

No. 26988

**UNITED STATES OF AMERICA
and
ZIMBABWE**

**Commodity Import Grant Agreement. Signed at Salisbury on
7 April 1982**

Authentic text: English.

Registered by the United States of America on 19 December 1989.

**ÉTATS-UNIS D'AMÉRIQUE
et
ZIMBABWE**

**Accord de don pour l'importation de produits de base. Signé
à Salisbury le 7 avril 1982**

Texte authentique : anglais.

Enregistré par les États-Unis d'Amérique le 19 décembre 1989.

GRANT AGREEMENT¹ BETWEEN UNITED STATES OF AMERICA AND THE GOVERNMENT OF ZIMBABWE FOR COMMODITY IMPORTS

Dated: April 7, 1982

A.I.D. Grant No.: 613-K-603

COMMODITY IMPORT GRANT AGREEMENT

DATE: April 7, 1982

Between

The Government of Zimbabwe ("Grantee")

and

The United States of America, acting through the
Agency for International Development ("A.I.D.").

ARTICLE 1

The Grant

A.I.D. agrees to grant to the Grantee pursuant to the Foreign Assistance Act of 1961, as amended, an amount not to exceed Fifty Million United States dollars (\$50,000,000) (the "Grant") for the foreign exchange costs of commodities and commodity-related services, as such services are defined by A.I.D. Regulation 1, needed to assist the Grantee in achieving reconstruction and economic development objectives and maintaining stability. Commodities and commodity-related services authorized to be financed hereunder are hereinafter referred to as "Eligible Items," as more fully described in Section 3.2.

ARTICLE 2

Conditions Precedent to Disbursement

SECTION 2.1. First Disbursement. Prior to the first disbursement under this Agreement, or to the issuance by A.I.D. of documentation pursuant to which such disbursement will be made, the Grantee will, except as the Parties may otherwise agree in writing, furnish to A.I.D., in form and substance satisfactory to A.I.D.

(a) An opinion of the State Attorney of Zimbabwe that this Agreement has been duly authorized and/or ratified by, and executed on behalf of, the Grantee and that it constitutes a valid and legally binding obligation of the Grantee in accordance with all of its terms;

¹ Came into force on 7 April 1982 by signature.

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

(c) Any implementation plan which provides (1) an illustrative list by general category of items to be financed and (2) the procedures to be used for allocating foreign exchange to importers under this Agreement;

(d) A plan detailing the activities to be financed, in order of priority, with local currency generations under Section 5.8.

SECTION 2.2. Disbursement for Public Sector Procurement. Prior to any disbursement under this Agreement for public sector procurement, or to the issuance by A.I.D. of documentation pursuant to which such disbursement will be made, the Grantee will, except as the Parties may otherwise agree in writing, furnish to A.I.D., in form and substance satisfactory to A.I.D., a plan describing the commodities to be procured, the anticipated use and the end user of the commodities.

SECTION 2.3. Notification. When A.I.D. has determined that the conditions precedent specified in Sections 2.1 and 2.2 have been met, it will promptly notify the Grantee by implementation letter issued pursuant to Section 7.1 of this Agreement.

SECTION 2.4. Terminal Date for Meeting Conditions Precedent.

(a) If all the conditions specified in Section 2.1 have not been met within ninety (90) days from the date of this Agreement, or such later date as A.I.D. may specify in writing, A.I.D., at its option, may terminate this Agreement by written notice to the Grantee.

(b) If all of the conditions specified in Section 2.2 have not been met within 12 months from the date of this Agreement, or such later date as A.I.D. may agree to in writing, A.I.D., at its option, may cancel the then undisbursed balance of the Grant, to the extent not irrevocably committed to third parties, and may terminate this Agreement by written notice to the Grantee.

ARTICLE 3

Procurement, Eligibility, and Utilization of Commodities

SECTION 3.1. A.I.D. Regulation 1. This Grant and the procurement and utilization of commodities and commodity-related services financed under it are subject to the terms and conditions of A.I.D. Regulation 1 as from time to time amended and in effect, except as A.I.D. may otherwise specify in writing. If any provision of A.I.D. Regulation 1 is inconsistent with a provision of this Agreement, the provision of this Agreement shall govern.

