

No. 27149

**UNITED STATES OF AMERICA
and
MEXICO**

**Cooperative Agreement concerning eradication of the Mediterranean fruit fly (MEDFLY) (with patent provision).
Signed at Guatemala City on 22 October 1981**

Authentic texts: English and Spanish.

Registered by the United States of America on 15 March 1990.

**ÉTATS-UNIS D'AMÉRIQUE
et
MEXIQUE**

**Accord de coopération concernant l'éradication de la mouche ceratitis (avec clause de brevet). Signé à Guatemala le
22 octobre 1981**

Textes authentiques : anglais et espagnol.

Enregistré par les États-Unis d'Amérique le 15 mars 1990.

COOPERATIVE AGREEMENT¹ BETWEEN SECRETARÍA DE AGRICULTURA Y RECURSOS HIDRÁULICOS DE MÉXICO, DIRECCIÓN GENERAL DE SANIDAD VEGETAL, AND UNITED STATES DEPARTMENT OF AGRICULTURE, ANIMAL AND PLANT HEALTH INSPECTION SERVICE, PLANT PROTECTION AND QUARANTINE

No. 12-16-5-2478

THIS AGREEMENT, made and entered into by and between the Secretaria de Agricultura y Recursos Hidraulicos de México, Dirección General de Sanidad Vegetal, hereinafter called the Cooperator, and the United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine, hereinafter called the Service.

WHEREAS, the Service is authorized pursuant to the Act of September 21, 1944, as amended (7 U.S.C. 147a), to cooperate with governments of Western Hemisphere countries or the local authorities thereof, in carrying out necessary surveys and control operations in those countries in connection with the detection, eradication, suppression, control, and prevention or retardation of the spread of plant pests including the Mediterranean fruit fly; and

WHEREAS, a Memorandum of Understanding was entered into between the parties hereto, on February 8, 1973² covering cooperative efforts to protect crops from plant pest damage and plant diseases in the United Mexican States and in the United States of America, through the execution of cooperative programs; and

WHEREAS, due to increased activity related to the cooperative effort to halt the Northward spread and dissemination of the Mediterranean fruit fly (*Ceratitidis capitata* Wied.) the 1973 Memorandum of Understanding was amended on October 9, 1973² and July 15, 1976,² to reflect this increased activity; and

WHEREAS, it is the intent of the parties that this agreement shall supersede Agreement No. 12-16-5-1047 of August 17, 1978;³ and

WHEREAS, the objectives of this Cooperative Agreement are to further action that will provide for specific activities to and for the Service, Cooperator and interested parties with regard to the Mediterranean fruit fly, and provide services that will assist in the execution of the cooperative eradication program of the Mediterranean fruit fly; and

WHEREAS, it is necessary for the furtherance of the goals of the Program to assign the day-to-day management of Mediterranean fruit fly activities in the State of Chiapas to the officials of the Cooperator; and

WHEREAS, the Cooperator is equipped with or has access to facilities and has or can secure personnel and equipment mutually satisfactory to both parties for this work; and

WHEREAS, it is the intention of the parties hereto that such cooperation covered by this agreement shall be for the mutual benefit of the people of México and the United States of America.

NOW THEREFORE, for and in consideration of the promises and mutual covenants herein contained, the parties hereto do hereby mutually agree with each other as follows:

¹ Came into force on 22 October 1981 by signature, in accordance with section C (25).

² United Nations, *Treaty Series*, vol. 1082, p. 176.

³ *Ibid.*, vol. 1273, p. 33.

