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No. 5898

**UNITED STATES OF AMERICA
and
BRAZIL**

Exchange of notes constituting an agreement relating to the acquisition by the Government of the United States of America of monazite sand, rare earth compounds and thorium compounds. Rio de Janeiro, 20 August 1954

Exchange of notes constituting an agreement relating to the delivery by the Government of Brazil and acceptance by the Government of the United States of America of rare earth sodium sulphate and metallurgical manganese ore as payment of a debt arising out of the above-mentioned Agreement. Washington, 5 January 1961

Official texts: English and Portuguese.

Registered by the United States of America on 29 September 1961.

**ÉTATS-UNIS D'AMÉRIQUE
et
BRÉSIL**

Échange de notes constituant un accord relatif à l'acquisition par le Gouvernement des États-Unis d'Amérique de sables monazitiques, de composés de terres rares et de composés de thorium. Rio de Janeiro, 20 août 1954

Échange de notes constituant un accord relatif à la livraison par le Gouvernement du Brésil et à l'acceptation par le Gouvernement des États-Unis d'Amérique de sulfates de sodium et de terres rares et de minerai de manganèse métallurgique en paiement d'une dette résultant de l'Accord susmentionné. Washington, 5 janvier 1961

Textes officiels anglais et portugais.

Enregistrés par les États-Unis d'Amérique le 29 septembre 1961.

No. 5898. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN THE UNITED STATES OF AMERICA AND BRAZIL RELATING TO THE ACQUISITION BY THE GOVERNMENT OF THE UNITED STATES OF AMERICA OF MONAZITE SAND, RARE EARTH COMPOUNDS AND THORIUM COMPOUNDS. RIO DE JANEIRO, 20 AUGUST 1954

I

The Brazilian Acting Minister for Foreign Affairs to the American Ambassador

[PORTUGUESE TEXT — TEXTE PORTUGAIS]

MINISTERIO DAS RELAÇÕES EXTERIORES
RIO DE JANEIRO

Em 20 de agosto de 1954

DE/CEME/CCT/DAI/355/842.11(42) (22)

Senhor Embaixador,

Tenho a honra de informar Vossa Excelência de que, em aditamento às conversações iniciadas no Rio de Janeiro sobre a série de notas trocadas entre nossos respectivos Governos e sobre contratos que ambos concluíram, documentação essa referente à aquisição, pelo Governo dos Estados Unidos da América ao Governo dos Estados Unidos do Brasil, de areia monazítica, sais de terras raras e sais de tório, representantes dos dois Governos se reuniram em Washington e concordaram no que se segue :

1) O Governo dos Estados Unidos do Brasil, por intermédio de sua repartição competente, adquirirá imediatamente, pelos canais de comércio normais, nos Estados Unidos da América, cerca de 100.000 toneladas longas de trigo americano, tipo « Hard Winter » nº 2, a serem embarcadas em portos do Golfo do México ;

2) O trigo procederá de estoques da « Commodity Credit Corporation », (CCC), e será vendido a exportadores norte-americanos, na base FOB navio em portos dos Estados Unidos, pelo preço do mercado menos o subsídio à exportação, vigente na data da venda ;

3) O preço de exportação faturado ao comprador brasileiro, na base FOB navio em portos dos Estados Unidos, será creditado pelo Banco do Brasil S.A. a uma conta em dólares, a ser aberta em nome da « Commodity Credit Corporation », (CCC), à sua ordem ou à ordem dos agentes que a Commodity Credit Corporation designar, nas datas

¹ Came into force on 20 August 1954 by the exchange of the said notes.

I avail, etc.

For the Minister of State :

V. DE CUNHA

His Excellency James Scott Kemper
Ambassador of the United States of America

II

The American Ambassador to the Brazilian Minister for Foreign Affairs

Rio de Janeiro, August 20, 1954

No. 46

Excellency :

I have the honor to acknowledge the receipt of Your Excellency's note, number 355 of August 20, reading as follows :

"I have the honor to inform Your Excellency that pursuant to conversations initiated in Rio de Janeiro with respect to the series of notes exchanged between our two governments, and contracts concluded, pertaining to the acquisition by the Government of the United States of America of monazite sand, rare earth compounds and thorium compounds from the Government of the United States of Brazil, representatives of our two governments have met in Washington, D. C. and have reached the following understandings :

"1. The Government of the United States of Brazil through its authorized agency will immediately acquire through United States private trade channels approximately one hundred thousand long tons of United States hard winter No. two wheat to be embarked from gulf ports.

"2. The wheat will come from CCC stocks and will be sold to United States exporters FOB vessel United States ports at the market price, less the United States export subsidy rate in effect on the date of sale.

"3. The United States exporters sale price to the Brazilian buyer FOB vessel United States ports will be credited by the Bank of Brazil to an open account in dollars in the name of the Commodity Credit Corporation, subject to its order or to the order of such agents as CCC may designate, on the dates each shipment is delivered to the exporter on board vessel in the United States port. This account will not be subject to any Brazilian taxes or other charges.

"4. The two governments will open negotiations immediately through their respective authorized agencies for the purpose of concluding, subject to agreement on prices, specifications and delivery schedules, contracts for the sale by Brazil and the purchase by the United States of equal tonnages of monazite sand and rare

earth sodium sulphates, not to exceed a combined total of ten thousand tons or a combined total CIF value of five million dollars, plus at least the amount of thorium salts which results from producing the rare earth sodium sulphates.

"5. The dollars credited to the open account will be applied to the purchase of the above mentioned materials. Any dollars remaining in the open account after purchase of the materials will be transferred by the Bank of Brazil upon request of the United States Government and the account will be closed.

"6. In the event that contracts for all three materials are not concluded within one year from the date of this agreement, all dollars in the open account will be transferred by the Bank of Brazil one year from the date of the first credit of dollars to the account. In this event, interest at a rate of three and one-half per cent per annum in dollars will be paid for the periods dollars have been on deposit.

