use payments, used for the purposes set forth in Part II of this Agreement; or

2. the payments shall be made in local currency at the applicable exchange rate specified in Part I, Article III, G of this Agreement in effect on the date of payment and shall, at the option of the Government of the Exporting Country, be converted to United States Dollars at the same rate, or used by the Government of the Exporting Country for payment of its obligations or, in the case of currency use payments, used for the purposes set forth in Part II of this Agreement in the Importing Country.

F. Payment Provisions Applicable to Sales to be Financed on Local Currency Terms When Such Financing Terms Are Specified in Part II.

1. The Government of the Importing Country shall pay, or cause to be paid, to the Government of the Exporting Country an amount of local currency equivalent to the dollar amount disbursed by the Government of the Exporting Country for the commodities to be financed on local currency terms (not including any ocean transportation costs), less any portion of the initial payment payable in dollars, not later than 120 days after date of disbursement by the Government of the Exporting Country. The calculation of this local currency equivalent shall be at the applicable rate of exchange specified in Part I Article III G of this Agreement, using the rate in effect on the date of payment by the Government of the Importing Country.

2. The Government of the Exporting Country shall determine which of its funds shall be used to repay the Government of the Importing Country any local currency due the Government of the Importing Country as a result of refunds received by the Government of the Exporting Country of dollar amounts financed hereunder.

G. Deposit of Payments.

The Government of the Importing Country shall make, or cause to be made, payments to the Government of the Exporting Country in the currencies, amounts, and at the exchange rates provided for in this Agreement as follows:

1. Dollar payments shall be remitted to the Treasurer, Commodity Credit Corporation, United States Department of Agriculture, Washington, D.C. 20250, unless another method of payment is agreed upon by the two Governments.

2. Payments in the local currency of the Importing Country (Hereinafter referred to as local currency), shall be deposited to the Account of the Government of the United States of America in interest bearing accounts in banks selected by the Government of the United States of America in the Importing Country.

H. Uses of Local Currency From Sales of Commodities Financed on Local Currency Terms When Such Financing Terms are Specified in Part II.

1. The local currency accruing to the Government of the Exporting Country from sales of commodities financed on local currency terms shall be made available for use by the Government of the Exporting Country in such manner and order of priority as the Government of the Exporting Country shall determine, for the purposes and in the proportions indicated in Part II of the Agreement.

(a.) Any percentage of such local currency indicated in Part II for loans to intermediary financial institutions will be available for loans by the Government of the Exporting Country to Financial Institutions located or operating in the Importing Country for the purpose of relending to individuals, cooperatives, corporations, or other entities within the importing country, in order to finance:

(1.) Productive, private enterprise investment within the Importing Country including such investment in projects carried out by cooperatives and non-profit voluntary organizations;

(2.) Private enterprise facilities for aiding the utilization and distribution, and increasing the consumption of and markets for, United States agricultural commodities and products thereof; or

(3.) private enterprise support of self-help measures and projects outlined in Part II below.

(b.) The Government of the Exporting Country will keep the Government of the Importing Country informed, in a timely manner, as to the intermediary financial institutions selected as recipients of loans, the amount of such loans, and the repayment terms. The repayment terms will be consistent with the currency conversion obligations of the Government of the Importing Country under this Agreement.

(c.) Any percentage of such local currency indicated in Part II for agricultural technical assistance shall be made available by the Government of the Exporting Country for

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activities to support and expand private sector enterprise in the Importing Country, and activities to develop and expand markets for United States agricultural commodities and products thereof.

2. Local currency paid to the Government of the Exporting country by the intermediary financial institutions (under the terms of their loan agreements) may be used by that Government:

(a.) to finance additional productive, private enterprise investment under agreements with intermediary financial institutions;

(b.) to develop new markets for United States agricultural commodities;

(c.) to pay United States obligations in the Importing Country; or

(d.) to be converted to United States Dollars.

I. Currency Conversion Requirement For Local Currency From the Sale of Commodities Financed on Local Currency Terms When Such Financing Terms are Specified in Part II.

1. The amount of local currency which has accrued to the Government of the Exporting Country from the sale of commodities financed on local currency terms under this Agreement, and which has been repaid to that Government by intermediary financial institutions, less amounts thereof, if any, used to pay United States obligations or for the development of new markets for United States agricultural commodities in the Importing Country, shall be convertible to United States Dollars in accordance with the conversion schedule specified in Part II. The calculation of the United States Dollar equivalent shall be at the applicable rate of exchange specified in Part I, Article III G of this Agreement on the date of conversion.

2. Local currency received by the Government of the Exporting Country under the terms of a loan agreement with an intermediary financial institution in excess of the amount specified in Paragraph 1 above may be converted to United States Dollars as mutually agreed.