A. The Cooperator Agrees:

1. To manage and operate the Mediterranean Fruit Fly Laboratory located in Metapa, Chiapas, México, in accordance with mutually agreed to production plans for rearing and sterilizing 500 million Mediterranean fruit fly pupae per week for field release.
2. To provide for free access to the Laboratory by Service personnel designated to work at this facility, subject only to restrictions jointly agreed to in advance. To provide housing located on the laboratory grounds for the Co-Director. To provide office space for all Service personnel at a location most advantageous for performance of their duties.
3. To designate a mutually acceptable official as the Cooperator's duly authorized representative who will act as project coordinator for all matters pertaining to this cooperative program.
4. To furnish field operation personnel in the State of Chiapas, Mexico for carrying out the program activities which are stipulated in the work plan referenced in paragraph C.2. of this agreement.
5. To provide funding for laboratory and field operations in the State of Chiapas, México, amounting to the agreed upon sum as stipulated in the financial plan referenced in paragraph C.2. of this agreement.
6. To establish and maintain in Tapachula, Chiapas, Mexico, a central administrative office which will be responsible for all the procurement, personnel, financial functions, and records for the operation of the laboratory and for the field operations in the State of Chiapas, México, as covered under this agreement.
7. To submit to the Service narrative, statistical and financial reports concerning laboratory production and field operations in the State of Chiapas, Mexico. These reports will be in conformance with the work and financial plans stipulated in paragraph C.2. of this agreement.
8. Require the Administrative Office in Tapachula, Chiapas, México, to monitor the use of and need for funds and to request periodically that the Service deposit to the bank account in Tapachula, Chiapas, México, its share of the funds necessary to sustain operations for periods not to exceed 60 days from the date of request. A schedule of deposits will be maintained to substantiate the request for subsequent deposits.
9. To provide all maintenance for Service furnished nonexpendable property and to permit free access to same at all times by personnel designated by the Service for the purpose of insuring prescribed usage.
10. To procure all supplies, equipment, and services (including construction services) to maintain operations, except for those items not readily available to the Cooperator in Mexico, or available at a prohibitive cost (+25 percent above U. S. cost). In such event, the Service, upon written request from the Cooperator will provide assistance in purchasing those items with funds available under this agreement.
11. To provide through the Government of Mexico duty free entry of all supplies and equipment furnished by the Service or purchased for the Mediterranean fruit fly program under this agreement, in accordance with the existing laws and with the authorization of the corresponding authorities.
12. To provide transportation of all supplies and equipment to Chiapas, Mexico, from source of origin if purchased by the Cooperator, or if purchased by the Service, from a mutually agreeable location on the Mexican/U.S. Border.

B. The Service Agrees:

1. To provide funding for the laboratory and field operations in the state of Chiapas, México, in the amounts agreed upon and stipulated in the financial plan referenced in paragraph C.2. of this agreement.
2. Deposit in a designated bank account in Tapachula, Chiapas, México, funds as agreed upon in the financial plan stipulated in paragraph C.2. Deposits will be made to cover the Mediterranean fruit fly operations in the state of Chiapas, México, for periods not to exceed 60 days. Deposit of funds will be subject to appropriation of funds by the U. S. Congress for the purpose of the control and eradication of the Mediterranean fruit fly for the period October 1, 1981 to September 30, 1982, and will not exceed the dollar amount specified in the work and financial plans referenced in paragraph C.2.
3. To use its facilities to procure supplies and/or equipment in the United States as may be deemed necessary, as stipulated in paragraph A. 10 and in accordance with the work and financial plans as stated in C.2. of this agreement.
4. To provide employees who will serve as the field technical consultants for field operations in the state of Chiapas, México. The senior official will serve as the duly authorized representative of the Service.
5. To provide a laboratory Co-Director and other technical support to the Metapa Laboratory.
6. To provide at its own expense additional technical experts for onsite consultation involving mechanical or scientific advice when it is mutually agreed that such experts could benefit the program.
7. Provide the necessary reporting format for the financial reports required of the Administrative Office in Tapachula and to conduct a review of these records every three months.

C. It is Mutually Understood and Agreed:

1. The parties to the Cooperative Agreement will cooperate to the best interest of the agricultural producers and the general public of the countries of Mexico and the United States.
2. The cooperating parties will develop and furnish mutually satisfactory work plans and financial plans for conducting a Mediterranean fruit fly program which will outline overall plans for carrying out and funding this program in accordance with established standards and to the satisfaction of the Cooperator and the Service.
3. A Technical Advisory Committee consisting of a maximum of three representatives from each party, will be formed to evaluate and recommend program changes.
4. The operation of the laboratory will be under the joint direction of the Director and the Co-Director. In the event the Director and the Co-Director cannot agree with regard to the interpretation or application of the present international instrument, the matter shall be referred to the Technical Advisory Committee. If the Technical Advisory Committee cannot agree, the problem shall be resolved through consultation between the Secretary of Agriculture and Hydraulic Resources of Mexico and the United States Secretary of Agriculture.
5. Weekly meetings involving representatives of the cooperative parties will be held. Minutes of these meetings will be maintained by the Cooperator and distributed to both parties. If necessary, work and financial plans may be amended during these meetings so long as these changes are not in conflict with the guidance provided by the Technical Advisory Committee.

