

LOAN NUMBER 1295 WAF

GUARANTEE AGREEMENT
(CIMAO Regional Clinker Project)

between

REPUBLIC OF TOGO

and

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

Dated

June 28, 1976

GUARANTEE AGREEMENT

AGREEMENT, dated *June 28*, 1976, between REPUBLIC OF TOGO (hereinafter called Togo) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank).

WHEREAS by the Loan Agreement of even date herewith between the Bank and Ciments de l'Afrique de l'Ouest (CIMA) (hereinafter called the Borrower) the Bank has agreed to make to the Borrower a loan in various currencies equivalent to forty-nine million five hundred thousand dollars (\$49,500,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that Togo, the Republic of the Ivory Coast (hereinafter called the Ivory Coast), and the Republic of Ghana (hereinafter called Ghana) agree to guarantee the obligations of the Borrower in respect of such loan as provided hereinafter and in two Guarantee Agreements of even date herewith between, respectively, the Ivory Coast and the Bank, and Ghana and the Bank;

WHEREAS Togo, in consideration of the Bank's entering into the Loan Agreement with the Borrower, and in consideration of such Guarantee Agreements with the Ivory Coast and Ghana, 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 March 15, 1974, 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; Provision of Funds

Section 2.01. Without limitation or restriction upon any of its other obligations under the Guarantee Agreement, Togo 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 premium, if any, on the prepayment of the Loan, all as set forth in the Loan Agreement.

Section 2.02. (a) Togo shall exercise its rights and powers as a signatory of the Treaty and as a shareholder of the Borrower and every other right, power or remedy available to it to permit or cause the Borrower to perform all its obligations under the Loan Agreement, and it shall not take, nor 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 which would prevent or interfere with the performance by the Borrower of its obligations contained in the Loan Agreement.

(b) Without limitation or restriction upon the provisions of paragraph (a) above, Togo shall permit the Borrower (i) to maintain and renew all rights, privileges, franchises, licenses, consents or other rights required for the carrying out of the Project or the operation of the facilities included therein, (ii) to export such portion of its clinker production as shall be

required in accordance with the provisions of the Treaty or of the instrument referred to in Recital (J) to the Loan Agreement, and (iii) to operate and maintain the facilities included in the Project in accordance with appropriate mining and industrial practices.

Section 2.03. Without limitation or restriction upon any other provision of this Agreement, Togo undertakes:

(a) to promptly subscribe, and/or pay-in, as the case may be, 30.74% of any share capital increase of the Borrower or of any call upon the non paid-in portion of its share capital issued by the Borrower, as the case may be, all as and when required to permit the Borrower to perform its obligations under Section 5.09 of the Loan Agreement; and

(b) 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 or inadequate to permit the Borrower to comply with its obligations under Section 5.08 (a) of the Loan Agreement, together with the Ivory Coast and Ghana 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 or to comply with such obligations.

ARTICLE III

Other Covenants

Section 3.01. (a) It is the policy of the Bank, in making loans to, or with the guarantee of, its members not to seek, in normal circumstances, specific security from the member concerned but to ensure that no other external debt shall have priority over its loans in the allocation, realization or distribution of foreign exchange held under the control or for the benefit of such member. To that end, if any lien shall be created on any public assets (as hereinafter defined), as security for any external debt, which will or might result in a priority for the benefit of the creditor of such external debt in the allocation, realization or distribution of foreign exchange, such lien shall, unless the Bank shall otherwise agree, ipso facto and at no cost to the Bank, equally and ratably secure the principal of, and interest and other charges on, the Loan, and Togo, in creating or permitting the creation of such lien, shall make express provision to that effect; provided, however, that, if for any constitutional or other legal reason such provision cannot be made with respect to any lien created on assets of any of its political or administrative subdivisions, Togo shall promptly and at no cost to the Bank secure the principal of, and interest and other charges on, the Loan by an equivalent lien on other public assets satisfactory to the Bank.

(b) The foregoing 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; and (ii) any lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after its date.

(c) As used in this Section, the term "public assets" means assets of Togo, of any political or administrative subdivision thereof and of any entity owned or controlled by, or operating for the account or benefit of, Togo or any such subdivision, including gold and other foreign exchange assets held by any institution performing the functions of a central bank or exchange stabilization fund, or similar functions, for Togo.