J. Sales Proceeds.

The total amount of the proceeds accruing to the Importing Country from the sale of commodities financed on credit terms under this Agreement, to be applied to the economic development processes set forth in Part II of this Agreement, shall be not less than the local currency

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equivalent of the dollar disbursement by the Government of the Exporting Country in connection with the financing of the commodities on credit terms (other than the ocean freight differential), provided, however, that the sales proceeds to be so applied shall be reduced by the currency use payment, if any, made by the Government of the importing country. The exchange rate to be used in calculating this local currency equivalent shall be the rate at which the central monetary authority of the Importing Country, or its authorized agent, sells foreign exchange for local currency in connection with the commercial import of the same commodities. Any such accrued proceeds that are loaned by the Government of the Importing Country to private or non-governmental organizations shall be loaned at rates of interest approximately equivalent to those charged for comparable loans in the Importing Country. The Government of the Importing Country shall furnish in accordance with its fiscal year budgeting procedure, at such times as may be requested by the Government of the Exporting Country but not less than annually, a report of the receipt and expenditure of the proceeds, certified by the appropriate audit authority of the Government of the importing country, and in case of expenditures the budget sector in which they were used.

K. Computations.

The computation of the initial payment, currency use payment and all payments of principle and interest under this Agreement shall be made in United States Dollars.

ARTICLE III

A. World Trade.

The two Governments shall take maximum precautions to assure that sales of agricultural commodities pursuant to this Agreement will not displace usual marketings of the Exporting Country in these commodities or unduly disrupt world prices of agricultural commodities or normal patterns of commercial trade with countries the Government of the Exporting Country considers to be friendly to it (referred to in this Agreement as Friendly Countries). In implementing this provision the Government of the Importing Country shall:

1. Insure that total imports from the Exporting Country and other Friendly Countries into the Importing Country paid for with the resources of the Importing Country will equal at least the quantities of agricultural commodities as may be specified in the Usual Marketing Table set forth in Part II during each import period specified in the table and during each subsequent comparable period in which commodities

financed under this Agreement are being delivered. The imports of commodities to satisfy these usual marketing requirements for each import period shall be in addition to purchases financed under this Agreement.

2. Take steps to assure that the Exporting Country obtains a fair share of any increase in commercial purchases of agricultural commodities by the Importing Country.

3. Take all possible measures to prevent the resale, diversion in transit, or transshipment to other countries or the use for other than domestic purposes of the agricultural commodities purchased pursuant to this Agreement (except where such resale, diversion in transit, transshipment or use is specifically approved by the Government of the United States of America).

4. Take all possible measures to prevent the export of any commodity of either domestic or foreign origin, which is defined in Part II of this Agreement, during the export limitation period specified in the Export Limitation Table in Part II (except as may be specified in Part II or where such export is otherwise approved by the Government of the United States of America).

B. Private Trade.

In carrying out the provisions of this Agreement, the two Governments shall seek to assure conditions of commerce permitting private traders to function effectively.

C. Self Help.

Part II describes the program the Government of the Importing Country is undertaking to improve its production, storage, and distribution of agricultural commodities. The Government of the Importing Country shall furnish in such form and at such time as may be requested by the Government of the Exporting Country, a statement of progress the Government of the Importing Country is making in carrying out such self-help measures.

D. Reporting.

In addition to any other reports agreed upon by the two Governments, the Government of the Importing Country shall furnish, in such form and such time as may be requested by the Government of the Exporting Country:

1. A report on the arrival of each shipment of commodities purchased under the Agreement which shall

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include: the name of each vessel; the commodity and quantity received; the discharge port; the date discharge was completed; the condition of the commodity on arrival; any significant loss or damage in transit; and advice of any claims for, or recovery of, or reduction of freight charges due to loss or damage in transit on U.S. flag ships;

2. A report covering the supply period specified in Part II, Item I of the Agreement and containing: statistical data on imports by country of origin to meet usual marketing requirements specified in Part II, Item III of the Agreement; a statement of the measures taken to implement the provisions of Section A, Items 3 and 4 of this Article; statistical data on exports by country of destination of commodities the same as or like those imported under the Agreement, as specified in Part II, Item IV of the Agreement; a statement of utilization of commodities imported under the Agreement; and a statement of measures taken to implement the publicity provisions of Section I of this Article.

E. Procedures for Reconciliation and Adjustment of Accounts.

The two Governments shall each establish appropriate procedures to facilitate the reconciliation of their respective records on the amounts financed with respect to the commodities delivered during each calendar year. The Commodity Credit Corporation of the Exporting Country and the Government of the Importing Country may make such adjustments in these accounts as they mutually decide are appropriate.

F. Definitions.

For the purposes of this Agreement:

1. Delivery shall be deemed to have occurred as of the on-board date shown in the ocean bill of lading which has been signed or initialed on behalf of the carrier,

2. Import shall be deemed to have occurred when the commodity has entered the country, and passed through customs, if any, of the Importing Country, and

3. Utilization shall be deemed to have occurred when the commodity clears customs and enters normal distribution channels within the Importing Country, including: being transported to mills, bakeries, refineries or other facilities for further processing; transported to local, regional or central storage for subsequent distribution; or transported directly to commercial or Government wholesale, retail, or ration center outlets.

