

A.I.D. Program No. 391-0492
Grant No. 391-K606A
Appropriation No. 72-118/91037
Budget Plan Code: QES8-88-37391-KG-39
Project Agreement No. 88-13A

COMMODITY IMPORT GRANT AGREEMENT

BETWEEN

THE PRESIDENT OF THE ISLAMIC REPUBLIC OF PAKISTAN

AND THE

UNITED STATES OF AMERICA

FOR

AGRICULTURAL SECTOR SUPPORT PROGRAM

DATED: August 4, 1988

(CONFORMED COPY)

Grant and Grant Agreements
FM/LMD (if Loan)
FM/PAPD
FM/CAD
GC/ANE
ANT Desk
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ANE/PD Officer & File
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Dated: August 4, 1988

Between

The President of the Islamic Republic of Pakistan, acting through the Government of Pakistan (hereinafter referred to as the "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 and local costs of certain commodities and commodity-related services ("Eligible Items") necessary to promote the economic and political stability of Pakistan, the United States, pursuant to the Foreign Assistance Act of 1961, as amended, agrees to grant the Government of the Islamic Republic of Pakistan, under the terms of this Agreement, not to exceed Sixty Million United States dollars (\$60,000,000) ("Grant").

Article 2: Conditions Precedent to Disbursement

SECTION 2.1. First Disbursement. Prior to the first disbursement 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 or have furnished to A.I.D., in form and substance satisfactory to A.I.D.:

(a) 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;

(b) A statement representing and warranting that the named person or persons have the authority to act as the the representative or representatives of the Grantee pursuant to Section 7.2 together with a specimen signature of each such person certified as to its authenticity.

SECTION 2.2. Notification. When A.I.D. has determined that the conditions precedent specified in Section 2.1 have been met, it will promptly notify the Grantee.

SECTION 2.3. Terminal Date for Conditions Precedent. If all the conditions specified in Section 2.1 have not been met within sixty (60) days from the date of signing 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 the Grantee.

Article 3: Procurement, Eligibility, and Utilization of Commodities.

SECTION 3.1. 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 3.2. Eligible Items. The commodities eligible for financing under this Grant shall be those listed below and such other commodities as are mutually agreed upon in writing by the Parties and specified in Implementation Letters issued to the Grantee in accordance with Section 7.1 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.

Eligible Commodities

Group 1: Wheat

Group 2: Commodity imports as A.I.D. and the GOP may agree, from time to time, are necessary to meet the emergency requirements of Pakistan.

SECTION 3.3. Procurement Source. All Eligible Items shall have their source and origin in the United States of America (Code 000 of the A.I.D. Geographic Code Book as in effect at the time orders are placed or contracts entered into for such eligible items) except as A.I.D. may specify in Implementation Letters or as it may otherwise agree in writing.

SECTION 3.4. 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 3.5. Procurement for Public Sector. With respect to procurement under this Grant by or for the Grantee, its departments and instrumentalities, the provisions of Section 201.22 of A.I.D. Regulation 1 regarding formal competitive bid procedures will apply unless A.I.D. otherwise agrees in writing.

SECTION 3.6. Special Procurement Rules.

(a) None of the proceeds of this Grant 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 A.I.D. 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.

(c) All international air shipments financed under this Grant will be on carriers holding U.S. certification to perform the service, unless shipment would, in the judgment of the Grantee, be delayed an unreasonable time awaiting a U.S.-flag carrier either at point of origin or transshipment. The Grantee must certify to the facts in the vouchers or other documents retained as part of the Grant records.

SECTION 3.7. 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:

(1) 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

(2) 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) The 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. in writing.

SECTION 3.8. 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 a country included in the Geographic Code authorized in Section 3.3 of the Agreement, except that when Code 941 is authorized, A.I.D. will finance only those transportation costs incurred on aircraft or ocean vessels under flag registry of the United States. When Code 941 is authorized and there is a general unavailability of cooperating country flag aircraft or ocean vessels, A.I.D. will specifically authorize in Implementation Letters the financing of transportation costs incurred on aircraft or ocean vessels of any country included in Code 941.

