

In The Privy Council

Judgment and Appeal
No. 99 of 1977

ON APPEAL

*FROM THE SUPREME COURT OF
NEW SOUTH WALES*

Between

BP AUSTRALIA LIMITED Appellant (Defendant)

and

NABALCO PTY LIMITED Respondent (Plaintiff)

RECORD OF PROCEEDINGS

VOLUME VI

(pages 1103-1522)

Linklaters & Paines
59-67 Gresham Street
LONDON, EC2V 7JA
Solicitors for the Appellant

Hewitt Woollacott & Chown
113 Cannon Street
LONDON, EC4N 5AU
Solicitors for the Respondent

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Solicitors for the Respondent

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES COMMON LAW
DIVISION COMMERCIAL LIST IN ACTION NO. 4310 OF 1974

BP AUSTRALIA LIMITED
Appellant

NABALCO PTY LIMITED
Respondent

RECORD OF PROCEEDINGS:
INDEX TO VOLUMES

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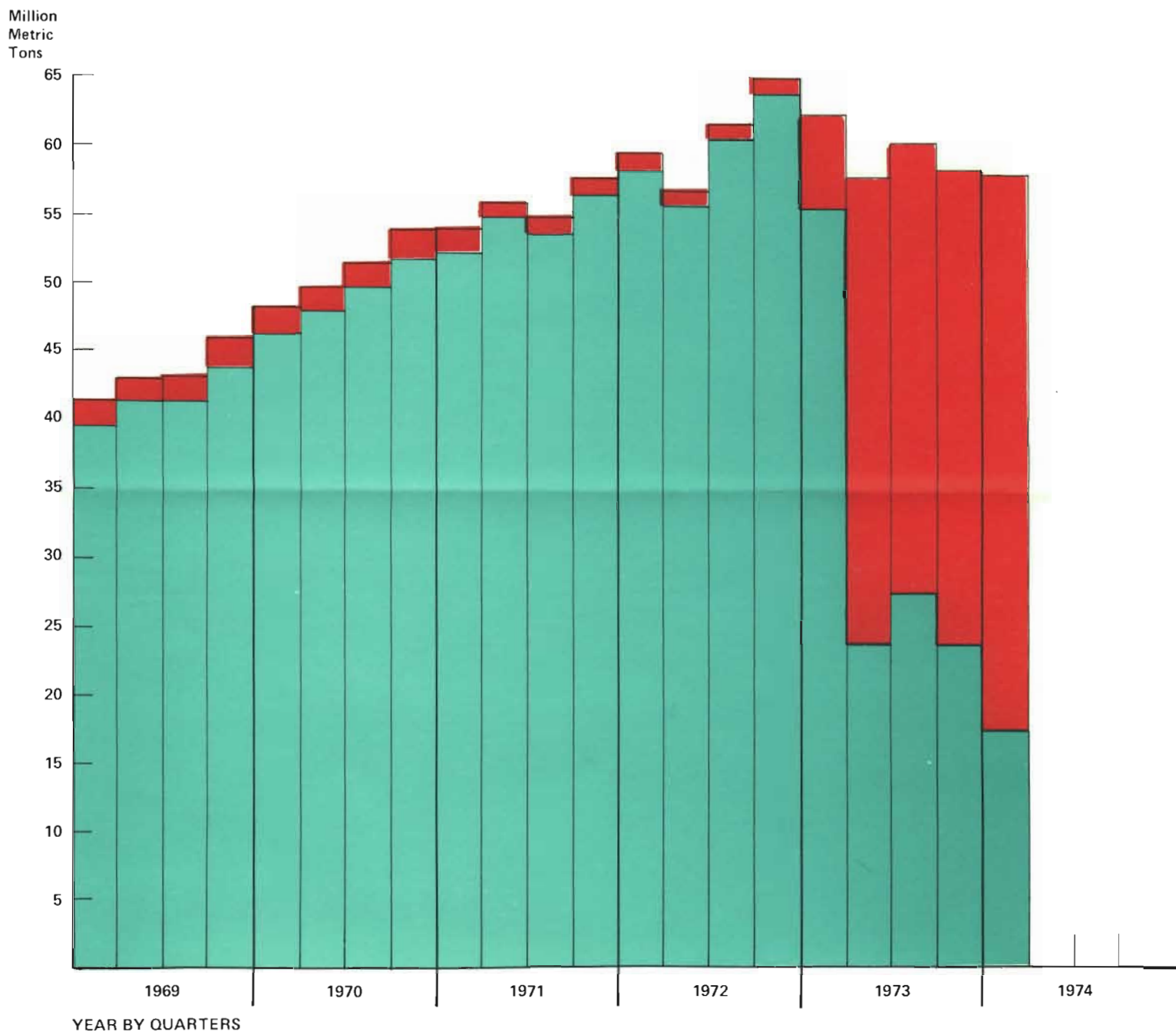
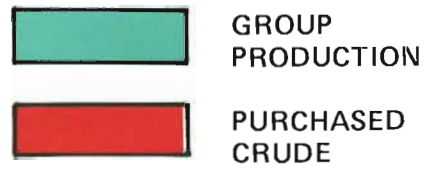
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BP GROUP CRUDE OIL SOURCES

Exh. 20



Graph: BP Group Crude Oil Sources

Exhibit 20

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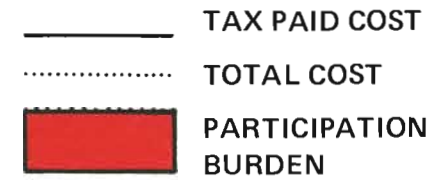
Exhibit 20
Graph:
BP Group Crude
Oil Sources

ILLUSTRATION OF TAX PAID, PARTICIPATION AND TOTAL COSTS

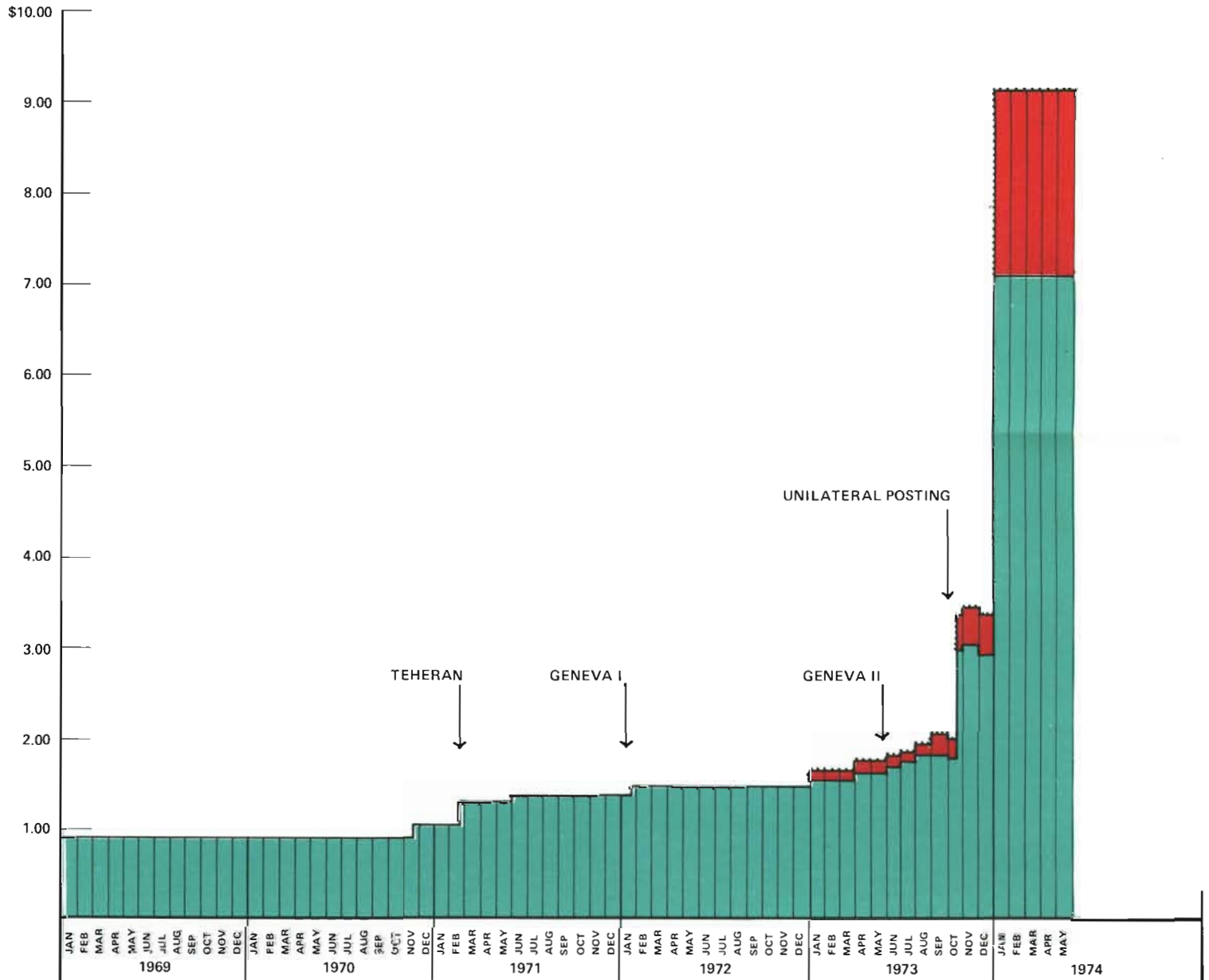
Exh. 22

1969-MID 1974

31° KUWAIT



U.S. DOLLARS/
PER U.S. BARREL



1104

Exhibit 22

Graphs: Crude Oil Costs

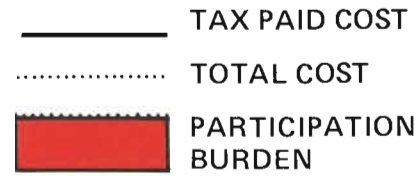
Exhibit 22
Graphs:
Crude Oil Costs

ILLUSTRATION OF TAX PAID, PARTICIPATION AND TOTAL COSTS

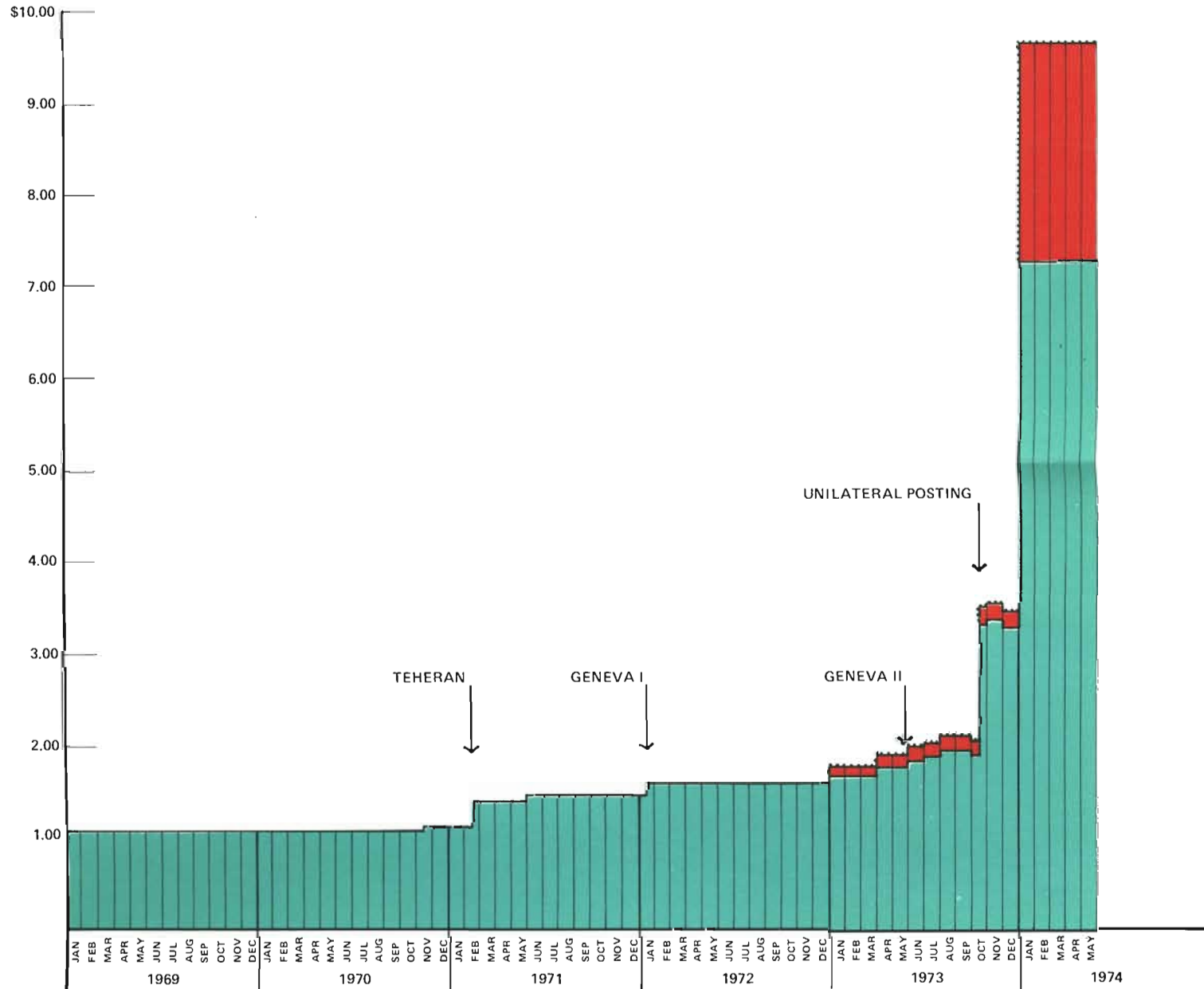
Exh. 22

1969-MID 1974

IRAN LIGHT



U.S. DOLLARS/
PER U.S. BARREL



Graphs Crude Oil Costs

Exhibit 22

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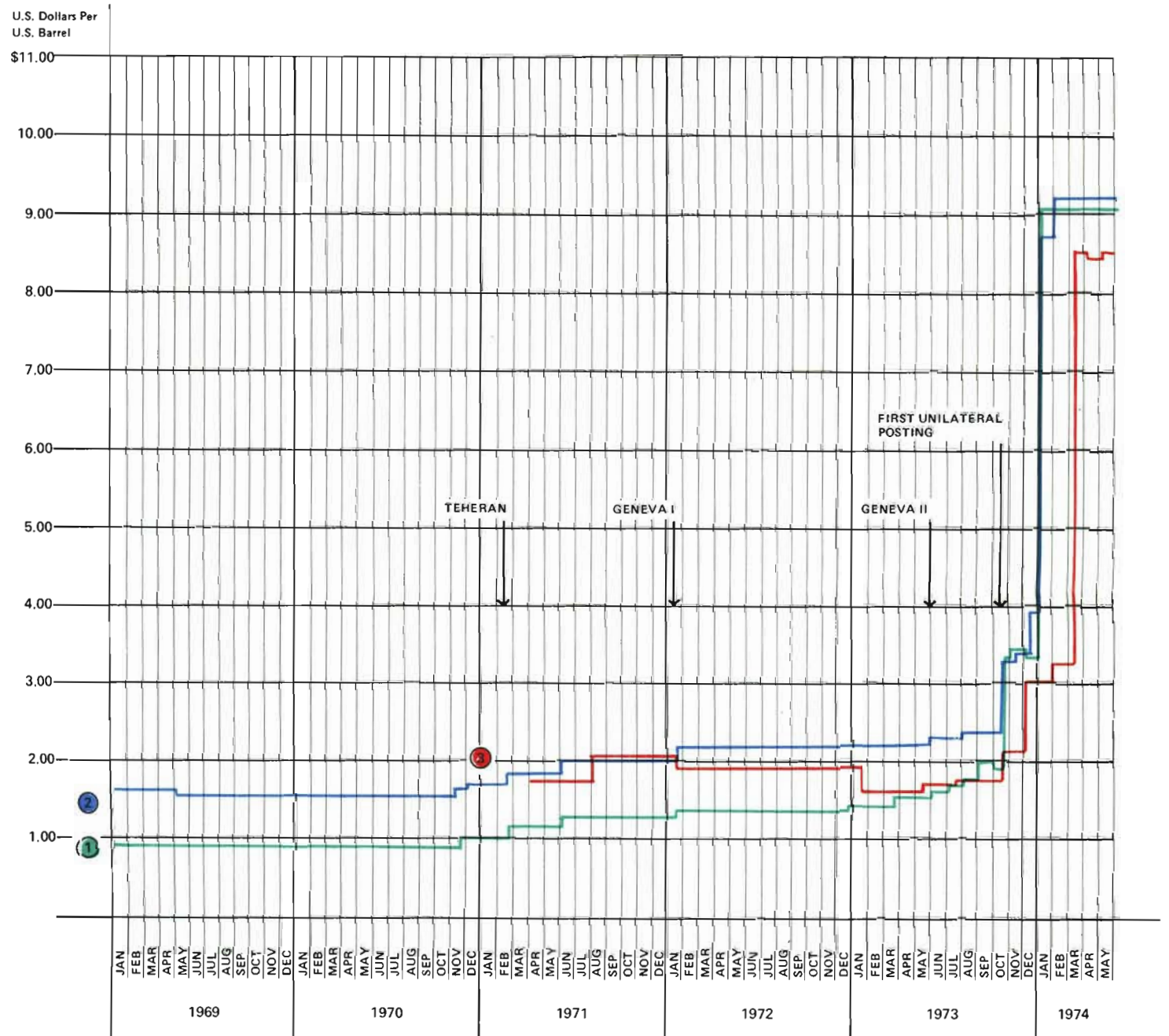
Exhibit 22
Graphs:
Crude Oil Costs

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Exhibit 26

Graph: Cost of Crude Oil, posted prices of fuel oil and cost of furnace oil

Exhibit 26
Graph:
Cost of Crude
Oil, posted
prices of fuel oil
and cost of
furnace oil



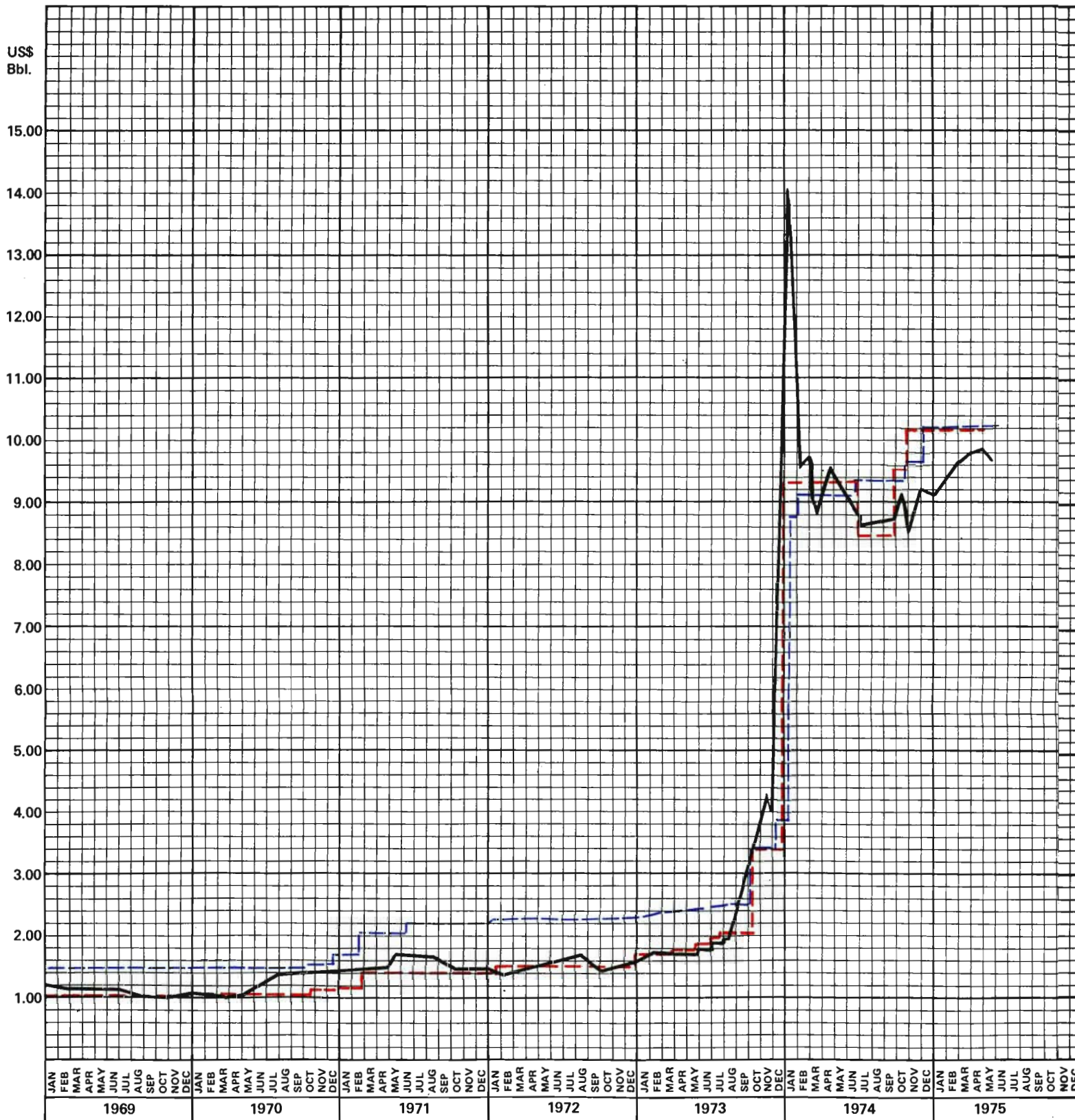
2. BP TRADING LIMITED
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3. COST OF FURNACE OIL
PURCHASED FROM BP
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DELIVERY TO NABALCO
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PERSIAN GULF

Exh. 29

- BP Bandar Mah-Shahr LFO posting
- Tax paid cost — Kuwait crude
- P.G. spot price — 3.5% sulphur fuel oil



