

No. 16463

**UNITED STATES OF AMERICA
and
ISRAEL**

**Program Assistance Grant Agreement (with exhibits).
Signed at Washington on 22 September 1976**

Authentic text: English.

Registered by the United States of America on 13 February 1978.

**ÉTATS-UNIS D'AMÉRIQUE
et
ISRAËL**

**Accord relatif à l'octroi d'un don au titre d'un programme
d'assistance (avec modèles d'attestations). Signé à
Washington le 22 septembre 1976**

Texte authentique : anglais.

Enregistré par les États-Unis d'Amérique le 13 février 1978.

PROGRAM ASSISTANCE GRANT AGREEMENT¹ BETWEEN THE GOVERNMENT OF ISRAEL AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA ACTING THROUGH THE AGENCY FOR INTERNATIONAL DEVELOPMENT

September 22, 1976

Agreement Number 271-K-608

AGREEMENT, dated this 22nd day of September 1976, between the GOVERNMENT OF ISRAEL ("Grantee") and the GOVERNMENT OF THE UNITED STATES OF AMERICA, acting through the AGENCY FOR INTERNATIONAL DEVELOPMENT ("A.I.D.").

Article 1. THE GRANT

Section 1.1. THE GRANT. In accordance with the Technical Co-operation Agreement between the United States of America and Israel² entered into force on February 26, 1951, and subject to the terms and conditions of this Agreement, A.I.D. hereby agrees to grant to the Grantee pursuant to the Foreign Assistance Act of 1961, as amended, up to thirty-five million United States dollars (\$35,000,000) (the "Grant") for the purpose of financing the foreign exchange costs of certain commodities, commodity-related services and other related expenditures to promote the economic and political stability of Israel. Recognizing the exceptional burden the Grantee faces in terms of recurring defense expenditures, the budget support generated by this program will assist the Grantee in meeting overall financial needs associated with continued rapid economic growth, increased public services and the adjustment costs arising from the resettlement in Israel of large numbers of new immigrants. Such commodities, services and expenses authorized to be financed hereunder are hereinafter referred to as "Eligible Items".

Article 2. CONDITIONS PRECEDENT TO DISBURSEMENT

Section 2.1. CONDITIONS PRECEDENT. Except as A.I.D. may otherwise agree in writing, prior to issuance of the first disbursing authorization, Grantee shall furnish in form and substance satisfactory to A.I.D.:

- (a) an opinion of Grantee's Minister of Justice or other counsel satisfactory to A.I.D. that this Agreement has been duly authorized or ratified by, and executed on behalf of, Grantee and constitutes a valid and legally binding obligation of Grantee in accordance with its terms;
- (b) the name of the person or persons who will act as the representative or representatives of the Grantee pursuant to Section 8.2 hereunder together with evidence of his or their authority and a specimen signature of each person certified as to its authenticity.

¹ Came into force on 22 September 1976 by signature.

² United Nations, *Treaty Series*, vol. 137, p. 57.

Section 2.2. **TERMINAL DATE FOR FULFILLMENT OF CONDITIONS PRECEDENT.** Except as A.I.D. may otherwise agree in writing, if the conditions required by Section 2.1 have not been satisfied within ninety (90) days from the date of this Agreement, A.I.D. may at its option terminate this Agreement by written notice to Grantee.

Article 3. **GENERAL COVENANTS**

Section 3.1. **COMMISSIONS, FEES, AND OTHER PAYMENTS.** Grantee warrants and covenants that in connection with obtaining the assistance to be furnished hereunder or any action under this Agreement it has not paid and will not pay or agree to pay, nor to the best of its knowledge has there been paid or will there be paid or agreed to be paid by any other person or entity, commissions, fees, or other payments of any kind, except as regular compensation to Grantee's full-time officers and employees or as compensation for bona fide professional, technical, or other comparable services. Grantee shall promptly report to A.I.D. any payment or agreement to pay for such bona fide professional, technical, or other comparable services to which it is a party or of which it has knowledge and, if the amount of any such payment is deemed unreasonable by A.I.D., Grantee shall cause a reduction satisfactory to A.I.D. to be made therein.

Section 3.2. **MARINE INSURANCE.** If in connection with the placement of marine insurance on shipments eligible for reimbursement hereunder, Grantee by statute, decree, rule or regulation discriminates against any marine insurance company authorized to do business in any state of the United States, during the continuance of such discrimination, commodities otherwise eligible for reimbursement thereunder shall not be so reimbursed unless they have been insured against marine risk in the United States with a company or companies authorized to do a marine insurance business in any state of the United States.