(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 Pakistan 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.

SECTION 3.9. 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 3.3 of this Agreement, or if Geographic Code 94¹ is authorized, also in the Grantee country, in accordance with the applicable provisions of A.I.D. Regulation 1, Subparts B and C.

Article 4: Disbursement

SECTION 4.1. Letters of Commitment to Banks. After satisfaction of the conditions precedent, 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 4.2. Other Forms of Disbursement Authorizations.

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

SECTION 4.3. 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 A.I.D. may otherwise agree in writing.

SECTION 4.4. Terminal Date for Requests for Disbursement. No disbursement of Grant funds shall be made against documentation submitted after eighteen (18) months from the date of signing of this Agreement, except as A.I.D. may otherwise agree in writing.

Article 5: General Covenants

SECTION 5.1. Use of Sales Proceeds. All local currency proceeds from the sale or importation of commodities provided under this Agreement will be credited to the Federal Consolidated Fund of the Grantee. The Grantee agrees to credit these proceeds to a special subsidiary account to be named "US AID Program for US FY 1988".

Funds in the special subsidiary account shall be mutually programmed by A.I.D. and the GOP for use in development activities in such areas as agriculture, rural development, water resources, energy, population, education, health and/or in any other areas to which both parties may agree in writing, and where appropriate, may also be used to reduce opium/poppy production. Upon mutual agreement of the parties, rupees deposited in the special subsidiary account may also be used to pay United States administrative costs in Pakistan.

SECTION 5.2. Taxation. This Agreement and the Grant will be free from any taxation or fees imposed under laws in effect in Pakistan.

SECTION 5.3. Reporting and Records. In addition to the requirements of 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 three-year period to inspect the commodities financed under this Grant at any point, including the point of use.

SECTION 5.4. 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 a timely fashion of any subsequent facts and circumstances that might materially affect, or that it is reasonable to believe might so affect, the Grant or the discharge of the responsibilities under this Agreement.

SECTION 5.5. Other Payments. The Grantee affirms that no payments have been made 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.

SECTION 5.6. Minimum size of Transactions. No foreign exchange allocation or letters of credit issued pursuant to this Agreement shall be in an amount less than Ten Thousand dollars (\$10,000), except as A.I.D. may otherwise agree in writing.

SECTION 5.7. Reporting. As long as balances remain in the Special Account, the Borrower/Grantee shall provide to the A.I.D., in form and substance satisfactory to A.I.D. annual reports on the balances remaining in the account and the withdrawals and use of the funds from that account during the current reporting period with the first report covering deposits and withdrawals through December 31, 1988 to be provided by January 15, 1989.

Article 6: Termination; Remedies

SECTION 6.1 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 6.2 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, giving prompt notice to the Grantee thereafter;

(2) decline to issue additional commitment documents or to make disbursements other than under the 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 at ports of entry of Pakistan.

SECTION 6.3. Cancellation by A.I.D. If, within sixty (60) days from the date of any suspension of disbursements pursuant to Section 6.2, 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 6.4. 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 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 disbursements 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 6.5. 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 7: Miscellaneous

SECTION 7.1. 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.

SECTION 7.2. Representatives. For all purposes relevant to this Agreement, the Grantee will be represented by the individuals holding or acting in the Offices of the Secretary, the Joint Secretary and the Deputy Secretary of the Economic Affairs Division, and A.I.D. will be represented by the individual holding or acting in the Office of the Director, USAID Mission to Pakistan, 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 7.3. Communication. 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 addresses:

To the Grantee

Mail Address: Economic Affairs Division
Government of Pakistan
Islamabad (Pakistan)

Alternative address for Cables: ECONOMIC ISLAMABAD

To A.I.D.

Mail Address: USAID/Pakistan
P.O. Box No. 1028
Islamabad (Pakistan)

Alternative address for Cables: USAIDPAK ISLAMABAD
Telex: 54270 USAID PK

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. The Grantee, in addition, will provide the USAID Mission with an original and a copy of each communication sent to A.I.D.