Graph: Spot prices of crude oil and fuel oil

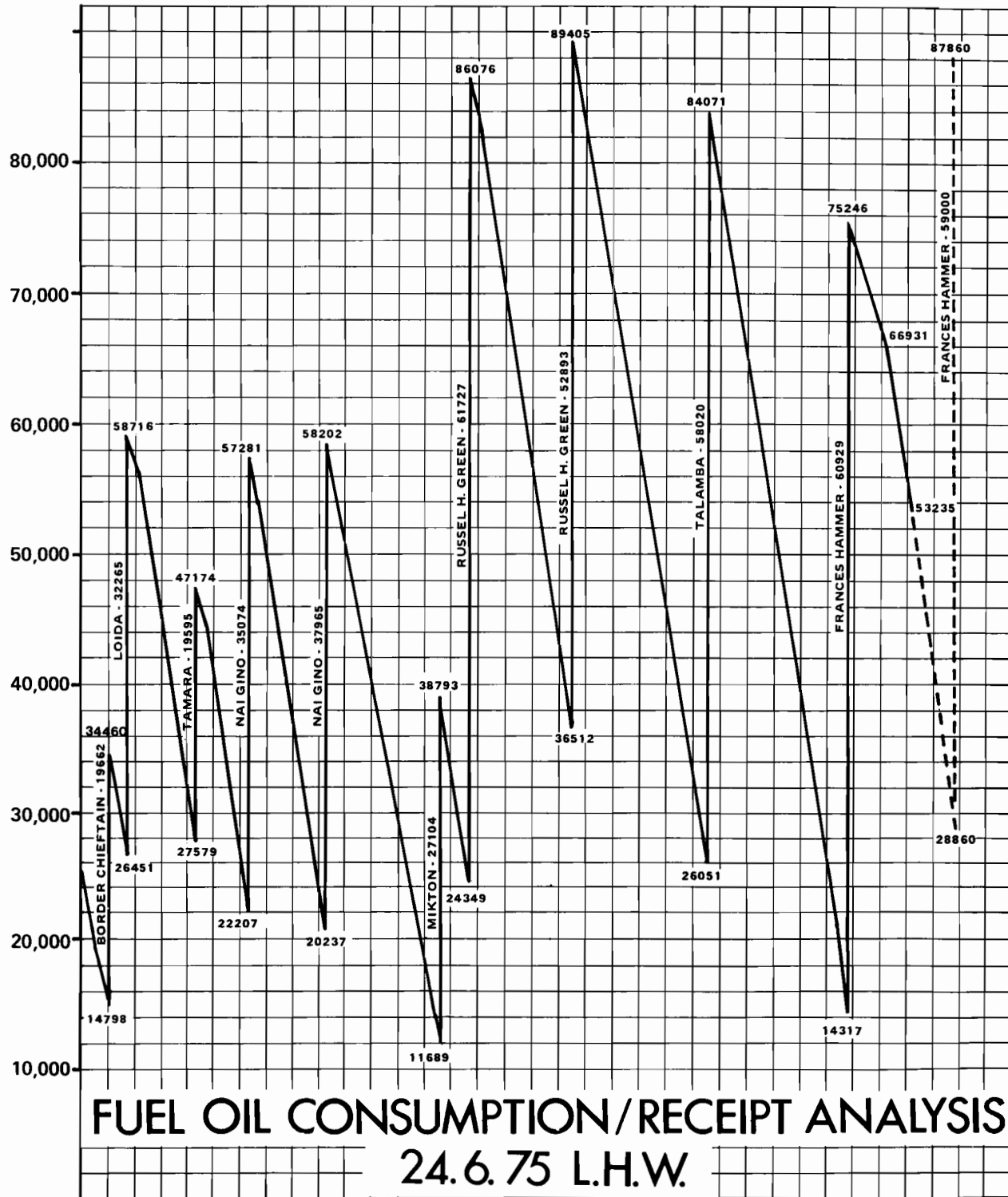
Exhibit 29
Graph:
Spot prices of
crude oil and
fuel oil

Exhibit 46

Exhibit 46
 "Fuel Oil Usage
 Analysis"

"Fuel Oil Usage Analysis"

Exh. 46



NABALCO SHIPMENTS 1-10

PRICE COMPARISON

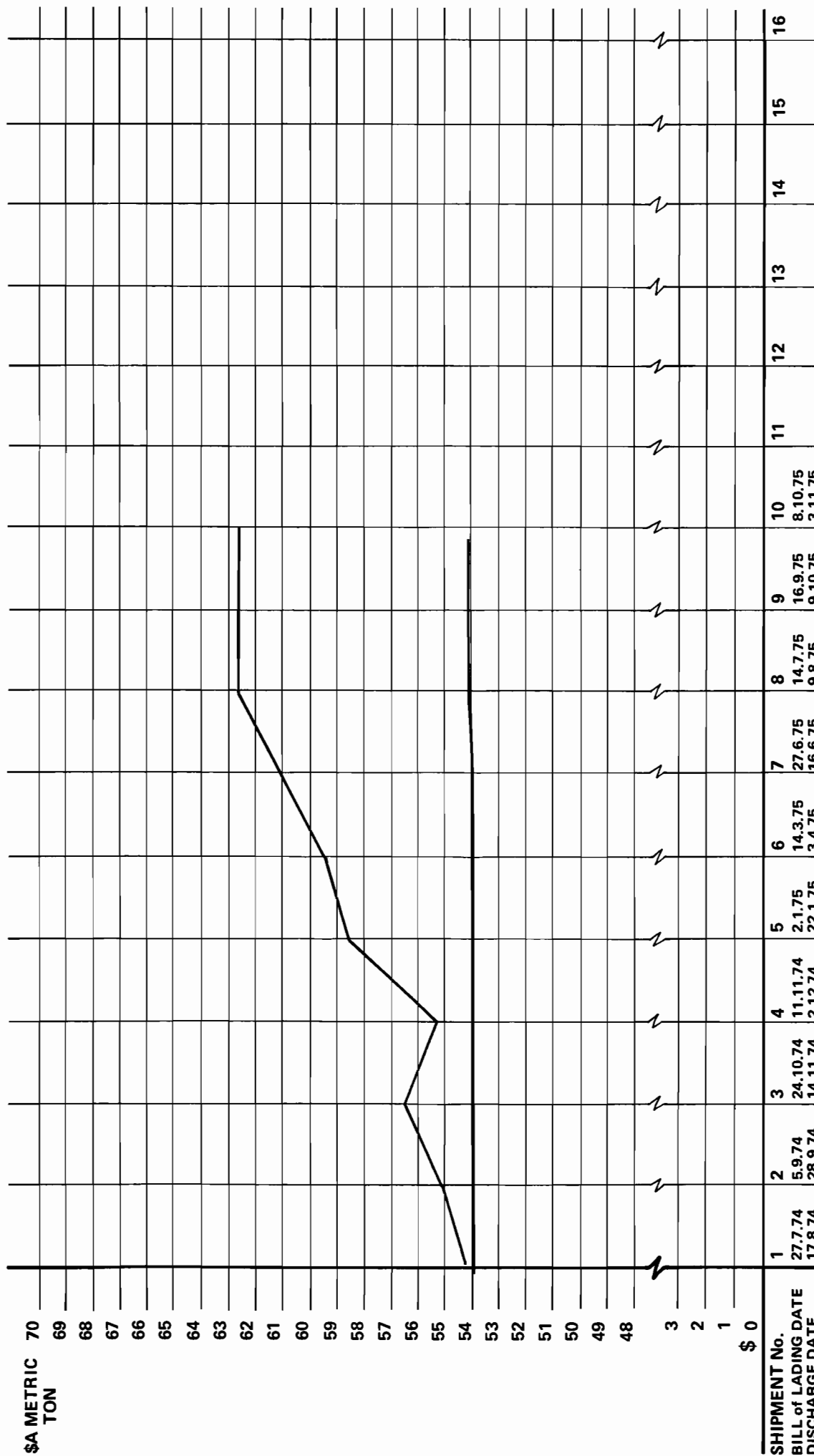
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Exhibit 51

Graph: Price comparison

Exhibit 51
Graph:
Price comparison



COMPARISON OF NABALCO'S CIF & E PRICE EX KNPC/CONCORD,
EXCLUDING DEMURRAGE, WITH BP'S REVISED BASE PRICE OF
\$A 54.44 ADJUSTED FOR FREIGHT VARIATIONS THROUGH
THE PERIOD PURSUANT TO CLAUSE 9(B) OF BP SUPPLY
AGREEMENT OF 11.6.1970.

KNPC/CONCORD CIF & E PRICE _____
(SOURCE: NABALCO'S COMPARATIVE VOYAGE ANALYSES 17.11.75)

BP's REVISED BASE PRICE _____

Exhibit AB

Exhibit AB
Plaintiff's
Schedules:
Estimated Usage
of Fuel Oil

Plaintiff's Schedules: Estimated Usage of Fuel Oil

10th Nov. 1975
and:
19th Nov. 1975

SCHEDULE OF USAGE OF FUEL OIL

<i>Period</i>	<i>Tonnes</i>	10th November 1975
15th August, 1974 to 20th August, 1974 <i>week ending</i>	4445	
27th August, 1974	6086	
3rd September, 1974	5763	
10th September, 1974	6256	
17th September, 1974	6376	
24th September, 1974	6121	10
1st October, 1974	6731	
8th October, 1974	6667	
15th October, 1974	6934	
22nd October, 1974	5623	
29th October, 1974	7919	
5th November, 1974	6459	
12th November, 1974	6792	
19th November, 1974	7957	
26th November, 1974	5849	
3rd December, 1974	5821	20
9th December, 1974	7220	
16th December, 1974	7083	
23rd December, 1974	7018	
31st December, 1974—8 days	8043*	
6th January, 1975—5 days	3799*	
13th January, 1975	5879	
20th January, 1975	5396	
28th January, 1975—8 days	6976*	
3rd February, 1975	5269	
10th February, 1975	6405	30
17th February, 1975	6326	
24th February, 1975	5812	
3rd March, 1975	6794	
10th March, 1975	6357	
17th March, 1975	6006	
24th March, 1975	6016	
1st April, 1975—8 days	6477*	
7th April, 1975—6 days	5831*	
14th April, 1975	6323	
21st April, 1975	6343	40
28th April, 1975	5896	
5th May, 1975	7030	
12th May, 1975	5293	
19th May, 1975	6073	
26th May, 1975	6318	
2nd June, 1975	6217	

* Indicates if actual figure reported is for a period more than or less than the normal 7 day period.

<u>Period</u>	<u>Tonnes</u>	Exhibit AB Plaintiff's Schedules: Estimated Usage of Fuel Oil
<i>week ending</i>		
9th June, 1975	7158	
17th June, 1975—8 days	8982*	
23rd June, 1975—6 days	5719*	10th Nov. 1975 and 19th Nov. 1975
30th June, 1975	6582	
7th July, 1975	7114	
14th July, 1975	6780	
21st July, 1975	6799	
10 28th July, 1975	6448	
4th August, 1975	6609	
11th August, 1975	6147	
18th August, 1975	6892	
25th August, 1975	6731	
1st September, 1975	6063	
8th September, 1975	6135	
15th September, 1975	7746	
22nd September, 1975	6377	
29th September, 1975	6724	
20 6th October, 1975	6607	
13th October, 1975	6786	
20th October, 1975	7111	
27th October, 1975	6538	
3rd November, 1975	6273	

*Indicates if actual figure reported is for a period more than or less than the normal 7 day period.

SCHEDULE OF ESTIMATED USAGE OF FUEL OIL

Period 4th November, 1975 to 5th September, 1976

<u>Week ending at 0700</u>	<u>Estimated usage</u>	19th November, 1975
30 3rd November, 1975	(A) 6273	
10th November, 1975	(A) 7335	
17th November, 1975	(A) 6374	
24th November, 1975	6475	
1st December, 1975	6475	
8th December, 1975	6560	
15th December, 1975	6560	
22nd December, 1975	6560	
29th December, 1975	6560	
5th January, 1976	6825	
40 12th January, 1976	6825	
26th January, 1976	6825	
2nd February, 1976	6825	
9th February, 1976	6825	
16th February, 1976	6825	
23rd February, 1976	6825	

Exhibit AB Plaintiff's Schedules: Estimated Usage of Fuel Oil — 10th Nov. 1975 and 19th Nov. 1975	<u>Week ending at 0700</u>	<u>Estimated usage</u>	
	1st March, 1976	6825	
	8th March, 1976	6825	
	15th March, 1976	6825	
	22nd March, 1976	6825	
	29th March, 1976	6825	
	5th April, 1976	6613	
	12th April, 1976	6613	
	19th April, 1976	6613	
	26th April, 1976	6613	10
	3rd May, 1976	6611	
	10th May, 1976	6611	
	17th May, 1976	6611	
	24th May, 1976	6611	
	31st May, 1976	6611	
	7th June, 1976	6613	
	14th June, 1976	6613	
	21st June, 1976	6613	
	28th June, 1976	6613	
	5th July, 1976	6613	20
	12th July, 1976	6613	
	19th July, 1976	6613	
	26th July, 1976	6613	
	2nd August, 1976	6611	
	9th August, 1976	6611	
	16th August, 1976	6611	
	23rd August, 1976	6611	
	30th August, 1976	6611	
	5th September, 1976	5668	
	Total =	298817	30

Note: First three figures are actual.

Exhibit AE**Exhibit AE**
Plaintiff's
schedules of
costs**Plaintiff's Schedules of costs**

It is agreed by the parties, without admission by the Defendant as to the validity of any basis of entitlement of the Plaintiff to claim from the Defendant any of the components or elements below referred to, that the Comparative Voyage Analyses dated 17/11/75 now tendered show

- (1) the actual prices for fuel oil freight and associated charges paid in respect of the various shipments of fuel oil Numbered 1 to 10 referred to therein.
- (2) the dates such expenditures were incurred and
- (3) the consequential excess of such prices over the price that would have been payable to the Defendant for such shipments had the Defendant continued to supply at the original base price adjusted from time to time pursuant to Clause 9(b) of the Supply Agreement of 11/6/70.

PROVIDED HOWEVER that the Plaintiff waives its claim in respect of item (R) (Insurance—Charterers Liability) in respect of voyages 1 to 8 inclusive. Also tendered are a second set of analyses identical with the first set, save that demurrage is excluded.

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
VOYAGE No. 1

					Method					KNPC/Concord	BPA	Invoice Payment Date
A	Vessel Name	..	..	..						NAI GINO		
B	Gross Registered Tonnage	..	..	..						28,695		
C	Bill of Lading Qty.	..	..	..						231,086		
D	Bill of Lading Qty.	..	..	..						35,245		
E	Gove Outturn Statement Qty.	..	..	..						33,074	35,074	
F	Differential	..	..	..	D - E					+171		
G	Bill of Lading Date	..	..	..						27/7/74		
H	Disch. Date Gove (Hoses Disc)	..	..	..						17/8/74	17/8/74	
I	FOB Price Per BBL	..	..	..						9.278		
J	FOB Value	..	..	..	C x I	US\$				2,144,015.91		(b) 25/9/74
K	Exchange Rate	..	..	..	US\$ = A\$	US\$				1.3068		
L	FOB Value	..	..	..	J ÷ K	A\$				1,640,661.09		
M	FOB Cost/Tonne	..	..	..	L ÷ D	A\$				46.550		
N	MHTC L/C Fee	..	..	..	0.25% x J	US\$				5,364.24		
O	Exchange Rate	..	..	..	US\$ = A\$	A\$				1.3067		
P	MHTC L/C Fee Value	..	..	..	N ÷ O	A\$				4,107.38		
Q	MHTC L/C Fee/Tonne	..	..	..	P ÷ D	A\$				0.117		(c) 26/9/74
R	Insurance—Charterer's Liability	..	..	..	A\$0.10 x B	A\$				2,869.50		13/5/75
S	Insurance—Charterer's Liability/Tonne	..	..	..	R ÷ D	A\$				0.081		
T	Insurance—Marine 0.045% War Risk	..	..	..	0.06375% x L	A\$				920.41		10/12/74
U	Insurance—Marine/War Risk/Tonne	..	..	..	T ÷ D	A\$				0.026		
V	Total Cargo Value (Excl. Freight Costs)	..	..	..	L+P+R+T	A\$				1,648,558.38		
W	Cargo Cost/Tonne (Excl. Freight Costs)	..	..	..	M+Q+S+U	A\$				46.774		
X	Actual Freight/Tonne	..	..	..	X x D	US\$				10.91247		(d) 16/8/74
Y	Freight Value	..	..	..	US\$ = A\$	US\$				384,609.98		
Z	Exchange Rate	..	..	..	Y ÷ Z	A\$				1.4853		
1	Freight Value	..	..	..	1 ÷ D	A\$				258,948.22		
2	Freight Cost/Tonne	..	..	..	US\$ = A\$	US\$				7.347		
3	Demurrage Value	..	..	..		US\$				NIL		
4	Exchange Rate	..	..	..		US\$ = A\$				NIL		

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
 VOYAGE No. 1

	Method		KNPC/Concord	BPA	Invoice Payment Date
5 Demurrage Value ..	3 ÷ 4	A\$	NIL	—	
6 Demurrage Cost/Tonne ..	5 ÷ D	A\$	NIL	—	
7 Survey Fee/Tonne ..	7 × D	US\$	0.028542	—	(e)
8 Survey Value ..	US\$ = A\$	US\$	1,005.95	—	17/9/74
9 Exchange Rate ..	8 ÷ 9	A\$	1.485	—	
10 Survey Value ..	10 ÷ D	A\$	677.41	—	
11 Survey Cost/Tonne ..		A\$	0.019	—	
12 Total Freight Value ..	1+5+10	A\$	259,625.63	—	
13 Total Freight Cost/Tonne ..	2+6+11	A\$	7.366	—	
14 BP—Base Contract Price/Tonne ..		A\$	—	9.42	(g)
15 BP—Cargo Value ..	14 × E	A\$	—	330,397.08	14/11/74
16 BP—Freight AFRA Adjustment/Tonne ..	17 × E	A\$	—	(h) 3.97	(g)
17 BP—Freight Adjustment Value ..		A\$	—	139,243.78	14/11/74
18 Total Delivered Gove—Value ..		A\$	V + 12 1,908,184.01	15 + 17 469,640.86	(i)
19 Total Delivered Gove Cost/Tonne ..		A\$	W + 13 54.140	14 + 16 13.390	
20 Excess Cost to Nabalco ..		A\$	1,438,543.15		

**FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD
TO BP AUSTRALIA 17/11/75
VOYAGE NO. 1**

NOTES**— Actual**

- (a) Each exchange rate is that rate quoted when each payment is made.
- (b) Payment by IRREVOC L/C—60 days after Bill of Lading date.
- (c) Payment by telegraphic transfer—60 days after Bill of Lading date.
- (d) Payment by telegraphic transfer on receipt of cargo at Gove.
- (e) Payment by Bank Draft on receipt of invoice.
- (f) Actual premium paid is calculated on basis FOB cargo value in US\$ converted to CAN\$ and premium in CAN\$ is converted to A\$ for invoice purposes at the A\$/CAN\$ rate ruling at the Bill of Lading date.

10

— Assumption

- (g) Payment by cheque—90 days after receipt of cargo at Gove.
- (h) Freight adjustment as per BP's Cross Claim APPENDIX C 31/10/75.
- (i) BP invoices Nabalco for OUTTURN STATEMENT quantity.

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
VOYAGE No. 2

		Method		KNPC/Concord	BPA	Invoice Payment Date
A	Vessel Name		..	NAI GINO	—	
B	Gross Registered Tonnage		..	28,695	—	
C	Bill of Lading Qty.		..	249,235	—	
D	Bill of Lading Qty.		..	38,010	—	
E	Gove Outturn Statement Qty.		..	37,965	37,965	
F	Differential	D - E	..	+45	—	
G	Bill of Lading Date		..	5/9/74	—	
H	Disch. Date Gove (Hoses Disc)		..	28/9/74	28/9/74	
I	FOB Price Per BBL		..	9.278	—	(b)
J	FOB Value	C x I	..	2,312,402.33	—	4/11/74
K	Exchange Rate	US\$ = A\$	..	1.3092	—	
L	FOB Value	J ÷ K	..	1,766,271.26	—	
M	FOB Cost/Tonne	L ÷ D	..	46.469	—	
N	MHTC L/C Fee	0.25% x J	..	5,782.75	—	(c)
O	Exchange Rate	US\$ = A\$	..	1.3103	—	5/11/74
P	MHTC L/C Fee Value	N ÷ O	..	4,422.10	—	
Q	MHTC L/C Fee/Tonne	P ÷ D	..	0.116	—	
R	Insurance—Charterer's Liability	A\$0.10 x B	..	2,869.50	—	13/5/75
S	Insurance—Charterer's Liability/Tonne	R ÷ D	..	0.075	—	
T	Insurance—Marine 0.045% War Risk	.06375% x L	..	1,128.76	—	10/12/74
U	Insurance—Marine/War Risk/Tonne	T ÷ D	..	0.030	—	
V	Total Cargo Value (Excl. Freight Costs)	L+P+R+T	..	1,774,691.62	—	
W	Cargo Cost/Tonne (Excl. Freight Costs)	M+Q+S+U	..	46.690	—	
X	Actual Freight/Tonne	X x D	..	10,792.64	—	(d)
Y	Freight Value	US\$ = A\$	..	410,228.34	—	27/9/74
Z	Exchange Rate	Y ÷ Z	..	1.3066	—	
1	Freight Value	1 ÷ D	..	313,966.28	—	
2	Freight Cost/Tonne	US\$ = A\$	..	8.260	—	
3	Demurrage Value		..	NIL	—	NIL
4	Exchange Rate		..	NIL	—	

Exhibit AE
Plaintiff's
schedules of
costs

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
VOYAGE No. 2

				Method				KNPC/Concord	BPA	Invoice Payment Date
5	Demurrage Value ..	..	..	3 ÷ 4	A\$			NIL	—	
6	Demurrage Cost/Tonne ..	..	..	5 ÷ D	A\$			NIL	—	
7	Survey Fee/Tonne ..	..	..	7 × D	US\$			0.028542	—	(e)
8	Survey Value ..	..	..	US\$ = A\$	US\$		(a)	1,084.89	—	15/11/74
9	Exchange Rate ..	..	..	8 ÷ 9	A\$			1.3153	—	
10	Survey Value ..	..	..	10 ÷ D	A\$			824.82	—	
11	Survey Cost/Tonne ..	..	..		A\$			0.022	—	
12	Total Freight Value ..	..	..	1+5+10	A\$			314,791.10	—	
13	Total Freight Cost/Tonne ..	..	..	2+6+11	A\$			8.282	—	
14	BP—Base Contract Price/Tonne ..	..	..	14 × E	A\$			—	9.42	(g)
15	BP—Cargo Value ..	..	..	17 × E	A\$			—	357,630.30	27/12/74
16	BP—Freight AFRA Adjustment/Tonne ..	..	..		A\$			—	(h) 3.97	(g)
17	BP—Freight Adjustment Value ..	..	..		A\$			—	150,721.05	27/12/74
18	Total Delivered Gove—Value ..	..	..		A\$			V + 12 2,089,482.72	15 + 17 508,351.35	(i)
19	Total Delivered Gove Cost/Tonne ..	..	..		A\$			W + 13 54.972	14 + 16 13.390	
20	Excess Cost to Nabalco ..	..	..		A\$			1,581,131.37		

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD
TO BP AUSTRALIA 17/11/75
VOYAGE NO. 2

Exhibit AE
Plaintiff's
schedules of
costs

NOTES

— *Actual*

- (a) Each exchange rate is that rate quoted when each payment is made.
- (b) Payment by IRREVOC L/C—60 days after Bill of Lading date.
- (c) Payment by telegraphic transfer—60 days after Bill of Lading date.
- (d) Payment by telegraphic transfer on receipt of cargo at Gove.
- 10 (e) Payment by Bank Draft on receipt of invoice.
- (f) Actual premium paid is calculated on basis FOB cargo value in US\$ converted to CAN\$ and premium in CAN\$ is converted to A\$ for invoice purposes at the A\$/CAN\$ rate ruling at the Bill of Lading date.