"This note and Your Excellency's reply expressing the concurrence of the Government of the United States of America to the understandings above outlined will constitute an agreement between our two Governments, superseding the agreement of February 21, 1952¹ and all other subsequent notes pertaining to it."

I desire, in reply, to convey my Government's acceptance of the above mentioned terms of Your Excellency's note which shall, accordingly, constitute an agreement between the Governments of the United States of America and the United States of Brazil.

Accept, Excellency, the renewed assurance of my highest consideration.

James Scott KEMPER

His Excellency Dr. Vicente Ráo
Minister for Foreign Affairs
Rio de Janeiro

¹ Not printed by the Department of State of the United States of America.

EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹
BETWEEN THE UNITED STATES OF AMERICA AND
BRAZIL RELATING TO THE DELIVERY BY THE GOV-
ERNMENT OF BRAZIL AND ACCEPTANCE BY THE
GOVERNMENT OF THE UNITED STATES OF AMERICA
OF RARE EARTH SODIUM SULPHATE AND METALLUR-
GICAL MANGANESE ORE AS PAYMENT OF A DEBT
ARISING OUT OF THE AGREEMENT OF 20 AUGUST
1954.² WASHINGTON, 5 JANUARY 1961

I

The Secretary of State to the Brazilian Chargé d'Affaires ad interim

DEPARTMENT OF STATE
WASHINGTON

January 5, 1961

Sir :

I refer to the memorandum of November 22, 1960 from the Brazilian Embassy and earlier communications³ and conversations all of which concern a debt of approximately \$6.7 million plus interest claimed by the Government of the United States of America to be owing by the Government of the United States of Brazil arising out of the agreement of August 20, 1954.² As you are aware, the exact amount and manner of settlement of the debt have for some time been the subject of discussions between our two Governments. It being the desire of the Government of the United States of America to effect a mutually satisfactory settlement of this matter as expeditiously as possible, I propose that our two Governments agree as follows :

(1) The amount due and owing from the Government of the United States of Brazil to the Government of the United States of America arising out of the agreement dated August 20, 1954, between our two Governments shall be considered to be \$7,400,000.00.

(2) The Government of the United States of America shall accept and the Government of the United States of Brazil shall deliver as part payment of the aforesaid debt as herein established 4,535 metric tons of rare earth sodium sulphate at a value of \$3,100,000.00. said rare earths to be deliverable f.o.b. vessel, Brazilian ports, within one year from the date of this agreement, free of any taxes or other charges. The rare earth sodium sul-

¹ Came into force on 5 January 1961 by the exchange of the said notes.

² See p. 80 of this volume.

³ Not printed by the Department of State of the United States of America.

phates deliverable hereunder shall conform in every respect with the Specification—Rare Earth Sodium Sulphate identified as Exhibit A¹ attached hereto and made a part hereof.

(3) The Government of the United States of America shall accept and the Government of the United States of Brazil shall deliver as part settlement of the aforesaid debt as herein established a quantity of metallurgical manganese ore of 48 percent manganese content, known commercially as Amapa (Icomi) manganese ore, of a total value of \$4,300,000, provided that deliveries of this material are identified as commercial sales for purposes of a contract between the General Services Administration, an agency of the Government of the United States of America, and the producers of Amapa manganese ore, said contract identified as DMP-46.

The value of the manganese ore delivered shall be calculated at a price of \$0.89 per long ton unit, this unit price to be based upon ore containing 48 percent manganese and 5 percent iron. Premiums shall be allowed at the rate of \$0.01 per long ton unit for each 1 percent of manganese content above 48 percent, and \$0.005 per long ton unit for each 1 percent iron content below 5 percent, with fractional percentages pro rata. This manganese ore shall be deliverable f.o.b. carrier's conveyance United States ports north of Cape Hatteras or United States Gulf ports and it is understood that the price quotations above are calculated on this basis.

All manganese ore shall be delivered within one year from the date of this agreement, free of taxes or other charges and shall conform in every respect to National Stockpile Specification P-30-R-1, dated March 14, 1958 for Type I Lumpy Ore, except that all manganese ore delivered shall contain no less than 48 percent manganese and no more than 5 percent iron. A copy of the above-mentioned National Stockpile Specification identified as Exhibit B² is attached hereto and made a part hereof.

(4) Subject to prior approval for each vessel by the Government of the United States of America, the Government of the United States of Brazil shall charter vessels and perform such other actions as are necessary to deliver 4,535 metric tons of rare earth sodium sulphate ore f.o.b. carrier's conveyance United States ports, and the Government of the United States of America will promptly reimburse the Government of the United States of Brazil in U.S. dollars for ocean transportation charges upon receipt of paid ocean freight bills.

(5) In the event deliveries of either or both rare earth sodium sulphate and metallurgical manganese ore are not made as provided herein then the proportionate part of the aforesaid debt as herein established shall become due and payable by the Government of the United States of Brazil with interest at 3-½ percent per annum from October 1, 1960, payable in U.S. dollars.

(6) U.S. dollar credits of \$6,700,000,000.00 in the Banco do Brazil S.A. to the account of the Commodity Credit Corporation, an instrumentality of the Government of the United States of America, established under the operation of the aforesaid agreement dated August 20, 1954 shall be released by the Government of the United States of America to the Government of the United States of Brazil upon the performance of the various covenants and agreements contained herein.

¹ See p. 86 of this volume.

² See p. 88 of this volume.

(7) The Government of the United States of Brazil and the Government of the United States of America agree to appoint representatives of the two Governments authorized and empowered to arrange implementing details of this agreement. These will include but not be limited to :

- (a) arrangements for prior clearance of vessels chartered by the Government of the United States of Brazil in accordance with numbered paragraph four,
- (b) incorporation into the appropriate documents implementing this agreement of the substance of Articles III 50 percent U.S. Flag Vessels, XVII Covenant Against Contingent Fees, XIX Officials not to Benefit, XX Non Discrimination in Employment from *Uniform Barter Contractual Provisions* (Form CCC-111 (7-13-59)) identified as Exhibit C¹ attached hereto and made a part hereof.

