

No. 30561

**UNITED STATES OF AMERICA
and
KENYA**

Agreement for the sale of agricultural commodities (with minutes of negotiations of 30 March, 6 and 27 April 1982). Signed at Nairobi on 3 June 1982

Authentic text: English.

Registered by the United States of America on 2 December 1993.

**ÉTATS-UNIS D'AMÉRIQUE
et
KENYA**

Accord relatif à la vente de produits agricoles (avec procès-verbal de négociations des 30 mars, 6 et 27 avril 1982). Signé à Nairobi le 3 juin 1982

Texte authentique : anglais.

Enregistré par les États-Unis d'Amérique le 2 décembre 1993.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF KENYA FOR THE SALE OF AGRICULTURAL COMMODITIES

The Government of the United States of America and the Government of Kenya agree to the sale of agricultural commodities specified below. This agreement shall consist of the preamble and Parts I and III of the agreement signed December 31, 1980,² together with the following:

PART II. - PARTICULAR PROVISIONS

ITEM I

COMMODITY TABLE

COMMODITY	SUPPLY PERIOD (U.S. FISCAL YEAR)	APPROXIMATE QUANTITY (METRIC TONS)	MAXIMUM EXPORT MARKET VALUE (DOL MILLIONS)
Rice	1982	15,000	4.4
Wheat	1982	70,000	10.6
		Total	15.0

ITEM II

PAYMENT TERMS

Convertible Local Currency Credit

- A. Initial payment - five (5) percent;
- B. Currency use payment amount - ten (10) percent for Section 104 (A) purposes;
- C. Number of installment payments - thirty-one (31);
- D. Amount of each installment payment - approximately equal annual amounts;
- E. Due date of first installment payment - ten (10) years after date of last delivery of commodities in each calendar year;
- F. Initial interest rate - two (2) percent;
- G. Continuing interest rate - three (3) percent.

¹ Came into force on 3 June 1982 by signature, in accordance with Part III B.

² United Nations, *Treaty Series*, vol. 1268, p. 47.

ITEM IIIUSUAL MARKETING TABLE

COMMODITY	IMPORT PERIOD (U.S. FISCAL YEAR)	USUAL MARKETING REQUIREMENT (METRIC TONS)
Rice	1982	2,400
Wheat/Wheat flour	1982	27,000

ITEM IVEXPORT LIMITATIONS

A. The export limitation period:

The export limitation period shall be United States fiscal year 1982, or any subsequent United States fiscal year during which commodities financed under this agreement are being imported or utilized.

B. Commodities to which limitations apply:

For the purposes of PART I, ARTICLE III (A) (4) of this agreement, the commodities which may not be exported: for rice--rice in the form of paddy, brown or milled; and for wheat/wheat flour--wheat, wheat flour rolled wheat, semolina, farina, bulgur, or the same products under different names.

ITEM VSELF-HELP MEASURES

A. The Government of Kenya agrees to undertake self help measures to improve the production, storage, and distribution of agricultural commodities. In addition to supporting programs that will contribute directly to development progress in poor rural areas and enable the poor to participate actively in increasing agricultural production through small farm agriculture as set forth in Item IV, the following self help measures shall be implemented.

B. The Government of Kenya agrees to undertake the following measures and in doing so to provide adequate financial, technical and managerial resources for their implementation. It will:

1. Establish a special account with Cereals and Sugar Finance Corporation for the deposit of the Kenya Shilling proceeds from the sale of commodities provided by the exporting country.
2. Implement the major recommendations of the Financial Study of the National Cereals and Produce Board to improve the operational efficiency and financial management of the Board.

3. Continue its program to write off the debt to Government of the National Cereals and Produce Board which was accumulated through June 1981. In addition to the sum of Kenya Pounds 15.75 million written off in July 1981 a further Kenya Pounds 7 million will be written off in Kenya fiscal year 1982/83.
4. Prepare and adopt policies and plans for the establishment of a grain security program.
5. As control over smuggling in border districts improves, introduce freer movement of grain within districts and among non-border districts.