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G. Applicable Exchange Rate.

For the purposes of this Agreement, the applicable exchange rate for determining the amount of any local currency to be paid to the Government of the Exporting Country shall be a rate in effect on the date of payment by the Importing Country which is not less favorable to the Government of the Exporting Country than the highest exchange rate legally obtainable in the Importing Country and which is not less favorable to the Government of the exporting country than the highest exchange rate obtainable by any other nation. With respect to local currency:

1. As long as a unitary exchange rate system is maintained by the Government of the Importing Country, the applicable exchange rate will be the rate at which the central monetary authority of the Importing Country, or its authorized agent, sells foreign exchange for local currency.

2. If a unitary system is not maintained, the applicable rate will be the rate (as mutually agreed by the two Governments) that fulfills the requirements of the first sentence of this Section G.

H. Consultation.

The two Governments shall, upon request of either of them, consult regarding any matter arising under this Agreement, including the operation of arrangements carried out pursuant to this Agreement.

I. Identification and Publicity.

The Government of the Importing Country shall undertake such measures as may be mutually agreed prior to delivery for the identification of food commodities at points of distribution in the Importing Country, and for publicity in the same manner as provided for in Subsection 103 (L) of the Act.

PART II - PARTICULAR PROVISIONS

ITEM I - COMMODITY TABLE:

| <u>Commodity</u> | <u>Supply Period (U.S. FY)</u> | <u>Approximate Quantity (Metric Tons)</u> | <u>Maximum Export Market Value (Dollars Millions)</u> |
|------------------|--------------------------------|---|---|
| Wheat | 1989 | 33,000 | 5.0 |

ITEM II. PAYMENT TERMS: Convertible Local Currency Credit (CLCC)

1. Initial Payment - five (5) percent.
2. Currency Use Payment - ten (10) percent for Section 104(A) purposes.
3. Number of installment payments - thirty one (31).
4. Amount of each installment payment - approximately equal annual amounts.
5. Due date of the first installment payment - ten (10) years after date of last delivery of commodities in each calendar year.
6. Initial interest rate - two (2) percent.
7. Continuing interest rate - three (3) percent.

ITEM III. USUAL MARKETING TABLE:

| <u>Commodity</u> | <u>Import Period (U.S. Fiscal Year)</u> | <u>Usual Marketing Requirements (Metric Tons)</u> |
|--|---|---|
| Wheat/Wheat Flour (Grain Equivalent Basis) | 1989 | 62,200 |

ITEM IV. EXPORT LIMITATIONS:

(A). Export Limitation Period:

The export limitation period shall be United States Fiscal Year 1989, or any subsequent United States Fiscal Year during which commodities financed under this Agreement are being imported or utilized.

(B). Commodities to which Export Limitations Apply:

For the purposes of Part I, Article III (A) (4) of this Agreement, the commodities which may not be exported are: for wheat - wheat, wheat flour, rolled wheat, semolina, farina, and bulgur (or the same products under different names).

ITEM V. SELF-HELP MEASURES:

A. The Government of the Republic of Kenya will continue to undertake Self-Help Measures to improve the production, storage, and distribution of agricultural commodities. The following Self-Help Measures shall be implemented to contribute directly to development progress in rural areas and increase agricultural production through small farm agriculture.

B. The Government of the Republic of Kenya agrees to undertake the following activities and in doing so to provide adequate financial, technical, and managerial resources for their implementation:

1. Consolidation of Previous Self-Help Measures

(A) The Government will continue to improve and assure the implementation of the Self-Help Measures of Privatization of U.S. Title I and Commercially Imported Wheat, Semi-Annual Food Grain Situation and Outlook Reporting, and Donor Food Aid Coordination as found in the Agreement of July 22, 1988, as amended.

(B) Benchmarks:

(1) The Government will advise approved millers of the expected quantities, delivery dates, and price guidelines for Title I and commercially imported commodities to be delivered within two weeks of the date of the import agreement.

(2) The Government will offer to approved millers the specific condition of sale for each shipment at least three (3) weeks prior to the arrival of said commodities and allow at least two (2) weeks for miller response. The invitation for response will advise the milling sector that in the event that demand at a given price is greater than the availability the allocations will be made in part on the basis of the date on which the offer was received.

(3) The Government will advise USAID within one (1) week of the closing tender date of the number and quantity of offers as well as the amount allocated.

(4) The Government will submit to USAID evidence which confirms deliveries of quantities in conformance with the allocation.

(5) By December 31, 1988, the Government will inform interested parties and USAID of an Expected Cereal Import Plan which includes itemized quantity, specifications, foreign exchange requirements, and expected delivery date for calendar year 1989. Interested parties and USAID will be advised of any modifications in this plan as a result of reassessments of the food situation.