Section 3.3. **OCEAN SHIPMENT.** (a) At least 50% of the gross tonnage of all commodities (computed separately for dry bulk carriers, dry cargo liners and tankers) for which reimbursement is requested, which may be transported on ocean vessels, shall have been transported on privately-owned U.S. flag commercial vessels, to the extent such vessels are available at fair and reasonable rates for U.S. flag commercial vessels. Determination that U.S. flag commercial vessels are not so available must be made by A.I.D. Additionally, at least 50% of the gross freight revenue generated by all shipments financed hereunder and transported on dry cargo liners shall be paid to or for the benefit of privately-owned U.S. flag commercial vessels.

(b) Reimbursement will not be made for commodities which have been transported on any ocean vessel which A.I.D. has designated as ineligible.

Section 3.4. **U.S. TREASURY DEPARTMENT REGULATIONS.** Procurement transactions shall comply with the requirements of the Foreign Assets Control Regulation and Cuban Assets Control Regulation of the U.S. Treasury Department.

Article 4. **PROCUREMENT, UTILIZATION AND ELIGIBILITY OF COMMODITIES**

Section 4.1. **SOURCE REQUIREMENT.** The authorized A.I.D. Geographic Code for purposes of determining Eligible Items is Code 000 (United States) as defined in the *A.I.D. Geographic Code Book*. Eligible Items shall meet the

“source” requirements set forth in A.I.D. Regulation 1, Section 201.11 (b). “Source” is defined in A.I.D. Regulation 1, Section 201.01 (q).

Section 4.2. DATE OF PROCUREMENT. No commodities or commodity-related services may be financed hereunder for which delivery to the importer or his agent was made prior to the Eligibility Date, which shall be January 1, 1976.

Section 4.3. ELIGIBLE ITEMS. Unless otherwise agreed by A.I.D. in writing, Eligible Items for financing under this Grant shall consist of new and unused commodities listed as eligible in the A.I.D. Commodity Eligibility Listing dated December 16, 1974, as amended (provided as an attachment of the Commodity Procurement Instruction transmitted with the first of the Implementation Letters which shall be issued to the Grantee) and of those commodity-related services as defined in paragraphs (i), (l), (o) of Section 201.01 of A.I.D. Regulation 1 and declared to be eligible in Sections 201.12 and 201.13 of A.I.D. Regulation 1. 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 this Grant or the Foreign Assistance Act of 1961, as amended.

Section 4.4. UTILIZATION OF COMMODITIES. (a) Grantee shall use its best efforts to prevent the use of commodities financed under this Agreement to promote or assist any project or activity associated with or financed by any country not included in Code 935 of the *A.I.D. Geographic Code Book* as in effect at the time of such projected use, except with the prior written consent of A.I.D. Grantee shall use its best efforts to restrict the purchase of Eligible Items to purchases for use within the geographic areas which were subject to State of Israel administration prior to June 5, 1967.

Section 4.5. MINIMUM VALUE OF TRANSACTIONS. Except where authorized by A.I.D. in writing, no transaction financed under this Agreement shall be in an amount less than five thousand dollars (\$5,000). Individual procurements of less than five thousand dollars may be combined and treated as one transaction to satisfy this requirement if they involve procurements from the same supplier and the total of such procurements equals or exceeds five thousand dollars and the documentation is submitted simultaneously. The supplier must identify each transaction by separate invoice number and date in the “Certificate to A.I.D.” attached to this Agreement or in A.I.D. Form 282.

Section 4.6. PRICES. Reimbursement will not be made for purchase of any commodity purchased at prices higher than the market price prevailing in the United States at the time of purchase, adjusted for differences in the cost of transportation to destination, quality and terms of payment.

Section 4.7. ELIGIBLE SUPPLIERS. Commodities financed under this Grant shall be purchased from eligible suppliers as described in paragraph (j), Section 201.11 of A.I.D. Regulation 1.

Section 4.8. EFFECTIVE USE OF COMMODITIES. The Grantee shall ensure that the Eligible Items financed under this Agreement shall be effectively used for the purpose for which the assistance is made available. Such effective use shall include the prompt processing of commodity imports through customs at ports of entry and the removal from customs of such commodities by the importer.