This agreement shall be considered as settling all outstanding questions between the two Governments under the Agreement dated August 20, 1954.

If the Government of the United States of Brazil is agreeable to the foregoing proposal, the Government of the United States of America will consider the present note and your reply concurring therein as constituting an agreement between our respective Governments which shall enter into force on the date of your note in reply.

Accept, Sir, the renewed assurances of my high consideration.

For the Secretary of State :
Edwin M. MARTIN

Enclosures :

- Exhibit A—Specification—Rare Earth Sodium Sulphate.
- Exhibit B—National Stockpile Purchase Specification P-30-R-1 of March 14, 1958.
- Exhibit C—Uniform Barter Contractual Provisions (Form CCC-111 (7-13-59)).

The Honorable Carlos Alfredo Bernardes
Brazilian Chargé d'Affaires ad interim

E X H I B I T A

SPECIFICATION—RARE EARTH SODIUM SULPHATE

I. QUALITY

(a) The material shall be in a form that corresponds to the formula $RE_2(SO_4)3.Na_2SO_4.2H_2O$ and each lot shall conform, on a per cent by weight, dry basis, to the following chemical requirements, dry basis to be obtained by drying the sample, prior to performing the analysis, to a constant weight at 105°C, i.e., all of the free moisture but none of the combined water to be considered to have been removed :

Total rare earth oxides, including Cerium Oxide (CeO_2) minimum 42.00 %

The Cerium Oxide (CeO_2) shall be not more than 75 % or not less than 35 % of the total rare earth oxide content.

¹ See p. 89 of this volume.

Thorium Oxide (ThO_2) 0.25 % max.

Phosphorus Pentoxide (P_2O_5) 1.25 % maximum.

Calcium and Magnesium Oxides (CaO MgO) 2.00 % maximum.

Ferric Oxide and Aluminum Oxide ($\text{Fe}_2\text{O}_3\text{Al}_2\text{O}_3$) 1.60 % max.

Silica (SiO_2) 0.30 % maximum.

Free Sulphuric Acid (H_2SO_4) None.

Sulphates (SO) range : 38 %—45 %.

Sodium Oxide (Na_2O) range : 6 %—10 %.

Combined water (loss on drying for 2 hours at 200°C, a sample from which the free moisture has been removed) 4.80 % maximum.

(b) The material upon its arrival in the United States of America shall not have a free moisture content in excess of 1.00 %. The free moisture content shall be the per cent of loss of weight resulting from drying the sample to a constant weight at 105°C.

2. PACKAGING

(a) Material shall be packed in non-returnable 18 gauge steel drums of 55 gallon capacity furnished by the contractor. The drums must have an opening of such type that sampling of the material in the drums can take place and the drums can be tightly sealed thereafter.

The drums must be of a type which will be acceptable to a public carrier for ocean transportation ; will prevent loss of the material in handling in transportation ; and will prevent infiltration of moisture. The drums must be adequately painted. The design of the drums shall be subject to the approval of GSA.¹ It is understood and agreed that the cost of the drums is for the account of the contractor and included in the price to be paid for the product delivered.

(b) Each drum shall be marked in English by hand lettering or stencil on the head of the drum with identification as follows :

“Product of Brazil—Rare Earth Sodium Sulphate”

Contract No. _____

Shipment No. _____

Lot No. _____

Drum No. _____

Gross Weight of Drum _____

Net Weight of Drum _____

¹ General Services Administration.

EXHIBIT B

March 14, 1958

(Supersedes issue of January 8, 1953)

P-30R1

NATIONAL STOCKPILE PURCHASE SPECIFICATION
MANGANESE—METALLURGICAL (ORE, NODULES, AND SINTER)

1. DESCRIPTION

This specification covers manganese ore, nodules, and sinter suitable for use in the manufacture of commercial grades of ferro-manganese and special manganese alloys, and for the production of chemicals which do not require ore of high manganese dioxide content.

2. CHEMICAL AND PHYSICAL REQUIREMENTS

a. *Chemical Requirements :*

Metallurgical manganese ore, nodules, and sinter purchased under this specification shall conform to the following chemical requirements on a weighted average basis for each contract :

		<i>Percent by Weight (Dry Basis)</i>
Manganese (Mn)	Minimum	46.00
Iron (Fe)	Maximum	8.00
Silica-plus-Alumina (SiO ₂ + Al ₂ O ₃)	Maximum	12.00
Phosphorus (P)	Maximum	0.18
Copper-plus-Lead-plus-Zinc (Cu + Pb + Zn)	Maximum	0.20

Each lot delivered under a contract shall conform to the following chemical requirements ; a lot shall be any quantity determined by the Government to require a separate chemical analysis report :

		<i>Percent by Weight (Dry Basis)</i>
Manganese (Mn)	Minimum	44.00
Iron (Fe)	Maximum	12.00
Silica-plus-Alumina (SiO ₂ + Al ₂ O ₃)	Maximum	15.00
Phosphorus (P)	Maximum	0.24
Copper-plus-Lead-plus-Zinc (Cu + Pb + Zn)	Maximum	0.30

b. *Physical Requirements :*

Each lot of metallurgical manganese ore, nodules, or sinter purchased under this specification shall conform to the following applicable physical requirements :

Type I. Lumpy Ore

Lumpy ore shall be natural ore, unprocessed except for physical concentration or screening. Not more than 5 percent by weight of each lot shall pass a U.S. Standard Sieve No. 20 (A.S.T.M. Designation E-11).

Type III. Nodules or Sinter

Nodules or sinter shall be material which has been agglomerated by the application of heat to produce a chemically stable, hard, dense product which will not disintegrate when stored outdoors. Not more than 5 percent by weight of each lot shall pass a U.S. Standard Sieve No. 20 (A.S.T.M. Designation E-11).