(6) The Government shall submit Food Situation and Outlook Reports to USAID/Kenya by October 31, 1988; April 30, 1989; and September 30, 1989. Such reporting will provide information on supply (opening stock levels, current production estimates, commercial and food aid imports) and utilization (exports, feed, seed, waste and human consumption) as well as the expected closing stocks on a semi-annual basis for the commodities of maize, beans, wheat, rice.

(7) Donor Food Aid Coordination: In its efforts to continue a forum for the review of food assistance to Kenya and for the coordination of regular and emergency imports by Donors and Non-Governmental Organizations, the Government will submit an approved and fixed schedule of Donor Food Aid Coordination meetings to be held during the following year. The schedule of meetings shall be submitted to USAID and other Donors no later than October 15, 1988.

2. Feasibility Study of Direct Miller Importation

(A) The Government of Kenya will conduct during fiscal year 1988/89 a feasibility study which explores the potential of direct importation by the private sector. This study will consider the economic and financial implications for the domestic producer, consumer, millers and government in an effort to assure increased market efficiency and food (wheat) security. This study will also examine the import procedures utilized in other countries.

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(B) Benchmarks:

- (1) By March 31, 1989, the Government will report to USAID in writing on the status of its findings.
- (2) The Government will submit to USAID the results of the feasibility study no later than June 30, 1989.

3. Domestic Grain Marketing Policy and Operational Reforms

(A) The Government will assure that the gradual policy and operational reforms of the National Cereals and Produce Board contained within the EEC financed study and the Joint Cabinet Memorandum are implemented.

(B) Benchmarks:

(1) By March 31, 1989, the Government will provide USAID with details of its plan to reduce NCPB's market share while simultaneously stabilizing produce prices. These details will include: (a) an analysis of the 1988 crop and the NCPB purchases required to stabilize prices throughout the country; (b) an analysis of cash requirements and procedures to assure timely payments; (c) a discussion of the role of cooperatives and private sector in the reorganized maize market; and (d) verifiable indicators to demonstrate that NCPB reduces its market share.

(2) The Government will advise USAID of its intended modification in the system of movement permits no later than January 31, 1989.

(3) The Government will implement a plan for crop purchases by February 1, 1989 that will address the necessity of prompt cash payment to producers.

(4) The Government will submit a status report to USAID by April, 1989, regarding the implementation plans of becoming a buyer/seller of last resort for the marketing of beans during the 1989/90 market year. The status report will cover information with regard to pricing structure modifications; necessary purchases to

support the minimum price; necessary purchases to replenish the strategic reserve; market information requirements necessary to assure that the market will be liberalized with minimal distortions to the producer/consumer.

4. National Cereals and Produce Board Administrative and Organizational Reforms

(A) The Government will assure that the gradual administrative and organizational reforms of the National Cereals and Produce Board contained within the EEC financed study and the Joint Cabinet Memorandum are implemented.

(B) Benchmarks:

(1) The Government will assure that the positions of Manager for the Divisions of Operations, Finance and Services as well as the Forward Planning Unit are filled by December 31, 1988.

(2) The Government will submit proof as part of the annual Self-Help Report that competitive bid processes are being utilized for the international tenders of imports and exports.

(3) The Government will assure that the recommendations of the Management Letter on Accounts as of June 30, 1988 are implemented to permit an Unqualified Audit Report as of June 30, 1990. The Government will report on the progress of implementation by June 30, 1989.

(4) The Government will utilize a firm of Certified Public Accountants, registered to practice in Kenya and approved by USAID, to review the generations, deposit, withdrawal, and utilization of funds under this Agreement. This firm shall be named no later than November 1, 1988.

5. Integrated Market Development Program Preparation

(A) The Government will continue to pursue economic growth through policies/programs which focus on the linkages between increases in agricultural production, market efficiency and the development of

secondary towns and cities. The Government will demonstrate this commitment in the collaborative design (with USAID) of an Integrated Market Development Program which will enhance these linkages over time. During fiscal year 1988-89, the Government will: (1) develop a Policy Agenda which establishes benchmarks for the Government's proposed Market Policies; and (2) supervise and participate in specific studies described below which are intended to assure the design of appropriate policies and investment decisions under the Integrated Market Development Program.

(B) Benchmarks:

(1) By November 15, 1988, the Government will have developed and submitted to USAID a draft Policy Agenda which clearly states both the Government's stated policy with regard to the marketing of agricultural inputs and outputs as well as the actions required to assure successful implementation of these policies for the period 1988/89 -- 1991/92.

(2) The Policy Agenda will be reviewed and updated with a specific set of Self-Help Measures agreed upon for incorporation within the FY 1989/90 Title III Program Proposal no later than February 15, 1989.

(3) By March 31, 1989, economic studies will be completed which: (a) analyze market structure, performance and conduct for agricultural inputs and products; (b) analyze the prospects for private investment in rural areas as well as possible measures to encourage private investment; and (c) analyze the rural infrastructure allocation decisions as well as the economic and financial viability of proposed investments.