ITEM VI

ECONOMIC DEVELOPMENT PURPOSES FOR WHICH PROCEEDS
ACCRUING TO THE IMPORTING COUNTRY ARE TO BE USED

- A. The proceeds accruing to the Kenya Government from the sale of commodities financed under this agreement will be used to finance development in the agriculture and rural development sector.
- B. Deposited proceeds will be disbursed from the Special Account to support such development programs in the Kenya fiscal years 1982/83 and 1983/84. Specific identification of the programs to be supported will be agreed by an exchange of memoranda between the Kenya Government and USAID. Selected programs in poor rural areas will enable poor smallholders to increase their agricultural production.

For the Government
of the United States of America:



ROBERT G. HOUDEK
Chargé d'Affaires

For the Government
of the Republic of Kenya:



ARTHUR K. MAGUGU
Minister of Finance



CHARLES E. COSTELLO
Acting Director
USAID/Kenya

MINUTES OF NEGOTIATIONS ON A U.S. PUBLIC LAW 480 TITLE I PROGRAM FOR U.S. FISCAL YEAR 1982 HELD AT TREASURY BUILDING ON 30th MARCH, 6th APRIL AND 27th APRIL, 1982

Participants:

For the Government of Kenya:

Mr. J.G. Karuga	Financial Secretary, Ministry of Finance - Chair
Mr. D.R. Ongalo	Ministry of Finance
Mr. W.P. Mayaka	Ministry of Finance, External Aid Recording
Dr. A.B. Tench	Office of the President
Mr. W.K. Kikwai	National Cereals and Produce Board
Mr. S.G. Karanja	National Céréals and Produce Board
Mr. J. Karanja	Ministry of Agriculture
Mr. J.M. Kabuga	Ministry of Agriculture

For the United States Government:

Ms. A.B. Herrick	Director, USAID
Mr. T. Worrick	USAID - Recording
Mr. H. Norton	Agricultural Attache
Mr. C. Morris	U.S. Embassy

1. Opening Remarks

- 1.1 The Government of Kenya expressed appreciation for previous American assistance through the PL 480 program. It was observed that the food grains supplied in 1980 and 1981 came at a time when Kenya was faced with food shortages.
- 1.2 The recent PL 480 Title I programs have been a good experience in the administration of the PL 480 program and the mechanism is now understood and therefore Government expects successful implementation of future PL 480 programs.
- 1.3 The Government would like to see agreement reached as soon as possible so as to facilitate early preparation of a suitable timetable of delivery of the grains to Kenya.
- 1.4 The U.S. shared the view that the mechanism is now understood both in Nairobi and in the Kenyan Embassy in the United States and agreed that the 1982 program should therefore be implemented to the satisfaction of both Governments.

- 1.5 The U.S. Mission pointed out that the 1982 agreement would be for the U.S. fiscal year 1982, which began October 1, 1981 and will end September 30, 1982. The agreement will incorporate by reference the Preamble and Parts I and III of the Title I agreement signed on December 31, 1980 between the two Governments and will contain specific provisions relating to the 1982 program in a new Part II.
- 1.6 The Kenyan delegation said that they had studied the prior agreement and were familiar with the general and specific provisions.

2. Value of the Proposed Agreement

It was pointed out that the United States is prepared to provide \$15 million for U.S. fiscal year 1982 and that:

- 2.1 The commodities to be financed must be shipped by September 30, 1982.
- 2.2 If prices for commodities fall from current estimates the Government of Kenya will be able to purchase a larger quantity up to the value of \$15 million.
- 2.3 If prices rise, the \$15 million will constitute a ceiling and the quantity of grains to be provided could be less than currently projected.

3. Commodities Available and Prices

- 3.1 The participants reviewed correspondence to date.
 - 3.11 On 17th February 1982 the Government of Kenya requested 70,000 metric tons of wheat and 20,000 metric tons of rice.
 - 3.12 On 5th March 1982 USAID asked the Government of Kenya to consider an increase in its request for rice from 20,000 metric tons to 32,000 metric tons.
 - 3.13 On 27th March the Government of Kenya replied that 10,000 metric tons of rice will suffice considering the low average per caput consumption of rice in Kenya and that the need for and request for 70,000 metric tons of wheat is confirmed.
 - 3.14 Extensive verbal discussions were followed by a letter from the Kenya Government on 3rd May restating its position that 70,000 MT of wheat be included with the remaining funds for rice.
 - 3.15 Both parties restated their positions in letters (U.S. May 10th, Kenya May, 12th).