SECTION 3.2. Eligible Items.

(a) The commodities eligible for financing under this Grant shall be those specified in the A.I.D. Commodity Eligibility Listing as set forth in the Implementation Letters and Commodity Procurement Instructions issued to Grantee. Commodity-related services as defined in A.I.D. Regulation 1 are eligible for financing under this Grant. Other items shall become eligible for financing only with the written agreement of A.I.D. A.I.D. may decline to finance any specific commodity or commodity-related service when in its judgment such financing would be inconsistent with the purpose of the Grant or of the Foreign Assistance Act of 1961, as amended.

(b) A.I.D. reserves the right in exceptional situations to delete commodity categories or items within commodity categories described by Schedule B codes on the Commodity Eligibility Listing. Such right will be exercised at a point in time no later than commodity prevalidation by A.I.D. (Form 11 approval) or, if no commodity prevalidation is required, no later than the date on which an irrevocable Letter of Credit is confirmed by a U.S. bank in favor of the supplier.

(c) If no prevalidation is required and payment is not by Letter of Credit, A.I.D. will exercise this right no later than the date on which it expends funds made available to the Grantee under this Agreement for the financing of the commodity. In any event, however, the Grantee will be notified through the A.I.D. Mission in its country of any decision by A.I.D. to exercise this right pursuant to a determination that financing the commodity would adversely affect A.I.D. or foreign policy objectives of the United States or could jeopardize the safety or health of people in the importing country.

SECTION 3.3. Procurement Source. All Eligible Items shall have their source and origin in the United States of America (Code 000 of the A.I.D. Geographic Code Book), except as A.I.D. may specify in Implementation Letters or as it may otherwise agree in writing

SECTION 3.4. Eligibility Date. No commodities or commodity-related services may be financed under the Grant if they were procured pursuant to orders or contracts firmly placed or entered into prior to the date of this Agreement, except as A.I.D. may otherwise agree in writing.

SECTION 3.5. Procurement for Public Sector.

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

(b) Grantee will undertake to assure that any public sector end-users under this Grant establish adequate logistic management facilities and, with respect to commodities imported by public sector end-users, that sufficient funds are made available to meet the local currency deposit requirements under

Section 5.8, and to pay banking charges, customs duties, and other commodity-related charges.

SECTION 3.6. Procurement for Private Sector. Except as A.I.D. may otherwise agree in writing, procurement by private importers will be subject to the negotiated procurement procedures of Section 201.23 of A.I.D. Regulation 1 unless the importer elects procurement through the formal competitive procedures of Section 201.22 of A.I.D. Regulation 1.

SECTION 3.7. Motor Vehicles. Except as A.I.D. may otherwise agree in writing, none of the proceeds of this Grant may be used to finance the purchase, sale, long-term lease, exchange or guaranty of a sale of motor vehicles unless such motor vehicles are manufactured in the United States.

SECTION 3.8. Utilization of Commodities.

(a) Grantee will assure that commodities financed under this Grant will be effectively used for the purposes for which the assistance is made available. To this end, the Grantee will use its best efforts to assure that the following procedures are followed:

(i) accurate arrival and clearance records are maintained by customs authorities; commodity imports are promptly processed through customs at points of entry; such commodities are removed from customs and/or bonded warehouses within ninety (90) calendar days from the date the commodities are unloaded at the point of entry, unless the importer is hindered by force majeure or A.I.D. otherwise agrees in writing; and

(ii) the commodities are consumed or used by the importer not later than one (1) year from the date the commodities are removed from customs, unless a longer period can be justified to the satisfaction of A.I.D. by reason of force majeure or special market conditions or other circumstances.

(b) Grantee will assure that commodities financed under this Grant will not be re-exported in the same or substantially the same form, unless specifically authorized by A.I.D.

SECTION 3.9. Shipping.

(a) Commodities may not be financed under this Grant if transported either: (1) on an ocean vessel or aircraft under flag registry of a country which is not included in A.I.D. Geographic Code 935 as in effect at the time of shipment, or (2) on an ocean vessel which A.I.D., by written notice to the Grantee has designated as ineligible, or (3) under an ocean or air charter which has not received prior A.I.D. approval.