(4) By March 31, 1989, market information system studies will be completed which provide alternative means for the Government to improve its crop forecasting and market information services.

(5) By March 31, 1989, selection criteria for infrastructural investment in rural access roads and market towns will be developed.

(6) By March 31, 1989, a monitoring and evaluation framework for the Marketing Program will have been designed.

ITEM VI. ECONOMIC DEVELOPMENT PURPOSES FOR WHICH PROCEEDS ACCRUING TO THE IMPORTING COUNTRY ARE TO BE USED:

A. The Proceeds accruing to the Government of the Republic of Kenya from the sale of commodities financed on CLCC terms under this agreement will be used for financing the Self-Help Measures set forth in the Agreement, and for development in the agricultural and rural development sectors, in a manner designed to increase the access of the lowest income groups in Kenya to an adequate, nutritious, and stable food supply.

B. In the use of proceeds for these purposes, emphasis will be placed on directly improving the lives of the lowest income groups of Kenya's people and their capacity to participate in the development of their country.

C. For the period during which disbursements are made in accordance with this Item VI, the Government of the Importing Country will furnish the Government of the Exporting Country a quarterly report of the deposits and disbursements made, certified by the appropriate audit authority of the Government of the Importing Country, and a description of the activities for which the disbursements were made.

D. The Government of the Exporting Country reserves the right to review such activities. If the Government of the Exporting Country determines that a disbursement was made for an activity ineligible to receive a disbursement under this Item VI, notice of such ineligibility shall be given by the Government of the Exporting Country to the Government of the Importing Country, and the two Governments shall, upon request of either, consult regarding such ineligibility. If the notice of ineligibility is not rescinded by the Government of the Exporting Country within 90 days of receipt of such notice by the Government of the Importing Country, at the option of the Government of the Exporting Country, the equivalent amount shall be restored by the Government of the Importing Country for disbursement for an eligible activity.

E. The Government of the Importing Country agrees to maintain adequate records for not less than three years after the end of the supply period of this Agreement to permit review and audit by the Government of the Exporting Country of the generation of sales proceeds and measures taken to implement this Agreement. The Government of the Exporting Country shall have the right at reasonable times to inspect projects, and inspect and audit records, procedures and methods pertaining to the disbursements.

In witness whereof, the respective representatives, duly authorized for the purpose, have signed the present Agreement.

Done at Nairobi, in duplicate, the 17th day
of *October*, Nineteen Hundred and Eighty Eight.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA

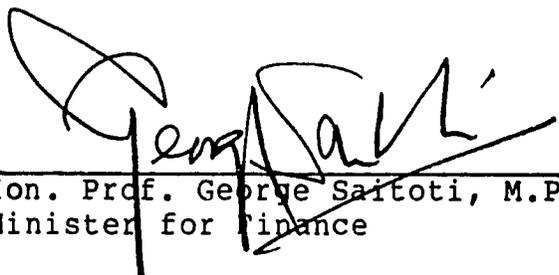
FOR THE GOVERNMENT OF
THE REPUBLIC OF KENYA

By:



Elinor G. Constable
Ambassador

By:



Hon. Prof. George Saitoti, M.P.
Minister for Finance


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Minutes of Negotiations on the U.S. Public Law 480
Title I Program for U.S. Fiscal Year 1989
Held at the Treasury Building on
September 29, 1988

In addition to the conditions in the draft Agreement, Part II, between the Government of the United States of America and the Government of the Republic of Kenya for the sale of agricultural commodities, the following matters require the Government of Kenya's attention during negotiations.

1. Commodity Composition

The commodity composition is shown in Part II, Item I of the Agreement. Wheat is programmed at approximately 33,000 MT with a value of U.S. dollars 5 million. In accordance with Part I, Article I (E) of the Agreement, the export value specified in Part II, Item I may not be exceeded. This means that, if commodity prices increase over those used in determining the estimated quantity used in Part II of the Agreement, the quantity financed under the Agreement will be less than the quantity set forth in Part II. However, should actual prices be lower at the time of purchase, the Government of Kenya may purchase up to the maximum export market value, i.e. more than the quantity set forth in Part II.

2. Commodity Deliveries

The supply period of the Agreement is United State fiscal year 1989. In order to expedite implementation of the Agreement after signature, the Government of Kenya is encouraged to make an early request, through its Embassy in Washington for purchase authorizations (PA's). The Government of Kenya should also open letters of credit promptly for both commodities and freight after PA's are issued, commodities are purchased, and vessels are booked. It was noted that no purchase authorization will be issued authorizing FY 1989 deliveries until a determination has been made that funds and commodities are available for fy 1989 deliveries.

3. Payment Terms

The payment terms are those of Convertible Local Currency Credit (CLCC) which are shown in Part II, Item II of the Agreement. These are the same payment terms as were used in the FY 1988 Title I Agreement. They provide for CLCC terms of forty (40) years including a ten (10) year grace period, an Initial

Payment of five (5) percent, a ten (10) percent Currency Use Payment (CUP), a two (2) percent initial interest rate, and a three (3) percent continuing interest rate.

