

[TRADUCTION — TRANSLATION]

N^o 2520. CONTRAT DE GARANTIE¹ (*PROJET RELATIF À LA FABRICATION DE PAPIER ET DE PÂTE À PAPIER*) ENTRE LA RÉPUBLIQUE DU CHILI ET LA BANQUE INTERNATIONALE POUR LA RECONSTRUCTION ET LE DÉVELOPPEMENT. SIGNÉ À WASHINGTON, LE 10 SEPTEMBRE 1953

CONTRAT, en date du 10 septembre 1953, entre la RÉPUBLIQUE DU CHILI (ci-après dénommée « le Garant ») et la BANQUE INTERNATIONALE POUR LA RECONSTRUCTION ET LE DÉVELOPPEMENT (ci-après dénommée « la Banque »).

CONSIDÉRANT que, aux termes d'un contrat de même date conclu entre la Banque et la Corporación de Fomento de la Producción et la Compañía Manufacturera de Papeles y Cartones (ci-après dénommées les « Emprunteurs »), ledit contrat et les annexes qui sont visées étant ci-après dénommés « le Contrat d'emprunt »², la Banque a accepté de faire aux Emprunteurs un prêt en diverses monnaies d'un montant total en principal équivalant à vingt millions de dollars (\$ 20.000.000), aux clauses et conditions stipulées dans le Contrat d'emprunt, mais seulement à la condition que le Garant consente à garantir le remboursement du principal de l'Emprunt et le paiement des intérêts et autres charges y afférents:

CONSIDÉRANT que, en raison de la conclusion par la Banque du Contrat d'emprunt avec les Emprunteurs, le Garant a accepté de garantir le remboursement du principal de l'Emprunt et le paiement des intérêts et autres charges y afférents;

Les parties aux présentes sont convenues de ce qui suit :

Article premier

PARAGRAPHE 1.01. Les parties au présent Contrat acceptent toutes les dispositions du Règlement n^o 4³ de la Banque sur les emprunts, en date du 15 octobre 1952, sous réserve toutefois des modifications qui y sont apportées par l'annexe 3⁴ du Contrat d'emprunt (ledit Règlement n^o 4, ainsi modifié, étant ci-après dénommé « le Règlement sur les emprunts ») et leur reconnaissent la même force obligatoire et les mêmes effets que si elles figuraient intégralement dans le présent Contrat.

¹ Entré en vigueur dès la notification par la Banque au Gouvernement du Chili, le 10 décembre 1953.

² Voir p. 35 de ce volume.

³ Voir p. 35 de ce volume.

⁴ Voir p. 59 de ce volume.

SECTION 1.02. Wherever used in this Guarantee Agreement, unless the context shall otherwise require, the terms “ Fomento ”, “ Company ”, “ Mortgage ” and “ Notes ” shall have the respective meanings set forth in Section 1.02 of the Loan Agreement.

Article II

SECTION 2.01. Without limitation or restriction upon any of the other covenants on its part in this Agreement contained, the Guarantor hereby unconditionally guarantees, as primary obligor and not as surety merely, the due and punctual payment of the principal of, and the interest and other charges on, the Loan, the principal of and interest on the Notes and the premium, if any, on the prepayment of the Loan or the redemption of the Notes, all as set forth in the Loan Agreement and in the Notes.

Article III

SECTION 3.01. It is the mutual intention of the Guarantor and the Bank that no other external debt shall enjoy any priority over the Loan by way of a lien on governmental assets. To that end, the Guarantor undertakes that, except as the Bank shall otherwise agree, if any lien shall be created on any assets of the Guarantor or of any of its political subdivisions or of any agency of the Guarantor or of any such political subdivision as security for any external debt, such lien will *ipso facto* equally and ratably secure the payment of the principal of, and interest and other charges on, the Loan and the Notes, and that in the creation of any such lien express provision will be made to that effect; provided, however, that the foregoing provisions of this Section shall not apply to (i) any lien created on property, at the time of purchase thereof, solely as security for the payment of the purchase price of such property; or (ii) any lien on commercial goods to secure debt maturing not more than one year after the date on which it is originally incurred and to be paid out of the proceeds of sale of such commercial goods; or (iii) any lien arising in the ordinary course of banking transactions to secure a debt maturing not more than one year after the date on which it is originally incurred.