6. That to the maximum extent possible all procurement will be made competitively in a prudent manner, and in accordance with all governing laws of México and the United States, as appropriate.
7. To permit USDA employees, as designated by the Service, to serve as technical advisors for field operations in the State of Chiapas.
8. That the Cooperator and the Service will coordinate visits by official personnel to those persons not regularly assigned to the project.
9. That both parties will jointly ensure that security measures are taken to prevent the escape and/or theft of specimens at any biological stage of the Mediterranean fruit fly.
10. That Mexican national personnel employed by the Service in the State of Chiapas, and identified by the Service at the time of the signing of this agreement, shall without a break in employment be afforded the choice of either:
 - (1) Remaining an employee of the Service in an alternative location to be determined by the Service; or
 - (2) Transferring to the employment of the Cooperator in the State of Chiapas in a position of like status, and salary.

These choices will be available to affected employees until December 31, 1981 after which time those still remaining will be removed from the payroll of the Service.

11. To employ personnel mutually acceptable to the Cooperator and the Service.
12. That funds provided by the Service shall not be used for any purchases of nonexpendable equipment without specific prior authorization by the Service. Nonexpendable equipment purchased from the Cooperator's funds shall remain the property of the Cooperator subject to its disposition. Likewise, non-expendable equipment purchased from funds provided by the Service shall remain the property of the Service, subject to its disposition.
13. That the value of equipment and/or supplies furnished by either party shall include purchase cost, freight, taxes (if any), storage costs, costs of permits and any other directly related costs.
14. The Service funding for this cooperative endeavor will be considered to be those funds deposited to the designated bank account in Tapachula, Chiapas, Mexico, and those costs as enumerated in paragraph C.2. of this agreement.
15. Mediterranean fruit fly sterile pupae produced as a result of this joint endeavor will be used as and where needed to the mutual benefit of both parties and according to priorities set forth for the prevention of establishment of Medfly in Mexico and its increase in Guatemala. Commitments for the use of sterile flies made prior to the initiation of this agreement will be honored if mutually agree to by both parties. If an infestation of Medfly is found in the United States of America and the Service decides to use sterile Mediterranean fruit flies, it can receive 20 percent of the weekly production of the laboratory in Metapa, Chiapas, México and such surplus over 20 percent that may be available, immediately. If additional pupae is required by the Service, the amount to be shipped to the United States of America will be determined mutually (up to 200 million per week) and the Service will provide additional funds for personnel and equipment to increase production to a level at which those flies will be available for use in the United States each week without adversely affecting the program in Mexico and Guatemala. The work and financial plans will be adjusted accordingly.
16. The Service shall not provide reimbursement to the Cooperator for any capital improvements made during the effective period of this agreement, except as provided for in the approved work and financial plans.
17. Financial responsibility to be assumed by each party shall be subject to appropriation of funds available to legally cover Program expenses.

18. The results of the work herein outlined may be published jointly by the Cooperator and the Service, or by either party, and shall be submitted to the other party for suggestions and approval prior to publication. In the event of disagreement, either party may publish results on its own responsibility, giving proper acknowledgement of cooperation.
19. In the event the costs of the program under this agreement are increased or decreased, the total contribution of the parties may be adjusted as mutually agreed upon in advance by the parties hereto as stipulated in a revised written work and financial plans.
20. All equipment purchased and installed by the Service under the cooperative agreement of August 17, 1978, between the Cooperator and the Service for the cooperative construction and operation of the laboratory at Metapa, Chiapas, México, will remain the property of the Service.
21. The patent provision applicable to this agreement, shall be in accordance with Exhibit A, attached hereto and made a part thereof.
22. The Service, the United States and all of its officers and employees shall not be liable to the Cooperator for the loss of or damage to any equipment or other property of any kind owned, leased, operated or in the possession or control of the Cooperator or of any officers, employees, or agents, or cooperators of the Cooperator. The Service, the United States and all of its officers and employees shall not be liable to the Cooperator for the death or injury of any of the Cooperator's officers, employees, agents or any other individuals as a result of activities authorized or described by this agreement. The Cooperator shall hold the Service, the United States and all of its officers and employees harmless from liability of any kind or nature including liability arising under the Federal Employees Compensation Act arising from any activities authorized by or described in this agreement, except for liability arising from the negligent act or omission of an employee of the United States Department of Agriculture. In order to hold the Service, the United States and all of its officers and employees harmless, the Cooperator agrees to indemnify the Service, the United States and all of its officers and employees for all liability and costs including the cost of any judgment and the legal and other costs of the defense of the litigation for all liability arising out of the activities authorized by or described in this agreement except for liability arising from the negligent act or omission of any employee of the United States.
23. That the Comptroller General of the United States or any of his duly authorized representatives and duly authorized representatives of the United States Department of Agriculture shall, until expiration of three years after final payment under this agreement, have access to and the right to examine pertinent books, documents, papers, and records of the Cooperator involving transactions related to this agreement. This same right is extended identically to the Secretary of State and to the Agencies of the Secretaria de Agricultura y Recursos Hidraulicos de México involved in the management of funds.
24. No member of or delegate to the U. S. Congress, Resident Commissioner, or Mexico Parliamentary officials shall be admitted to any share or part of this agreement or to any benefit to arise therefrom; unless it be made with a corporation for its general benefit.
25. This agreement shall become effective upon date of final signature and shall continue in force until September 30, 1982, subject to renewal in writing by the parties hereto from year to year. Further, this agreement may be amended at any time by mutual agreement of the parties hereto in writing. Either party may terminate this agreement upon 60 day's notice in writing to the other party.