— *Assumption*

- (g) Payment by cheque—90 days after receipt of cargo at Gove.
- (h) Freight adjustment as per BP's Cross Claim APPENDIX C 31/10/75.
- (i) BP invoices Nabalco for OUTTURN STATEMENT quantity.

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
VOYAGE No. 3

		Method		KNPC/Concord	BPA	Invoice Payment Date
A	Vessel Name			MIKTON	—	
B	Gross Registered Tonnage			18,889	—	
C	Bill of Lading Qty.			176,033	—	
D	Bill of Lading Qty.			27,104	—	
E	Grove Outturn Statement Qty.			26,580	26,580	
F	Differential	D - E		+524	—	
G	Bill of Lading Date			24/10/74	—	
H	Disch. Date Gove (Hoses Disc)			14/11/74	14/11/74	
I	FOB Price Per BBL			9.622	—	
J	FOB Value	C x I	US\$	1,693,789.53	—	(b) 23/12/74
K	Exchange Rate	US\$ = A\$	US\$	1.3178	—	
L	FOB Value	J ÷ K	A\$	1,285,322.68	—	
M	FOB Cost/Tonne	L ÷ D	A\$	47.422	—	
N	MHTC L/C Fee	0.25% x J	US\$	4,235.67	—	(c) 23/12/74
O	Exchange Rate	US\$ = A\$	A\$	1.3178	—	
P	MHTC L/C Fee Value	N ÷ O	A\$	3,216.40	—	
Q	MHTC L/C Fee/Tonne	P ÷ D	A\$	0.119	—	
R	Insurance—Charterer's Liability	A\$0.10 x B	A\$	1,888.90	—	13/5/75
S	Insurance—Charterer's Liability/Tonne	R ÷ D	A\$	0.070	—	
T	Insurance—Marine 0.045% War Risk 0.01875% .. .. .	.06375% x L	A\$	825.41	—	13/5/75
U	Insurance—Marine/War Risk/Tonne	T ÷ D	A\$	0.030	—	
V	Total Cargo Value (Excl. Freight Costs)	L+P+R+T	A\$	1,291,253.39	—	
W	Cargo Cost/Tonne (Excl. Freight Costs)	M+Q+S+U	A\$	47.641	—	
X	Actual Freight/Tonne	X x D	US\$	11.36093	—	(d) 22/11/74
Y	Freight Value	US\$ = A\$	US\$	307,926.53	—	
Z	Exchange Rate	Y ÷ Z	A\$	1.3103	—	
1	Freight Value	I ÷ D	A\$	235,009.60	—	
2	Freight Cost/Tonne	US\$ = A\$	US\$	8.671	—	
3	Demurrage Value	3 ÷ 4	NIL	NIL	—	NIL
4	Exchange Rate		NIL	NIL	—	
5	Demurrage Value		NIL	NIL	—	

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
 VOYAGE No. 3

				Method		KNPC/Concord	BPA	Invoice Payment Date
6	Demurrage Cost/Tonne	..	..	5 ÷ D	A\$	NIL	—	
7	Survey Fee/Tonne	..	..		US\$	0.028542	—	(e)
8	Survey Value	..	..	7 × D	US\$	773.60	—	11/12/74
9	Exchange Rate	..	..	US\$ = A\$		1.3160	—	
10	Survey Value	..	..	8 ÷ 9	A\$	587.84	—	
11	Survey Cost/Tonne	..	..	10 ÷ D	A\$	0.022	—	
12	Total Freight Value	..	..	1+5+10	A\$	235,597.44	—	
13	Total Freight Cost/Tonne	..	..	2+6+11	A\$	8.693	—	
14	BP—Base Contract Price/Tonne	..	..		A\$	—	9.42	(g)
15	BP—Cargo Value	..	..	14 × E	A\$	—	250,383.60	21/1/75
16	BP—Freight AFRA Adjustment/Tonne	..	..		A\$	—	3.97	(g)
17	BP—Freight Adjustment Value	..	..	17 × E	A\$	—	105,522.60	21/1/75
18	Total Delivered Gove—Value	..	..		A\$	V + 12	15 + 17	(i)
						1,526,850.83	355,906.20	
19	Total Delivered Gove Cost/Tonne	..	..		A\$	W + 13	14 + 16	
						56.334	13.39	
20	Excess Cost to Nabalco	..	..		A\$	1,170,944.63		

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD
TO BP AUSTRALIA 17/11/75
VOYAGE NO. 3

NOTES

— *Actual*

- (a) Each exchange rate is that rate quoted when each payment is made.
- (b) Payment by IRREVOC L/C—60 days after Bill of Lading date.
- (c) Payment by telegraphic transfer—60 days after Bill of Lading date.
- (d) Payment by telegraphic transfer on receipt of cargo at Gove.
- (e) Payment by Bank Draft on receipt of invoice.
- (f) Actual premium paid is calculated on basis FOB cargo value in US\$ converted to CAN\$ and premium in CAN\$ is converted to A\$ for invoice purposes at the A\$/CAN\$ rate ruling at the Bill of Lading date.

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— *Assumption*

- (g) Payment by cheque—90 days after receipt of cargo at Gove.
- (h) Freight adjustment as per BP's Cross Claim APPENDIX C 31/10/75.
- (i) BP invoices Nabalco for OUTTURN STATEMENT quantity.

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
 VOYAGE No. 4

						Method	KNPC/Concord	BPA	Invoice Payment Date
A	Vessel Name	..	..	..	..		RUSSEL H. GREEN	—	
B	Gross Registered Tonnage	..	..	..	..		34,837	—	
C	Bill of Lading Qty.	..	..	..	..		401,580	—	
D	Bill of Lading Qty.	..	..	..	..		61,727	—	
E	Grove Outturn Statement Qty.	..	..	..	..		61,656	61,656	
F	Differential	..	..	..	..	D - E	+71	—	
G	Bill of Lading Date	..	..	..	..		11/11/74	—	
H	Disch. Date Grove (Hoses Disc)	..	..	..	..		2/12/74	2/12/74	
I	FOB Price Per BBL	..	..	..	..		9,633	—	(b)
J	FOB Value	..	..	..	..	C x I	3,868,420.14	—	3/1/75
K	Exchange Rate	..	..	..	..	US\$ = A\$	1,3219	—	
L	FOB Value	..	..	..	..	J ÷ K	2,926,409.00	—	
M	FOB Cost/Tonne	..	..	..	..	L ÷ D	47,409	—	
N	MHTC L/C Fee	..	..	..	..	0.25% x J	9,674.05	—	(c)
O	Exchange Rate	..	..	..	..	US\$ = A\$	1,3256	—	10/1/75
P	MHTC L/C Fee Value	..	..	..	..	N ÷ O	7,300.37	—	
Q	MHTC L/C Fee/Tonne	..	..	..	..	P ÷ D	0.118	—	
R	Insurance—Charterer's Liability	..	..	..	..	A\$0.10 x B	3,483.70	—	13/5/75
S	Insurance—Charterer's Liability/Tonne	..	..	..	..	R ÷ D	0.056	—	13/5/75
T	Insurance—Marine 0.045% War Risk	..	..	..	..	.06375% x L	1,881.81	—	
U	Insurance—Marine/War Risk/Tonne	..	..	..	..	T ÷ D	0.030	—	
V	Total Cargo Value (Excl. Freight Costs)	..	..	..	..	L+P+R+T	2,939,074.88	—	
W	Cargo Cost/Tonne (Excl. Freight Costs)	..	..	..	..	M+Q+S+U	47,613	—	
X	Actual Freight/Tonne	..	..	..	..	X x D	9,92177	—	(d)
Y	Freight Value	..	..	..	..	US\$ = A\$	612,440.91	—	2/12/74
Z	Exchange Rate	..	..	..	..	Y ÷ Z	1,3140	—	
1	Freight Value	..	..	..	..	1 ÷ D	466,096.79	—	
2	Freight Cost/Tonne	..	..	..	..	US\$	7,551	—	(e)
3	Demurrage Value	..	..	..	..	US\$	39,288.83	—	10/11/75
4	Exchange Rate	..	..	..	..	US\$ = A\$	1,2662	—	
5	Demurrage Value	..	..	..	..	3 ÷ 4	18,737.70	—	

Exhibit AE
 Plaintiff's
 schedules of
 costs

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
VOYAGE No. 4

		Method		KNPC/Concord	BPA	Invoice Payment Date
6	Demurrage Cost/Tonne	5 ÷ D	A\$	0.304	—	
7	Survey Fee/Tonne		US\$	0.028542	—	(f)
8	Survey Value ..	7 × D	US\$	1,761.81	—	13/1/75
9	Exchange Rate ..	US\$ = A\$		1.3256	—	
10	Survey Value ..	8 ÷ 9	A\$	1,329.07	—	
11	Survey Cost/Tonne	10 ÷ D	A\$	0.022	—	
12	Total Freight Value ..	1+5+10	A\$	486,163.56	—	
13	Total Freight Cost/Tonne	2+6+11	A\$	7.877	—	
14	BP—Base Contract Price/Tonne		A\$	—	9.42	(h)
15	BP—Cargo Value ..	14 × E	A\$	—	580,799.52	3/3/75
16	BP—Freight AFRA Adjustment/Tonne		A\$	—	3.97	(h)
17	BP—Freight Adjustment Value	17 × E	A\$	—	244,774.32	3/3/75
18	Total Delivered Gove—Value		A\$	V + 12 3,425,238.44	15 + 17 825,573.84	(j)
19	Total Delivered Gove Cost/Tonne ..		A\$	W + 13 55.490	14 + 16 13.39	
20	Excess Cost to Nabalco		A\$	2,599,664.60		

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD
TO BP AUSTRALIA 17/11/75
VOYAGE NO. 4

Exhibit AE
Plaintiff's
schedules of
costs

NOTES

— *Actual*

- (a) Each exchange rate is that rate quoted when each payment is made
- (b) Payment by IRREVOC. L/C—60 days after Bill of Lading date.
- (c) Payment by telegraphic transfer—60 days after Bill of Lading date.
- (d) Payment by telegraphic transfer on receipt of cargo at Gove.
- 10 (e) Payment by telegraphic transfer after verifying demurrage statement.
- (f) Payment by Bank Draft on receipt of invoice.
- (g) Actual premium paid is calculated on basis FOB cargo value in US\$ converted to CAN\$ and premium in CAN\$ is converted to A\$ for invoice purposes at the A\$/CAN\$ rate ruling at the Bill of Lading date.

— *Assumption*

- (h) Payment by cheque—90 days after receipt of cargo at Gove.
- (i) Freight adjustment as per BP's Cross Claim APPENDIX C 31/10/75.
- (j) BP invoices Nabalco for OUTTURN STATEMENT quantity.
- 20 (k) Pending payment of US\$15,502.80 from KNPC. Under Article IV Section VI of Supply Agreement, Nabalco is entitled to claim demurrage in accordance with AFRA for month in which loading commenced and applicable to the size of the vessel. Accordingly, 41 hours 31 minutes or 1.72986 days demurrage has been claimed from KNPC based on AFRA 1/11/75 for 110.3. Due to differences between Concord and KNPC contracts in calculating demurrage Nabalco can only claim US\$15,502.80 from KNPC of the total US\$23,893.69 in fact paid to Concord for time lost at Shuaiba. Assume KNPC will pay Nabalco at exchange rate on 17/11/75 of A\$1 = US\$1.2609 (i.e.: US\$15,502.80 = A\$12,295.03) Therefore net value of demurrage paid by Nabalco is A\$18,737.70 (i.e.: A\$31,032.73—A\$12,295.03).

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
VOYAGE No. 5

									Method		KNPC/Concord	BPA	Invoice Payment Date
A	Vessel Name	..	..	..	..	..	..	..			RUSSEL H. GREEN	—	
B	Gross Registered Tonnage	..	..	..	..	..	..	..			34,837	—	
C	Bill of Lading Qty.	..	..	..	..	..	..	..			343,405	—	
D	Bill of Lading Qty.	..	..	..	..	..	..	..			52,893	—	
E	Grove Outturn Statement Qty.	..	..	..	..	..	..	..			52,975	52,975	
F	Differential	..	..	..	..	..	..	..	D - E		-82	—	
G	Bill of Lading Date	..	..	..	..	..	..	..			2/1/75	—	
H	Disch. Date Gove (Hoses Disc)	..	..	..	..	..	..	..			22/1/75	22/1/75	
I	FOB Price Per BBL	..	..	..	..	..	..	..			10.132	—	
J	FOB Value	..	..	..	..	..	..	..	C x I	US\$	3,479,379.46	—	(b) 3/3/75
K	Exchange Rate	..	..	..	..	..	..	..	US\$ = A\$	US\$	1.3641	—	
L	FOB Value	..	..	..	..	..	..	..	J ÷ K	A\$	(a) 2,550,677.71	—	
M	FOB Cost/Tonne	..	..	..	..	..	..	..	L ÷ D	A\$	48.223	—	
N	MHTC L/C Fee	..	..	..	..	..	..	..	0.25% x J	US\$	8,698.45	—	(c) 3/3/75
O	Exchange Rate	..	..	..	..	..	..	..	US\$ = A\$	A\$	1.3638	—	
P	MHTC L/C Fee Value	..	..	..	..	..	..	..	N ÷ O	A\$	6,380.30	—	
Q	MHTC L/C Fee/Tonne	..	..	..	..	..	..	..	P ÷ D	A\$	0.121	—	
R	Insurance—Charterer's Liability	..	..	..	..	..	..	..	A\$0.10 x B	A\$	3,483.70	—	13/5/75
S	Insurance—Charterer's Liability/Tonne	..	..	..	..	..	..	..	R ÷ D	A\$	0.066	—	
T	Insurance—Marine 0.045% War Risk 0.01875%	..	..	..	..	..	..	..	.06375% x L	A\$	1,664.62	—	13/5/75
U	Insurance—Marine/War Risk/Tonne	..	..	..	..	..	..	..	T ÷ D	A\$	0.031	—	
V	Total Cargo Value (Excl. Freight Costs)	..	..	..	..	..	..	..	L+P+R+T	A\$	2,562,206.33	—	
W	Cargo Cost/Tonne (Excl. Freight Costs)	..	..	..	..	..	..	..	M+Q+S+U	A\$	48.441	—	
X	Actual Freight/Tonne	..	..	..	..	..	..	..	X x D	US\$	13,251.32	—	(d) 24/1/75
Y	Freight Value	..	..	..	..	..	..	..	US\$ = A\$	US\$	700,895.45	—	
Z	Exchange Rate	..	..	..	..	..	..	..	Y ÷ Z	A\$	1.3350	—	
1	Freight Value	..	..	..	..	..	..	..	1 ÷ D	A\$	525,021.62	—	
2	Freight Cost/Tonne	..	..	..	..	..	..	..		A\$	9.926	—	
3	Demurrage Value	..	..	..	..	..	..	..		US\$	8,224.65	—	(e) 28/5/75
4	Exchange Rate	..	..	..	..	..	..	..	US\$ = A\$	US\$	1.3433	—	
5	Demurrage Value	..	..	..	..	..	..	..	3 ÷ 4	A\$	6,125.32	—	

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
 VOYAGE No. 5

		Method		KNPC/Concord	BPA	Invoice Payment Date
6	Demurrage Cost/Tonne	5 ÷ D	A\$	0.116	—	
7	Survey Fee/Tonne		US\$	0.028542	—	(f)
8	Survey Value	7 × D	US\$	1,509.65	—	26/3/75
9	Exchange Rate	US\$ = A\$		1.3528	—	
10	Survey Value	8 ÷ 9	A\$	1,115.94	—	
11	Survey Cost/Tonne	10 ÷ D	A\$	0.021	—	
12	Total Freight Value	1+5+10	A\$	532,262.88	—	
13	Total Freight Cost/Tonne	2+6+11	A\$	10.063	—	
14	BP—Base Contract Price/Tonne		A\$	—	9.42	(h)
15	BP—Cargo Value	14 × E	A\$	—	499,024.50	21/4/75
16	BP—Freight AFRA Adjustment/Tonne		A\$	—	3.98	(h)
17	BP—Freight Adjustment Value	17 × E	A\$	—	(i) 210,840.50	21/4/75
18	Total Delivered Gove—Value		A\$	V + 12 3,094,469.21	15 + 17 709,865.00	(j)
19	Total Delivered Gove Cost/Tonne		A\$	W + 13 58.504	14 + 16 13.40	
20	Excess Cost to Nabalco		A\$	2,384,604.21		

Exhibit AE
 Plaintiff's
 schedules of
 costs

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD
TO BP AUSTRALIA 17/11/75
VOYAGE NO. 5

NOTES

— *Actual*

- (a) Each exchange rate is that rate quoted when payment is made.
- (b) Payment by IRREVOC. L/C—60 days after Bill of Lading date.
- (c) Payment by telegraphic transfer—60 days after Bill of Lading date.
- (d) Payment by telegraphic transfer on receipt of cargo at Gove.
- (e) Payment by telegraphic transfer after verifying demurrage statement. 10
- (f) Payment by Bank Draft on receipt of invoice.
- (g) Actual premium paid is calculated on basis FOB cargo value in US\$ converted to CAN\$ and premium in CAN\$ is converted to A\$ for invoice purposes at the A\$/CAN\$ rate ruling at the Bill of Lading date.

— *Assumption*

- (h) Payment by cheque—90 days after receipt of cargo at Gove.
- (i) Freight adjustment as per BP's Cross Claim APPENDIX C 31/10/75.
- (j) BP invoices Nabalco for OUTTURN STATEMENT quantity.

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
 VOYAGE No. 6

	Method		KNPC/Concord	BPA	Invoice Payment Date
A Vessel Name			TALAMBA		
B Gross Registered Tonnage		LT	34,479	—	
C Bill of Lading Qty.		BBL	376,704	—	
D Bill of Lading Qty.		MT	58,020	—	
E Gove Outturn Statement Qty.		MT	57,791	57,791	
F Differential	D - E	MT	+229	—	
G Bill of Lading Date			14/3/75	—	
H Disch. Date Gove (Hoses Disc)			3/4/75	3/4/75	
I FOB Price Per BBL		US\$	10.132	—	(b)
J FOB Value	C × I	US\$	3,816,764.93	—	13/5/75
K Exchange Rate	US\$ = A\$	(a)	1.3370	—	
L FOB Value	J ÷ K	A\$	2,854,723.21	—	
M FOB Cost/Tonne	L ÷ D	A\$	49.202	—	
N MHTC L/C Fee	0.25% × J	US\$	9,543.91	—	(c)
O Exchange Rate	US\$ = A\$	(a)	1.3367	—	13/5/75
P MHTC L/C Fee Value	N ÷ O	A\$	7,143.00	—	
Q MHTC L/C Fee/Tonne	P ÷ D	A\$	0.123	—	
R Insurance—Charterer's Liability	A\$0.10 × B	A\$	3,447.90	—	(k)
S Insurance—Charterer's Liability/Tonne	R ÷ D	A\$	0.059	—	31/12/75
T Insurance—Marine 0.045% War Risk 0.01875% .. .. .	.06375% × L	A\$	1,765.35	—	4/7/75
U Insurance—Marine/War Risk/Tonne	T ÷ D	A\$	0.030	—	
V Total Cargo Value (Excl. Freight Costs)	L+P+R+T	A\$	2,867,079.46	—	
W Cargo Cost/Tonne (Excl. Freight Costs)	M+Q+S+U	A\$	49.414	—	
X Actual Freight/Tonne		US\$	13.25132	—	(d)
Y Freight Value	X × D	US\$	768,834.79	—	3/4/75
Z Exchange Rate	US\$ = A\$	(a)	1.3495	—	
1 Freight Value	Y ÷ Z	A\$	569,733.14	—	
2 Freight Cost/Tonne	1 ÷ D	A\$	9.820	—	(e)
3 Demurrage Value		US\$	12,077.44	—	21/7/75
4 Exchange Rate	US\$=A\$	(a)	1.3047	—	
5 Demurrage Value	3 ÷ 4	A\$	9,258.87	—	

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Exhibit AE
 Plaintiff's
 schedules of
 costs

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
VOYAGE No. 6

	Method		KNPC/Concord	BPA	Invoice Payment Date
6 Demurrage Cost/Tonne	5 ÷ D	A\$	0.160	—	
7 Survey Fee/Tonne		US\$	0.028542	—	(f)
8 Survey Value	7 × D	US\$	1,655.99	—	21/4/75
9 Exchange Rate	US\$ = A\$		(a) 1.3421	—	
10 Survey Value	8 ÷ 9	A\$	1,233.88	—	
11 Survey Cost/Tonne	10 ÷ D	A\$	0.021	—	
12 Total Freight Value	1+5+10	A\$	580,225.89	—	
13 Total Freight Cost/Tonne	2+6+11	A\$	10.001	—	
14 BP—Base Contract Price/Tonne		A\$	—	9.42	(h)
15 BP—Cargo Value	14 × E	A\$	—	544,391.22	1/7/75
16 BP—Freight AFRA Adjustment/Tonne		A\$	—	(i) 3.98	(h)
17 BP—Freight Adjustment Value	17 × E	A\$	—	230,008.18	1/7/75
18 Total Delivered Gove—Value		A\$	V + 12 3,447,305.35	15 + 17 774,399.40	(j)
19 Total Delivered Gove Cost/Tonne		A\$	W + 13 59.415	14 + 16 13.40	
20 Excess Cost to Nabalco		A\$	2,672,905.95		

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD
TO BP AUSTRALIA 17/11/75
VOYAGE NO. 6

Exhibit AE
Plaintiff's
schedules of
costs

NOTES

— *Actual*

- (a) Each exchange rate is that rate quoted when each payment is made.
- (b) Payment by IRREVOC. L/C—60 days after Bill of Lading date.
- (c) Payment by telegraphic transfer—60 days after Bill of Lading date.
- (d) Payment by telegraphic transfer on receipt of cargo at Gove.
- 10 (e) Payment by telegraphic transfer after verifying demurrage statement.
- (f) Payment by Bank Draft on receipt of invoice.
- (g) Actual premium paid is calculated on basis FOB cargo value in US\$ converted to CAN\$ and premium in CAN\$ is converted to A\$ for invoice purposes at the A\$/CAN\$ rate ruling at the Bill of Lading date.