SECTION 3.02. (a) The Guarantor and the Bank shall cooperate fully to assure that the purposes of the Loan will be accomplished. To that end, each of them shall furnish to the other all such information as it shall reasonably request with regard to the general status of the Loan. On the part of the Guarantor, such information shall include information with respect to financial and economic conditions in the territories of the Guarantor and the international balance of payments position of the Guarantor.

(b) The Guarantor and the Bank shall from time to time exchange views through their representatives with regard to matters relating to the purposes of the

Loan and the maintenance of the service thereof. The Guarantor shall promptly inform the Bank of any financial or economic condition arising within its territories or relating to its international balance of payments position which shall interfere with, or threaten to interfere with, the accomplishment of the purposes of the Loan or the maintenance of the service thereof.

(c) The Guarantor shall afford all reasonable opportunity for accredited representatives of the Bank to visit any part of the territories of the Guarantor for purposes related to the Loan.

SECTION 3.03. The principal of, and interest and other charges on, the Loan and the Notes shall be paid without deduction for and free from any taxes or fees imposed under the laws of the Guarantor or laws in effect in its territories; provided, however, that the provisions of this Section shall not apply to taxation of, or fees upon, payments under any Note to a holder thereof other than the Bank when such Note is beneficially owned by an individual or corporate resident of the Guarantor.

SECTION 3.04. The Loan Agreement, Guarantee Agreement, Mortgage and the Notes shall be free from any taxes or fees that shall be imposed under the laws of the Guarantor or laws in effect in its territories on or in connection with the execution, issue, delivery, registration, recordation or filing thereof.

SECTION 3.05. The principal of, and interest and other charges on, the Loan and the Notes shall be paid free from all restrictions imposed by the laws of the Guarantor or laws in effect in its territories.

SECTION 3.06. The Guarantor shall not take or permit any of its political subdivisions or agencies to take any action which would prevent or interfere with the performance by the Borrowers of any of the covenants, agreements and obligations of the Borrowers or either of them, in the Loan Agreement contained, and will take or cause to be taken all reasonable action which shall be necessary in order to enable the Borrowers to perform such covenants, agreements and obligations.

Article IV

SECTION 4.01. The Guarantor shall endorse, in accordance with the provisions of the Loan Agreement and the Loan Regulations, its guarantee on the Notes to be executed and delivered by the Borrowers. The Minister of Finance of the Guarantor and such person or persons as he shall designate in writing are designated as the authorized representatives of the Guarantor for the purposes of Section 6.12 (b) of the Loan Regulations.

Article V

SECTION 5.01. If the Guarantor shall default in the performance of any agreement on its part in this Guarantee Agreement contained, the Bank, at its option, may by notice to the Guarantor require that the Guarantor pay the principal amount of all the Notes which shall then be outstanding and unpaid, and the interest accrued and unpaid thereon to the date of payment thereof, and forthwith upon the giving of such notice such principal and interest shall become immediately due and payable by the Guarantor, anything in this Guarantee Agreement, the Loan Agreement, the Mortgage or the Notes to the contrary notwithstanding. Such principal and interest in respect of any Note shall be paid at the place designated in the Note for the payment of principal thereof and interest thereon, upon surrender of such Note at said place, accompanied by such instruments of assignment as shall be necessary to vest in the Guarantor all the right, title and interest of the holder thereof. If and when any such Note shall have been so surrendered and such payment shall have been made with respect thereto, the Guarantor shall succeed to all rights of the holder of such Note thereunder and under the Mortgage; provided, however, that nothing herein contained shall be deemed to confer upon the Guarantor or any successor in interest to the Guarantor any right to declare the principal of any such Note to be due and payable by the Borrowers or to require payment thereof prior to the maturity date specified therein, except upon the occurrence of an Event of Default as provided in the Mortgage; and provided further that neither the Guarantor nor any successor in interest to the Guarantor shall succeed to any right of any such holder under any guarantee by the Bank. The exercise by the Bank of its right hereunder to require payment by the Guarantor of the principal of, and interest on, the Notes shall not impair or affect any right of the Bank under the Loan Agreement in respect of the commitment charge or service charge on the Loan or any other right, power or remedy which the Bank may have under this Guarantee Agreement or the Loan Agreement, none of which shall accrue to the Guarantor by reason of such payment by it.