3. PACKAGING AND MARKING

a. *Packaging :*

All metallurgical manganese ore shall be delivered in bulk.

b. *Marking :*

Appropriate identifying documents shall accompany each shipment and shall include the name, type and weight of the product, country of origin, Government contract number, and name of supplier.

4. SAMPLING, INSPECTION, AND TESTING

Each lot of metallurgical manganese ore shall be subject to sampling, inspection, and testing by the purchaser or his designee.

EXHIBIT C

U.S. DEPARTMENT OF AGRICULTURE
COMMODITY CREDIT CORPORATION
WASHINGTON 25, D. C.

UNIFORM BARTER CONTRACTUAL PROVISIONS

This form contains general terms and conditions which are incorporated by reference into contracts for the exchange of agricultural commodities for strategic and other materials.

PROVISIONS WITH RESPECT TO MATERIALS

Article I—Credits

Article II—Title and Risk of Loss

Article III—50% U.S. Flag Vessels

Article IV—Restrictive Charter Clause

Article V—Liquidated Damages

Article VI—Performance Guarantee on Material

PROVISIONS WITH RESPECT TO AGRICULTURAL COMMODITIES

- | | |
|---|--|
| <i>Article VII</i> —Exchange Value on Net Export Price Basis | <i>Article X</i> —Agents |
| <i>Article VIII</i> —Establishing Exchange Value by CCC Determination | <i>Article XI</i> —Interest |
| <i>Article IX</i> —Delivery | <i>Article XII</i> —Financial Arrangements |
| | <i>Article XIII</i> —Export Requirements |

GENERAL PROVISIONS

- | | |
|---|--|
| <i>Article XIV</i> —Amendment for More Favorable Policies | <i>Article XIX</i> —Officials not to Benefit |
| <i>Article XV</i> —Assignment | <i>Article XX</i> —Non discrimination in Employment |
| <i>Article XVI</i> —Settlement | <i>Article XXI</i> —Walsh-Healy Public Contracts Act |
| <i>Article XVII</i> —Covenant Against Contingent Fees | <i>Article XXII</i> —Disputes |
| <i>Article XVIII</i> —Communications | <i>Article XXIII</i> —Meaning of Words |

PROVISIONS WITH RESPECT TO MATERIALS

Article I

CREDITS

Upon receipt by CCC of properly executed documents as specified in the contract, and a written statement from the Defense Materials Service, General Services Administration, Washington, D. C. that material has been delivered and accepted, CCC shall credit the contractor's account with the exchange value of the material represented by such documents and shall so notify the contractor.

Article II

TITLE AND RISK OF LOSS AND DAMAGE

Title and risk of loss and damage with respect to material shall pass to CCC concurrently with delivery : *Provided, however,* That, with respect to any material rejected, title and risk of loss and damage shall revert to the contractor at the time the notice of rejection of such material is received by the contractor.

Article III

SHIPMENT ON U.S. FLAG VESSELS

The following requirements shall apply with respect to any material delivered under the contract which is transported by ocean vessel : (1) if all of the material delivered is transported in one shipment, such shipment shall be on a privately owned United States-flag commercial vessel ; (2) if only one shipment is made from any one country, or geographic area if the country from which the material is shipped is within more than one geographic area, such shipment shall be on a privately owned United States-flag commercial vessel (*information as to geographic areas may be obtained from CCC*) ; (3) if more than one shipment is made from any one country, or geographic area if the country from

which the material is shipped is within more than one geographic area, at least fifty percent (50 %) of the gross tonnage of the material shipped (*computed separately for dry bulk carriers, dry cargo liners and tankers*) shall be transported on privately owned United States-flag commercial vessels. The Government desires, however, that as much as practicable in excess of such fifty percent (50%) of gross tonnage be so transported.

Notwithstanding anything to the contrary above, if CCC determines after notification by the contractor that privately owned United States-flag commercial vessels are not available at fair and reasonable rates for such vessels, it will authorize the contractor to make shipment on foreign-flag vessels.

Article IV

RESTRICTIVE CHARTER CLAUSE

(a) The contractor agrees to include the following restrictive charter clause in any charter party agreement entered into by him for the transportation on foreign-flag ocean vessels of the material delivered under the contract :

"The vessel will not enter any communist far east port until after sixty days from the date of completion of discharge of the entire cargo under this charter. In the event of failure to comply with said agreement, ten percent of the freight charges for ocean transportation hereunder will not be earned. Ten percent of the freight charges payable hereunder will be withheld by the charterer until the owner or his authorized agent submits evidence satisfactory to the charterer that the vessel has not entered any communist far east port until after the expiration of the sixty-day period following such discharge under the charter, and in the absence of such evidence the withheld portion of the charges will not be paid."

The contractor further agrees to notify the vessel owner, or his authorized agent, that in the event of violation of the provisions of said clause all vessels of the owner may be barred from further chartering for the transportation of cargoes owned by or destined for the Government of the United States of America.

(b) Promptly after expiration of the sixty-day period provided in the restrictive charter clause stated in paragraph (a) of this article, the contractor, on the basis of the evidence furnished him by the vessel owner or his authorized agent, shall determine whether the vessel has complied with the above restrictive charter clause. If the contractor determines that the restrictive charter clause has been complied with, the contractor shall pay to the owner of the vessel or his authorized agent the aforesaid withheld ten percent. If the contractor determines that the said restrictive charter clause has not been complied with, the contractor shall notify the owner of the vessel or his authorized agent of such determination of violation of the clause and shall afford said owner or his authorized agent thirty (30) days within which to furnish to the contractor any additional evidence which will show to the satisfaction of the contractor that the restrictive charter clause has not been violated. During said thirty-day period the contractor shall continue to withhold the aforesaid ten percent of the freight charges. If upon the expiration of said thirty-day period the owner of the vessel or his authorized agent has not established proof satisfactory to the contractor of compliance with said restrictive charter clause, the contractor shall advise the owner of the vessel or his authorized agent of

such final determination and shall thereafter promptly pay to CCC the full amount of the freight charges withheld by the contractor pursuant to the aforesaid restrictive charter clause.