Section 3.02. Togo undertakes:

(a) to exercise its rights and powers as a signatory of the Treaty to cause or permit the Borrower to set its prices for the sale of clinker at such a level as will permit the Borrower to meet all its obligations, including debt service, and to earn a reasonable return on capital invested;

(b) to provide the Borrower, or cause the Borrower to be provided, with all such information as the Borrower shall require to establish adequate projections for clinker demand in Togo's territory;

(c) to take, or cause to be taken, all reasonable action necessary or appropriate to cause and enable the Borrower to fulfill its obligations with respect to the payment of the guarantee fee referred to in Section 2.09 of the Loan Agreement; and

(d) (i) to duly perform all its obligations under the Treaty and under the instrument referred to in Recital (J) to the Loan Agreement, provided that such obligations are not inconsistent with a provision hereunder, in which case such provision shall govern, and (ii) without the Bank's prior approval, (A) not to consent to any modification or termination of the Treaty, of such instrument or of the Borrower's Statutes, nor (B) to sell, pledge or otherwise dispose of any of its shares of the Borrower or permit a change in the percentage of its holdings of such shares.

Section 3.03. Togo undertakes: (i) to take, or cause to be taken, all reasonable action necessary or appropriate to cause and enable each of CEB, CEET, CFT, PAL and Togo's Ministère des Travaux Publics et des Mines (hereinafter called the Ministry) to fulfill promptly as required for the purposes of the Project all its obligations under the respective agreements listed in Recital (G) to the Loan Agreement and in Section 4.07 (iii) of the Loan Agreement; (ii) whenever there is reasonable cause to believe that the funds available to the Ministry will be inadequate to meet the expenditures required for the carrying out by the Ministry of its obligations with respect to the carrying out of any part of the Infrastructure Project under such respective agreement, to make arrangements satisfactory to the Bank promptly to provide the Ministry, or cause the Ministry to be provided, with such funds as are required to meet such expenditures; (iii) to employ an expert acceptable to the Bank to coordinate the carrying out of the Infrastructure Project by the Ministry; (iv) to cause such additional technical assistance to be provided to CFT as shall be required to enable CFT to carry

out its obligations under its agreement with the Borrower referred to in Recital (G) to the Loan Agreement; (v) to continue to cause such technical assistance to be provided to PAL as shall be required to ensure an efficient operation of PAL's port facilities in Lomé; and (vi) to furnish to the Bank all such information concerning the carrying out of the Infrastructure Project as the Bank shall reasonably request and to enable the Bank's representatives to visit the facilities and construction sites included in the Infrastructure Project.

Section 3.04. Togo undertakes to cause to be provided to the Borrower, upon terms and conditions satisfactory to Togo and the Borrower, as and when required all such electric power and fuel oil as shall be needed for the operation of the facilities included in the Project as well as of the rail/port terminal included in Part D.2 of the Infrastructure Project.

ARTICLE IV

Representative of Togo; Addresses

Section 4.01. The Ministre des Finances et de l'Economie of Togo is designated as representative of Togo for the purposes of Section 11.03 of the General Conditions.

Section 4.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For Togo:

Ministère des Finances et
de l'Economie
Lomé
Republic of Togo

Cable address:

MINFINANCES
Lomé, Togo

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.

Telex:

440098 (ITT)
248423 (RCA) or
64145 (WUI)

IN WITNESS WHEREOF, the parties hereto, acting through their representatives thereunto duly authorized, have caused this Agreement to be signed in their respective names in Lomé, Republic of Togo, as of the day and year first above written.

REPUBLIC OF TOGO

By /s/ A. G. Hwedor
Authorized Representative

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

By /s/ R. Chagnonier
Regional Vice President
West Africa

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

CERTIFICATE

I hereby certify that the foregoing is a true copy of the original in the archives of the International Bank for Reconstruction and Development.

In witness whereof I have signed this Certificate and affixed the Seal of the Bank thereunto this 28th day of June, 1976.

M P Shuman

FOR SECRETARY