Article VI

SECTION 6.01. The following addresses are specified for the purposes of Section 8.01 of the Loan Regulations :

For the Guarantor : The Republic of Chile, c/o Corporación de Fomento de la Producción, 37 Wall Street, New York, New York, United States of America.

For the Bank : International Bank for Reconstruction and Development, 1818 H Street, N. W., Washington 25, D. C., United States of America.

SECTION 6.02. The Minister of Finance of the Guarantor is designated for the purposes of Section 8.03 of the Loan Regulations.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Guarantee Agreement to be signed in their respective names and delivered in the District of Columbia, United States of America, as of the day and year first above written.

The Republic of Chile :
By A. JARA
Authorized Representative

International Bank for Reconstruction and Development :
By Eugene R. BLACK
President

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

LOAN REGULATIONS No. 4, DATED 15 OCTOBER 1952

REGULATIONS APPLICABLE TO LOANS MADE BY THE BANK TO BORROWERS OTHER THAN
MEMBER GOVERNMENTS

[Not published herein. See *United Nations, Treaty Series, Vol. 172, p. 124*]

LOAN AGREEMENT

(PAPER AND PULP PROJECT)

AGREEMENT, dated September 10, 1953, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT, party of the first part, (hereinafter called the Bank) and CORPORACIÓN DE FOMENTO DE LA PRODUCCIÓN and COMPAÑÍA MANUFACTURERA DE PAPELES Y CARTONES, parties of the second part, (hereinafter collectively called the Borrowers).

Article I

LOAN REGULATIONS; SPECIAL DEFINITIONS

Section 1.01. The parties to this Loan Agreement accept all the provisions of Loan Regulations No. 4¹ of the Bank dated October 15, 1952, subject, however, to the modifications thereof set forth in Schedule 3² to this Agreement (said Loan Regulations No. 4 as so modified being hereinafter called the Loan Regulations), with the same force and effect as if they were fully set forth herein.

¹ See above.

² See p. 58 of this volume.

Section 1.02. Except where the context otherwise requires, the following terms have the following meanings wherever used in this Agreement or any Schedule hereto :

(a) The term " Fomento " means Corporación de Fomento de la Producción, an agency of the Republic of Chile, one of the parties of the second part hereto;

(b) The term " Company " means Compañía Manufacturera de Papeles y Cartones, a *sociedad anónima* existing under the laws of the Republic of Chile, one of the parties of the second part hereto;

(c) The term " Mortgage " shall include any and all security instruments if and when executed and delivered to the Bank by the Company pursuant to the provisions of Article V of this Agreement.

(d) The term " Notes " means notes executed and delivered by Fomento and the Company pursuant to the provisions of this Agreement; and such term includes any such notes issued in exchange for, or on transfer of, Notes as herein defined.

Article II

THE LOAN

Section 2.01. The Bank agrees to lend to the Borrowers, on the terms and conditions in this Agreement set forth or referred to, an amount in various currencies equivalent to twenty million dollars (\$ 20,000,000).

Section 2.02. The Bank shall open a Loan Account on its books in the names of the Borrowers and shall credit to such Account the amount of the Loan. The amount of the Loan may be withdrawn from the Loan Account as provided in, and subject to the rights of cancellation and suspension set forth in, the Loan Regulations.

Section 2.03. The Borrowers shall pay to the Bank a commitment charge at the rate of three quarters of one per cent ($\frac{3}{4}$ of 1%) per annum on the principal amount of the Loan not so withdrawn from time to time.

The date specified for purposes of Section 2.02 of the Loan Regulations is ninety days after the date of this Agreement, or the Effective Date, whichever shall be the earlier.

Section 2.04. The Borrowers shall pay interest at the rate of five per cent (5%) per annum on the principal amount of the Loan so withdrawn and outstanding from time to time.