(b) Unless otherwise authorized, A.I.D. will finance only those transportation costs incurred on aircraft or ocean vessels under flag registry of a country included in the Geographic Code authorized in Section 3.3 of the Agreement.

(c) Unless A.I.D. determines that privately owned United States-flag commercial ocean vessels are not available at fair and reasonable rates for such vessels, (1) at least fifty percent (50%) of the gross tonnage of all goods (computed separately for dry bulk carriers, dry cargo liners and tankers) financed by A.I.D. which may be transported on ocean vessels will be transported on privately owned United States-flag commercial vessels, and (2) at least fifty percent (50%) of the gross freight revenue generated by all shipments financed by A.I.D. and transported on dry cargo liners shall be paid to or for the benefit of privately owned United States-flag commercial vessels. Compliance with the requirements of (1) and (2) of this subsection must be achieved with respect to both cargo transported from U.S. ports and cargo transported from non-U.S. ports, computed separately.

SECTION 3.10. Insurance. Marine insurance on commodities financed by A.I.D. under this Grant may also be financed under this Grant provided that such insurance is placed in a country included in the Geographic Code authorized in Section 3.3. of this Agreement, in accordance with the application provisions of A.I.D. Regulation 1, Subparts B and C.

ARTICLE 4

Disbursement

SECTION 4.1. Letters of Commitment to United States Banks. After satisfaction of the conditions precedent, the Grantee may obtain disbursements of funds under this Grant by submitting Financing Requests to A.I.D. for the issuance of letters of commitment for specified amounts to one or more banking institutions in the United States designated by Grantee and satisfactory to A.I.D. Such letters will commit A.I.D. to reimburse the bank or banks on behalf of the Grantee for payments made by the banks to suppliers or contractors, under letters of credit or otherwise, pursuant to such documentation requirements as A.I.D. may prescribe. Banking charges incurred in connection with letters of commitment and disbursements shall be for the account of Grantee and may be financed by this Grant.

SECTION 4.2. Other Forms of Disbursement Authorizations. Disbursements of the Grant may also be made through such other means as the Parties may agree to in writing.

SECTION 4.3. Terminal Date for Disbursement. Except as A.I.D. may otherwise agree in writing, no Letter of Commitment or other commitment documents which may be called for by another form of disbursement under Section 4.2 shall be issued in response to a request received by A.I.D. after twelve (12) months, and no disbursement of grant funds shall be made against documentation received by A.I.D. or any bank described in Section 4.1 after eighteen (18) months, from the date of this Agreement.

ARTICLE 5

Covenants

SECTION 5.1. Taxation. This Agreement and the Grant will be free from any taxation or fees imposed under laws in effect in Zimbabwe. To the extent that any commodity procurement transaction financed hereunder is not exempt from identifiable taxes, tariffs, duties, and other levies imposed under laws in effect within Zimbabwe, the same shall not be paid with funds provided or directly generated under this Grant.

SECTION 5.2. Reports and Records. In addition to the requirements in A.I.D. Regulation 1, the Grantee will:

(a) furnish A.I.D. such reports and information relating to the goods and services financed by this Grant and the performance of Grantee's obligations under this Agreement as A.I.D. may reasonably request;

(b) maintain or cause to be maintained, in accordance with generally accepted accounting principles and practices consistently applied, such books and records relating to this Grant as may be prescribed in Implementation Letters. Such books and records may be inspected by A.I.D. or any of its authorized representatives at all times as A.I.D. may reasonably require, and shall be maintained for three years after the date of last disbursement by A.I.D. under this Grant; and

(c) permit A.I.D. or any of its authorized representatives at all reasonable times during the three-year period to inspect the commodities financed under this Grant at any point, including the point of use.