— *Assumption*

- (h) Payment by cheque—90 days after receipt of cargo at Gove.
- (i) Freight adjustment as per BP's Cross Claim APPENDIX C 31/10/75.
- (j) BP invoices Nabalco for OUTTURN STATEMENT quantity.
- (k) Not invoiced—assume payment will be made on 31/12/75.

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
VOYAGE No. 7

	Method		KNPC/Concord	BPA	Invoice Payment Date
A Vessel Name			FRANCES HAMMER		
B Gross Registered Tonnage		LT	34,886	—	
C Bill of Lading Qty.		BBL	397,063	—	
D Bill of Lading Qty.		MT	60,929	—	
E Gove Outturn Statement Qty.		MT	60,689	60,689	
F Differential	D - E	MT	+ 240	—	
G Bill of Lading Date			27/5/75	—	
H Disch. Date Gove (Hoses Disc)			16/6/75	16/6/75	
I FOB Price Per BBL		US\$	10.132	—	(b)
J FOB Value	C × I	US\$	4,023,042.32	—	28/7/75
K Exchange Rate	US\$ = A\$	(a)	1.3020	—	
L FOB Value	J ÷ K	A\$	3,089,894.25	—	
M FOB Cost/Tonne	L ÷ D	A\$	50.713	—	
N MHTC L/C Fee	0.25% × J	US\$	10,059.21	—	(c)
O Exchange Rate	US\$ = A\$	(a)	1.3017	—	28/7/75
P MHTC L/C Fee Value	N ÷ O	A\$	7,731.54	—	
Q MHTC L/C Fee/Tonne	P ÷ D	A\$	0.127	—	
R Insurance—Charterer's Liability	A\$0.10 × B	A\$	3,488.60	—	24/10/75
S Insurance—Charterer's Liability/Tonne	R ÷ D	A\$	0.057	—	
T Insurance—Marine 0.045% War Risk 0.01875% .. .. .	.06375% × L	A\$	(g) 1,872.58	—	5/8/75
U Insurance—Marine/War Risk/Tonne	T ÷ D	A\$	0.031	—	
V Total Cargo Value (Excl. Freight Costs)	L+P+R+T	A\$	3,102,986.97	—	
W Cargo Cost/Tonne (Excl. Freight Costs)	M+Q+S+U	A\$	50.928	—	
X Actual Freight/Tonne		US\$	13.25132	—	(d)
Y Freight Value	X × D	US\$	807,395.69	—	18/6/75
Z Exchange Rate	US\$ = A\$	(a)	1.3346	—	
1 Freight Value	Y ÷ Z	A\$	604,974.04	—	
2 Freight Cost/Tonne	1 ÷ D	A\$	9.929	—	(e)
3 Demurrage Value		US\$	11,447.90	—	20/8/75
4 Exchange Rate	US\$ = A\$	(a)	1.2798	—	
5 Demurrage Value	3 ÷ 4	A\$	8,947.07	—	

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
 VOYAGE No. 7

	Method		KNPC/Concord	BPA	Invoice Payment Date
6 Demurrage Cost/Tonne	5 ÷ D	A\$	0.147	—	
7 Survey Fee/Tonne		US\$	0.028542	—	(f)
8 Survey Value	7 × D	US\$	1,739.04	—	27/6/75
9 Exchange Rate	US\$ = A\$	(a)	1.3265	—	
10 Survey Value	8 ÷ 9	A\$	1,310.99	—	
11 Survey Cost/Tonne	10 ÷ D	A\$	0.022	—	
12 Total Freight Value	1+5+10	A\$	615,232.10	—	
13 Total Freight Cost/Tonne	2+6+11	A\$	10.098	—	
14 BP—Base Contract Price/Tonne		A\$	—	9.42	(h)
15 BP—Cargo Value	14 × E	A\$	—	571,690.38	15/9/75
16 BP—Freight AFRA Adjustment/Tonne		A\$	—	(i) 3.98	(h)
17 BP—Freight Adjustment Value	17 × E	A\$	—	241,542.22	15/9/75
18 Total Delivered Gove—Value		A\$	V + 12 3,718,219.07	15 + 17 813,232.60	(j)
19 Total Delivered Gove Cost/ Tonne		A\$	W + 13 61.026	14 + 16 13.40	
20 Excess Cost to Nabalco		A\$	2,904,986.47		

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FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD
TO BP AUSTRALIA 17/11/75
VOYAGE NO. 7

NOTES

— *Actual*

- (a) Each exchange rate is that rate quoted when payment is made.
- (b) Payment by IRREVOC. L/C—60 days after Bill of Lading date.
- (c) Payment by telegraphic transfer—60 days after Bill of Lading date.
- (d) Payment by telegraphic transfer on receipt of cargo at Gove.
- (e) Payment by telegraphic transfer after verifying demurrage statement. 10
- (f) Payment by Bank Draft on receipt of invoice.
- (g) Actual premium paid is calculated on basis FOB cargo value in US\$ converted to CAN\$ and premium in CAN\$ is converted to A\$ for invoice purposes at the A\$/CAN\$ rate ruling at the Bill of Lading date.

— *Assumption*

- (h) Payment by cheque—90 days after receipt of cargo at Gove.
- (i) Freight adjustment as per BP's Cross Claim APPENDIX C 31/10/75.
- (j) BP invoices Nabalco for OUTTURN STATEMENT quantity.

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
 VOYAGE No. 8

	Method		KNPC/Concord	BPA	Invoice Payment Date
A Vessel Name			FRANCES HAMMER		
B Gross Registered Tonnage		LT	34,886	—	
C Bill of Lading Qty.		BBL	388,916	—	
D Bill of Lading Qty.		MT	59,734	—	
E Gove Outturn Statement Qty.		MT	59,993	59,993	
F Differential	D - E	MT	-259	—	
G Bill of Lading Date			14/7/75	—	
H Disch. Date Gove (Hoses Disc)			9/8/75	9/8/75	
I FOB Price Per BBL		US\$	10.132	—	(b)
J FOB Value	C × I	US\$	3,940,496.91	—	12/9/75
K Exchange Rate	US\$ = A\$	(a)	1.2765	—	
L FOB Value	J ÷ K	A\$	3,086,954.10	—	
M FOB Cost/Tonne	L ÷ D	A\$	51.678	—	
N MHTC L/C Fee	0.25% × J	US\$	9,851.24	—	(c)
O Exchange Rate	US\$ = A\$	(a)	1.2762	—	12/9/75
P MHTC L/C Fee Value	N ÷ O	A\$	7,723.00	—	
Q MHTC L/C Fee/Tonne	P ÷ D	A\$	0.129	—	
R Insurance—Charterer's Liability	A\$0.10 × B	A\$	3,488.60	—	(k)
S Insurance—Charterer's Liability/Tonne	R ÷ D	A\$	0.058	—	31/12/75
T Insurance—Marine 0.045% War Risk 0.01875% .. .. .	.06375% × L	A\$	1,853.92	—	24/10/75
U Insurance—Marine/War Risk/Tonne	T ÷ D	A\$	0.0310	—	
V Total Cargo Value (Excl. Freight Costs)	L+P+R+T	A\$	3,100,019.62	—	
W Cargo Cost/Tonne (Excl. Freight Costs)	M+Q+S+U	A\$	51.896	—	
X Actual Freight/Tonne		US\$	13.25132	—	(d)
Y Freight Value	X × D	US\$	791,548.56	—	11/8/75
Z Exchange Rate	US\$ = A\$	(a)	1.2760	—	
1 Freight Value	Y ÷ Z	A\$	620,335.86	—	
2 Freight Cost/Tonne	1 ÷ D	A\$	10,385	—	(g)
3 Demurrage Value		US\$	13,504.06	—	30/11/75
4 Exchange Rate	US\$ = A\$	(l)	1.2609	—	
5 Demurrage Value	3 ÷ 4	A\$	10,709.86	—	

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Exhibit AE
 Plaintiff's
 schedules of
 costs

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
VOYAGE No. 8

	Method		KNPC/Concord	BPA	Invoice Payment Date
6 Demurrage Cost/Tonne	5 ÷ D	A\$	0.179	—	
7 Survey Fee/Tonne		US\$	0.028542	—	(e)
8 Survey Value	7 × D	US\$	1,704.91	—	20/8/75
9 Exchange Rate	US\$ = A\$	(a)	1.2798	—	
10 Survey Value	8 ÷ 9	A\$	1,332.17	—	
11 Survey Cost/Tonne	10 ÷ D	A\$	0.022	—	
12 Total Freight Value	1+5+10	A\$	632,377.89	—	
13 Total Freight Cost/Tonne	2+6+11	A\$	10.586	—	
14 BP—Base Contract Price/Tonne		A\$	—	9.42	(h)
15 BP—Cargo Value	14 × E	A\$	—	565,134.06	6/11/75
16 BP—Freight AFRA Adjustment/Tonne		A\$	—	(i) 4.26	(h)
17 BP—Freight Adjustment Value	17 × E	A\$	—	255,570.18	6/11/75
18 Total Delivered Gove—Value		A\$	V + 12 3,732,397.51	15 + 17 820,704.24	(j)
19 Total Delivered Gove Cost/Tonne		A\$	W + 13 62.482	14 + 16 13.68	
20 Excess Cost to Nabalco		A\$	2,911,693.27		

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD
TO BP AUSTRALIA 17/11/75
VOYAGE NO. 8

Exhibit AE
Plaintiff's
schedules of
costs

NOTES

— *Actual*

- (a) Each exchange rate is that rate quoted when each payment is made.
- (b) Payment by IRREVOC. L/C—60 days after Bill of Lading date.
- (c) Payment by telegraphic transfer—60 days after Bill of Lading date.
- (d) Payment by telegraphic transfer on receipt of cargo at Gove.
- 10 (e) Payment by Bank Draft on receipt of invoice.
- (f) Actual premium paid is calculated on basis FOB cargo value in US\$ converted to CAN\$ and premium in CAN\$ is converted to A\$ for invoice purposes at the A\$/CAN\$ rate ruling at the Bill of Lading date.

— *Assumption*

- (g) Not paid—pending validation by Nabalco.
- (h) Payment by cheque—90 days after receipt of cargo at Gove.
- (i) Freight adjustment as per BP's Cross Claim APPENDIX C 31/10/75.
- (j) BP invoices Nabalco for OUTTURN STATEMENT quantity.
- (k) Not invoiced—assume payment will be made 31/12/75.
- 20 (l) Assume payment 30/11/75 exchange rate ruling 17/11/75.

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
VOYAGE No. 9

	Method		KNPC/Concord	BPA	Invoice Payment Date
A Vessel Name			MIKTON	—	
B Gross Registered Tonnage		LT	N/A	—	
C Bill of Lading Qty.		BBL	172,438	—	
D Bill of Lading Qty.		MT	26,650	—	
E Gove Outturn Statement Qty.		MT	26,501	26,501	
F Differential	D - E	MT	+ 149	—	
G Bill of Lading Date			16/9/75	—	
H Disch. Date Gove (Hoses Disc)			9/10/75	9/10/75	
I FOB Price Per BBL		US\$	10.112	—	(b)
J FOB Value	$C \times I$	US\$	1,743,693.06	—	17/11/75
K Exchange Rate	$US\$ = A\$$	(a)	1.2612	—	
L FOB Value	$J \div K$	A\$	1,382,566.65	—	
M FOB Cost/Tonne	$L \div D$	A\$	51.879	—	
N MHTC L/C Fee	$0.25\% \times J$	US\$	4,361.28	—	(c)
O Exchange Rate	$US\$ = A\$$	(a)	1.2577	—	18/11/75
P MHTC L/C Fee Value	$N \div O$	A\$	3,471.46	—	
Q MHTC L/C Fee/Tonne	$P \div D$	A\$	0.130	—	
R Insurance—Charterer's Liability	$A\$0.10 \times B$	A\$	N/A	—	
S Insurance—Charterer's Liability/Tonne	$R \div D$	A\$	—	—	(k)
T Insurance—Marine 0.045% War Risk 0.01875%	$.06375\% \times L$	A\$	(g) 853.44	—	31/12/75
U Insurance—Marine/War Risk/Tonne	$T \div D$	A\$	0.032	—	
V Total Cargo Value (Excl. Freight Costs)	$L+P+R+T$	A\$	1,386,891.55	—	
W Cargo Cost/Tonne (Excl. Freight Costs)	$M+Q+S+U$	A\$	52.041	—	
X Actual Freight/Tonne		US\$	13.25132	—	(d)
Y Freight Value	$X \times D$	US\$	353,147.26	—	10/10/75
Z Exchange Rate	$US\$ = A\$$	(a)	1.2593	—	
1 Freight Value	$Y \div Z$	A\$	280,437.00	—	
2 Freight Cost/Tonne	$1 \div D$	A\$	10.523	—	
3 Demurrage Value		US\$	NIL	—	(e)
4 Exchange Rate	$US\$ = A\$$		NIL	—	NIL
5 Demurrage Value	$3 \div 4$	A\$	NIL	—	

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
 VOYAGE No. 9

	Method		KNPC/Concord	BPA	Invoice Payment Date
6 Demurrage Cost/Tonne	5 ÷ D	A\$	NIL	—	
7 Survey Fee/Tonne		US\$	0.028542	—	(f)
8 Survey Value	7 × D	US\$	760.64	—	9/10/75
9 Exchange Rate	US\$ = A\$	(a)	1.2590	—	
10 Survey Value	8 ÷ 9	A\$	604.16	—	
11 Survey Cost/Tonne	10 ÷ D	A\$	0.023	—	
12 Total Freight Value	1+5+10	A\$	281,041.16	—	
13 Total Freight Cost/Tonne	2+6+11	A\$	10.546	—	
14 BP—Base Contract Price/Tonne		A\$	—	9.42	(h)
15 BP—Cargo Value	14 × E	A\$	—	249,639.42	6/1/76
16 BP—Freight AFRA Adjustment/Tonne		A\$	—	(i) 4.26	(h)
17 BP—Freight Adjustment Value	17 × E	A\$	—	112,894.26	6/1/76
18 Total Delivered Gove—Value		A\$	V + 12 1,667,932.71	15 + 17 362,533.68	(j)
19 Total Delivered Gove Cost/Tonne		A\$	W + 13 62,587	14 + 16 13.68	
20 Excess Cost to Nabalco		A\$	1,305,399.03		

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD
TO BP AUSTRALIA 17/11/75
VOYAGE NO. 9

NOTES

— *Actual*

- (a) Each exchange rate is that rate quoted when each payment is made.
- (b) Payment by IRREVOC. L/C—60 days after Bill of Lading date.
- (c) Payment by telegraphic transfer—60 days after Bill of Lading date.
- (d) Payment by telegraphic transfer on receipt of cargo at Gove.
- (e) Demurrage claim not expected.
- (f) Payment by Bank Draft on receipt of invoice.

10

— *Assumption*

- (g) Actual premium paid is calculated on basis FOB cargo value in US\$ converted to CAN\$ and the premium in CAN\$ is converted to A\$ for invoice purposes at the A\$/CAN\$ rate ruling at the Bill of Lading date.
- (h) Payment by cheque—90 days after receipt of cargo at Gove.
- (i) Freight adjustment as per BP's Cross Claim APPENDIX C 31/10/75.
- (j) BP invoices Nabalco for OUTTURN STATEMENT quantity.
- (k) Not yet officially invoiced—assume payment on 31/12/75.

N/A Not applicable. From and including Voyage 9 Charterers Liability Insurance is no longer paid by Nabalco. Concord have agreed to cover Nabalco at no cost to Nabalco. 20

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
 VOYAGE No. 10

	Method		KNPC/Concord	BPA	Invoice Payment Date
A Vessel Name			RUSSEL H. GREEN	—	
B Gross Registered Tonnage		LT	N/A	—	
C Bill of Lading Qty.		BBL	391,340	—	
D Bill of Lading Qty.		MT	60,761	—	
E Gove Outturn Statement Qty.		MT	60,331	60,331	
F Differential	D - E	MT	+430	—	
G Bill of Lading Date			8/10/75	—	
H Disch. Date Gove (Hoses Disc)			3/11/75	3/11/75	
I FOB Price Per BBL		US\$	(h) 10.112	—	(d)
J FOB Value	C × I	US\$	3,957,230.08	—	8/12/75
K Exchange Rate	US\$ = A\$	(f)	1.2612	—	
L FOB Value	J ÷ K	A\$	3,137,670.54	—	
M FOB Cost/Tonne	L ÷ D	A\$	51.640	—	(e)
N MHTC L/C Fee	0.25% × J	US\$	9,895.84	—	8/12/75
O Exchange Rate	US\$ = A\$	(g)	1.2609	—	
P MHTC L/C Fee Value	N ÷ O	A\$	7,848.24	—	
Q MHTC L/C Fee/Tonne	P ÷ D	A\$	0.129	—	
R Insurance—Charterer's Liability	A\$0.10 × B	A\$	N/A	—	
S Insurance—Charterer's Liability/Tonne	R ÷ D	A\$	—	—	
T Insurance—Marine 0.045% War Risk 0.01875% .. .. .	.06375% × L	A\$	(i) 2,000.26	—	(j)
U Insurance—Marine/War Risk/Tonne	T ÷ D	A\$	0.033	—	18/1/76
V Total Cargo Value (Excl. Freight Costs)	L+P+R+T	A\$	3,147,519.04	—	
W Cargo Cost/Tonne (Excl. Freight Costs)	M+Q+S+U	A\$	51.802	—	
X Actual Freight/Tonne		US\$	(k) 13.25132	—	(b)
Y Freight Value	X × D	US\$	805,160.66	—	7/11/75
Z Exchange Rate	US\$ = A\$	(a)	1.2677	—	
1 Freight Value	Y ÷ Z	A\$	635,137.02	—	
2 Freight Cost/Tonne	1 ÷ D	A\$	10.453	—	(m)
3 Demurrage Value		US\$	(l) 14,671.14	—	7/1/76
4 Exchange Rate	US\$ = A\$	(g)	1.2609	—	
5 Demurrage Value	3 ÷ 4	A\$	11,635.45	—	

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
VOYAGE No. 10

	Method		KNPC/Concord	BPA	Invoice Payment Date
6 Demurrage Cost/Tonne	5 ÷ D	A\$	0.191	—	
7 Survey Fee/Tonne		US\$	0.028542	—	(c)
8 Survey Value	7 × D	US\$	1,734.23	—	6/11/75
9 Exchange Rate	US\$ = A\$		(a) 1.2660	—	
10 Survey Value	8 ÷ 9	A\$	1,369.85	—	
11 Survey Cost/Tonne	10 ÷ D	A\$	0.023	—	
12 Total Freight Value	1+5+10	A\$	648,142.32	—	
13 Total Freight Cost/Tonne	2+6+11	A\$	10.667	—	
14 BP—Base Contract Price/Tonne		A\$	—	9.42	(n)
15 BP—Cargo Value	14 × E	A\$	—	568,318.02	2/2/76
16 BP—Freight AFRA Adjustment/Tonne		A\$	—	(o) 4.26	(n)
17 BP—Freight Adjustment Value	17 × E	A\$	—	257,010.06	2/2/76
18 Total Delivered Gove—Value		A\$	V + 12 3,795,661.36	15 + 17 825,328.08	(p)
19 Total Delivered Gove Cost/Tonne		A\$	W + 13 62.469	14 + 16 13.68	
20 Excess Cost to Nabalco		A\$	2,970,333.28		

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD
TO BP AUSTRALIA 17/11/75
VOYAGE NO. 10

Exhibit AE
Plaintiff's
schedules of
costs

NOTES

—Actual

- (a) Exchange rate is that rate quoted when payment is made.
 (b) Payment by telegraphic transfer on receipt of cargo in Gove.
 (c) Payment by Bank Draft on receipt of invoice.
 (d) Payment by IRREVOC. L/C—60 days after Bill of Lading date.
 10 (e) Payment by telegraphic transfer—60 days after Bill of Lading date.

—Assumption

- (f) Preferential exchange rate as at 17/11/75.
 (g) Official exchange rate as at 17/11/75.
 (h) KNPC has advised by telex 28/10/75 that invoice price per barrel is US\$10.287. However invoice dated 18/10/75 states price US\$10.112.
 (i) Not invoiced—assume A\$/CAN\$ exchange rate same as A\$/CAN\$ exchange rate at 17/11/75.
 (j) Payment date—103 days after Bill of Lading date (as per voyage 8).
 20 (k) Due increase in World Scale 100 from US\$8.16 to US\$8.21 per 1.t. Concord invoiced new rate. However Nabalco has requested Concord by letter 30/10/75 to reconsider and not apply the increase. It is assumed that the lower figure now applies.
 (l) Demurrage based on average NET Laytime used in Gove for nominal 60,000 tonne cargoes for Voyages 4, 5, 6, and 7. i.e. : 58 hours (re particulars to Pritchard on 11/11/75 Page 4.). Therefore, average demurrage is 22 hours (58–36 hours laytime allowed for discharge) or 0.91666 days. As Russel H. Green summer Dwt is 63,442 = US\$9,700 per day which at WS165 = US\$16,005 per day or pro rata. Average demurrage value = US\$16,005 × 0.91666 = US\$14,671.14.
 30 (m) Payment date—66 days after discharge date at Gove (as per Voyage 7).
 (n) Payment by cheque—90 days after receipt of cargo at Gove.
 (o) Freight adjustment as per BP's Cross Claim APPENDIX C 31/10/75.
 (p) BP invoices Nabalco for OUTTURN STATEMENT quantity.
 N/A Not applicable. From and including Voyage 9 Charterers Liability Insurance is no longer paid by Nabalco. Concord have agreed to cover Nabalco at no cost to Nabalco.