Section 2.05. Except as the Bank and the Borrowers shall otherwise agree, the charge payable for special commitments entered into by the Bank at the request of the Borrowers pursuant to Section 4.02 of the Loan Regulations shall be at the rate of one-half of one per cent ($\frac{1}{2}$ of 1%) per annum on the principal amount of such special commitments outstanding from time to time.

Section 2.06. Interest and other charges shall be payable semi-annually on May 15 and November 15 in each year.

Section 2.07. The Borrowers shall repay the principal of the Loan in accordance with the amortization schedule set forth in Schedule I to this Agreement.

Section 2.08. All obligations of the Borrowers under this Agreement and the Notes, unless they shall have been expressly undertaken by only one of the Borrowers, shall be joint and several, and the obligation of either of them to comply with any provision of this Agreement is not subject to any prior notice to, demand upon or action against the other. No extension of time or forbearance given to either of the Borrowers in respect of the performance of any of its obligations under this Agreement or the Notes, and no failure of the Bank or of any holder of the Notes to give any notice or to make any demand or protest whatsoever to either of the Borrowers, or strictly to assert any right or pursue any remedy against either of them in respect of this Agreement or the Notes, and no failure by either of the Borrowers to comply with any requirement of any law, regulation or order, shall in any way affect or impair any obligation of the other Borrower under this Agreement or the Notes.

Article III

USE OF PROCEEDS OF THE LOAN

Section 3.01. The Borrowers shall apply or cause the proceeds of the Loan to be applied exclusively to financing the cost of goods required to carry out the Project described in Schedule 2¹ to this Agreement. The specific goods to be purchased out of the proceeds of the Loan shall be determined by agreement between the Company and the Bank, and the list of such goods may be modified from time to time by agreement between them. A copy of the original list of goods shall be delivered to Fomento, and the Company shall, on or before the date on which it shall submit any proposed change in such list to the Bank, notify Fomento of such proposed change.

Section 3.02. The Borrowers shall cause all goods financed out of the proceeds of the Loan to be imported into the territories of the Guarantor and there to be used exclusively in the carrying out of the Project.

Article IV

NOTES

Section 4.01. The Borrowers shall execute and deliver Notes representing the principal amount of the Loan as provided herein and in the Loan Regulations.

Section 4.02. (a) Notes payable in dollars shall be substantially in the form set forth in Schedule 5-A² to this Agreement. All Notes shall have the guarantee of the Guarantor endorsed thereon substantially in the form set forth in Schedule 5-B³ to this Agreement.

¹ See p. 56 of this volume.

² See p. 64 of this volume.

³ See p. 68 of this volume.

(b) Notes payable in any currency other than dollars and the guarantee endorsed thereon shall be substantially in the forms set forth in Schedule 5-A and Schedule 5-B, respectively, of this Agreement, except that they shall (i) provide for payment of principal, interest and premium on redemption, if any, in such other currency, (ii) provide for such place of payment as the Bank shall specify, and (iii) contain such other modifications as the Bank shall reasonably request in order to conform to the laws or to the financial usage of the place where they are payable.

(c) If the Bank shall sell any of the Notes, the Borrowers will, at the request of the Bank, execute and deliver or issue in exchange Notes containing such modifications in form as the Bank may request to give such holder or holders of Notes *pro rata* security under the Mortgage or to provide that any rights of such holder or holders under the Mortgage may be exercised by the Bank as trustee.

Section 4.03. Notes shall be payable to such payee or payees as the Bank shall specify.

Section 4.04. Each Note shall be dated the semi-annual interest payment date on which or next preceding the date on which it shall be executed and delivered. Upon any delivery of Notes appropriate adjustment shall be made so that there shall be no loss to the Bank or to the Borrowers in respect of commitment charge or interest and service charge, if any, on the principal amount of the Loan represented by such Notes.

Section 4.05. The Borrowers shall, as soon as practicable after the Bank shall so request, execute and deliver to or on the order of the Bank, in exchange for Notes theretofore executed and delivered to it, new Notes in accordance with the following provisions :

(a) Notes bearing interest at one rate may be exchanged for Notes bearing interest at any other rate not in excess of the rate of interest on the Loan. The Bank shall reimburse the Borrowers for the reasonable cost of any such exchange.