(c) Promptly after expiration of the sixty-day period provided in the above-stated restrictive charter clause, the contractor shall furnish CCC with a complete statement of the evidence submitted to him by the owner of the vessel or his authorized agent pursuant to the provisions of the above restrictive charter clause on which the contractor has based his determination that there has been compliance or non-compliance with said restrictive charter clause. In the event of a determination by the contractor of non-compliance with said clause the contractor shall thereafter furnish CCC, promptly after receipt by him, such additional information as may be received by him from the vessel owner or his authorized agent within the thirty-day period provided for in paragraph (b) of this article.

(d) Notwithstanding any other provision of this article, the contractor and CCC agree and stipulate that the question of compliance or non-compliance by the vessel owner with the restrictive charter clause is one of fact. Consequently, if at any time after payment by the contractor to the vessel owner or his authorized agent of the aforesaid withheld ten percent CCC should discover that the vessel in question did in fact enter a communist far east port before expiration of the sixty-day period provided in said clause, the contractor shall be indebted to and shall pay to CCC the full amount of said withheld ten percent of the freight charges. Conversely, if at any time after the contractor has finally determined that there has been non-compliance with the restrictive charter clause and has paid the withheld ten percent of the freight charges to CCC pursuant to paragraph (b) of this article, it should be conclusively established that the vessel in question did not in fact enter a communist far east port before expiration of the sixty-day period provided in the restrictive charter clause, CCC shall reimburse the contractor with the full amount of the ten percent of freight charges withheld by the contractor from the vessel owner.

Article V

LIQUIDATED DAMAGES

(a) Except as provided in paragraph (b) of this article, upon termination by CCC, pursuant to article VI-(c) or other provisions of the contract, of the contractor's right to make deliveries of material under the contract, the contractor shall pay to CCC as liquidated damages and not as a penalty an amount computed at the rate stated in the contract based on the undelivered quantity of material which the contract requires to be delivered.

(b) Liquidated damages shall not be payable as to any part of the material which the contractor is prevented from delivering due solely to causes without the fault of the contractor. Such causes may include but are not restricted to : Acts of God, of the public enemy or of government ; fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather ; and, in the event the contractor notifies CCC in writing promptly after learning of imminent default by a subcontractor, defaults of such subcontractor due to any of such causes unless, acting upon each notice, CCC (1) determines that the material to be furnished by the subcontractor is obtainable

from other sources at a comparable cost and in sufficient time to permit the contractor to meet (*except with regard to source*) the contract requirements, and (2) authorizes delivery of material from such other sources. The contractor's obligation to accept delivery of agricultural commodities under the contract shall be reduced to the extent of the minimum total exchange value of the material not delivered with respect to which, by operation of this paragraph (b), liquidated damages are not payable. Such reductions, however, shall not be applied to any quantity of the agricultural commodity for which the exchange value has been fixed pursuant to the contract.

Article VI

PERFORMANCE GUARANTEE ON MATERIAL

(a) Not later than ten (10) banking days after the contract is signed by both parties, the contractor shall furnish CCC, in an amount required by the contract, a certified or cashier's check, or an irrevocable letter of credit, or a performance bond, in favor of and in form and substance acceptable to CCC, conditioned on faithful performance of the contractor's obligations under Article V and other provisions of the contract with respect to material.

(b) If a letter of credit has been furnished, when the contractor's account has been credited for the value of material delivered and accepted, CCC shall notify the bank which issued such letter of credit that CCC consents to a reduction in the amount of the letter of credit equal to the amount stated in the contract for each unit of material for which the contractor's account has been credited, and upon fulfillment of the contractor's obligations under the contract, CCC shall notify such bank that it consents to cancellation of the letter of credit. If a certified or cashier's check has been furnished, refund of portions of the amount of such check by CCC to the contractor shall be made at the same rate and on the same basis as provided above for reduction of letter of credit; and upon fulfillment of the contractor's obligations under the contract, CCC shall refund any excess of such amount over the total amount previously refunded to the Contractor. If a performance bond has been furnished, CCC shall notify the bonding firm when the contractor has fulfilled his obligations under the contract.

(c) If the contractor fails to furnish to CCC a certified or cashier's check, or letter of credit, or a performance bond acceptable to CCC, within the time specified in this article, CCC may elect to terminate the contractor's right to make further deliveries of material under the contract. Any such termination must be in writing to be effective.

PROVISIONS WITH RESPECT TO AGRICULTURAL COMMODITIES

Article VII

EXCHANGE VALUE ON NET EXPORT PRICE BASIS

Whenever (1) there is an export subsidy program in effect for any agricultural commodity deliverable under the contract, (2) exportation pursuant to the terms of the contract will meet the requirements of such program, as determined by CCC, and (3) the contractor acquires such agricultural commodity for application to the contract, he must

acquire such agricultural commodity in accordance with the requirements of such program on a net export price basis. Such net export price shall be deemed to be the market price, as determined by CCC, less the cash equivalent as determined by CCC of any export subsidy, as determined by CCC. The exchange value of an agricultural commodity so acquired shall be a sum equal to the net export price so determined.