- 3.2 The U.S. Mission stated that they had authorization from the U.S. Government to offer quantities with estimated values as follows:
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|-------|--------------------|-------------|-------------|
| Rice | 25,000 metric tons | \$7,500,000 | \$300/ton |
| Wheat | 43,000 metric tons | \$7,500,000 | \$174.4/ton |
- 3.3 The Government of Kenya stated that the Food Committee of the Office of the President had considered the U.S. offer and come to the conclusion upon thorough study that the requirement for 70,000 metric tons of wheat is firm.
- 3.4 The U.S. Agriculture Attache informed the meeting that as of late March the price of rice had fallen to \$286 per metric ton "free-along-side" and the price of soft wheat to \$144 per metric ton FOB Gulf Port, a 17% reduction. Hard winter wheat was \$161 per ton. It would thus be possible for the Government of Kenya to purchase more than 43,000 tons of wheat after allocation for 25,000 metric tons of rice.
- 3.5 Kenya representatives insisted that 25,000 metric tons of rice is on the high side for Kenya. They also reiterated the Government's firm request for 70,000 tons of wheat and stated that the hard wheats are preferred as imports because these are used to blend with local wheat.

4. Terms of Payment

- 4.1 A convertible local currency credit will be made on the following terms:
- 4.11 Initial payment of 5 percent
- 4.12 Currency Use Payment of 10 percent in Kenya Shillings equivalent.
- 4.13 40 years maturity including 10 years grace period.
- 4.14 2 percent interest during grace period and 3 percent thereafter.
- 4.15 Repayment in 31 approximately equal annual amounts beginning 10 years after the date of last delivery of commodities in each calendar year.
- 4.2 Kenyan representative reminded the meeting that the Government of Kenya had protested the Currency Use Payment of the prior agreement and that the U.S. Mission had said the provision was not negotiable. They pointed out that the Government of Kenya considers those provision to be an unwelcome hardening of terms. It is well aware that although the payment is made in Kenya Shillings there is no foreign exchange advantage to Kenya as the United States will reduce the number of dollars it brings into the country for its Embassy expenses by the same amount.

5. Commercial Imports

5.1 The U.S. representatives pointed out that the Government of Kenya must assure that commercial imports of rice and wheat from the United States and other friendly countries during U.S. fiscal year 1982 will total as follows:

Rice	2,400 metric tons
Wheat	27,000 metric tons

5.2 It pointed out that USAID is aware that Government of Kenya has purchased 22,500 tons of wheat from commercial sources and asked if the 70,000 requirement should not be reduced by the additional 4,500 tons to be imported to meet the so-called Usual Marketing Requirement for wheat.

5.3 The Kenyan representatives stated that the full 70,000 was required from the United States on concessional terms and assured that the Usual Marketing Requirement would be met.

5.4 A similar assurance was given that commercial imports of 2,400 metric tons would be made during the U.S. fiscal year.

6. Prohibition on Exports

6.1 The U.S. Mission pointed out that the agreement will contain a provision that the Government of Kenya will take all possible measures to prevent the export of wheat and rice of domestic or foreign origin during U.S. fiscal year 1982.

6.2 Kenya representatives indicated that they understood the provision.

7. Adequacy of Storage and Distribution Facilities

7.1 U.S. representatives stated that the U.S. Secretary of Agriculture must determine that adequate storage and distribution facilities are available in Kenya to prevent spoilage or waste of the U.S. wheat and rice and asked for assurances on these matters.

7.2 Kenya representatives responded that they did not anticipate problems because the facilities at the port of Mombasa are adequate for handling imports and the grains would quickly be distributed to millers. Thus space in other storage facilities now filling with seasonal purchases would not be required.

8. Possible Disincentive to Domestic Production

8.1 The U.S. asked for and received assurance that the distribution of the commodities would not interfere with domestic production or marketing of those commodities.

9. Shilling Generations

- 9.1 The U.S. suggested that the Government of Kenya agree to increase support for certain programs to improve agricultural production by applying to such programs the counter value shillings generated by sale of the U.S. food commodities. The programs would be those to which Government has accorded priority but for which sufficient budgetary resources would otherwise not be available.
- 9.2 Kenya representatives reported that they were in the process of identifying the programs that might be covered in this manner.
- 9.3 USAID suggested that the programs chosen should contribute directly to development progress in poor rural areas and enable poor smallholders to increase their agricultural production.