(b) Notes in large denominations may be exchanged without charge to the Bank for Notes in smaller denominations for purposes of sale by the Bank.

(c) Notes initially issued to the Bank may be exchanged without charge to the Bank for Notes containing such modifications in form as may be required by Section 4.02 (c) of this Agreement.

The foregoing rights of exchange are in addition to any rights of exchange provided in the Notes. Except as in this Section expressly provided, exchanges of Notes pursuant to this Section shall be subject to all provisions of the Notes relating to exchanges.

Section 4.06. The Executive Vice President of Fomento and such person or persons as he shall appoint in writing and the General Manager (*Gerente*) of the Company and such person or persons as he shall appoint in writing are designated as authorized representatives of Fomento and the Company, respectively, for the purposes of Section 6.12 (a) of the Loan Regulations.

Article V

MORTGAGE

Section 5.01. At the date of execution of this Agreement the authorized representatives of the Bank and the Borrowers shall initial a form of *Hipoteca y Prenda Industrial*. Prior to the Effective Date of this Agreement the Company shall execute and deliver to the Bank a security instrument (herein called the Original Mortgage) substantially in the form initialed by such representatives, with such changes therein as may be agreed between the Bank and the Company, covering so much of the property described in Schedule 4¹ to this Agreement as shall be owned by the Company at the date of execution of the Original Mortgage. The Company shall thereafter from time to time within 60 days after receipt of a request from the Bank execute and deliver to the Bank such supplemental security instruments (herein called Supplemental Mortgages) substantially in the form initialed by such representatives with such changes therein as may be agreed between the Bank and the Company, as may be required to give the Bank valid and effective first mortgages or industrial pledges of the first grade under the laws of the Guarantor, covering all the property described in Schedule 4 to this Agreement.

Section 5.02. The Mortgage shall secure payment of the principal of and interest and other charges on the Notes equally and ratably in accordance with the amount of the Notes outstanding without preference, priority or distinction in respect of any of the Notes over any other Notes by reason of the time of execution, delivery or maturity thereof or otherwise.

Section 5.03. (a) The Company shall register and reregister, record and rerecord and file and refile the Mortgage in all such jurisdictions and offices as may be required in order that the rights and remedies of the Bank and of its successors and assigns under the Mortgage may be established, maintained, confirmed and protected.

(b) Promptly after execution and delivery of the Original Mortgage and of each Supplemental Mortgage the Company shall furnish to the Bank evidence satisfactory to the Bank that the Original Mortgage or the Supplemental Mortgage, as the case may be, has been duly recorded or filed in accordance with applicable Chilean law in all such offices and jurisdictions as may be required under Chilean law to constitute such instrument a valid and binding first lien made by the Company in favor of the Bank.

Section 5.04. Within 90 days after execution of the Original Mortgage and of any Supplemental Mortgage, the Company shall furnish to the Bank an opinion or opinions satisfactory to the Bank of counsel acceptable to the Bank that the Original Mortgage or Supplemental Mortgage, as the case may be, has been duly executed and delivered; that it has created a valid lien under the laws of the Republic of Chile enforceable in accordance with its terms; that it has been duly registered, recorded or filed in all offices or jurisdictions required in order to make it a valid and enforceable first lien; and that at the date of the Original Mortgage or Supplemental Mortgage, as the case may be, and at the date of the registration, recordation or filing thereof the Company had valid

¹ See p. 60 of this volume.

title to the property described in such instrument free of all liens and encumbrances other than the lien of the Mortgage.

Section 5.05. Except as the Bank shall otherwise agree, the Company shall report to the Bank at intervals of six months all property described in Schedule 4 to this Agreement, together with additions, replacements or improvements to such property, which has been acquired by the Company and which has not yet been subjected to the lien of the Mortgage.

Section 5.06. If the Bank shall sell any of the Notes the Borrowers will, at the request of the Bank, take all such action and execute all such documents as may be necessary to give to the holder or holders of such Notes *pro rata* security under the Mortgage.

Article VI

PARTICULAR COVENANTS

Section 6.01. The Company shall carry out the Project with due diligence and efficiency and in conformity with sound engineering and financial practices.