Article VIII

ESTABLISHING EXCHANGE VALUE BY CCC DETERMINATION

If at 5:30 p.m., EST, or EDST, whichever is applicable in Washington, D. C., on the relevant date by which the contractor must establish exchange value as provided in the contract, the contractor has not established the exchange value of a balance of agricultural commodities deliverable under the contract, the contractor shall be obligated, at CCC's option, to accept thereafter such balance in the agricultural commodity(ies) specified in the contract as applicable to this article of such qualities as may be declared available for barter by CCC from inventories acquired through its price support program and as may be designated by the contractor. The exchange value of any such agricultural commodities shall be a sum equal to the export market price for the day following the day first described in this Article, as determined by CCC, delivered on the same basis as the export delivery pricing basis under the applicable Announcements or, at CCC's option, a sum equal to the net export price determined as provided in Article VII. Except as to pricing and designation by the contractor, the provisions of the Announcements and, to the extent they are not in conflict with the provisions of the Announcements, the terms of the contract shall apply to such agricultural commodities except that in any event the export requirements of the contract shall apply.

Article IX

DELIVERY

Delivery of the agricultural commodities under the contract shall be made in accordance with the terms of the acquisition but in no event later than sixty calendar days after the relevant date by which the contractor must fix the exchange value.

Article X

AGENTS

The contractor may designate one or more agents, in addition to his employees, to handle transactions related to agricultural commodities under the contract; and such agent(s) will be recognized by CCC except that CCC, by issuing a notice not later than five (5) calendar days after the contractor has informed CCC of designation of such agent(s), may reject or accept with qualifications the agent(s) designated by the contractor.

Article XI

INTEREST

If the contractor acquires agricultural commodities pursuant to the contract having an exchange value in excess of the exchange value of acceptable material delivered to

CCC and financial coverage for such excess is in the form of an irrevocable letter of credit, the contractor shall pay interest to CCC on such excess, computed at the rates applicable to credit approvals (*as announced by CCC in its monthly sales list*) on the date of the acquisition of agricultural commodities which creates such excess. Such interest shall be charged from and including the date of delivery of agricultural commodities creating such excess until (*but not including*) the date delivery is made of material or payment is otherwise effected, but interest shall not be charged to the extent that there is financial coverage for such excess in a form other than a letter of credit. When the final delivery of acceptable material has been accepted by CCC, the contractor, upon receipt of an invoice for such interest, shall promptly make payment in cash. If the material is delivered f.o.b. carrier's conveyance at an inland point in the United States and the contractor does not submit a certification from the carrier in accordance with the contract, CCC will use the "date received" as noted on Form GSA-131, Receiving Report, as the date material is delivered for the purpose of calculating interest charges on agricultural commodities.

Article XII

FINANCIAL ARRANGEMENTS

In the event the contractor desires delivery of agricultural commodities having an exchange value in excess of the amount credited to the contractor's account for acceptable material delivered, the contractor shall furnish to CCC, prior to delivery, at the office which is to handle the delivery of the agricultural commodities, a certified or cashier's check payable to CCC or an irrevocable letter of credit in favor of and in form and substance acceptable to CCC in an amount equal to the amount of such excess.

The terms of such letter of credit shall provide for payment of drafts supported only by a statement that the amount is due CCC in accordance with the terms of the contract. The letter of credit shall not expire prior to thirty (30) calendar days after the final date for delivery of all of the material (*including replacement of rejected material*).

CCC may draw against such letters of credit to the extent that the exchange value of the agricultural commodities exceeds the exchange value of material credited and other credits allowed by CCC to the contractor : *Provided*, That CCC may not draw earlier than ten (10) calendar days after the final date for delivery of all material (*including replacement of rejected material*) : *Provided, further*, That, if the contractor notifies CCC in writing of his inability to deliver, as required, any part of the material required to be delivered under the contract, without regard to the preceding proviso CCC shall have the right to draw against such letters of credit immediately upon receipt of such notice to the same extent as if the contractor had defaulted in delivery of the quantity of material covered by such notice.

Promptly after crediting the contractor's account for acceptable material delivered, CCC shall either notify the bank that it consents to a reduction of any letter of credit furnished or make refund to the contractor on account of any certified or cashier's check furnished. Any such reduction of a letter of credit and such refund on account of a certified or cashier's check, shall be in an amount equal to the amount credited to the contractor's account.

Article XIII

EXPORT REQUIREMENTS

(a) *Export Destination.* The contractor warrants and agrees that, except as otherwise provided in paragraph (e) of this article, he will cause the agricultural commodities acquired from CCC pursuant to the contract, or substitute agricultural commodities or products where substitution is permitted by CCC, to be exported as required by the contract.

(b) *Transshipment.* The contractor warrants and agrees that he will not cause any agricultural commodity or produce exported under the contract to be transshipped out of the country or area to which it is exported pursuant to the contract. The contractor also agrees to cause to be included in the agreement with the importer of the agricultural commodities or products into the country to which agricultural commodities or products are exported under the contract (1) a representation that the purchase or importation of the agricultural commodities or products are not being made for the purpose of resale or transshipment to any other country or area, or to increase the availability of those or like agricultural commodities or products to any country or area unfriendly to the United States of America, and (2) an agreement that the foreign importer will not resell them or cause them to be transshipped to any other country or area or, as a result of the purchase or importation of the agricultural commodities or products increase the availability of those or like agricultural commodities or products to any country or area unfriendly to the United States of America.

(c) *Warranty Against Accepting Certain Payments.* The contractor warrants and agrees that neither he nor any other person or firm which exports agricultural commodities or products in fulfillment of his obligation under the contract will accept in payment (1) funds made available by the United States Government, or any Agency thereof, expressly for the purchase of agricultural commodities produced in the United States, or (2) funds made available as the result of financing by the United States Government, or any Agency thereof, of sales of agricultural commodities for foreign currency pursuant to Title I, Public Law 480, 83rd Congress as amended. If any such funds are so accepted in payment for exported agricultural commodities or products, the contractor shall pay to CCC, as a price adjustment on the agricultural commodities acquired under the contract as to which such exportation was made any amount by which the exchange value of such agricultural commodities acquired under the contract is exceeded by the greater of: (1) CCC's statutory minimum sales price for unrestricted use in effect on the date of delivery by CCC to the contractor of such agricultural commodities, as determined by CCC or (2) the sales price announced by CCC for sales of such agricultural commodity for unrestricted use in effect on the date of delivery by CCC to the contractor of such agricultural commodities as determined by CCC, or if no such sales price has been announced, the domestic market price for such agricultural commodities on such date, as determined by CCC. Such amount shall be paid by the contractor to CCC promptly upon demand.