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
VOYAGE No. 1 Demurrage Excluded

	Method		KNPC/Concord	BPA	Invoice Payment Date
A Vessel Name			NAI GINO	—	
B Gross Registered Tonnage		LT	28,695	—	
C Bill of Lading Qty.		BBL	231,086	—	
D Bill of Lading Qty.		MT	35,245	—	
E Gove Outturn Statement Qty.		MT	35,074	35,074	
F Differential	D - E	MT	+ 171	—	
G Bill of Lading Date			27/7/74	—	
H Disch. Date Gove (Hoses Disc)			17/8/74	17/8/74	
I FOB Price Per BBL		US\$	9.278	—	(b)
J FOB Value	C × I	US\$	2,144,015.91	—	25/9/74
K Exchange Rate	US\$ = A\$	(a)	1.3068	—	
L FOB Value	J ÷ K	A\$	1,640,661.09	—	
M FOB Cost/Tonne	L ÷ D	A\$	46.550	—	
N MHTC L/C Fee	0.25% × J	US\$	5,364.24	—	(c)
O Exchange Rate	US\$ = A\$	(a)	1.3067	—	26/9/74
P MHTC L/C Fee Value	N ÷ O	A\$	4,107.38	—	
Q MHTC L/C Fee/Tonne	P ÷ D	A\$	0.117	—	
R Insurance—Charterer's Liability	A\$0.10 × B	A\$	2,869.50	—	13/5/75
S Insurance—Charterer's Liability/Tonne	R ÷ D	A\$	0.081	—	
T Insurance—Marine 0.045% War Risk 0.01875% .. .. .	.06375% × L	A\$	(f) 920.41	—	10/12/74
U Insurance—Marine/War Risk/Tonne	T ÷ D	A\$	0.026	—	
V Total Cargo Value (Excl. Freight Costs)	L+P+R+T	A\$	1,648,558.38	—	
W Cargo Cost/Tonne (Excl. Freight Costs)	M+Q+S+U	A\$	46.774	—	
X Actual Freight/Tonne		US\$	10.91247	—	(d)
Y Freight Value	X × D	US\$	384,609.98	—	16/8/74
Z Exchange Rate	US\$ = A\$	(a)	1.4853	—	
1 Freight Value	Y ÷ Z	A\$	258,948.22	—	
2 Freight Cost/Tonne	1 ÷ D	A\$	7.347	—	
3 Demurrage Value		US\$	NIL	—	NIL
4 Exchange Rate	US\$ = A\$		NIL	—	
5 Demurrage Value	3 ÷ 4	A\$	NIL	—	

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
 VOYAGE No. 1 Demurrage Excluded

	Method		KNPC/Concord	BPA	Invoice Payment Date
6 Demurrage Cost/Tonne	5 ÷ D	A\$	NIL	—	
7 Survey Fee/Tonne		US\$	0.028542	—	(e)
8 Survey Value	7 × D	US\$	1,005.95	—	17/9/74
9 Exchange Rate	US\$ = A\$		(a) 1.485	—	
10 Survey Value	8 ÷ 9	A\$	677.41	—	
11 Survey Cost/Tonne	10 ÷ D	A\$	0.019	—	
12 Total Freight Value	1+5+10	A\$	259,625.63	—	
13 Total Freight Cost/Tonne	2+6+11	A\$	7.366	—	
14 BP—Base Contract Price/Tonne		A\$	—	9.42	(g)
15 BP—Cargo Value	14 × E	A\$	—	330,397.08	14/11/74
16 BP—Freight AFRA Adjustment/Tonne		A\$	—	(h) 3.97	(g)
17 BP—Freight Adjustment Value	17 × E	A\$	—	139,243.78	14/11/74
18 Total Delivered Gove—Value		A\$	V + 12 1,908,184.01	15 + 17 469,640.86	(i)
19 Total Delivered Gove Cost/Tonne		A\$	W + 13 54.140	14 + 16 13.390	
20 Excess Cost to Nabalco		A\$	1,438,543.15		

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD
TO BP AUSTRALIA 17/11/75
VOYAGE NO. 1

NOTES

— *Actual*

- (a) Each exchange rate is that rate quoted when each payment is made.
- (b) Payment by IRREVOC L/C—60 days after Bill of Lading date.
- (c) Payment by telegraphic transfer—60 days after Bill of Lading date.
- (d) Payment by telegraphic transfer on receipt of cargo at Gove.
- (e) Payment by Bank Draft on receipt of invoice.
- (f) Actual premium paid is calculated on basis FOB cargo value in US\$ converted to CAN\$ and premium in CAN\$ is converted to A\$ for invoice purposes at the A\$/CAN\$ rate ruling at the Bill of Lading date.

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— *Assumption*

- (g) Payment by cheque—90 days after receipt of cargo at Gove.
- (h) Freight adjustment as per BP's Cross Claim APPENDIX C 31/10/75.
- (i) BP invoices Nabalco for OUTTURN STATEMENT quantity.

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
 VOYAGE No. 2 Demurrage Excluded

	Method		KNPC/Concord	BPA	Invoice Payment Date
A Vessel Name			NAI GINO	—	
B Gross Registered Tonnage		LT	28,695	—	
C Bill of Lading Qty.		BBL	249,235	—	
D Bill of Lading Qty.		MT	38,010	—	
E Gove Outturn Statement Qty.		MT	37,965	37,965	
F Differential	D - E	MT	+45	—	
G Bill of Lading Date			5/9/74	—	
H Disch. Date Gove (Hoses Disc)			28/9/74	28/9/74	
I FOB Price Per BBL		US\$	9.278	—	(b)
J FOB Value	C × I	US\$	2,312,402.33	—	4/11/74
K Exchange Rate	US\$ = A\$	(a)	1.3092	—	
L FOB Value	J ÷ K	A\$	1,766,271.26	—	
M FOB Cost/Tonne	L ÷ D	A\$	46.469	—	
N MHTC L/C Fee	0.25% × J	US\$	5,782.75	—	(c)
O Exchange Rate	US\$ = A\$	(a)	1.3103	—	5/11/74
P MHTC L/C Fee Value	N ÷ O	A\$	4,422.10	—	
Q MHTC L/C Fee/Tonne	P ÷ D	A\$	0.116	—	
R Insurance—Charterer's Liability	A\$0.10 × B	A\$	2,869.50	—	13/5/75
S Insurance—Charterer's Liability/Tonne	R ÷ D	A\$	0.075	—	
T Insurance—Marine 0.045% War Risk 0.01875% .. .. .	.06375% × L	A\$	1,128.76	—	10/12/74
U Insurance—Marine/War Risk/Tonne	T ÷ D	A\$	0.030	—	
V Total Cargo Value (Excl. Freight Costs)	L+P+R+T	A\$	1,774,691.62	—	
W Cargo Cost/Tonne (Excl. Freight Costs)	M+Q+S+U	A\$	46.690	—	
X Actual Freight/Tonne		US\$	10.79264	—	(d)
Y Freight Value	X × D	US\$	410,228.34	—	27/9/74
Z Exchange Rate	US\$ = A\$	(a)	1.3066	—	
1 Freight Value	Y ÷ Z	A\$	313,966.28	—	
2 Freight Cost/Tonne	1 ÷ D	A\$	8.260	—	
3 Demurrage Value		US\$	NIL	—	NIL
4 Exchange Rate	US\$ = A\$		NIL	—	
5 Demurrage Value	3 ÷ 4	A\$	NIL	—	

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Exhibit AE
 Plaintiff's
 schedules of
 costs

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
VOYAGE No. 2 Demurrage Excluded

	Method		KNPC/Concord	BPA	Invoice Payment Date
6 Demurrage Cost/Tonne	5 ÷ D	A\$	NIL	—	
7 Survey Fee/Tonne		US\$	0.028542	—	(e)
8 Survey Value	7 × D	US\$	1,084.89	—	15/11/74
9 Exchange Rate	US\$ = A\$		(a) 1.3153	—	
10 Survey Value	8 ÷ 9	A\$	824.82	—	
11 Survey Cost/Tonne	10 ÷ D	A\$	0.022	—	
12 Total Freight Value	1+5+10	A\$	314,791.10	—	
13 Total Freight Cost/Tonne	2+6+11	A\$	8.282	—	
14 BP—Base Contract Price/Tonne		A\$	—	9.42	(g)
15 BP—Cargo Value	14 × E	A\$	—	357,630.30	27/12/74
16 BP—Freight AFRA Adjustment/Tonne		A\$	—	(h) 3.97	(g)
17 BP—Freight Adjustment Value	17 × E	A\$	—	150,721.05	27/12/74
18 Total Delivered Gove—Value		A\$	V + 12 2,089,482.72	15 + 17 508,351.35	(i)
19 Total Delivered Gove Cost/Tonne		A\$	W + 13 54.972	14 + 16 13.390	
20 Excess Cost to Nabalco		A\$	1,581,131.37		

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD
TO BP AUSTRALIA 17/11/75
VOYAGE NO. 2

Exhibit AE
Plaintiff's
schedules of
costs

NOTES

— *Actual*

- (a) Each exchange rate is that rate quoted when each payment is made.
- (b) Payment by IRREVOC L/C—60 days after Bill of Lading date.
- (c) Payment by telegraphic transfer—60 days after Bill of Lading date.
- (d) Payment by telegraphic transfer on receipt of cargo at Gove.
- 10 (e) Payment by Bank Draft on receipt of invoice.
- (f) Actual premium paid is calculated on basis FOB cargo value in US\$ converted to CAN\$ and premium in CAN\$ is converted to A\$ for invoice purposes at the A\$/CAN\$ rate ruling at the Bill of Lading date.

— *Assumption*

- (g) Payment by cheque—90 days after receipt of cargo at Gove.
- (h) Freight adjustment as per BP's Cross Claim APPENDIX C 31/10/75.
- (i) BP invoices Nabalco for OUTTURN STATEMENT quantity.

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
VOYAGE No. 3 Demurrage Excluded

	Method		KNPC/Concord	BPA	Invoice Payment Date
A Vessel Name			MIKTON	—	
B Gross Registered Tonnage		LT	18,889	—	
C Bill of Lading Qty.		BBL	176,033	—	
D Bill of Lading Qty.		MT	27,104	—	
E Gove Outturn Statement Qty.		MT	26,580	26,580	
F Differential	D - E	MT	+ 524	—	
G Bill of Lading Date			24/10/74	—	
H Disch. Date Gove (Hoses Disc)			14/11/74	14/11/74	
I FOB Price Per BBL		US\$	9.622	—	(b)
J FOB Value	C × I	US\$	1,693,789.53	—	23/12/74
K Exchange Rate	US\$ = A\$	(a)	1.3178	—	
L FOB Value	J ÷ K	A\$	1,285,322.68	—	
M FOB Cost/Tonne	L ÷ D	A\$	47.422	—	
N MHTC L/C Fee	0.25% × J	US\$	4,235.67	—	(c)
O Exchange Rate	US\$ = A\$	(a)	1.3178	—	23/12/74
P MHTC L/C Fee Value	N ÷ O	A\$	3,216.40	—	
Q MHTC L/C Fee/Tonne	P ÷ D	A\$	0.119	—	
R Insurance—Charterer's Liability	A\$0.10 × B	A\$	1,888.90	—	13/5/75
S Insurance—Charterer's Liability/Tonne	R ÷ D	A\$	0.070	—	
T Insurance—Marine 0.045% War Risk 0.01875% .. .. .	.06375% × L	A\$	(f) 825.41	—	13/5/75
U Insurance—Marine/War Risk/Tonne	T ÷ D	A\$	0.030	—	
V Total Cargo Value (Excl. Freight Costs)	L+P+R+T	A\$	1,291,253.39	—	
W Cargo Cost/Tonne (Excl. Freight Costs)	M+Q+S+U	A\$	47.641	—	
X Actual Freight/Tonne		US\$	11.36093	—	(d)
Y Freight Value	X × D	US\$	307,926.53	—	22/11/74
Z Exchange Rate	US\$ = A\$	(a)	1.3103	—	
1 Freight Value	Y ÷ Z	A\$	235,009.60	—	
2 Freight Cost/Tonne	1 ÷ D	A\$	8.671	—	
3 Demurrage Value		US\$	NIL	—	NIL
4 Exchange Rate	US\$ = A\$		NIL	—	
5 Demurrage Value	3 ÷ 4	A\$	NIL	—	

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
 VOYAGE No. 3 Demurrage Excluded

	Method		KNPC/Concord	BPA	Invoice Payment Date
6 Demurrage Cost/Tonne	5 ÷ D	A\$	NIL	—	
7 Survey Fee/Tonne		US\$	0.028542	—	(e)
8 Survey Value	7 × D	US\$	773.60	—	11/12/74
9 Exchange Rate	US\$ = A\$	(a)	1.3160	—	
10 Survey Value	8 ÷ 9	A\$	587.84	—	
11 Survey Cost/Tonne	10 ÷ D	A\$	0.022	—	
12 Total Freight Value	1+5+10	A\$	235,597.44	—	
13 Total Freight Cost/Tonne	2+6+11	A\$	8.693	—	
14 BP—Base Contract Price/Tonne		A\$	—	9.42	(g)
15 BP—Cargo Value	14 × E	A\$	—	250,383.60	21/1/75
16 BP—Freight AFRA Adjustment/Tonne		A\$	—	(h) 3.97	(g)
17 BP—Freight Adjustment Value	17 × E	A\$	—	105,522.60	21/1/75
18 Total Delivered Gove—Value		A\$	V + 12 1,526,850.83	15 + 17 355,906.20	(i)
19 Total Delivered Gove Cost/Tonne		A\$	W + 13 56.334	14 + 16 13.39	
20 Excess Cost to Nabalco		A\$	1,170,944.63		

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FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD
TO BP AUSTRALIA 17/11/75
VOYAGE NO. 3

NOTES

— *Actual*

- (a) Each exchange rate is that rate quoted when each payment is made.
- (b) Payment by IRREVOC L/C—60 days after Bill of Lading date.
- (c) Payment by telegraphic transfer—60 days after Bill of Lading date.
- (d) Payment by telegraphic transfer on receipt of cargo at Gove.
- (e) Payment by Bank Draft on receipt of invoice.
- (f) Actual premium paid is calculated on basis FOB cargo value in US\$ converted to CAN\$ and premium in CAN\$ is converted to A\$ for invoice purposes at the A\$/CAN\$ rate ruling at the Bill of Lading date.

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— *Assumption*

- (g) Payment by cheque—90 days after receipt of cargo at Gove.
- (h) Freight adjustment as per BP's Cross Claim APPENDIX C 31/10/75.
- (i) BP invoices Nabalco for OUTTURN STATEMENT quantity.

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
 VOYAGE No. 4 Demurrage Excluded

	Method		KNPC/Concord	BPA	Invoice Payment Date
A Vessel Name			RUSSEL H. GREEN	—	
B Gross Registered Tonnage		LT	34,837	—	
C Bill of Lading Qty.		BBL	401,580	—	
D Bill of Lading Qty.		MT	61,727	—	
E Gove Outturn Statement Qty.		MT	61,656	61,656	
F Differential	D - E	MT	+ 71	—	
G Bill of Lading Date			11/11/74	—	
H Disch. Date Gove (Hoses Disc)			2/12/74	2/12/74	
I FOB Price Per BBL		US\$	9.633	—	(b)
J FOB Value	C × I	US\$	3,868,420.14	—	3/1/75
K Exchange Rate	US\$ = A\$	(a)	1.3219	—	
L FOB Value	J ÷ K	A\$	2,926,409.00	—	
M FOB Cost/Tonne	L ÷ D	A\$	47.409	—	
N MHTC L/C Fee	0.25% × J	US\$	9,674.05	—	(c)
O Exchange Rate	US\$ = A\$	(a)	1.3256	—	10/1/75
P MHTC L/C Fee Value	N ÷ O	A\$	7,300.37	—	
Q MHTC L/C Fee/Tonne	P ÷ D	A\$	0.118	—	
R Insurance—Charterer's Liability	A\$0.10 × B	A\$	3,483.70	—	13/5/75
S Insurance—Charterer's Liability/Tonne	R ÷ D	A\$	0.056	—	
T Insurance—Marine 0.045% War Risk 0.01875% .. .. .	.06375% × L	A\$	1,881.81	—	13/5/75
U Insurance—Marine/War Risk/Tonne	T ÷ D	A\$	0.030	—	
V Total Cargo Value (Excl. Freight Costs)	L+P+R+T	A\$	2,939,074.88	—	
W Cargo Cost/Tonne (Excl. Freight Costs)	M+Q+S+U	A\$	47.613	—	
X Actual Freight/Tonne		US\$	9.92177	—	(d)
Y Freight Value	X × D	US\$	612,440.91	—	2/12/74
Z Exchange Rate	US\$ = A\$	(a)	1.3140	—	
1 Freight Value	Y ÷ Z	A\$	466,096.79	—	
2 Freight Cost/Tonne	1 ÷ D	A\$	7.551	—	(e)
3 Demurrage Value		US\$	39,288.83	—	10/11/75
4 Exchange Rate	US\$ = A\$	(a)	1.2662	—	
5 Demurrage Value	3 ÷ 4	A\$	18,737.70	—	

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Exhibit AE
 Plaintiff's
 schedules of
 costs

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
VOYAGE No. 4 Demurrage Excluded

	Method		KNPC/Concord	BPA	Invoice Payment Date
6 Demurrage Cost/Tonne	5 ÷ D	A\$	0.304	—	
7 Survey Fee/Tonne		US\$	0.028542	—	(f)
8 Survey Value	7 × D	US\$	1,761.81	—	13/1/75
9 Exchange Rate	US\$ = A\$	(a)	1.3256	—	
10 Survey Value	8 ÷ 9	A\$	1,329.07	—	
11 Survey Cost/Tonne	10 ÷ D	A\$	0.022	—	
12 Total Freight Value	1+5+10	A\$	486,163.56	—	
13 Total Freight Cost/Tonne	2+6+11	A\$	7.877	—	
14 BP—Base Contract Price/Tonne		A\$	—	9.42	(h)
15 BP—Cargo Value	14 × E	A\$	—	580,799.52	3/3/75
16 BP—Freight AFRA Adjustment/Tonne		A\$	—	(i) 3.97	(h)
17 BP—Freight Adjustment Value	17 × E	A\$	—	244,774.32	3/3/75
18 Total Delivered Gove—Value		A\$	V + 12 3,425,238.44	15 + 17 825,573.84	(j)
19 Total Delivered Gove Cost/Tonne		A\$	W + 13 55.490	14 + 16 13.39	
20 Excess Cost to Nabalco		A\$	2,599,664.60		

Alternatively if demurrage is to be excluded

12 becomes	467,425.86
13 becomes	7.573
18 becomes	3,406,500.74
19 becomes	55.186
20 becomes	2,580,926.90

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD
TO BP AUSTRALIA 17/11/75
VOYAGE NO. 4

Exhibit AE
Plaintiff's
schedules of
costs

NOTES

— *Actual*

- (a) Each exchange rate is that rate quoted when each payment is made
- (b) Payment by IRREVOC. L/C—60 days after Bill of Lading date.
- (c) Payment by telegraphic transfer—60 days after Bill of Lading date.
- (d) Payment by telegraphic transfer on receipt of cargo at Gove.
- 10 (e) Payment by telegraphic transfer after verifying demurrage statement.
- (f) Payment by Bank Draft on receipt of invoice.
- (g) Actual premium paid is calculated on basis FOB cargo value in US\$ converted to CAN\$ and premium in CAN\$ is converted to A\$ for invoice purposes at the A\$/CAN\$ rate ruling at the Bill of Lading date.

— *Assumption*

- (h) Payment by cheque—90 days after receipt of cargo at Gove.
- (i) Freight adjustment as per BP's Cross Claim APPENDIX C 31/10/75.
- (j) BP invoices Nabalco for OUTTURN STATEMENT quantity.
- 20 (k) Pending payment of US\$15,502.80 from KNPC. Under Article IV Section VI of Supply Agreement, Nabalco is entitled to claim demurrage in accordance with AFRA for month in which loading commenced and applicable to the size of the vessel. Accordingly, 41 hours 31 minutes or 1.72986 days demurrage has been claimed from KNPC based on AFRA 1/11/75 for 110.3. Due to differences between Concord and KNPC contracts in calculating demurrage Nabalco can only claim US\$15,502.80 from KNPC of the total US\$23,893.69 in fact paid to Concord for time lost at Shuaiba. Assume KNPC will pay Nabalco at exchange rate on 17/11/75 of A\$1 = US\$1.2609 (i.e.: US\$15,502.80 = A\$12,295.03) Therefore net value of demurrage paid by Nabalco is A\$18,737.70 (i.e.: A\$31,032.73—A\$12,295.03).