SECTION 5.3. Completeness of Information. The Grantee confirms:

(a) that the facts and circumstances of which it has informed A.I.D., or caused A.I.D. to be informed, in the course of reaching agreement with A.I.D. on the Grant, are accurate and complete, and include all facts and circumstances that might materially affect the Grant and the discharge of responsibilities under this Agreement; and

(b) that it will inform A.I.D. in timely fashion of any subsequent facts and circumstances that might materially affect, or that it is reasonable to believe might so affect, the Grant or the discharge of responsibilities under this Agreement.

SECTION 5.4. Other Payments. Grantee affirms that no payments have been or will be received by any official of the Grantee in connection with the procurement of goods or services financed under the Grant, except fees, taxes, or similar payments legally established in the country of the Grantee.

SECTION 5.5. Minimum Size of Transactions. No foreign exchange allocation or letter of credit issued pursuant to this Agreement shall be in an amount less than ten-thousand

United States dollars (\$10,000), except as A.I.D. may otherwise agree in writing.

SECTION 5.6. Private Sector. The Grantee covenants to take all necessary steps to make available to the private sector no less than eighty (80) percent of the proceeds of the Grant.

SECTION 5.7. Additionality. The Grantee covenants to use its best efforts to ensure that an amount of United States dollars at least equal to fifty (50) percent of this Grant will be made available to the private sector in addition to the amount that would have been available absent this Grant.

SECTION 5.8. Generation and Use of Local Currency.

(a) The Grantee will establish a Special Account in the Reserve Bank at Zimbabwe and will deposit therein currency of the Government of Zimbabwe in amounts equal to proceeds accruing to the Grantee or any authorized agency thereof as a result of the sale of the Eligible Items. Funds in the Special Account shall be utilized for mutually agreed purposes as set forth in the plan submitted by Grantee in accordance with Section 2.1(d) of this Agreement and for other mutually agreed upon purposes, provided that such portion of the funds in the Special Account as may be designated by A.I.D. shall be made available to meet the requirements of the United States, which for purposes of this Agreement shall be deemed to be one percent (1%) of total local currency generations.

(b) Except as A.I.D. may otherwise agree in writing, deposits to the Special Account shall be made quarterly, within five (5) working days after receipt of written advice from A.I.D. as to the amount due and payable. A.I.D. may elect to specify that such local currency deposits shall be equivalent to U.S. dollar disbursements under this Agreement, aggregated quarterly. Such deposits shall be based upon the exchange rate which, on the date of A.I.D.'s advice to Grantee as to the amount to be deposited, provides the largest number of Zimbabwe dollars per U.S. dollar that is not unlawful in Zimbabwe.

(c) The Grantee will provide A.I.D. with a detailed accounting of the use of such local currency; the timing and format for such reports will be specified in an Implementation Letter.

(d) Any encumbered balances of funds which remain in the Special Account one year from the terminal date for disbursement under Section 4.3 of this Agreement shall be disbursed for such purposes as may, subject to applicable law, be agreed to between Grantee and A.I.D.

SECTION 5.9. Continuing Consultation. The Grantee and A.I.D. agree to cooperate fully to assure that the purpose of the Grant will be accomplished. To this end, the Grantee and A.I.D. shall from time to time, at the request of either Party, exchange views through their representatives with regard to the Grantee's economic development and its progress in achieving the objectives of its reconstruction and development program, including the level of current expenditures and its

foreign exchange position, and the performance by the Grantee of its obligations under this Agreement, the performance of consultants or suppliers under the Grant, and other matters relating to this Agreement.

ARTICLE 6

Termination; Remedies

SECTION 6.1. Termination. This Agreement may be terminated by mutual agreement of the Parties at any time. Either Party may terminate this Agreement by giving the other Party thirty (30) days written notice.