(d) *Proof of Exportation.* In addition to any other proof of exportation specifically required by the contract, the contractor shall, within thirty (30) calendar days after causing any of the agricultural commodities or products to be exported furnish proof of exportation of such agricultural commodities or products as required by the CSS office handling the transaction.

(e) *Prevention of Exportation.* If (1) any part of the agricultural commodities deliverable under the contract for which the exchange value has been fixed, (or *substitute commodity or product where substitution is permitted by CCC*), was sold for delivery to an eligible country as provided in the contract at a time when exportation for such delivery was permissible, (2) the contractor is prevented by any act of the United States Government from exporting it for such delivery, (3) the contractor promptly gives written notice thereof to CCC, and (4) determines that he has been so prevented, the contractor shall export such agricultural commodity (or *substitute commodity or product*) to any friendly foreign country. The contractor shall have a period of sixty (60) calendar days after such determination by CCC in which to effect exportation: *Provided*, That nothing in this article shall be construed to extend the final date for export beyond any final date stipulated in the applicable Announcement or stipulated by CCC in Washington. However, in the event that such determination is made by CCC within 60 days of any final date for exportation of the commodities or products under the applicable Announcement, or the final date stipulated by CCC in Washington, the contractor may at any time before such final date cancel the action which established the exchange value of the agricultural commodity involved and return any quantity thereof delivered by CCC prior to its receipt of the referred to notice, and reduce his obligation to accept agricultural commodities under the contract by an amount equal to the exchange values affected by such cancellation. Title and risk of loss and damage to an agricultural commodity so returned shall revert upon delivery to CCC and, if the agricultural commodity has been loaded aboard vessel, CCC shall bear the expense of unloading and returning the agricultural commodity to storage. Any loss, damage, or deterioration occurring prior to such return delivery to CCC shall be for the account of the contractor.

(f) *Failure to Comply.* The contractor shall pay to CCC as liquidated damages and not as a penalty a sum equal to that percentage (*which percentage is specified in the contract as applicable to this Article XIII*) of the exchange value of the agricultural commodity with respect to which the contractor does not comply with one or more of his export or transshipment obligations under the contract. Such liquidated damages shall not be paid, however, to the extent that, upon consideration of the cause and effect of any failure by the contractor to so comply, the Executive Vice President of Commodity Credit Corporation, or his designee, determines: (1) that such failure to comply was due solely to impossibility of performance of such obligations arising from causes without the fault of the contractor, including but not restricted to acts of government, acts of God, acts of the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, or (2) that such failure to comply was due to loss of or damage to the agricultural commodity or product in the course of exportation and the commodity or product, if so damaged, is not disposed of upon the domestic market in such condition or manner as to tend to impair CCC's price support operation or (3) that such failure to comply was only one of delay without the fault of the contractor or his agents designated pursuant to the contract or of his or their officers and employees or (4) that any damage to CCC resulting from such failure to comply is compensated for by the exportation by the contractor of quantities of agricultural commodities in such manner as to effect performance substantially equivalent to that required by the contract. Such liquidated damages shall be in addition to any upward adjustment in price for which provision is made in the applicable Announcements by reason of the

contractor's failure to export as required therein and the contractor shall pay to CCC upon demand the amount of any such adjustment made as a result of such failure.

GENERAL PROVISIONS

Article XIV

AMENDMENT OF CONTRACT TO GIVE EFFECT TO MORE FAVORABLE POLICIES

If, subsequent to the making of the contract, CCC adopts general policies which it determines to be more favorable to commodity exchange contractors regarding (1) its pricing policy with respect to agricultural commodities, (2) any provision relating to the use of the United States-flag commercial vessels or (3) any provision relating to restrictive charter clauses, and enters into subsequent barter contracts giving effect to such policies, CCC agrees upon written request, to amend the contract to give affect to such policies with respect to acts remaining to be performed by the contractor on the date of any such amendment. Nothing contained in this article shall be construed to require CCC to amend the contract unless the policies given effect in such subsequent barter contracts represent changes in general policies nor shall it be construed to affect an exchange value which has been established. This article shall not be construed to require an amendment because of a policy change resulting from a statutory provision hereinafter enacted which is prospective in effect only.

Article XV

ASSIGNMENT

The contractor shall not, in whole or in part, assign the contract or any claim under the contract, except his rights to any amounts payable or agricultural commodities deliverable under the contract, which may be assigned in accordance with the provisions of this Article XV. Subject to recognition and approval by CCC of such assignment, claims for moneys due or to become due and agricultural commodities deliverable or to become deliverable by CCC under the contract (*subject to offset by CCC of any amounts owed to it under the contract by the contractor*) may be assigned in full to one bank trust company, other financial institution or business concern which is a regular dealer in agricultural commodities: *Provided, However,* That any payment by CCC to the contractor or his assignee for material delivered and accepted shall be made only as provided in Article XVI.

In the event of any such assignment, the contractor shall file with CCC a written notice of assignment together with two signed copies of the instrument of assignment. Such assignment shall be binding on CCC unless CCC notifies the assignee to the contrary by wire filed with the telegraph office not later than five (5) calendar days after receipt by the treasurer of CCC of a written notice of the assignment together with two signed copies of the instrument of assignment. The fact that CCC does not so notify the assignee shall constitute recognition and approval by CCC of the assignment. A provision to the effect that the assignment is subject to recognition and approval by CCC shall be included in the body of the instrument of assignment.

Recognition and approval by CCC of any such assignment shall not constitute a novation or waiver, and shall not in any way relieve the contractor of any obligations or responsibilities under this contract.