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
VOYAGE No. 5 Demurrage Excluded

	Method		KNPC/Concord	BPA	Invoice Payment Date
A Vessel Name			RUSSEL H. GREEN	—	
B Gross Registered Tonnage		LT	34,837	—	
C Bill of Lading Qty.		BBL	343,405	—	
D Bill of Lading Qty.		MT	52,893	—	
E Gove Outturn Statement Qty.		MT	52,975	52,975	
F Differential	D - E	MT	-82	—	
G Bill of Lading Date			2/1/75	—	
H Disch. Date Gove (Hoses Disc)			22/1/75	22/1/75	
I FOB Price Per BBL		US\$	10.132	—	(b)
J FOB Value	C × I	US\$	3,479,379.46	—	3/3/75
K Exchange Rate	US\$ = A\$	(a)	1.3641	—	
L FOB Value	J ÷ K	A\$	2,550,677.71	—	
M FOB Cost/Tonne	L ÷ D	A\$	48.223	—	(c)
N MHTC L/C Fee	0.25% × J	US\$	8,698.45	—	3/3/75
O Exchange Rate	US\$ = A\$	(a)	1.3638	—	
P MHTC L/C Fee Value	N ÷ O	A\$	6,380.30	—	
Q MHTC L/C Fee/Tonne	P ÷ D	A\$	0.121	—	
R Insurance—Charterer's Liability	A\$0.10 × B	A\$	3,483.70	—	13/5/75
S Insurance—Charterer's Liability/Tonne	R ÷ D	A\$	0.066	—	
T Insurance—Marine 0.045% War Risk 0.01875% .. .. .	.06375% × L	A\$	(g) 1,664.62	—	13/5/75
U Insurance—Marine/War Risk/Tonne	T ÷ D	A\$	0.031	—	
V Total Cargo Value (Excl. Freight Costs)	L+P+R+T	A\$	2,562,206.33	—	
W Cargo Cost/Tonne (Excl. Freight Costs)	M+Q+S+U	A\$	48.441	—	
X Actual Freight/Tonne		US\$	13.25132	—	(d)
Y Freight Value	X × D	US\$	700,895.45	—	24/1/75
Z Exchange Rate	US\$ = A\$	(a)	1.3350	—	
1 Freight Value	Y ÷ Z	A\$	525,021.62	—	
2 Freight Cost/Tonne	1 ÷ D	A\$	9.926	—	(e)
3 Demurrage Value		US\$	8,224.65	—	28/5/75
4 Exchange Rate	US\$ = A\$	(a)	1.3433	—	
5 Demurrage Value	3 ÷ 4	A\$	6,125.32	—	

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
 VOYAGE No. 5 Demurrage Excluded

	Method		KNPC/Concord	BPA	Invoice Payment Date
6 Demurrage Cost/Tonne	5 ÷ D	A\$	0.116	—	
7 Survey Fee/Tonne		US\$	0.028542	—	(f)
8 Survey Value	7 × D	US\$	1,509.65	—	26/3/75
9 Exchange Rate	US\$ = A\$	(a)	1.3528	—	
10 Survey Value	8 ÷ 9	A\$	1,115.94	—	
11 Survey Cost/Tonne	10 ÷ D	A\$	0.021	—	
12 Total Freight Value	1+5+10	A\$	532,262.88	—	
13 Total Freight Cost/Tonne	2+6+11	A\$	10.063	—	
14 BP—Base Contract Price/Tonne		A\$	—	9.42	(h)
15 BP—Cargo Value	14 × E	A\$	—	499,024.50	21/4/75
16 BP—Freight AFRA Adjustment/Tonne		A\$	—	(i) 3.98	(h)
17 BP—Freight Adjustment Value	17 × E	A\$	—	210,840.50	21/4/75
18 Total Delivered Gove—Value		A\$	V + 12 3,094,469.21	15 + 17 709,865.00	(j)
19 Total Delivered Gove Cost/Tonne		A\$	W + 13 58.504	14 + 16 13.40	
20 Excess Cost to Nabalco		A\$	2,384,604.21		

Alternatively if demurrage is to be excluded

12 becomes	526,137.56
13 becomes	9.947
18 becomes	3,088,343.89
19 becomes	58.388
20 becomes	2,378,478.89

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD
TO BP AUSTRALIA 17/11/75
VOYAGE NO. 5

NOTES

— *Actual*

- (a) Each exchange rate is that rate quoted when each payment is made.
- (b) Payment by IRREVOC. L/C—60 days after Bill of Lading date.
- (c) Payment by telegraphic transfer—60 days after Bill of Lading date.
- (d) Payment by telegraphic transfer on receipt of cargo at Gove.
- (e) Payment by telegraphic transfer after verifying demurrage statement. 10
- (f) Payment by Bank Draft on receipt of invoice.
- (g) Actual premium paid is calculated on basis FOB cargo value in US\$ converted to CAN\$ and premium in CAN\$ is converted to A\$ for invoice purposes at the A\$/CAN\$ rate ruling at the Bill of Lading date.

— *Assumption*

- (h) Payment by cheque—90 days after receipt of cargo at Gove.
- (i) Freight adjustment as per BP's Cross Claim APPENDIX C 31/10/75.
- (j) BP invoices Nabalco for OUTTURN STATEMENT quantity.

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
 VOYAGE No. 6 Demurrage Excluded

	Method		KNPC/Concord	BPA	Invoice Payment Date
A Vessel Name			TALAMBA	—	
B Gross Registered Tonnage		LT	34,479	—	
C Bill of Lading Qty.		BBL	376,704	—	
D Bill of Lading Qty.		MT	58,020	—	
E Gove Outturn Statement Qty.		MT	57,791	57,791	
F Differential	D – E	MT	+ 229	—	
G Bill of Lading Date			14/3/75	—	
H Disch. Date Gove (Hoses Disc)			3/4/75	3/4/75	
I FOB Price Per BBL		US\$	10.132	—	(b)
J FOB Value	C × I	US\$	3,816,764.93	—	13/5/75
K Exchange Rate	US\$ = A\$	(a)	1.3370	—	
L FOB Value	J ÷ K	A\$	2,854,723.21	—	
M FOB Cost/Tonne	L ÷ D	A\$	49.202	—	
N MHTC L/C Fee	0.25% × J	US\$	9,543.91	—	(c)
O Exchange Rate	US\$ = A\$	(a)	1.3367	—	13/5/75
P MHTC L/C Fee Value	N ÷ O	A\$	7,143.00	—	
Q MHTC L/C Fee/Tonne	P ÷ D	A\$	0.123	—	
R Insurance—Charterer's Liability	A\$0.10 × B	A\$	3,447.90	—	(k)
S Insurance—Charterer's Liability/Tonne	R ÷ D	A\$	0.059	—	31/12/75
T Insurance—Marine 0.045% War Risk 0.01875% .. .. .	.06375% × L	A\$	1,765.35	—	4/7/75
U Insurance—Marine/War Risk/Tonne	T ÷ D	A\$	0.030	—	
V Total Cargo Value (Excl. Freight Costs)	L+P+R+T	A\$	2,867,079.46	—	
W Cargo Cost/Tonne (Excl. Freight Costs)	M+Q+S+U	A\$	49.414	—	
X Actual Freight/Tonne		US\$	13.25132	—	(d)
Y Freight Value	X × D	US\$	768,834.79	—	3/4/75
Z Exchange Rate	US\$ = A\$	(a)	1.3495	—	
1 Freight Value	Y ÷ Z	A\$	569,733.14	—	
2 Freight Cost/Tonne	1 ÷ D	A\$	9.820	—	(e)
3 Demurrage Value		US\$	12,077.44	—	21/7/75
4 Exchange Rate	US\$ = A\$	(a)	1.3047	—	
5 Demurrage Value	3 ÷ 4	A\$	9,258.87	—	

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Exhibit AE
 Plaintiff's
 schedules of
 costs

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
VOYAGE No. 6 Demurrage Excluded

	Method	KNPC/Concord	BPA	Invoice Payment Date
6 Demurrage Cost/Tonne	5 ÷ D	A\$ 0.160	—	
7 Survey Fee/Tonne		US\$ 0.028542	—	(f)
8 Survey Value	7 × D	US\$ 1,655.99	—	21/4/75
9 Exchange Rate	US\$ = A\$	(a) 1.3421	—	
10 Survey Value	8 ÷ 9	A\$ 1,233.88	—	
11 Survey Cost/Tonne	10 ÷ D	A\$ 0.021	—	
12 Total Freight Value	1+5+10	A\$ 580,225.89	—	
13 Total Freight Cost/Tonne	2+6+11	A\$ 10.001	—	
14 BP—Base Contract Price/Tonne		A\$ —	9.42	(h)
15 BP—Cargo Value	14 × E	A\$ —	544,391.22	1/7/75
16 BP—Freight AFRA Adjustment/Tonne		A\$ —	(i) 3.98	(h)
17 BP—Freight Adjustment Value	17 × E	A\$ —	230,008.18	1/7/75
18 Total Delivered Gove—Value		A\$ V + 12 3,447,305.35	15 + 17 774,399.40	(j)
19 Total Delivered Gove Cost/Tonne		A\$ W + 13 59.415	14 + 16 13.40	
20 Excess Cost to Nabalco		A\$ 2,672,905.95		
Alternatively if demurrage is to be excluded				
12 becomes		570,967.02		
13 becomes		9.841		
18 becomes		3,438,046.48		
19 becomes		59.255		
20 becomes		2,663,647.08		

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD
TO BP AUSTRALIA 17/11/75
VOYAGE NO. 6

Exhibit AE
Plaintiff's
schedules of
costs

NOTES

— *Actual*

- 10 (a) Each exchange rate is that rate quoted when each payment is made.
(b) Payment by IRREVOC. L/C—60 days after Bill of Lading date.
(c) Payment by telegraphic transfer—60 days after Bill of Lading date.
(d) Payment by telegraphic transfer on receipt of cargo at Gove.
(e) Payment by telegraphic transfer after verifying demurrage statement.
(f) Payment by Bank Draft on receipt of invoice.
(g) Actual premium paid is calculated on basis FOB cargo value in US\$ converted to CAN\$ and premium in CAN\$ is converted to A\$ for invoice purposes at the A\$/CAN\$ rate ruling at the Bill of Lading date.

— *Assumption*

- (h) Payment by cheque—90 days after receipt of cargo at Gove.
(i) Freight adjustment as per BP's Cross Claim APPENDIX C 31/10/75.
(j) BP invoices Nabalco for OUTTURN STATEMENT quantity.
(k) Not invoiced—assume payment will be made on 31/12/75.

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
VOYAGE No. 7 Demurrage Excluded

	Method		KNPC/Concord	BPA	Invoice Payment Date
A Vessel Name			FRANCES HAMMER	—	
B Gross Registered Tonnage		LT	34,886	—	
C Bill of Lading Qty.		BBL	397,063	—	
D Bill of Lading Qty.		MT	60,929	—	
E Gove Outturn Statement Qty.		MT	60,689	60,689	
F Differential	D - E	MT	+ 240	—	
G Bill of Lading Date			27/5/75	—	
H Disch. Date Gove (Hoses Disc)			16/6/75	16/6/75	
I FOB Price Per BBL		US\$	10.132	—	(b)
J FOB Value	C × I	US\$	4,023,042.32	—	28/7/75
K Exchange Rate	US\$ = A\$	(a)	1.3020	—	
L FOB Value	J ÷ K	A\$	3,089,894.25	—	
M FOB Cost/Tonne	L ÷ D	A\$	50.713	—	
N MHTC L/C Fee	0.25% × J	US\$	10,059.21	—	(c)
O Exchange Rate	US\$ = A\$	(a)	1.3017	—	28/7/75
P MHTC L/C Fee Value	N ÷ O	A\$	7,731.54	—	
Q MHTC L/C Fee/Tonne	P ÷ D	A\$	0.127	—	
R Insurance—Charterer's Liability	A\$0.10 × B	A\$	3,488.60	—	24/10/75
S Insurance—Charterer's Liability/Tonne	R ÷ D	A\$	0.057	—	
T Insurance—Marine 0.045% War Risk 0.01875% .. .. .	.06375% × L	A\$	(g) 1,872.58	—	5/8/75
U Insurance—Marine/War Risk/Tonne	T ÷ D	A\$	0.031	—	
V Total Cargo Value (Excl. Freight Costs)	L+P+R+T	A\$	3,102,986.97	—	
W Cargo Cost/Tonne (Excl. Freight Costs)	M+Q+S+U	A\$	50.928	—	
X Actual Freight/Tonne		US\$	13.25132	—	(d)
Y Freight Value	X × D	US\$	807,395.69	—	18/6/75
Z Exchange Rate	US\$ = A\$	(a)	1.3346	—	
1 Freight Value	Y ÷ Z	A\$	604,974.04	—	
2 Freight Cost/Tonne	1 ÷ D	A\$	9.929	—	(e)
3 Demurrage Value		US\$	11,447.90	—	20/8/75
4 Exchange Rate	US\$ = A\$	(a)	1.2798	—	
5 Demurrage Value	3 ÷ 4	A\$	8,947.07	—	

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
 VOYAGE No. 7 Demurrage Excluded

	Method		KNPC/Concord	BPA	Invoice Payment Date
6 Demurrage Cost/Tonne	5 ÷ D	A\$	0.147	—	
7 Survey Fee/Tonne		US\$	0.028542	—	(f)
8 Survey Value	7 × D	US\$	1,739.04	—	27/6/75
9 Exchange Rate	US\$ = A\$	(a)	1.3265	—	
10 Survey Value	8 ÷ 9	A\$	1,310.99	—	
11 Survey Cost/Tonne	10 ÷ D	A\$	0.022	—	
12 Total Freight Value	1+5+10	A\$	615,232.10	—	
13 Total Freight Cost/Tonne	2+6+11	A\$	10.098	—	
14 BP—Base Contract Price/Tonne		A\$	—	9.42	(h)
15 BP—Cargo Value	14 × E	A\$	—	571,690.38	15/9/75
16 BP—Freight AFRA Adjustment/Tonne		A\$	—	(i) 3.98	(h)
17 BP—Freight Adjustment Value	17 × E	A\$	—	241,542.22	15/9/75
18 Total Delivered Gove—Value		A\$	V + 12 3,718,219.07	15 + 17 813,232.60	(j)
19 Total Delivered Gove Cost/ Tonne		A\$	W + 13 61.026	14 + 16 13.40	
20 Excess Cost to Nabalco		A\$	2,904,986.47		
Alternatively if demurrage is to be excluded					
12 becomes			606,285.03		
13 becomes			9.951		
18 becomes			3,709,272.00		
19 becomes			60.879		
20 becomes			2,896,039.40		

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD
TO BP AUSTRALIA 17/11/75
VOYAGE NO. 7

NOTES

— *Actual*

- (a) Each exchange rate is that rate quoted when payment is made.
- (b) Payment by IRREVOC. L/C—60 days after Bill of Lading date.
- (c) Payment by telegraphic transfer—60 days after Bill of Lading date.
- (d) Payment by telegraphic transfer on receipt of cargo at Gove.
- (e) Payment by telegraphic transfer after verifying demurrage statement. 10
- (f) Payment by Bank Draft on receipt of invoice.
- (g) Actual premium paid is calculated on basis FOB cargo value in US\$ converted to CAN\$ and premium in CAN\$ is converted to A\$ for invoice purposes at the A\$/CAN\$ rate ruling at the Bill of Lading date.

— *Assumption*

- (h) Payment by cheque—90 days after receipt of cargo at Gove.
- (i) Freight adjustment as per BP's Cross Claim APPENDIX C 31/10/75.
- (j) BP invoices Nabalco for OUTTURN STATEMENT quantity.

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
 VOYAGE No. 8 Demurrage Excluded

	Method		KNPC/Concord	BPA	Invoice Payment Date
A Vessel Name			FRANCES HAMMER	—	
B Gross Registered Tonnage		LT	34,886	—	
C Bill of Lading Qty.		BBL	388,916	—	
D Bill of Lading Qty.		MT	59,734	—	
E Gove Outturn Statement Qty.		MT	59,993	59,993	
F Differential	D - E	MT	-259	—	
G Bill of Lading Date			14/7/75	—	
H Disch. Date Gove (Hoses Disc)			9/8/75	9/8/75	
I FOB Price Per BBL		US\$	10.132	—	(b)
J FOB Value	C × I	US\$	3,940,496.91	—	12/9/75
K Exchange Rate	US\$ = A\$	(a)	1.2765	—	
L FOB Value	J ÷ K	A\$	3,086,954.10	—	
M FOB Cost/Tonne	L ÷ D	A\$	51.678	—	
N MHTC L/C Fee	0.25% × J	US\$	9,851.24	—	(c)
O Exchange Rate	US\$ = A\$	(a)	1.2762	—	12/9/75
P MHTC L/C Fee Value	N ÷ O	A\$	7,723.00	—	
Q MHTC L/C Fee/Tonne	P ÷ D	A\$	0.129	—	
R Insurance—Charterer's Liability	A\$0.10 × B	A\$	3,488.60	—	(k)
S Insurance—Charterer's Liability/Tonne	R ÷ D	A\$	0.058	—	31/12/75
T Insurance—Marine 0.045% War Risk 0.01875% .. .. .	.06375% × L	A\$	1,853.92	—	24/10/75
U Insurance—Marine/War Risk/Tonne	T ÷ D	A\$	0.0310	—	
V Total Cargo Value (Excl. Freight Costs)	L+P+R+T	A\$	3,100,019.62	—	
W Cargo Cost/Tonne (Excl. Freight Costs)	M+Q+S+U	A\$	51.896	—	
X Actual Freight/Tonne		US\$	13.25132	—	(d)
Y Freight Value	X × D	US\$	791,548.56	—	11/8/75
Z Exchange Rate	US\$ = A\$	(a)	1.2760	—	
1 Freight Value	Y ÷ Z	A\$	620,335.86	—	
2 Freight Cost/Tonne	1 ÷ D	A\$	10.385	—	(g)
3 Demurrage Value		US\$	13,504.06	—	30/11/75
4 Exchange Rate	US\$ = A\$	(l)	1.2609	—	
5 Demurrage Value	3 ÷ 4	A\$	10,709.86	—	

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FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
VOYAGE No. 8 Demurrage Excluded

	Method		KNPC/Concord	BPA	Invoice Payment Date
6 Demurrage Cost/Tonne	5 ÷ D	A\$	0.179	—	
7 Survey Fee/Tonne		US\$	0.028542	—	(e)
8 Survey Value	7 × D	US\$	1,704.91	—	20/8/75
9 Exchange Rate	US\$ = A\$		1.2798	—	
10 Survey Value	8 ÷ 9	A\$	1,332.17	—	
11 Survey Cost/Tonne	10 ÷ D	A\$	0.022	—	
12 Total Freight Value	1+5+10	A\$	632,377.89	—	
13 Total Freight Cost/Tonne	2+6+11	A\$	10.586	—	
14 BP—Base Contract Price/Tonne		A\$	—	9.42	(h)
15 BP—Cargo Value	14 × E	A\$	—	565,134.06	6/11/75
16 BP—Freight AFRA Adjustment/Tonne		A\$	—	(i) 4.26	(h)
17 BP—Freight Adjustment Value	17 × E	A\$	—	255,570.18	6/11/75
18 Total Delivered Gove—Value		A\$	V + 12 3,732,397.51	15 + 17 820,704.24	(j)
19 Total Delivered Gove Cost/Tonne		A\$	W + 13 62.482	14 + 16 13.68	
20 Excess Cost to Nabalco		A\$	2,911,693.27		

Alternatively if demurrage is to be excluded

12 becomes	621,668.03
13 becomes	10.407
18 becomes	3,721,687.65
19 becomes	62.303
20 becomes	2,900,983.41

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD
TO BP AUSTRALIA 17/11/75
VOYAGE NO. 8

Exhibit AE
Plaintiff's
schedules of
costs

NOTES

— *Actual*

- (a) Each exchange rate is that rate quoted when each payment is made.
- (b) Payment by IRREVOC. L/C—60 days after Bill of Lading date.
- (c) Payment by telegraphic transfer—60 days after Bill of Lading date.
- (d) Payment by telegraphic transfer on receipt of cargo at Gove.
- 10 (e) Payment by Bank Draft on receipt of invoice.
- (f) Actual premium paid is calculated on basis FOB cargo value in US\$ converted to CAN\$ and premium in CAN\$ is converted to A\$ for invoice purposes at the A\$/CAN\$ rate ruling at the Bill of Lading date.

— *Assumption*

- (g) Not paid—pending validation by Nabalco.
- (h) Payment by cheque—90 days after receipt of cargo at Gove.
- (i) Freight adjustment as per BP's Cross Claim APPENDIX C 31/10/75.
- (j) BP invoices Nabalco for OUTTURN STATEMENT quantity.
- (k) Not invoiced—assume payment will be made 31/12/75.
- 20 (l) Assume payment 30/11/75 exchange rate ruling 17/11/75.

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
No. 9 Demurrage Excluded

	Method		KNPC/Concord	BPA	Invoice Payment Date
A Vessel Name			MIKTON	—	
B Gross Registered Tonnage		LT	N/A	—	
C Bill of Lading Qty.		BBL	172,438	—	
D Bill of Lading Qty.		MT	26,650	—	
E Gove Outturn Statement Qty.		MT	26,501	26,501	
F Differential	D - E	MT	+ 149	—	
G Bill of Lading Date			16/9/75	—	
H Disch. Date Gove (Hoses Disc)			9/10/75	9/10/75	
I FOB Price Per BBL		US\$	10.112	—	(b)
J FOB Value	$C \times I$	US\$	1,743,693.06	—	17/11/75
K Exchange Rate	$US\$ = A\$$	(a)	1.2612	—	
L FOB Value	$J \div K$	A\$	1,382,566.65	—	
M FOB Cost/Tonne	$L \div D$	A\$	51.879	—	
N MHTC L/C Fee	$0.25\% \times J$	US\$	4,361.28	—	(c)
O Exchange Rate	$US\$ = A\$$	(a)	1.2577	—	18/11/75
P MHTC L/C Fee Value	$N \div O$	A\$	3,471.46	—	
Q MHTC L/C Fee/Tonne	$P \div D$	A\$	0.130	—	
R Insurance—Charterer's Liability	$A\$0.10 \times B$	A\$	N/A	—	
S Insurance—Charterer's Liability/Tonne	$R \div D$	A\$	—	—	(k)
T Insurance—Marine 0.045% War Risk 0.01875%	$.06375\% \times L$	A\$	(g) 853.44	—	31/12/75
U Insurance—Marine/War Risk/Tonne	$T \div D$	A\$	0.032	—	
V Total Cargo Value (Excl. Freight Costs)	$L+P+R+T$	A\$	1,386,891.55	—	
W Cargo Cost/Tonne (Excl. Freight Costs)	$M+Q+S+U$	A\$	52.041	—	
X Actual Freight/Tonne		US\$	13.25132	—	(d)
Y Freight Value	$X \times D$	US\$	353,147.26	—	10/10/75
Z Exchange Rate	$US\$ = A\$$	(a)	1.2593	—	
1 Freight Value	$Y \div Z$	A\$	280,437.00	—	
2 Freight Cost/Tonne	$1 \div D$	A\$	10.523	—	
3 Demurrage Value		US\$	NIL	—	(e)
4 Exchange Rate	$US\$ = A\$$		NIL	—	NIL
5 Demurrage Value	$3 \div 4$	A\$	NIL	—	

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
 No. 9 Demurrage Excluded

	Method		KNPC/Concord	BPA	Invoice Payment Date
6 Demurrage Cost/Tonne	5 ÷ D	A\$	NIL	—	
7 Survey Fee/Tonne		US\$	0.028542	—	(f)
8 Survey Value	7 × D	US\$	760.64	—	9/10/75
9 Exchange Rate	US\$ = A\$		(a) 1,2590	—	
10 Survey Value	8 ÷ 9	A\$	604.16	—	
11 Survey Cost/Tonne	10 ÷ D	A\$	0.023	—	
12 Total Freight Value	1+5+10	A\$	281,041.16	—	
13 Total Freight Cost/Tonne	2+6+11	A\$	10.546	—	
14 BP—Base Contract Price/Tonne		A\$	—	9.42	(h)
15 BP—Cargo Value	14 × E	A\$	—	249,639.42	6/1/76
16 BP—Freight AFRA Adjustment/Tonne		A\$	—	(i) 4.26	(h)
17 BP—Freight Adjustment Value	17 × E	A\$	—	112,894.26	6/1/76
18 Total Delivered Gove—Value		A\$	V + 12 1,667,932.71	15 + 17 362,533.68	(j)
19 Total Delivered Gove Cost/Tonne		A\$	W + 13 62,587	14 + 16 13.68	
20 Excess Cost to Nabalco		A\$	1,305,399.03		

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD
TO BP AUSTRALIA 17/11/75
VOYAGE NO. 9

NOTES

— *Actual*

- (a) Each exchange rate is that rate quoted when each payment is made.
- (b) Payment by IRREVOC. L/C—60 days after Bill of Lading date.
- (c) Payment by telegraphic transfer—60 days after Bill of Lading date.
- (d) Payment by telegraphic transfer on receipt of cargo at Gove.
- (e) Demurrage claim not expected.
- (f) Payment by Bank Draft on receipt of invoice.