4. Title I Arrearages

As of May 31, 1988 there were no arrearages. The Government of Kenya was commended for having paid its past arrearages. The Government of Kenya was encouraged to continue to make prompt payments per the schedules.

5. Counterpart Deposit Arrearages

As of September 25, 1988 there were no arrearages for the 1984, 1985 or 1987 accounts. There are arrearages of K Shs 166,076,710.20 for the 1986 Program which should be deposited into Special Account No. 140 with the Paymaster General at the Government of Kenya's earliest convenience to permit the use of these funds for the developmental purposes for which they were intended. The two Governments agreed to reconcile the 1988 accounts during the month of October 1988.

6. Usual Marketing Requirements

The Usual Marketing Requirements are set forth in Part II, Item III of the Agreement. For the year ending September 30, 1989, the Government of Kenya's usual marketing requirement is 62,200 metric tons. The Government of Kenya is reminded that Section 103, Paragraph (0) of the PL 480 Legislation requires that steps must be taken to assure that the U.S. obtains a fair share of any increase in commercial purchases of agricultural commodities by Kenya.

7. Export Limitations

The provisions shown in Part II, Item IV, Paragraphs A and B, concerning the export of wheat and/or wheat products are standard.

8. Self-Help Measures

Section 109 (A) of the PL 480 Legislation requires that, before entering into agreements for the sale of commodities, consideration be given to the extent to which the recipient country is undertaking self-help measures to increase per capita production and improve the means for storage and distribution of agricultural commodities. In addition, it is required that particular account be taken to determine the extent to which the measures are being carried out in ways designed to contribute

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directly to development progress in poor rural areas and to enable the poor to participate actively in increasing agricultural production through small farm agriculture. Section 109 includes literacy and health measures for the rural poor as a subject for self-help measures.

The self-help measures which the recipient country agrees to undertake shall be described: (A) to the maximum extent feasible, in specific and measurable terms, and (B) in a manner which ensures that the needy people in the recipient country will be the major beneficiaries of the self-help measures pursuant to each agreement. To the maximum extent feasible, self-help measures agreed to are to be additional to the measures that the recipient country otherwise would have undertaken irrespective of this Agreement. All appropriate steps are to be taken to determine whether the self-help provisions of each agreement and amendment entered into are being carried out. Under current interpretation, it must be possible, after a given period, such as a year, to determine the extent to which the self-help measures have or have not been carried out. The specific benchmarks devised to measure progress have been included in the Agreement.

The Government of Kenya is reminded of the importance of submitting reports regarding the self-help measures no later than the date required under the relevant benchmark. Determination as to whether economic developments and self-help measures are being fully carried out is to be made through the established yearly reporting process. The Government of Kenya is reminded that the due date for submitting the Annual Self-Help Report is November 15, 1989. Prior to the submission of the annual report, USAID/Kenya Food for Peace personnel will meet on a regular and periodic basis with Government of Kenya named counterpart(s) to assure the effective implementation of the Title I Program. An interim reporting cable is due in AID/W no later than August 31, 1989.

9. Use of Sales Proceeds

The agreed upon use of sales proceeds is found in Part II, Item VI of the Agreement. Under the terms of the Agreement, a minimum of K Pounds 3,920,000 is to be deposited no later than 120 days after Commodity Credit Corporation (CCC) disbursement. The funds are to be utilized for the agreed upon purposes during the Government of Kenya 1989/90 fiscal year. The estimated amount of K Pounds 3,920,000 may be amended once the CCC Advice of Payment and NCPB Generations and Deposit Report are received.

It is duly noted that the language found in Part I, Article II, Paragraphs H and I (Pages 7 and 8 of the Agreement) is standard language for all FY 1989 Title I Agreements. Local Currency accruing to the Government of the Exporting Country refers to Section 106/108 of the Food Security Act of 1985 under which the Government of the Importing Country channels a portion of the local currency proceeds directly to the private sector (Section 106) or through early payment to the Government of the Exporting Country (Section 108) for promotion of private enterprise activities. Inasmuch as these Sections are not included within Part II of the FY 1989 Agreement, the language of Part I, Article II, Paragraph J which discusses Sales Proceeds is pertinent in that the generations are accrued to the Importing Country.

The two Governments agree that the proposed use of Counterpart Generations should be incorporated within the Agreement. It is recognized, however, that the programming of counterpart funds at this time is not consistent with the Government's budgetary cycle. It was therefore agreed that the two Governments would finalize the agreed upon uses in a counter-signed Implementation Letter no later than December 1, 1988.

10. Section 108 - Private Sector Lending

The Food Security Act of 1985 contained amendments designed to stimulate private enterprise in developing countries to promote economic growth and development. For the period 1986-1990 the Legislation encourages channeling local currency, in an amount equivalent to a total of 25 percent of the value of Title I commodities for private sector lending under Sections 106 and 108, to the extent that there are appropriate proposals. The statute mandates that at least 10 percent of the annual value of Title I commodities shall be sold for local currency for private sector lending under Section 108. The balance of fifteen (15) percent of the Title I budget may be programmed either for private sector lending under Section 106, using Host Government owned local currencies, or any combination of Sections 106 and 108.