Article 5. PROCEDURES

Section 5.1. DISBURSEMENTS. To obtain disbursements hereunder, Grantee may from time to time submit to A.I.D. or its designee, documentation of the foreign exchange costs of and importation of Eligible Items. Such documentation shall consist of:

- (a) supplier's invoice with evidence of payment;
- (b) bill of lading, or delivery receipt, or such other document evidencing delivery and which is acceptable to A.I.D.;
- (c) (1) a "Certificate to A.I.D.", a copy of which is attached hereto as Exhibit A, or "Certificate to A.I.D. for Agricultural Commodities", which is hereto attached as Exhibit B, executed by the supplier; or
(2) A.I.D. Form 282 Supplier's Certificate, executed by the supplier.

Such documentation shall be reviewed by A.I.D. prior to making disbursement hereunder.

Section 5.2. ADDITIONAL INFORMATION. Should A.I.D. require any information in addition to that submitted under Section 5.1 above, concerning the purchase price or other information relevant to any given transaction, the Grantee agrees to secure such information and furnish the same to A.I.D.

Section 5.3. TERMINAL DATE OF DISBURSEMENTS. Except as A.I.D. may otherwise agree in writing, no disbursements shall be made against documentation received after September 30, 1977.

Article 6. COUNTERPART DEPOSIT

Section 6.1. DEPOSIT OF COUNTERPART. The Grantee shall establish a special account in the Bank of Israel, which account is hereinafter referred to as the "Special Account", and the Grantee shall make such arrangements as may be necessary to deposit therein currency of the State of Israel in amounts equal to the proceeds accruing to the Grantee or any authorized agency thereof as a result of the sale or importation of the Eligible Items in accordance with the following terms and conditions:

- (a) Deposits to the Special Account shall become due and payable quarterly upon active from A.I.D. as to disbursements made under the Agreement. Grantee shall make such deposits at the official rate of exchange in effect on the date of disbursements by A.I.D.
- (b) Upon notification from time to time by the A.I.D. of the local currency requirements of the United States, the Grantee shall make available to A.I.D., in the manner requested by it, such sums from the Special Account as are stated in such notifications to be necessary for the requirements of the Government of the United States.
- (c) The Grantee may draw upon any remaining balances in the Special Account for such purposes beneficial to the Grantee as may be agreed upon in writing by the appropriate representatives of the State of Israel and the United States. Such program uses shall be restricted to the geographic areas which were subject to State of Israel administration prior to June 5, 1967.

- (d) Any unencumbered balances of funds which remain in the Special Account upon termination of assistance hereunder shall be disposed of for such purposes as may, subject to applicable law, be agreed to between Grantee and A.I.D.

Article 7. REMEDIES OF A.I.D.

Section 7.1. TERMINATION OF DISBURSEMENTS. In the event that at any time:

- (a) Grantee shall fail to comply with any provision contained herein; or
- (b) any representation or warranty made by or on behalf of Grantee with respect to obtaining this Grant or made or required to be made hereunder is incorrect in any material respect; or
- (c) an event has occurred which A.I.D. determines to be an extraordinary situation which makes it improbable that the purposes of the Grant will be attained or that Grantee will be able to perform its obligations hereunder; or
- (d) any disbursement would be in violation of any provision of the laws of the United States; or
- (e) a default shall have occurred under any other agreement between Grantee or any of its agencies and the United States or any of its agencies;

then A.I.D., at its option, may (1) decline to issue further disbursing authorizations, or (2) suspend or cancel outstanding disbursing authorizations to the extent that A.I.D. has not made direct reimbursement to the Grantee thereunder.

Section 7.2. REFUNDS. 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 that the commodities financed under this Agreement are not financed or used in accordance with the terms of this Agreement, A.I.D. may at its option either: (1) authorize the Grantee to present valid documentation to cover the amount found to be ineligible; or (2) require the Grantee to pay to A.I.D., within ninety (90) days after receipt of notification by A.I.D., an amount not to exceed the amount of the ineligible disbursement. Except as A.I.D. may otherwise agree in writing, refunds paid by the Grantee to A.I.D. resulting from violation 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 not be available for reuse under the Agreement.

Section 7.3. WAIVERS OF DEFAULT. No delay in exercising or omitting to exercise, any right, power, or remedy accruing to A.I.D. under this Agreement shall be construed as a waiver of any of these rights, powers, or remedies.

