

No. 12091

**INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT
and
BRAZIL**

**Guarantee Agreement—*COSIPA Steel Expansion Project*
(with General Conditions Applicable to Loan and Guar-
antee Agreements). Signed at Washington on 14 June
1972**

Authentic text: English.

*Registered by the International Bank for Reconstruction and Development on
17 October 1972.*

**BANQUE INTERNATIONALE POUR
LA RECONSTRUCTION ET LE DÉVELOPPEMENT
et
BRÉSIL**

**Contrat de garantie — *Projet relatif à l'expansion des acié-
ries COSIPA* (avec Conditions générales applicables aux
contrats d'emprunt et de garantie). Signé à Washington
le 14 juin 1972**

Texte authentique : anglais.

*Enregistré par la Banque internationale pour la reconstruction et le développe-
ment le 17 octobre 1972.*

GUARANTEE AGREEMENT¹

AGREEMENT, dated June 14, 1972, between FEDERATIVE REPUBLIC OF BRAZIL (hereinafter called the Guarantor) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank).

WHEREAS by the Loan Agreement of even date herewith² between the Bank and Companhia Siderurgica Paulista—COSIPA (hereinafter called the Borrower) the Bank has agreed to make to the Borrower a loan in various currencies equivalent to sixty-four million five hundred thousand dollars (\$64,500,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that the Guarantor agree to guarantee the obligations of the Borrower in respect of such loan as hereinafter provided; and

WHEREAS the Guarantor, in consideration of the Bank's entering into the Loan Agreement with the Borrower and of the Borrower's agreement to pay to the Guarantor a fee of 1³/₄% per annum on the disbursed balance outstanding on the Loan, has agreed so to guarantee such obligations of the Borrower;

NOW THEREFORE, the parties hereto hereby agree as follows:

Article I. GENERAL CONDITIONS; DEFINITIONS

Section 1.01. The parties to this Agreement accept all the provisions of the General Conditions Applicable to Loan and Guarantee Agreements of the Bank dated January 31, 1969,³ with the same force and effect as if they were fully set forth herein, subject, however, to the modifications thereof set forth in Section 1.01 of the Loan Agreement (said General Conditions Applicable to Loan and Guarantee Agreements, as so modified, being hereinafter called the General Conditions).

Section 1.02. Wherever used in this Agreement, unless the context otherwise requires, the several terms defined in the General Conditions and in Section 1.02 of the Loan Agreement have the respective meanings therein set forth.

Article II. GUARANTEE; BONDS; PROVISION OF FUNDS

Section 2.01. Without limitation or restriction upon any of its other obligations under the Guarantee Agreement, the Guarantor hereby unconditionally guarantees, as primary obligor and not as surety merely, the due and punctual payment of the principal of, and interest and other charges on, the Loan and the Bonds, the premium, if any, on the prepayment of the Loan or the redemption of the Bonds prior to their maturity and the punctual performance of all the other obligations of the Borrower, all as set forth in the Loan Agreement and in the Bonds.

Section 2.02. The Guarantor shall endorse, in accordance with the provisions of the General Conditions, its guarantee on the Bonds to be executed and delivered by the Borrower. The Minister of Finance of the Guarantor and such other person or persons as he shall appoint in writing are designated as authorized representatives of the Guarantor for the purposes of Section 8.10 of the General Conditions.

¹ Came into force on 5 October 1972, upon notification by the Bank to the Government of Brazil.

² The said Agreement entered into force on 5 October 1972. As it does not constitute an international agreement or a part of the present Agreement, it is not reproduced herein. However, it was published by the Bank as document LN 828 BR, a certified true copy of which was transmitted to the Secretariat together with the documentation submitted for registration of the present Guarantee Agreement.

³ See p. 148 of this volume.

Section 2.03. Without limitation or restriction upon the provisions of Section 2.01 of this Agreement, the Guarantor specifically undertakes, whenever there is reasonable cause to believe that the funds available to the Borrower will be inadequate to meet the estimated expenditures required for the carrying out of the Project, Stage I Expansion, or any other on-going programs of the Borrower, to make arrangements, satisfactory to the Bank, promptly to provide the Borrower or cause the Borrower to be provided with such funds as are needed to meet such expenditures.

Article III. OTHER COVENANTS

Section 3.01. (a) It is the mutual intention of the Guarantor and the Bank that no other external debt shall enjoy any priority over the Loan or the Bonds by way of a lien on governmental assets.

(b) To that end the Guarantor (i) represents that at the date of this Agreement no lien exists on any governmental assets as security for any external debt, considering, however, the limitations disclosed in writing by the Guarantor to the Bank on January 19, 1972; and (ii) undertakes that, except as the Bank shall otherwise agree, if any such lien shall be created, it will *ipso facto* equally and ratably, and at no cost to the Bank or the holders of the Bonds, secure the payment of the principal of, and interest and other charges on, the Loan and the Bonds and in the creation of any such lien express provision will be made to that effect. The Guarantor shall promptly inform the Bank of the creation of any such lien.

(c) The foregoing representation and undertaking shall not apply to: (i) any lien created on property, at the time of purchase thereof, solely as security for payment of the purchase price of such property; (ii) any lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after its date; and (iii) any lien on commercial goods to secure a 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.

As used in this Section, the term "governmental assets" means assets of the Guarantor, of any of its political subdivisions, of any agency of the Guarantor or of any such political subdivision, and assets of the *Banco Central do Brasil* or any other institution performing the functions of a central bank for the Guarantor.

Section 3.02. The Guarantor covenants that it will not take, or cause or permit any of its political subdivisions or any of its agencies or any agency of any such political subdivisions to take, any action (including action which would adversely affect the independent corporate structure of the Borrower) which would prevent or interfere with the performance by the Borrower of its obligations contained in the Loan Agreement and will take or cause to be taken all reasonable action necessary or appropriate to enable the Borrower to perform such obligations.