10. Self-Help Measures

- 10.1 USAID noted that in the past the self-help measures in the agreement have been relatively general and that amendments to Public Law 480, the Agricultural Trade and Development Act of 1954 as amended, now require greater specificity in description of measures to be undertaken and a report of accomplishment to be made twelve months from the date of the signing of the agreement.
- 10.2 The two parties discussed possible self-help measures such as:
- 10.11 Lessening of the burden placed on public finances by the National Cereals and Produce Board (NCPB).
- 10.12 Increase in the efficiency of operations and financial management of NCPB.
- 10.13 Preparation and adoption of a plan for the NCPB to establish and manage a national grain reserve.
- 10.14 Reduction of the role of NCPB in seasonal buying and selling of grains outside of times of emergency.
- 10.15 Encouragement of private participation in buying, transporting and storing grains.
- 10.3 Kenya stated that the Government is considering the possibility of evolution of the NCPB into an interventionist agency in grain marketing.
- 10.4 Kenya representatives described the steps already taken and to be taken to write off the debt of the NCPB. It has been agreed that Kenya Pounds 36.83 million owed to the Cereals and Sugar Finance Corporation through June 1981 will be written off. In July 1981 Kenya Pounds 15.75 was written off. The balance will be written off in installments of Kenya Pounds 7 million per year

through the budget commencing in Kenya fiscal year 1982/83. They reported that a consulting firm has recently carried out a study of the operations and financial management of the Board and that certain measures recommended would be undertaken. They agreed that the proceeds of sale of the grains should be placed in a designated Government account, probably an account of the Cereals and Sugar Finance Corporation.

- 10.5 Kenya representatives pointed out that measures have already been undertaken to ensure sufficient storage facilities in future. A consulting firm has commenced feasibility studies on national grain storage to be completed in the near future. Japan International Cooperative Agency has recently reported on a study of grain storage up country. USAID is assisting with the On-Farm Grain Storage Project in Western Kenya. The forthcoming World Bank project will finance a major marketing and storage analysis.
- 10.6 Various measures to encourage the private sector role in handling of grains and to reduce Government controls, including decontrol of inter-district movement, were discussed. Government representatives stated that private sector participation in grain marketing was under consideration. They pointed out that smuggling problems on several borders and shortage of supplies have retarded the introduction of some desired structural changes. However, as control over smuggling improves, they expect that freer movement of grain will be introduced within districts and among non-border districts.
- 10.7 The results of consideration of self-help measures are reflected in Part II Item V of the agreement.

11. Reporting Requirements

- 11.1 U.S. representatives reviewed the reporting requirements under the agreement pointing out that the supply year ends September 30, 1982 but the reporting periods extend beyond that date:
 - 11.11 A Shipping and Arrival Report providing information on each shipment of commodities is to be completed promptly.
 - 11.12 Quarterly reports are due on:
 - Progress toward fulfilling the Usual Marketing Requirements.
 - Measures taken to assure that the United States obtains a fair share of increase in commercial purchases.
 - Imports of rice and wheat by country of origin and exports by country of destination.
 - 11.13 Periodic reports on the use of counter value shillings, as requested by USAID but at least once per annum.

- 11.14 A report on progress in carrying out self-help measures as of September 30, 1982, due November 15, 1982, and a final report, due June 15, 1983, of all measures taken through April 30, 1983.
- 11.2 NCPB representatives indicated that they understand the regular reporting requirements and USAID confirmed that reports have met the requirements.
- 11.3 It was pointed out by the U.S. representatives that the report on self-help measures due November 15, 1981 had not yet been received. It was promised (and received April 13, 1982).
12. Operational Reporting Cable
- 12.1 The U.S. representatives reviewed the necessity for an Operational Reporting Cable and actions by the Kenya Embassy in Washington.
- 12.2 The Government of Kenya noted that it now has had experience in these matters and foresees no problems in implementing the program.
13. Final Negotiation
- 13.1 As the parties were in agreement with the exception of the commodity mix the U.S. Ambassador met 21 May with the Permanent Secretary, Office of the President. It was then agreed to adjust the commodity mix to allow \$ 10.6 million for the purchase of wheat and \$ 4.4 million for the purchase of rice.
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