While private sector lending under Section 106 or 108 is not included within the current Agreement, the Government of Kenya and the Government of the United States of America have agreed to continue to examine programming possibilities for the FY 1990 Title I Program.

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11. Compliance and Reporting Requirements

The Government of Kenya is reminded of its responsibility for compliance with provisions of Articles II and III of Part I of the Agreement. Submission of timely and accurate reports by the Government of Kenya on compliance, shipping and arrival information, self-help measures and use of sales proceeds facilitates timely administration of Title I activities by the U.S. Government. This reporting requirement includes compliance with Part I, Article II (F) of the Agreement for a yearly certified report on the amounts of local currency sales proceeds used for economic development purposes. This report should be submitted as part of the annual self-help report.

The language of Part II Item VI has been modified to include a provision which specifically requires the Importing Country to maintain adequate records for at least three years after the close of the Agreement's supply period, and gives the United States Government the right to audit those records at reasonable times. It is noted that historically it has been difficult to monitor the release of funds from the Special Accounts to the mutually agreed upon purposes. The Government of Kenya is therefore encouraged to implement a monitoring system which enables accurate reporting on the use of Counterpart Proceeds generated by this and previous agreements. Such a report should be submitted within the framework of the Annual Self-Help Report.

12. Revised Cargo Preference

The Government of Kenya is reminded of the Food Security Act of 1985 changes in Cargo Preference Requirements. Effective April 1, 1987, the percentage of cargo that must be transported on U.S. flag ships increased to seventy (70) percent. On April 1, 1988, the effective rate became seventy five (75) percent. These percentages are overall program requirements and thus only rough targets for each participating country. It should not be assumed that each tender held by the Government of Kenya will be divided exactly 75-25 between U.S. and non-U.S. flag vessels.

Article I Paragraph F of the Agreement provides that "the Government of the Exporting Country shall bear the ocean freight differential for commodities the Government of the Exporting Country requires to be transported in United States flag vessels." It is the United States Department of Agriculture (USDA) policy to attempt to avoid to the extent possible expensive and inefficient shipment of partial cargoes on vessels. Thus USDA may require heavy shipment on a U.S. flag vessel(s) on one tender, with the assumption that non-U.S. flag vessels will be more heavily utilized to carry cargo on a later

tender. Further, it may develop that U.S. vessels are not available to meet the target percentage for shipments to a given country. If this occurs, USDA (still paying cargo preference cost differential) may require an increase in U.S. flag shipments to another country (possibly even 100 percent U.S. flag shipment) in order to meet overall program requirements.

13. Operational Considerations

The U.S. Government must have assurances from the Government of Kenya that arrangements have been made by appropriate authorities to relay to the Kenyan Embassy in Washington all instructions, information and authority necessary to ensure timely implementation of the Agreement including:

(a) Type and grade of each commodity to be purchased in accordance with official U.S. standards, with explanation/justification if commodities or specifications requested carry a significant price premium. The reason for requesting this explanation is to maximize the amount of commodity with the funds provided under the Title I Agreement. However, it is also recognized that a country may require commodities with certain premium price characteristics to meet specific end use requirements.

(b) Proposed contracting and delivery schedule to vessel at U.S. port(s) or Canadian transshipment point(s) including the latest feasible terminal delivery date to enable alternative scheduling, if necessary.

(c) Name and address of the bank in Kenya and the U.S. commercial bank acceptable to CCC through which letters of credit for commodity and ocean freight will be implemented.

(d) Assurance that appropriate Kenyan authorities are prepared to make prompt transfers of funds to cover initial payment and ocean freight costs of commodities purchased under the Agreement.

(e) Complete instructions to the Government of Kenya's Embassy in Washington regarding arranging for purchasing commodities and contracting for freight.

(f) Justification for any ocean freight transportation requirements that may restrict the use, or increase the cost of U.S. flag vessel(s).

(g) Instructions to contact the PL 480 Operations Division, Export Credit, Foreign Agricultural Service, USDA, telephone (202) 447-5780, for assistance.

The information in (a) through (d) above is required by the U.S. Mission during negotiations so that it may dispatch an Operational Reporting Cable to the USDA no later than the signing of the Agreement.

14. Regulations and Legislative Requirements

The Government of Kenya is reminded that according to current USG regulations and legislative requirements, the following should be observed:

(a) Purchase of food commodities under the Agreement must be made on the basis of invitations for bids (IFB's) publicly advertised in the United States and on the basis of bids (offers) which shall conform to the IFB. Bids are to be received and publicly opened in the United States. All awards under IFB's must be consistent with open, competitive, and responsive bid procedures.