10

— *Assumption*

- (g) Actual premium paid is calculated on basis FOB cargo value in US\$ converted to CAN\$ and the premium in CAN\$ is converted to A\$ for invoice purposes at the A\$/CAN\$ rate ruling at the Bill of Lading date.
- (h) Payment by cheque—90 days after receipt of cargo at Gove.
- (i) Freight adjustment as per BP's Cross Claim APPENDIX C 31/10/75.
- (j) BP invoices Nabalco for OUTTURN STATEMENT quantity.
- (k) Not yet officially invoiced—assume payment on 31/12/75.
- N/A Not applicable. From and including Voyage 9 Charterers Liability Insurance is no longer paid by Nabalco. Concord have agreed to cover Nabalco at no cost to Nabalco.

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FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
 VOYAGE No. 10 Demurrage Excluded

	Method		KNPC/Concord	BPA	Invoice Payment Date
A Vessel Name			RUSSEL H. GREEN	—	
B Gross Registered Tonnage		LT	N/A	—	
C Bill of Lading Qty.		BBL	391,340	—	
D Bill of Lading Qty.		MT	60,761	—	
E Gove Outturn Statement Qty.		MT	60,331	60,331	
F Differential	D - E	MT	+430	—	
G Bill of Lading Date			8/10/75	—	
H Disch. Date Gove (Hoses Disc)			3/11/75	3/11/75	
I FOB Price Per BBL		US\$	(h) 10.112	—	(d)
J FOB Value	C × I	US\$	3,957,230.08	—	8/12/75
K Exchange Rate	US\$ = A\$		(f) 1.2612	—	
L FOB Value	J ÷ K	A\$	3,137,670.54	—	
M FOB Cost/Tonne	L ÷ D	A\$	51.640	—	
N MHTC L/C Fee	0.25% × J	US\$	9,895.84	—	(e)
O Exchange Rate	US\$ = A\$		(g) 1.2609	—	8/12/75
P MHTC L/C Fee Value	N ÷ O	A\$	7,848.24	—	
Q MHTC L/C Fee/Tonne	P ÷ D	A\$	0.129	—	
R Insurance—Charterer's Liability	A\$0.10 × B	A\$	N/A	—	
S Insurance—Charterer's Liability/Tonne	R ÷ D	A\$	—	—	
T Insurance—Marine 0.045% War Risk 0.01875% .. .. .	.06375% × L	A\$	(i) 2,000.26	—	(j)
U Insurance—Marine/War Risk/Tonne	T ÷ D	A\$	0.033	—	18/1/76
V Total Cargo Value (Excl. Freight Costs)	L+P+R+T	A\$	3,147,519.04	—	
W Cargo Cost/Tonne (Excl. Freight Costs)	M+Q+S+U	A\$	51.802	—	
X Actual Freight/Tonne		US\$	(k) 13.25132	—	(b)
Y Freight Value	X × D	US\$	805,160.66	—	7/11/75
Z Exchange Rate	US\$ = A\$		(a) 1.2677	—	
1 Freight Value	Y ÷ Z	A\$	635,137.02	—	
2 Freight Cost/Tonne	1 ÷ D	A\$	10.453	—	(m)
3 Demurrage Value		US\$	(l) 14,671.14	—	7/1/76
4 Exchange Rate	US\$ = A\$		(g) 1.2609	—	
5 Demurrage Value	3 ÷ 4	A\$	11,635.45	—	

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Exhibit AE
 Plaintiff's
 schedules of
 costs

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
VOYAGE No. 10 Demurrage Excluded

	Method		KNPC/Concord	BPA	Invoice Payment Date
6 Demurrage Cost/Tonne	5 ÷ D	A\$	0.191	—	
7 Survey Fee/Tonne		US\$	0.028542	—	(c)
8 Survey Value	7 × D	US\$	1,734.23	—	6/11/75
9 Exchange Rate	US\$ = A\$		(a) 1.2660	—	
10 Survey Value	8 ÷ 9	A\$	1,369.85	—	
11 Survey Cost/Tonne	10 ÷ D	A\$	0.023	—	
12 Total Freight Value	1+5+10	A\$	648,142.32	—	
13 Total Freight Cost/Tonne	2+6+11	A\$	10.667	—	
14 BP—Base Contract Price/Tonne		A\$	—	9.42	(n)
15 BP—Cargo Value	14 × E	A\$	—	568,318.02	2/2/76
16 BP—Freight AFRA Adjustment/Tonne		A\$	—	(o) 4.26	(n)
17 BP—Freight Adjustment Value	17 × E	A\$	—	257,010.06	2/2/76
18 Total Delivered Gove—Value		A\$	V + 12 3,795,661.36	15 + 17 825,328.08	(p)
19 Total Delivered Gove Cost/Tonne		A\$	W + 13 62.469	14 + 16 13.68	
20 Excess Cost to Nabalco		A\$	2,970,333.28		

Alternatively if demurrage is to be excluded

12 becomes			636,506.87		
13 becomes	.. .. .		10.476		
18 becomes	.. .. .		3,784,025.91		
19 becomes	.. .. .		62.278		
20 becomes	.. .. .		2,958,697.83		

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD
TO BP AUSTRALIA 17/11/75
VOYAGE NO. 10

Exhibit AE
Plaintiff's
schedules of
costs

NOTES

— *Actual*

- (a) Exchange rate is that rate quoted when payment is made.
- (b) Payment by telegraphic transfer on receipt of cargo in Gove.
- (c) Payment by Bank Draft on receipt of invoice.
- (d) Payment by IRREVOC. L/C—60 days after Bill of Lading date.

10 — *Assumption*

- (f) Preferential exchange rate as at 17/11/75.
- (g) Official exchange rate as at 17/11/75.
- (h) KNPC has advised by telex 28/10/75 that invoice price per barrel is US\$10.287. However invoice dated 18/10/75 states price US\$10.112.
- (i) Not invoiced—assume A\$/CAN\$ exchange rate same as A\$/US\$ exchange rate at 17/11/75.
- (j) Payment date—103 days after Bill of Lading date (as per voyage 8).
- (k) Due increase in World Scale 100 from US\$8.16 to US\$8.21 per 1.t. Concord invoiced new rate. However Nabalco has requested Concord by letter 30/10/75 to reconsider and not apply the increase. It is assumed that the lower figure now applies.
- (l) Demurrage based on average NET Laytime used in Gove for nominal 60,000 tonne cargoes for Voyages 4, 5, 6, and 7. i.e.: 58 hours (re particulars to Pritchard on 11/11/75 Page 4.). Therefore, average demurrage is 22 hours (58–36 hours laytime allowed for discharge) or 0.91666 days. As Russel H. Green summer Dwt is 63,442 = US\$9,700 per day which at WS165 = US\$16,005 per day or pro rata. Average demurrage value = US\$16,005 × 0.91666 = US\$14,671.14.
- (m) Payment date—66 days after discharge date at Gove (as per Voyage 7).
- (n) Payment by cheque—90 days after receipt of cargo at Gove.
- 30 (o) Freight adjustment as per BP's Cross Claim APPENDIX C 31/10/75.
- (p) BP invoices Nabalco for OUTTURN STATEMENT quantity.
- N/A Not applicable. From and including Voyage 9 Charterers Liability Insurance is no longer paid by Nabalco. Concord have agreed to cover Nabalco at no cost to Nabalco.

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
 VOYAGE No. 11(a)

	Method		KNPC/Concord	BPA	Invoice Payment Date
A Vessel Name			RUSSEL H. GREEN	—	
B Gross Registered Tonnage		LT	N/A	—	
C Bill of Lading Qty.		BBL	(b) 403,000	—	
D Bill of Lading Qty.		MT	(c) 62,000	—	
E Gove Outturn Statement Qty.		MT	(d) 61,802	61,802	
F Differential	D - E	MT	+198	—	
G Bill of Lading Date			(e) 18/12/75	—	
H Disch. Date Gove (Hoses Disc) Arrival date 5/1/75			(f) 7/1/76	7/1/76	
I FOB Price Per BBL		US\$	(a) 10.757	—	(m)
J FOB Value	C × I	US\$	4,335,071.00	—	16/2/76
K Exchange Rate	US\$ = A\$	(g)	1.2612	—	
L FOB Value	J ÷ K	A\$	3,437,258.96	—	
M FOB Cost/Tonne	L ÷ D	A\$	55.440	—	
N MHTC L/C Fee	0.20% × J	US\$	(i) 8,670.14	—	(n)
O Exchange Rate	US\$ = A\$	(h)	1.2609	—	16/2/76
P MHTC L/C Fee Value	N ÷ O	A\$	6,876.15	—	
Q MHTC L/C Fee/Tonne	P ÷ D	A\$	0.111	—	
R Insurance—Charterer's Liability	A\$0.10 × B	A\$	N/A	—	
S Insurance—Charterer's Liability/Tonne	R ÷ D	A\$	—	—	(o)
T Insurance—Marine 0.045% War Risk 0.01875% .. .. .	.06375% × L	A\$	(j) 2,191.25	—	29/3/76
U Insurance—Marine/War Risk/Tonne	T ÷ D	A\$	0.035	—	
V Total Cargo Value (Excl. Freight Costs)	L+P+R+T	A\$	3,446,326.36	—	
W Cargo Cost/Tonne (Excl. Freight Costs)	M+Q+S+U	A\$	55.586	—	
X Actual Freight/Tonne		US\$	(k) 13.25132	—	(p)
Y Freight Value	X × D	US\$	821,581.84	—	7/1/76
Z Exchange Rate	US\$ = A\$	(g)	1.2612	—	
1 Freight Value	Y ÷ Z	A\$	651,428.67	—	
2 Freight Cost/Tonne	1 ÷ D	A\$	10.507	—	(u)
3 Demurrage Value		US\$	(l) NIL	—	
4 Exchange Rate	US\$ = A\$		NIL	—	
5 Demurrage Value	3 ÷ 4	A\$	NIL	—	

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Exhibit AG
 Plaintiff's
 schedules of
 costs

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
VOYAGE No. 11(a)

	Method		KNPC/Concord	BPA	Invoice Payment Date
6 Demurrage Cost/Tonne	5 ÷ D	A\$	NIL	—	
7 Survey Fee/Tonne		US\$	0.028542	—	(q)
8 Survey Value	7 × D	US\$	1,769.60	—	16/1/76
9 Exchange Rate	US\$ = A\$		(h) 1.2609	—	
10 Survey Value	8 ÷ 9	A\$	1,403.44	—	
11 Survey Cost/Tonne	10 ÷ D	A\$	0.023	—	
12 Total Freight Value	1+5+10	A\$	652,832.11	—	
13 Total Freight Cost/Tonne	2+6+11	A\$	10.530	—	
14 BP—Base Contract Price/Tonne		A\$	—	9.42	(r) 5/4/76
15 BP—Cargo Value	14 × E	A\$	—	582,174.84	(r)
16 BP—Freight AFRA Adjustment/Tonne		A\$	—	(s) 5.16	5/4/76
17 BP—Freight Adjustment Value	17 × E	A\$	—	318,898.32	
18 Total Delivered Gove—Value		A\$	V + 12 4,099,158.47	15 + 17 901,073.16	(t)
19 Total Delivered Gove Cost/Tonne		A\$	W + 13 66.116	14 + 16 14.58	
20 Excess Cost to Nabalco		A\$	3,198,085.31		

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD
TO BP AUSTRALIA 17/11/75
VOYAGE NO. 11(a)

Exhibit AG
Plaintiff's
schedules of
costs

NOTES

— *Actual*

(a) New contract price effective 17/10/75 (re KNPC's telex 28/10/75).

— *Assumption*

- (b) Estimated 6.5 bbls/tonne based on previous voyages.
- (c) Estimated maximum quantity loaded.
- 10 (d) Outturn loss estimated at 0.32% based on average of Voyages 1 to 10.
- (e) Calculated on average 19 day voyage based on average of Voyages 1 to 8 i.e.: arrival date less 19.
- (f) Assume vessel in Gove for 3 days.
- (g) Preferential exchange rate as at 17/11/75.
- (h) Official exchange rate as at 17/11/75.
- (i) MHTC have decreased commission rate from 0.25% to 0.20% effective Voyage 11.
- (j) A\$/CAN\$ exchange rate same as A\$/US\$ exchange rate at 17/11/75.
- 20 (k) Due increase in World Scale 100 from US\$8.15 to US\$8.21 per 1.t. Concord invoiced new rate. However, Nabalco has requested Concord by letter 30/11/75 to reconsider and not apply the increase. It is assumed that the lower figure now applies.
- (l) Assume demurrage not incurred.
- (m) Payment by IRREVOC. L/C—60 days after Bill of Lading date.
- (n) Payment by telegraphic transfer—60 days after Bill of Lading date.
- (o) Payment date—103 days after Bill of Lading date (as per Voyage 8).
- (p) Payment by telegraphic transfer on receipt of cargo at Gove.
- (q) Payment by Bank Draft—30 days after Bill of Lading date.
- (r) Payment by cheque 90 days after receipt of cargo at Gove.
- 30 (s) Freight adjustment calculated as per BP contract but assuming AFRA-1/11/75 voyage Aden/Gove $US\$7.86/1.t. @ 129.7 = US\$10.19 \div (\text{Reuters exchange } 17/11/75 \text{ US\$}2.0325 = \text{£STG}1) = \text{£STG}5.014 - \text{£STG}1.792 = \text{£STG}3.222 \div (\text{Bank exchange } 17/11/75 \text{ A\$}0.6147 = \text{£STG}1) = \text{A\$}5.24/1.t. \div 1.01605 = \text{A\$}5.16 \text{ mt.}$
- (t) BP invoices Nabalco for OUTTURN STATEMENT quantity.
- (u) Nil payment.
- N/A Not applicable. From and including Voyage 9 Charterers Liability Insurance is no longer paid by Nabalco. Concord have agreed to cover Nabalco at no cost to Nabalco.

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
VOYAGE No. 11(b)

	Method		KNPC/Concord	BPA	Invoice Payment Date
A Vessel Name			RUSSEL H. GREEN	—	
B Gross Registered Tonnage		LT	N/A	—	
C Bill of Lading Qty.		BBL	(b) 403,000	—	
D Bill of Lading Qty.		MT	(c) 62,000	—	
E Gove Outturn Statement Qty.		MT	(d) 61,802	61,802	
F Differential	D - E	MT	+ 198	—	
G Bill of Lading Date			(e) 18/12/75	—	
H Disch. Date Gove (Hoses Disc) Arrival date 5/1/75			(f) 7/1/76	7/1/76	
I FOB Price Per BBL		US\$	(a) 10.757	—	(m)
J FOB Value	C × I	US\$	4,335,071.00	—	16/2/76
K Exchange Rate	US\$ = A\$	(g)	1.2612	—	
L FOB Value	J ÷ K	A\$	3,437,758.96	—	
M FOB Cost/Tonne	L ÷ D	A\$	55.440	—	(m)
N MHTC L/C Fee	0.20% × J	US\$	(i) 8,670.14	—	16/2/76
O Exchange Rate	US\$ = A\$	(h)	1.2609	—	
P MHTC L/C Fee Value	N ÷ O	A\$	6,876.15	—	
Q MHTC L/C Fee/Tonne	P ÷ D	A\$	0.111	—	
R Insurance—Charterer's Liability	A\$0.10 × B	A\$	N/A	—	
S Insurance—Charterer's Liability/Tonne	R ÷ D	A\$	—	—	(o)
T Insurance—Marine 0.045% War Risk 0.01875% .. .. .	.06375% × L	A\$	(j) 2,191.25	—	29/3/76
U Insurance—Marine/War Risk/Tonne	T ÷ D	A\$	0.035	—	
V Total Cargo Value (Excl. Freight Costs)	L+P+R+T	A\$	3,446,326.36	—	
W Cargo Cost/Tonne (Excl. Freight Costs)	M+Q+S+U	A\$	55.586	—	
X Actual Freight/Tonne		US\$	(k) 13.33325	—	(p)
Y Freight Value	X × D	US\$	826,661.50	—	7/1/76
Z Exchange Rate	US\$ = A\$	(g)	1.2612	—	
1 Freight Value	Y ÷ Z	A\$	655,456.31	—	
2 Freight Cost/Tonne	1 ÷ D	A\$	10.572	—	(u)
3 Demurrage Value		US\$	(l) 14,671.14	—	12/3/76
4 Exchange Rate	US\$ = A\$	(h)	1.2609	—	
5 Demurrage Value	3 ÷ 4	A\$	11,635.45	—	

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
 VOYAGE No. 11(b)

	Method		KNPC/Concord	BPA	Invoice Payment Date
6 Demurrage Cost/Tonne	5 ÷ D	A\$	0.188	—	
7 Survey Fee/Tonne		US\$	0.028542	—	(q)
8 Survey Value	7 × D	US\$	1,769.60	—	16/1/76
9 Exchange Rate	US\$ = A\$	(h)	1.2609	—	
10 Survey Value	8 ÷ 9	A\$	1,403.44	—	
11 Survey Cost/Tonne	10 ÷ D	A\$	0.023	—	
12 Total Freight Value	1+5+10	A\$	668,495.20	—	
13 Total Freight Cost/Tonne	2+6+11	A\$	10.783	—	
14 BP—Base Contract Price/Tonne		A\$	—	9.42	(r) 5/4/76
15 BP—Cargo Value	14 × E	A\$	—	582,174.84	(r)
16 BP—Freight AFRA Adjustment/Tonne		A\$	—	(s) 4.26	5/4/76
17 BP—Freight Adjustment Value	17 × E	A\$	—	263,276.52	
18 Total Delivered Gove—Value		A\$	V + 12 4,114,821.56	15 + 17 845,451.36	(t)
19 Total Delivered Gove Cost/Tonne		A\$	W + 13 66.369	14 + 16 13.68	
20 Excess Cost to Nabalco		A\$	3,269,370.20		

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FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD
TO BP AUSTRALIA 17/11/75
VOYAGE NO. 11(b)

NOTES

—*Actual*

(a) New contract price effective 17/10/75 (re KNPC's telex 28/10/75)

—*Assumption*

- (b) Estimated 6.5 bbl/tonne based on previous voyage.
- (c) Estimated maximum quantity loaded.
- (d) Outturn loss estimated at 0.32% based on average of Voyages 1 to 10. 10
- (e) Calculated on average 19 day voyage based on average of Voyages 1 to 8 i.e.: arrival date less 19.
- (f) Assume vessel in Gove for 3 days.
- (g) Preferential exchange rate as at 17/11/75.
- (h) Official exchange rate as at 17/11/75
- (i) MHTC have decreased commission rate from 0.25% to 0.20% effective Voyage 11.
- (j) A\$/CAN\$ exchange rate same as A\$/US\$ exchange rate at 17/11/75.
- (k) Assume Nabalco will pay World Scale 100 increase from US\$8.16 to US\$8.21 per l.t. for voyage Shuaiba/Gove which is effective 1/10/75. 20
- (l) Assume demurrage incurred based on average NET Laytime used at Gove for nominal 60000 tonne cargos for Voyages 4, 5, 6, 7 i.e.: 58 hours (re particulars to Pritchard on 11/11/75 Page 4). Therefore average demurrage is 22 hours (58–36 hours Laytime allowed for discharge) or 0.91666 days. As Russel H. Green summer Dwt is 63442 = US\$9700 per day which at WS165 = US\$16005 per day or pro rata. Average demurrage value = US\$16005 × 0.91666 = US\$14,671.14.
- (m) Payment by IRREVOC. L/C—60 days after Bill of Lading date.
- (n) Payment by telegraphic transfer—60 days after Bill of Lading date.
- (o) Payment date—103 days after Bill of Lading date (as per Voyage 8). 30
- (p) Payment by telegraphic transfer on receipt of cargo at Gove.
- (q) Payment by Bank Draft—30 days after Bill of Lading date.
- (r) Payment by cheque—90 days after receipt of cargo at Gove.
- (s) Freight adjustment calculated as per BP's Cross Claim Appendix C 31/10/75. Assuming AFRA does not increase on 1/1/76.
- (t) BP invoices Nabalco for OUTTURN STATEMENT quantity.
- (u) Payment date—66 days after discharge at Gove (as per Voyage 7).
- N/A Not applicable. From and including Voyage 9 Charters Liability Insurance is no longer paid by Nabalco. Concord have agreed to cover Nabalco at no cost to Nabalco. 40

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
 VOYAGE No. 12(a)