Section 6.02. (a) The Company shall furnish to the Bank, promptly upon their preparation, the plans and specifications for the Project and any material modifications subsequently made therein.

(b) The Borrowers shall maintain or cause to be maintained records adequate to identify the goods purchased out of the proceeds of the Loan, to disclose the use thereof in the Project, to record the progress of the Project (including the cost thereof) and to reflect in accordance with consistently maintained sound accounting practices the financial condition and operations of the Company and the financial condition and operations of Fomento in connection with the Project.

(c) The Borrowers shall enable the Bank's representatives to inspect any and all goods purchased out of the proceeds of the Loan and the sites, works in progress and stores included in the Project and to examine any relevant records and documents.

(d) The Borrowers shall furnish or cause to be furnished to the Bank all such information as the Bank shall reasonably request concerning the expenditure of the proceeds of the Loan, the use of the goods purchased therewith, the progress of the Project, the operations and financial condition of the Company and the financial condition and operations of Fomento in connection with the Project.

Section 6.03. (a) The Bank and the Borrowers shall cooperate fully to assure that the purposes of the Loan will be accomplished. To that end, the Bank shall furnish to the Borrowers and the Borrowers shall furnish to the Bank all such information as the other party shall reasonably request with regard to the general status of the Loan.

(b) The Bank and the Borrowers shall from time to time exchange views through their representatives with regard to matters relating to the purposes of the Loan and the maintenance of the service thereof. The Borrowers shall promptly inform the Bank of any condition which shall arise that shall interfere with, or threaten to interfere with, the accomplishment of the purposes of the Loan or the maintenance of the service thereof.

Section 6.04. Except as the Bank shall otherwise agree, the Company shall not incur any additional interest-bearing debt unless on the date such debt is to be incurred the net income of the Company for twelve consecutive months of the preceding eighteen months was at least two and one-half times the annual interest on the total debt of the Company to be outstanding, including such proposed debt. For purposes of this section

(a) The term "debt" shall be deemed to mean all indebtedness of the Company, including loans or credits contracted for but not yet drawn down; provided, however, that the Loan shall not be counted as debt prior to one year after the Closing Date.

(b) Debt shall be deemed to be incurred on the date on which a loan or credit is contracted.

(c) The term "net income" shall be deemed to mean gross income from all sources (except revaluation of assets on the books of the Company and profits from purchase or retirement of the Company's indebtedness) less all operating and administrative expenses, including amounts allocated to reserves for maintenance, depreciation and depletion in accordance with sound business practices but before allowance of interest on debt and provision for income and profit taxes.

(d) The equivalent in currency of the Guarantor of amounts of debt payable in any other currency shall be determined on the basis of the rate of exchange, on the date on which the Company incurs the additional debt, which is available to the Company for the purchase of such other currency for debt service.

Section 6.05. (a) Until such time as a Mortgage satisfactory to the Bank shall have been executed and delivered to the Bank covering all the property described in Schedule 4 to this Agreement, the Company shall not, without the consent of the Bank, sell, mortgage or otherwise dispose of any of its property other than in the normal course of its business unless the Borrowers shall first redeem and pay or make adequate provision satisfactory to the Bank for redemption and payment of all of the Loan and the Notes which shall then be outstanding and unpaid; provided, however, that the foregoing provisions shall not apply to any lien created on property, at the time of purchase thereof, solely as security for the payment of the purchase price of such property.

(b) The Company shall not, without the consent of the Bank, sell, mortgage or otherwise dispose of all or substantially all of its property and assets or all or substantially all the property included in the Project or any plant included therein, to anyone other than the Bank, unless the Borrowers shall first redeem and pay, or make adequate provision satisfactory to the Bank for redemption and payment of, all of the Loan which shall then be outstanding and unpaid.

(c) Notwithstanding the foregoing provisions of this Section, the Company may sell or otherwise dispose of any property which shall have become worn-out, obsolete or unnecessary for use in its operations.

Section 6.06. Fomento undertakes that, except as the Bank shall otherwise agree, if any lien shall be created on any assets of Fomento as security for any external debt, such lien will *ipso facto* equally and ratably secure the payment of the principal of, and interest and other charges on, the Loan and the Notes, and in the creation of any such