(b) Terms of all IFB's (including IFB's for ocean freight) must be submitted to the General Sales Manager, FAS, USDA for review prior to issuance.

(c) If the Government of Kenya nominates a purchasing or shipping agent to procure commodities or arrange ocean transportation under the Agreement, the Government of Kenya is required to notify the General Sales Manager, FAS, USDA, in writing, of such nomination and attach a copy of the proposed agency agreement. All purchasing and shipping agents must be approved by the General Sales Manager, FAS, USDA, in accordance with regulatory standards designed to eliminate certain potential conflicts of interest.

(d) If the Government of Kenya plans to use a shipping agent this fiscal year, it should make nominations promptly.

15. Letters of Credit

The U.S. Government must receive assurances from the Government of Kenya that appropriate measures will be taken to ensure that operable and irrevocable letters of credit for both commodities and freight will be issued, advised, or confirmed by U.S. commercial bank(s) previously named by the Government of Kenya, immediately after commodities are purchased and ocean freight booked. Under the FY 1988 Title I Program, the Government of Kenya requested CCC to guarantee payment to a wheat supplier because the letter of credit was not open when the vessel arrived for loading. The Government of Kenya is to ensure that all letters of credit are opened as soon as the commodities are purchased and vessels booked for the FY 1989 Title I Program.

The Government of Kenya is reminded that commodity and ocean freight suppliers may refuse to load vessels when acceptable letters of credit for commodities or ocean freight are not available at time of loading. This can result in costly claims by vessel owners (demurrage) and by commodity suppliers (carrying charges).

The Government of Kenya is reminded that it must open letters of credit for 100 percent of ocean freight not later than 43 hours prior to vessel presentation for loading, providing for sight payment or acceptance of a draft in U.S. dollars in favor of the ocean transportation supplier on the basis of tonnage and rates specified in the applicable charter party or booking note.

The Government of Kenya is directed to review Section 7CFR 17.9(M) of the Title I Financing Regulations concerning payment of the final 10 percent of ocean freight charges. Where the ocean freight contract provides for demurrage/despatch, 90 percent of the ocean freight must be paid promptly on arrival of cargo. The remaining 10 percent, less despatch if any, should be paid promptly to the carrier upon completion of the laytime statement. Claims against the carrier for damaged or lost cargo should be pursued through normal channels and not deducted from the ocean freight.

16. Performance Bonds

The Government of Kenya is advised that if the commodity IFB issued requires a performance bond, the requirement must be fair to both the buyer and sell. USDA has developed performance bond language which satisfies these concerns and which may be used in commodity IFB's. USDA will be available to coordinate implementation of this performance bond language with purchasing officials in the United States.

17. Clarification of the Privatization Program

The implementation of the FY 1987 Privatization Program has found that there may have been an unintended disincentive to domestic production as a result of the minimum price formula employed. In order to correct for this unforeseen consequence of falling U.S. prices and rising Kenyan Prices, it was agreed in the FY 1988 Negotiations that the minimum bid price would be the ex-depot Mombasa price for Kenyan No. 1 Wheat.

It was also found that pan-territorial pricing of wheat resulted in millers in the Western regions being unable to compete for wheat offered under the FY 1987 Program. It was

therefore agreed that representatives of NCPB and A.I.D. would develop a minimum bid price schedule which would allow for transportation cost differentials. Such a schedule for the mill sites in Kenya would eliminate the short-term problem of price discrimination. The Government agreed that in the longer-term it would explore a program of regional pricing.

18. Title I Steering Committee

In the July 22, 1988 Amendment to the FY 1988 Title I Agreement, the two Governments agreed to the formation of a Steering Committee which would coordinate implementation and monitor progress of all self-help measures. The Agreement called for the Steering Committee to meet monthly. It was agreed to change this requirement to regular bi-monthly meetings with the provision for exceptional meetings if required.

19. Food Situation and Outlook Reports

The two Governments agreed that the language found within Self-Help Measure No. 1, Benchmark 5 (Page 15 of the Agreement) is the minimum reporting required. The GOK is encouraged to strengthen this reporting by both increasing the frequency of reporting and expanding the number of commodities covered. While it was agreed that it is difficult to quantify the production of sorghum, millet, roots and tubers, oilseeds, etc., the Government should attempt to discuss these in the narrative and present annual totals when the District reports have been aggregated.

20. USAID Financing of Priority Self-Help Measure Activities

It was agreed that both the Feasibility Study of Direct Miller Importation (Self-Help Measure 2, Page 15-16 of the Agreement) and the financial review of the Title I Program (Self-Help Measure No. 4, Benchmark No. 4, Page 18 of the Agreement) were important to the proposed Title III Program. The GOK expressed its concern that these activities should be conducted in a timely fashion with an emphasis on quality. The GOK advised the USG that it had neither the human or financial resources available to satisfactorily conduct these reviews and requested that the USG finance the activities. The USG noted that these activities should be funded under counterpart generations, but that Project Development and Support Funds would be made available on an exceptional basis this year.