26. Upon termination of the cooperative program, any and all equipment purchased through the use of funds of the Service, including such equipment purchased under the agreement of August 17, 1978, will be returned to the Service subject to its disposition. In addition, the Service at the request of the Cooperator agrees to sell its equipment to the Cooperator, all or in part and at the price to be agreed upon through joint evaluation.

United States Department
of Agriculture
Animal and Plant Health Inspection
Service:

[Signed — Signé]¹

Date: 10/22/81

Secretaría de Agricultura y Recursos
Hidráulicos de México
Dirección General de Sanidad Vegetal:

[Signed — Signé]²

Date: Oct/22/81

¹ Signed by D. Scott Campbell — Signé par D. Scott Campbell.

² Signed by Jorge G. San Perio — Signé par Jorge G. San Perio.

EXHIBIT A

UNITED STATES DEPARTMENT OF AGRICULTURE
ANIMAL AND PLANT HEALTH INSPECTION SERVICE

PATENT PROVISION

Any invention resulting from this cooperative work and made jointly by an employee or employees of the United States Department of Agriculture and the cooperator or an employee or employees of the cooperator shall be fully disclosed, either by publication or by patenting in the United States, and any such United States patent shall either be dedicated to the free use of the people in the territory of the United States or be assigned to the United States of America or be assigned to the cooperator, as may be mutually agreed upon by the parties hereto, provided, that in the event of assignment to the cooperator, the Government shall receive an irrevocable, nonexclusive, royalty-free license under the patent; throughout the world, to practice the invention for all governmental purposes, and, provided further, that nonexclusive, royalty-free licenses shall be issued by the cooperator to any and all applicants technically competent to make use of the patent, provided, that, where the assignment is to the Government, it shall be of the domestic patent rights. Where the domestic patent rights are so assigned, the United States Department of Agriculture shall have an option to acquire the foreign patent rights in the invention on which an application for a United States patent is filed, for any particular foreign country, said option to expire in the event that the Government fails to cause an application to be filed in any such country on behalf of the Government or determines not to seek a patent in such country within six months after the filing of the application for a United States patent on the invention. Where the domestic patent rights are assigned to the Government, but the foreign patent rights are retained by an employee, the employee shall grant to the Government a nonexclusive, irrevocable, royalty-free license in any patent which may issue thereon in any foreign country, including the power to issue sub-licenses for use in behalf of the Government and/or in furtherance of the foreign policies of the Government, and said license shall also include the power to sublicense American licensees under Government-owned United States patents to practice the invention without payment of royalty or other restriction in any foreign country wherein a corresponding patent may issue to the employee or his foreign assignee. Any invention made independently by an employee or employees of the United States Department of Agriculture or by the cooperator or an employee or employees of the cooperator shall be disposed of in accordance with the policy of the United States Department of Agriculture or the cooperator, respectively, provided, that in the event the invention is made solely by an employee or employees of the cooperator, the cooperator shall grant or shall obtain from the assignee of any patent issued on said invention an irrevocable, nonexclusive, world-wide, royalty-free license for the Government, for all governmental purposes, and provided further, in the event the invention is made solely by an employee or employees of the cooperator, that unless the cooperator or his assignee has taken effective steps within three years after a patent issues on the invention to bring the invention to the point of practical application or has made the invention available for licensing royalty-free or on terms that are reasonable in the circumstances, or can show cause why he should retain the principal or exclusive rights for a further period of time, the Government shall have the right to require the granting of a license to an applicant on a nonexclusive, royalty-free basis.

APHIS FORM 18
JUNE 1972