Section 3.03. (a) The Guarantor shall take, or cause to be taken, all reasonable action required to enable the Borrower to obtain, on reasonable terms, the credit referred to in Section 3.01 *(b)* of the Loan Agreement and to apply the proceeds of such credit for the purposes referred to therein.

(b) Without limitation or restriction upon the provisions of Sections 2.01 and 2.03 of this Agreement, the Guarantor covenants that it will make or cause to be made available, on terms and conditions satisfactory to the Bank, financing sufficient to enable the Borrower to meet such downpayments as shall be required to be made under the credit referred to in Section 3.01 *(b)* of the Loan Agreement.

Section 3.04. The Guarantor shall take, or cause to be taken, all reasonable action required for the prompt issuance to the Borrower of such import and other permits and licenses as shall be necessary for the acquisition and importation of goods and services required for the carrying out of the Project.

Section 3.05. The Guarantor shall take, or cause to be taken, all reasonable action required for coordinating the expansion of the steel production capacity of the Steel Companies as required by its market conditions and its industrial development needs and, to that end, the Guarantor shall take all necessary steps to enable the Steel Companies to carry out the planned expansion of their steel production capacities to the extent justified by such conditions and needs.

Section 3.06. The Guarantor shall cause a detailed study of the structure of steel prices in Brazil (including price trends, effect of import duties and tax legislation on existing price structure and possible distortions in prices of individual iron and steel products) to be carried out with the assistance of competent and experienced technical experts.

Section 3.07. The Guarantor shall cause BNDE punctually to perform all of the covenants and agreements in the BNDE Shareholder Agreement¹ contained.

Article IV. CONSULTATION AND INFORMATION

Section 4.01. (a) The Guarantor and the Bank shall cooperate fully to assure that the purposes of the Loan will be accomplished. To that end the Guarantor and the Bank shall from time to time, at the request of either party: (i) exchange views through their representatives with regard to the performance of their respective obligations under the Guarantee Agreement, the Guarantor's steel pricing policies (including the recommendations of the study referred to in Section 3.06) and its plans for coordinated expansion of the Brazilian steel industry, and other matters relating to the purposes of the Loan; and (ii) 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, including its balance of payments, and the external debt of the Guarantor, of any of its political subdivisions and of any agency of the Guarantor or of any such political subdivision.

(b) Without limitation or restriction on the provisions of subsection (a) of this Section and considering that it is the policy of the Guarantor, as long as it exercises control over the setting of prices of the Steel Companies, to establish maximum selling prices for the steel products sold by the Steel Companies on the domestic market which would: (i) allow the Steel Companies to earn an adequate return on funds invested in them, meet their financial obligations and make a reasonable contribution to future investment for expansion of capacity; (ii) be reasonably related to production costs under conditions of efficient operation at reasonable levels of capacity utilization; (iii) be reasonably competitive with the prices for such products in other major steel-producing countries; and (iv) once the foregoing conditions have been met, share any further declines in the costs of production with Brazilian consumers through reductions in steel prices in real terms; the Guarantor agrees that whenever (A) the earnings of the Steel Companies are such that the return on total assets (net profit after normal straight line depreciation and taxes plus interest charged to operations/total assets minus non-operating assets) falls below 10% or exceeds 15% in any year, or (B) prices are set at

¹ See footnote 2, p. 144 of this volume.

levels substantially higher than those of major steel-producing countries, the Guarantor shall afford the Bank a reasonable opportunity for exchanging views thereon.

Section 4.02. (a) The Guarantor shall promptly inform the Bank of any condition which interferes with, or threatens to interfere with, the accomplishment of the purposes of the Loan or the maintenance of the service thereof.

(b) 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.

Article V. TAXES AND RESTRICTIONS

Section 5.01. The principal of, and interest and other charges on, the Loan and the Bonds shall be paid without deduction for, and free from, any taxes imposed under the laws of the Guarantor or laws in effect in its territories; provided, however, that the foregoing shall not apply to taxation of payments under any Bond to a holder thereof other than the Bank when such Bond is beneficially owned by an individual or corporate resident of the Guarantor.

Section 5.02. The Guarantee Agreement, the Loan Agreement, the BNDE Shareholder Agreement and the Bonds shall be free from any taxes 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 or registration thereof.

Section 5.03. The payment of the principal of, and interest and other charges on, the Loan and the Bonds shall be free from all restrictions, regulations, controls or moratoria of any nature imposed under the laws of the Guarantor or laws in effect in its territories.

Article VI. REPRESENTATIVE OF THE GUARANTOR; ADDRESSES

Section 6.01. The Minister of Finance of the Guarantor is designated as representative of the Guarantor for the purposes of Section 10.03 of the General Conditions.

Section 6.02. The following addresses are specified for the purposes of Section 10.01 of the General Conditions:

For the Guarantor:

Ministerio da Fazenda
Av. Presidente Antonio Carlos 375
Rio de Janeiro, Brazil

Cable address:

Minifaz
Rio de Janeiro

For the Bank:

International Bank for Reconstruction and Development
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable address:

Intbafrad
Washington, D.C.

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

Federative Republic of Brazil:

By MOACYR LISBOA LOPES
Authorized Representative

International Bank for Reconstruction and Development:

By J. BURKE KNAPP
Vice President

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

GENERAL CONDITIONS, DATED 31 JANUARY 1969

GENERAL CONDITIONS APPLICABLE TO LOAN AND GUARANTEE AGREEMENTS

[Not published herein. See United Nations, Treaty Series, vol. 691, p. 300.]