SECTION 6.2. Suspension. If at any time:

(a) Grantee shall fail to comply with any provision of this Agreement; 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 under this Agreement is incorrect in any material respect; or

(c) An event occurs that A.I.D. determines to be an extra-ordinary situation that makes it improbable either that the purposes of the Grant will be attained or that the Grantee will be able to perform its obligations under this Agreement; or

(d) Any disbursement by A.I.D. would be in violation of the legislation governing A.I.D.; or

(e) A default shall have occurred under any other agreement between Grantee or any of its agencies and the Government of the United States or any of its agencies;

Then, in addition to remedies provided in A.I.D. Regulation 1, A.I.D. may:

(1) suspend or cancel outstanding commitment documents to the extent that they have not been utilized through irrevocable commitments to third parties or otherwise, or to the extent that A.I.D. has not made direct reimbursement to the Grantee thereunder, giving prompt notice to Grantee thereafter;

(2) decline to issue additional commitment documents or to make disbursements other than under existing ones; and

(3) at A.I.D.'s expense, direct that title to goods financed under the Grant be vested in A.I.D. if the goods are in a deliverable state and have not been offloaded at points of entry in Zimbabwe.

SECTION 6.3. Cancellation by A.I.D. If, within sixty (60) days from the date of any suspension of disbursements pursuant to Section 6.2, the cause or causes thereof have not been corrected, A.I.D. may cancel any part of the Grant that is not then disbursed or irrevocably committed to third parties.

SECTION 6.4. Refunds.

(a) In addition to any refund otherwise required by A.I.D. pursuant to A.I.D. Regulation 1, if A.I.D. determines that any disbursement is not supported by valid documentation in accordance with this Agreement, or is in violation of United States law, or is not made or used in accordance with the terms of this Agreement, A.I.D. may require the Grantee to refund the amount of such disbursement in U.S. dollars to A.I.D. within sixty (60) days after receipt of request therefore. Refunds paid by the Grantee to A.I.D. resulting from violations of the terms of this Agreement shall be considered as a reduction in the amount of A.I.D.'s obligation under the Agreement and shall be available for reuse under the Agreement if authorized by A.I.D. in writing.

(b) The right to require such a refund of a disbursement will continue notwithstanding any other provision of this Agreement, for three (3) years from the date of the last disbursement under this Agreement.

SECTION 6.5. Nonwaiver of Remedies. No delay in exercising or omitting to exercise, any right, power, or remedy accruing to A.I.D. under this Agreement will be construed as a waiver of such rights, powers, or remedies.

ARTICLE 7**Miscellaneous**

SECTION 7.1. Implementation Letters. From time to time, for the information and guidance of both parties, A.I.D. will issue Implementation Letters and Commodity Procurement Instructions describing the procedures applicable to the implementation of the Agreement. Except as permitted by particular provisions of this Agreement, Implementation Letters and Commodity Procurement Instructions will not be used to amend or modify the text of this Agreement.

SECTION 7.2. Representatives. For all purposes relevant to this Agreement, the Grantee will be represented by the individual holding or acting in the office of Secretary to the Treasury and A.I.D. will be represented by the individual holding or acting in the office of Director, USAID/Zimbabwe, each of whom, by written notice, may designate additional representatives. The names of the representatives of the Grantee, with specimen signatures, will be provided to A.I.D., which may accept as duly authorized any instrument signed by such representatives in implementation of this Agreement, until receipt of written notice of revocation of their authority.

SECTION 7.3. Communications. Any notice, request, document or other communications submitted by either Party to the other under this Agreement will be in writing or by telegram or cable, and will be deemed duly given or sent when delivered to such party at the following address:

To the Grantee:

Mail Address: Secretary to the Treasury
 Ministry of Finance
 Private Bag 7705
 Causeway
 Salisbury, Zimbabwe

Alternate address for cables:

MINFIN
 Causeway
 Salisbury, Zimbabwe

To A.I.D.:

Mail Address: Director
 USAID/Zimbabwe
 c/o American Embassy
 Box HG 81
 Highlands
 Salisbury, Zimbabwe

Alternate address for cables:

AmEmbassy
 Salisbury, Zimbabwe

IN WITNESS WHEREOF, the Grantee and the United States of America, each acting through its duly authorized representative, have caused this Agreement to be signed in their names and delivered as of the day and year first above written.

Government of Zimbabwe:
 By: [Signed]
 Name: BERNARD T. CHIDZERO
 Title: Minister of Finance, Economic
 Planning and Development

United States of America:
 By: [Signed]
 Name: ROBERT V. KEELY
 Title: Ambassador

By: [Signed]
 Name: ROY A. STACY
 Title: Director, USAID/Zimbabwe