Section 7.4. EXPENSES OF COLLECTION. All reasonable costs incurred by A.I.D. (other than salaries of its staff) in connection with the collection of amounts due under this Agreement may be charged to Grantee and reimbursed as A.I.D. may specify.

Article 8. MISCELLANEOUS

Section 8.1. REPORTS. The Grantee shall furnish A.I.D. with such information and reports relating to this Grant, and permit such inspection, review of records, or audit, as A.I.D. may reasonably request.

Section 8.2. USE OF REPRESENTATIVES. (a) All actions required or permitted to be performed or taken under this Agreement by Grantee or A.I.D. may be performed by their respective duly authorized representatives.

(b) The Grantee hereby designates the Economic Minister, Embassy of Israel, as its representative with the authority to designate in writing other representatives of Grantee in its dealing with A.I.D. Grantee's representatives designated pursuant to the preceding sentence, unless A.I.D. is given notice otherwise, shall have authority to agree on behalf of Grantee to any modification of this Agreement which does not substantially increase Grantee's obligations hereunder. Until receipt by A.I.D. of written notice of revocation by Grantee of the authority of any of its representatives, A.I.D. may accept the signature of such representatives on any instrument as conclusive evidence that any action effected by such instrument is authorized by Grantee.

Section 8.3. COMMUNICATIONS. Any notice, request, or other communication or any document given, made or sent by Grantee or A.I.D. pursuant to this Agreement shall be in writing and shall be deemed to have been duly given, made or sent to the party to which it is addressed when it shall be delivered by hand or by mail, telegram, cable, or radiogram to such party at the following address:

To Grantee:

Economic Minister
Embassy of Israel
641 Lexington Avenue
New York, New York 10022

To A.I.D.:

Director
Office of Commodity Management
Agency for International Development
Department of State
Washington, D.C. 20523

Other addresses may be substituted for the above upon giving of notice as provided herein. All communications or documents submitted to A.I.D. hereunder shall be in English and all technical and engineering specifications therein shall be in terms of U.S. standards, except as A.I.D. may otherwise agree in writing.

Government of Israel:

By: SIMCHA DINITZ
Title: Ambassador

United States of America:

By: DANIEL PARKER
Title: Administrator

EXHIBIT A

CERTIFICATE TO A.I.D.

Invoice No.(s)
Invoice Date(s)

The undersigned, an official of

.....
(company)

authorized to execute this certificate, hereby certifies to the Agency for International Development (A.I.D.) an agency of the United States that:

- (1) the commodities identified in the attached invoice(s) referenced above are accurately described therein, are new and unused and do not contain any rebuilt or rehabilitated components, and have not been declared surplus by a U.S. Government agency; and
- (2) such commodities have been mined, grown, or through manufacturing, processing or assembly produced in the United States; and
- (3) upon the request of A.I.D., information will be promptly furnished to A.I.D. in such form as A.I.D. may request, concerning the prices charged in the attached invoice(s) or the prices charged in other sales of the same or similar commodities.

The undersigned acknowledges that A.I.D., in reliance upon the truth, accuracy and undertakings of this certification, may reimburse the Government of Israel with A.I.D. funds for payments made to the supplier in connection with the purchase of the commodities identified in the attached invoice(s) referenced above.

Signature
Title
Date

EXHIBIT B

CERTIFICATE TO A.I.D. FOR AGRICULTURAL COMMODITIES

Invoice No.(s)
Invoice Date(s)

The undersigned, an official of

.....
(company)

authorized to execute this certificate hereby certifies to the Agency for International Development (A.I.D.), an agency of the United States Government, that:

- (1) the commodities identified in the attached invoice(s) referenced above are accurately described therein and their quality and specifications are in conformance with the requirements of the governing contract;

- (2) such commodities have been grown or raised in the United States or have been processed from agricultural commodities grown or raised in the United States;
- (3) upon the request of A.I.D., information will be promptly furnished to A.I.D. in such form as A.I.D. may request, concerning the prices charged in the attached invoice(s) or the prices charged in other sales of the same or similar commodities.

The undersigned acknowledges that A.I.D., in reliance upon the truth, accuracy and undertakings of this certification, may reimburse the Government of Israel with A.I.D. funds for payments made to the supplier in connection with the purchase of the commodities identified in the attached invoice(s) referenced above.

Signature

Title

Date