Article XVI

SETTLEMENT

The contractor shall pay to CCC a sum equal to any amount by which the total exchange value of agricultural commodities which at the time of settlement is charged to the contractor under the contract exceeds the total exchange value of the material accepted under the contract. CCC shall pay to the contractor or his assignee a sum equal to any amount by which the total exchange value of the material accepted exceeds the greater of (1) the total exchange value of agricultural commodities which the contractor is required to accept under the provisions of the contract or (2) the total exchange value of agricultural commodities which at the time of settlement is charged to the contractor under the provisions of the contract. The amount payable by the contractor or CCC under this article shall be subject to adjustment to take account of any amounts otherwise due either party under the terms of the contract at the time such settlement is effected.

Article XVII

COVENANT AGAINST CONTINGENT FEES

The contractor warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial selling agencies maintained by the contractor for the purpose of securing business. For breach or violation of this warranty the CCC shall have the right to annul the contract without liability or in its discretion to require the contractor to pay promptly to CCC upon demand an amount equal to the full amount of such commission, percentage, brokerage, or contingent fee.

Article XVIII

COMMUNICATIONS

Unless otherwise specified in the contract, any written requests, acceptances, notifications instructions or communications with respect to the contract by the contractor to CCC in Washington shall be addressed to the Barter and Stockpiling Division, Commodity Stabilization Service, U.S. Department of Agriculture, Washington 25, D. C. Any communication by the contractor with a CSS Commodity Office shall be addressed to the Director of the CSS Commodity Office. All such requests, notifications, acceptances, instructions and communications by the contractor shall bear the contract number assigned by CCC to the contract.

Article XIX

OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of the contract, or to any benefit that may arise therefrom ; but this provision shall not be construed to extend to the contract if made with a corporation for its general benefit.

Article XX

NONDISCRIMINATION IN EMPLOYMENT

In connection with the performance of work under the contract, the contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color or national origin. The aforesaid provision shall include, but not be limited to, the following : Employment, upgrading, demotion, or transfer ; recruitment or recruitment advertising ; layoff or termination ; rates of pay or other forms of compensation ; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer of CCC setting forth the provisions of the non-discrimination clause.

The contractor further agrees to insert the foregoing provision in all subcontracts under the contract, except subcontracts for standard commercial supplies or raw materials. This article shall not apply to the performance of the contract and subcontracts outside the United States where no recruitment of workers within the limits of the United States is involved.

Article XXI

WALSH-HEALEY PUBLIC CONTRACTS ACT

If the contract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount which exceeds or may exceed \$10,000 and is otherwise subject to the Walsh-Healey Public Contracts Act as amended (*41 U.S. Code 35-45*) there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect.

Article XXII

DISPUTES

Except as may otherwise be provided in the contract, any dispute concerning a question of fact arising under the contract which is not disposed of by agreement shall be decided by the Executive Vice President of CCC, or his designee, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor.

Within 30 days from the date of receipt of such copy, the contractor may appeal by mailing or otherwise furnishing a written appeal addressed to the President of CCC, or such other persons as he may designate to receive such appeal and the decision of the President of CCC, or his duly authorized representatives for the hearings of such appeals, shall be final and conclusive, unless determined by a court of competent jurisdiction to have been fraudulent, arbitrary, capricious, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence: *Provided*, That if no such appeal to the President of CCC is taken, the decision of the Executive Vice President, or his designee, shall be final and conclusive. In connection with any appeal proceeding under this article, the contractor shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of any such dispute the contractor shall proceed diligently with the performance of the contract and in accordance with the decision of the Executive Vice President, or his designee.

Article XXIII

MEANING OF WORDS

The term "the contract", as used in the preceding articles, means the barter contract signed by CCC and the contractor which incorporates by reference, all or any part of the foregoing articles and includes the articles so incorporated. The terms, words, and phrases used in the foregoing articles and also used in the contract, shall have the same meaning which may be assigned thereto in the contract.

II

The Brazilian Chargé d'Affaires ad interim to the Secretary of State

[PORTUGUESE TEXT — TEXTE PORTUGAIS]

[TRANSLATION¹ — TRADUCTION²

EMBAIXADA DOS ESTADOS UNIDOS DO
BRASIL

EMBASSY OF THE UNITED STATES OF
BRAZIL

Washington, D. C., em 5 de janeiro 1961
5/844.5(22) (42)

Washington, D. C., January 5, 1961
5/844.5(22) (42)

Senhor Secretário de Estado,

Mr. Secretary of State :

Tenho a honra de acusar o recebimento da Nota de Vossa Excelência, de 5 janeiro corrente, do seguinte teor :

I have the honor to acknowledge the receipt of Your Excellency's note dated January 5 of this year, of the following tenor :

[See English text, note I
Voir note I, texte anglais]

[See note I]

¹ Translation by the Government of the United States of America.

² Traduction du Gouvernement des États-Unis d'Amérique.

3. Em resposta, levo ao conhecimento de Vossa Excelência que o Governo dos Estados Unidos do Brasil concorda que a referida Nota de Vossa Excelência e esta resposta constituam Acôrdo entre os dois Governos sôbre o assunto.

Aproveito a oportunidade para renovar a Vossa Excelência os protestos da minha mais alta consideração.

C. A. BERNARDES
Encarregado de Negócios, a. i.

A Sua Excelência
o Senhor Christian A. Herter
Secretário de Estado
dos Estados Unidos da América

3. In reply, I inform Your Excellency that the Government of the United States of Brazil agrees that Your Excellency's note cited above and this reply shall constitute agreement between the two Governments on the matter.

I avail myself of the opportunity to renew to Your Excellency the assurances of my highest consideration.

C. A. BERNARDES
Chargé d'Affaires ad interim

His Excellency
Christian A. Herter
Secretary of State
of the United States of America