	Method		KNPC/Concord	BPA	Invoice Payment Date
A Vessel Name		(b)	RUSSEL H. GREEN	—	
B Gross Registered Tonnage		LT	N/A	—	
C Bill of Lading Qty.		BBL	(c) 403,000	—	
D Bill of Lading Qty.		MT	(d) 62,000	—	
E Gove Outturn Statement Qty.		MT	(e) 61,802	61,802	
F Differential	D - E	MT	+198	—	
G Bill of Lading Date			(f) 26/2/76	—	
H Disch. Date Gove (Hoses Disc) Arrival date 15/3/76 ..			(g) 17/3/76	17/3/76	
I FOB Price Per BBL		US\$	(a) 10.757	—	(n)
J FOB Value	C × I	US\$	4,335,071.00	—	26/4/76
K Exchange Rate	US\$ = A\$		(h) 1.2612	—	
L FOB Value	J ÷ K	A\$	3,437,258.96	—	
M FOB Cost/Tonne	L ÷ D	A\$	55.440	—	
N MHTC L/C Fee	0.20% × J	US\$	(j) 8670.14	—	(o)
O Exchange Rate	US\$ = A\$		(i) 1.2609	—	26/4/76
P MHTC L/C Fee Value	N ÷ O	A\$	6876.15	—	
Q MHTC L/C Fee/Tonne	P ÷ D	A\$	0.111	—	
R Insurance—Charterer's Liability	A\$0.10 × B	A\$	N/A	—	
S Insurance—Charterer's Liability/Tonne	R ÷ D	A\$	—	—	(p)
T Insurance—Marine 0.045% War Risk 0.01875% .. .. .	.06375% × L	A\$	(k) 2191.25	—	7/6/76
U Insurance—Marine/War Risk/Tonne	T ÷ D	A\$	0.035	—	
V Total Cargo Value (Excl. Freight Costs)	L+P+R+T	A\$	3,446,326.36	—	
W Cargo Cost/Tonne (Excl. Freight Costs)	M+Q+S+U	A\$	55.586	—	
X Actual Freight/Tonne		US\$	(l) 13.33325	—	(q)
Y Freight Value	X × D	US\$	826,661.50	—	17/3/76
Z Exchange Rate	US\$ = A\$		(h) 1.2612	—	
1 Freight Value	Y ÷ Z	A\$	655,456.31	—	
2 Freight Cost/Tonne	1 ÷ D	A\$	10.572	—	(r)
3 Demurrage Value		US\$	(m) NIL	—	—
4 Exchange Rate	US\$ = A\$		NIL	—	
5 Demurrage Value	3 ÷ 4	A\$	NIL	—	

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
VOYAGE No. 12(a)

	Method		KNPC/Concord	BPA	Invoice Payment Date
6 Demurrage Cost/Tonne	5 ÷ D	A\$	NIL	—	
7 Survey Fee/Tonne		US\$	0.028542	—	(s) 26/3/76
8 Survey Value	7 × D	US\$	1769.60	—	
9 Exchange Rate	US\$ = A\$		(i) 1.2609	—	
10 Survey Value	8 ÷ 9	A\$	1403.44	—	
11 Survey Cost/Tonne	10 ÷ D	A\$	0.023	—	
12 Total Freight Value	1+5+10	A\$	656,859.75	—	
13 Total Freight Cost/Tonne	2+6+11	A\$	10.595	—	
14 BP—Base Contract Price/Tonne		A\$	—	9.42	(t)
15 BP—Cargo Value	14 × E	A\$	—	582,174.84	14/6/76
16 BP—Freight AFRA Adjustment/Tonne		A\$	—	(u) 5.16	(t)
17 BP—Freight Adjustment Value	17 × E	A\$	—	318,898.32	14/6/76
18 Total Delivered Gove—Value		A\$	V + 12 4,103,186.11	15 + 17 901,073.16	(v)
19 Total Delivered Gove Cost/Tonne		A\$	W + 13 66.181	14 + 16 14.58	
20 Excess Cost to Nabalco		A\$	3,202,112.95		

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD
TO BP AUSTRALIA 17/11/75
VOYAGE NO. 12(a)

Exhibit AG
Plaintiff's
schedules of
costs

NOTES

— *Actual*

(a) New contract price effective 17/10/75 (re KNPC's telex 28/10/75).

— *Assumption*

- (b) Vessel not nominated but assume "Russel H. Green" as typical vessel.
- (c) Estimated 6.5 bbls/tonne based on previous voyages.
- 10 (d) Estimated maximum quantity loaded.
- (e) Outturn loss estimated at 0.32% based on average of Voyages 1 to 10.
- (f) Calculated on average 19 days voyage based on average of voyages 1 to 8 i.e.: arrival date less 19.
- (g) Assumed vessel in Gove 3 days.
- (h) Preferential exchange rate as at 17/11/75.
- (i) Official exchange rate as at 17/11/75.
- (j) MHTC have decreased commission rate from 0.25% to 0.20% effective Voyage 11.
- (k) A\$/CAN\$ exchange rate same as A\$/US\$ exchange rate at 17/11/75.
- 20 (l) Assume World Scale 100 for Voyage Shuaiba/Gove does not increase on 1/1/76 from current published rate (effective 1/10/75) of US\$8.21 per long ton.
- (m) Assume demurrage not incurred.
- (n) Payment by IRREVOC. L/C—60 days after Bill of Lading date.
- (o) Payment by telegraphic transfer—60 days after Bill of Lading date.
- (p) Payment date—103 days after Bill of Lading date (as per Voyage 8).
- (q) Payment by telegraphic transfer on receipt of cargo at Gove.
- (r) Nil payment.
- (s) Payment by Bank Draft—30 days after Bill of Lading date.
- (t) Payment by cheque—90 days after receipt of cargo at Gove.
- 30 (u) Freight adjustment calculated as per BP Contract but assuming AFRA 1/11/75 voyage Aden/Gove $US\$7.86 \text{ LT} @ 129.7 = US\$10.19 \div (\text{Reuters exchange } 17/11/75 \text{ US\$2.0325} = \text{£STG1}) = \text{£STG5.014} - \text{£STG1.792} = \text{£STG3.222} \div (\text{Bank Exchange } 17/11/75 \text{ A\$0.6147} = \text{£STG1}) = \text{A\$5.24 LT} \div 1.0165 = \text{A\$5.16 mt.}$
- (v) BP invoices Nabalco for OUTTURN STATEMENT quantity.
- N/A Not applicable. From and including Voyage 9 Charterers Liability Insurance is no longer paid by Nabalco. Concord have agreed to cover Nabalco at no cost to Nabalco.

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
VOYAGE No. 12(b)

	Method		KNPC/Concord	BPA	Invoice Payment Date
A Vessel Name		(b)	RUSSEL H. GREEN	—	
B Gross Registered Tonnage		LT	N/A	—	
C Bill of Lading Qty.		BBL	(c) 403,000	—	
D Bill of Lading Qty.		MT	(d) 62,000	—	
E Gove Outturn Statement Qty.		MT	(e) 61,802	61,802	
F Differential	D - E	MT	+ 198	—	
G Bill of Lading Date			(f) 26/2/76	—	
H Disch. Date Gove (Hoses Disc) Arrival date 15/3/76			(g) 17/3/76	17/3/76	
I FOB Price Per BBL		US\$	(a) 10.757	—	(n)
J FOB Value	C × I	US\$	4,335,071.00	—	26/4/76
K Exchange Rate	US\$ = A\$	(h)	1.2612	—	
L FOB Value	J ÷ K	A\$	3,437,258.96	—	
M FOB Cost/Tonne	L ÷ D	A\$	55.440	—	
N MHTC L/C Fee	0.20% × J	US\$	(j) 8,670.14	—	(o)
O Exchange Rate	US\$ = A\$	(i)	1.2609	—	26/4/76
P MHTC L/C Fee Value	N ÷ O	A\$	6,876.15	—	
Q MHTC L/C Fee/Tonne	P ÷ D	A\$	0.111	—	
R Insurance—Charterer's Liability	A\$0.10 × B	A\$	N/A	—	
S Insurance—Charterer's Liability/Tonne	R ÷ D	A\$	—	—	(p)
T Insurance—Marine 0.045% War Risk 0.01875% .. .. .	.06375% × L	A\$	(k) 2,191.25	—	7/6/76
U Insurance—Marine/War Risk/Tonne	T ÷ D	A\$	0.035	—	
V Total Cargo Value (Excl. Freight Costs)	L+P+R+T	A\$	3,446,326.36	—	
W Cargo Cost/Tonne (Excl. Freight Costs)	M+Q+S+U	A\$	55.586	—	
X Actual Freight/Tonne		US\$	(f) 14.33935	—	(q)
Y Freight Value	X × D	US\$	889,039.70	—	17/3/76
Z Exchange Rate	US\$ = A\$	(h)	1.2612	—	
1 Freight Value	Y ÷ Z	A\$	704,915.71	—	
2 Freight Cost/Tonne	1 ÷ D	A\$	11.370	—	
3 Demurrage Value		US\$	(m) 14,671.14	—	(r)
4 Exchange Rate	US\$ = A\$	(i)	1.2609	—	21/5/76
5 Demurrage Value	3 ÷ 4	A\$	11,635.45	—	

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
 VOYAGE No. 12(b)

	Method		KNPC/Concord	BPA	Invoice Payment Date
6 Demurrage Cost/Tonne	5 ÷ D	A\$	0.188	—	
7 Survey Fee/Tonne		US\$	0.028542	—	(s)
8 Survey Value	7 × D	US\$	1,769.60	—	26/3/76
9 Exchange Rate	US\$ = A\$	(i)	1.2609	—	
10 Survey Value	8 ÷ 9	A\$	1,403.44	—	
11 Survey Cost/Tonne	10 ÷ D	A\$	0.023	—	
12 Total Freight Value	1+5+10	A\$	717,954.60	—	
13 Total Freight Cost/Tonne	2+6+11	A\$	11.581	—	
14 BP—Base Contract Price/Tonne		A\$	—	9.42	(t)
15 BP—Cargo Value	14 × E	A\$	—	582,174.84	14/6/76
16 BP—Freight AFRA Adjustment/Tonne		A\$	—	(u) 4.26	(t)
17 BP—Freight Adjustment Value	17 × E	A\$	—	263,276.52	14/6/76
18 Total Delivered Gove—Value		A\$	V + 12 4,164,280.96	15 + 17 845,451.36	(v)
19 Total Delivered Gove Cost/Tonne		A\$	W + 13 67.167	14 + 16 13.68	
20 Excess Cost to Nabalco		A\$	3,318,829.60		

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD
TO BP AUSTRALIA 17/11/75
VOYAGE NO. 12(b)

NOTES

— *Actual*

(a) New contract price effective 17/10/75 (re KNPC's telex 28/10/75).

— *Assumption*

- (b) Vessel not nominated but assume "Russel H. Green" as typical vessel.
- (c) Estimated 6.5 bbls/tonne based on previous voyages.
- (d) Estimated maximum quantity loaded. 10
- (e) Outturn loss estimated at 0.32% based on average of Voyages 1 to 10.
- (f) Calculated on average 19 day voyage based on average of voyages 1 to 8 i.e.: arrival date less 19.
- (g) Assumed vessel in Gove for 3 days.
- (h) Preferential exchange rate as at 17/11/75.
- (i) Official exchange rate as at 17/11/75.
- (j) MHTC have decreased commission rate from 0.25% to 0.20% effective Voyage 11.
- (k) A\$/CAN\$ exchange rate same as A\$/US\$ exchange rate at 17/11/75.
- (l) Assume World Scale 100 for voyage Shuaiba/Gove increases on 1/1/76 for 20
current published rate (effective 1/10/75) for US\$8.21 per long ton. The increase
is expected to be 7.5% to US\$8.83 per long ton. Nabalco's contract rate of
WS165 will be US\$14.5695 per long ton or US\$14.33935 per metric ton.
- (m) Demurrage based on average NET Laytime used at Gove for nominal 60,000
tonne cargoes for voyages 4, 5, 6, and 7 i.e.: 58 hours (re particulars to Pritchard
on 11/11/75 Page 4). Therefore, average demurrage is 22 hours (58–36 hours
Laytime allowed for discharge) or 0.91666 days.
As Russel H. Green summer Dwt is 63442 = US\$9,700 per day which at
WS165 = US\$16005 per day or pro rata. Average demurrage value = US\$16005
× 0.91666 = US\$14,671.14. 30
- (n) Payment by IRREVOC. L/C—60 days after Bill of Lading date.
- (o) Payment by Telegraphic transfer—60 days after Bill of Lading date.
- (p) Payment date—103 days after Bill of Lading date (as per Voyage 8).
- (q) Payment by telegraphic transfer on receipt of cargo at Gove.
- (r) Payment date—66 days after discharge date at Gove (as per Voyage 7).
- (s) Payment by Bank Draft—30 days after Bill of Lading date.
- (t) Payment by cheque—90 days after receipt of cargo at Gove.
- (u) Freight adjustment as per BP Cross Claim APPENDIX C 31/10/75. Assume
AFRA does not increase on 1/1/76.
- (v) BP invoices Nabalco for OUTTURN STATEMENT quantity. 40
- N/A Not applicable. From and including Voyage 9 Charterers Liability Insurance
is no longer paid by Nabalco. Concord have agreed to cover Nabalco at no
cost to Nabalco.

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
 VOYAGE No. 13(a)

	Method		KNPC/Concord	BPA	Invoice Payment Date
A Vessel Name		(b)	RUSSEL H. GREEN	—	
B Gross Registered Tonnage		LT	N/A	—	
C Bill of Lading Qty.		BBL	(c) 403,000	—	
D Bill of Lading Qty.		MT	(d) 62,000	—	
E Gove Outturn Statement Qty.		MT	(e) 61,802	61,802	
F Differential	D – E	MT	+ 198	—	
G Bill of Lading Date			(f) 29/4/76	—	
H Disch. Date Gove (Hoses Disc) Arrival date 17/5/76 ..			(g) 19/5/76	19/5/76	
I FOB Price Per BBL		US\$	(a) 10.757	—	(n)
J FOB Value	C × I	US\$	4,335,071.00	—	28/6/76
K Exchange Rate	US\$ = A\$		(h) 1.2612	—	
L FOB Value	J ÷ K	A\$	3,437,258.96	—	
M FOB Cost/Tonne	L ÷ D	A\$	55.440	—	
N MHTC L/C Fee	0.20% × J	US\$	(j) 8,670.14	—	(o)
O Exchange Rate	US\$ = A\$		(i) 1.2609	—	28/6/76
P MHTC L/C Fee Value	N ÷ O	A\$	6,876.15	—	
Q MHTC L/C Fee/Tonne	P ÷ D	A\$	0.111	—	
R Insurance—Charterer's Liability	A\$0.10 × B	A\$	N/A	—	
S Insurance—Charterer's Liability/Tonne	R ÷ D	A\$	—	—	(p)
T Insurance—Marine 0.045% War Risk 0.01875% .. .. .	.06375% × L	A\$	(k) 2,191.25	—	9/8/76
U Insurance—Marine/War Risk/Tonne	T ÷ D	A\$	0.035	—	
V Total Cargo Value (Excl. Freight Costs)	L+P+R+T	A\$	3,446,326.36	—	
W Cargo Cost/Tonne (Excl. Freight Costs)	M+Q+S+U	A\$	55.586	—	
X Actual Freight/Tonne		US\$	(l) 13.33325	—	(q)
Y Freight Value	X × D	US\$	826,661.50	—	19/5/76
Z Exchange Rate	US\$ = A\$		(h) 1.2612	—	
1 Freight Value	Y ÷ Z	A\$	655,456.31	—	
2 Freight Cost/Tonne	1 ÷ D	A\$	10.572	—	(r)
3 Demurrage Value		US\$	(m) NIL	—	—
4 Exchange Rate	US\$ = A\$		NIL	—	
5 Demurrage Value	3 ÷ 4	A\$	NIL	—	

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FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
VOYAGE No. 13(a)

	Method		KNPC/Concord	BPA	Invoice Payment Date
6 Demurrage Cost/Tonne	5 ÷ D	A\$	NIL	—	
7 Survey Fee/Tonne		US\$	0.028542	—	(s)
8 Survey Value	7 × D	US\$	1,769.60	—	28/5/76
9 Exchange Rate	US\$ = A\$		(i) 1.2609	—	
10 Survey Value	8 ÷ 9	A\$	1,403.44	—	
11 Survey Cost/Tonne	10 ÷ D	A\$	0.023	—	
12 Total Freight Value	1+5+10	A\$	656,859.75	—	
13 Total Freight Cost/Tonne	2+6+11	A\$	10.595	—	
14 BP—Base Contract Price/Tonne		A\$	—	9.42	(t)
15 BP—Cargo Value	14 × E	A\$	—	5,821,74.84	16/8/76
16 BP—Freight AFRA Adjustment/Tonne		A\$	—	(u) 5.16	(t)
17 BP—Freight Adjustment Value	17 × E	A\$	—	318,898.32	16/8/76
18 Total Delivered Gove—Value		A\$	V + 12 4,103,186.11	15 + 17 901,073.16	(v)
19 Total Delivered Gove Cost/Tonne		A\$	W + 13 66.181	14 + 16 14.58	
20 Excess Cost to Nabalco		A\$	3,202,112.95		

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD
TO BP AUSTRALIA 17/11/75
VOYAGE NO 13(a)

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NOTES

— *Actual*

(a) New contract price effective 17/10/75 (re KNPC's telex 28/10/75).

— *Assumption*

- (b) Vessel not nominated but assume "Russel H. Green" as typical vessel.
 (c) Estimated 6.5 bbls/tonne based on previous voyages.
 10 (d) Estimated maximum quantity loaded.
 (e) Outturn loss estimated at 0.32% based on average of Voyages 1 to 10.
 (f) Calculated on average 19 days voyage based on average of voyages 1 to 8 i.e.: arrival date less 19.
 (g) Assumed vessel in Gove 3 days.
 (h) Preferential exchange rate as at 17/11/75.
 (i) Official exchange rate as at 17/11/75.
 (j) MHTC have decreased commission rate from 0.25% to 0.20% effective Voyage 11.
 (k) A\$/CAN\$ exchange rate same as A\$/US\$ exchange rate at 17/11/75.
 20 (l) Assume World Scale 100 for Voyage Shuaiba/Gove does not increase on 1/1/76 from current published rate (effective 1/10/75) of US\$8.21 per long ton.
 (m) Assume demurrage not incurred.
 (n) Payment by IRREVOC. L/C—60 days after Bill of Lading date.
 (o) Payment by telegraphic transfer—60 days after Bill of Lading date.
 (p) Payment date—103 days after Bill of Lading date (as per Voyage 8).
 (q) Payment by telegraphic transfer on receipt of cargo at Gove.
 (r) Nil payment.
 (s) Payment by Bank Draft—30 days after Bill of Lading date.
 (t) Payment by cheque—90 days after receipt of cargo at Gove.
 30 (u) Freight adjustment calculated as per BP Contract but assuming AFRA 1/11/75 voyage Aden/Gove $US\$7.86 \text{ LT} @ 129.7 = US\$10.19 \div (\text{Reuters exchange } 17/11/75 \text{ US\$}2.0325 = \text{£STG}1) = \text{£STG}5.014 - \text{£STG}1.792 = \text{£STG}3.222 \div (\text{Bank Exchange } 17/11/75 \text{ A\$}0.6147 = \text{£STG}1) = \text{A\$}5.24 \text{ LT} \div 1.0165 = \text{A\$}5.16 \text{ mt.}$
 (v) BP invoices Nabalco for OUTTURN STATEMENT quantity.
 N/A Not applicable. From and including Voyage 9 Charterers Liability Insurance is no longer paid by Nabalco. Concord have agreed to cover Nabalco at no cost to Nabalco.

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
VOYAGE No. 13(b)

	Method		KNPC/Concord	BPA	Invoice Payment Date
A Vessel Name		(b)	RUSSEL H. GREEN	—	
B Gross Registered Tonnage		LT	N/A	—	
C Bill of Lading Qty.		BBL	(c) 403,000	—	
D Bill of Lading Qty.		MT	(d) 62,000	—	
E Gove Outturn Statement Qty.		MT	(e) 61,802	61,802	
F Differential	D - E	MT	+ 198	—	
G Bill of Lading Date			(f) 29/4/76	—	
H Disch. Date Gove (Hoses Disc) Arrival date 17/5/76			(g) 19/5/76	19/5/76	
I FOB Price Per BBL		US\$	(a) 10.757	—	(n)
J FOB Value	C × I	US\$	4,335,071.00	—	28/6/76
K Exchange Rate	US\$ = A\$		(h) 1.2612	—	
L FOB Value	J ÷ K	A\$	3,437,258.96	—	
M FOB Cost/Tonne	L ÷ D	A\$	55.440	—	
N MHTC L/C Fee	0.20% × J	US\$	(j) 8,670.14	—	(o)
O Exchange Rate	US\$ = A\$		(i) 1.2609	—	28/6/76
P MHTC L/C Fee Value	N ÷ O	A\$	6,876.15	—	
Q MHTC L/C Fee/Tonne	P ÷ D	A\$	0.111	—	
R Insurance—Charterer's Liability	AS\$0.10 × B	A\$	N/A	—	
S Insurance—Charterer's Liability/Tonne	R ÷ D	A\$	—	—	(p)
T Insurance—Marine 0.045% War Risk 0.01875% .. .. .	.06375% × L	A\$	(k) 2,191.25	—	9/8/76
U Insurance—Marine/War Risk/Tonne	T ÷ D	A\$	0.035	—	
V Total Cargo Value (Excl. Freight Costs)	L+P+R+T	A\$	3,446,326.36	—	
W Cargo Cost/Tonne (Excl. Freight Costs)	M+Q+S+U	A\$	55.586	—	
X Actual Freight/Tonne		US\$	(l) 14.33935	—	(q)
Y Freight Value	X × D	US\$	889,039.70	—	19/5/76
Z Exchange Rate	US\$ = A\$		(h) 1.2612	—	
1 Freight Value	Y ÷ Z	A\$	704,915.71	—	
2 Freight Cost/Tonne	1 ÷ D	A\$	11.370	—	
3 Demurrage Value		US\$	(m) 14,671.14	—	(r)
4 Exchange Rate	US\$ = A\$		(i) 1.2609	—	23/7/76
5 Demurrage Value	3 ÷ 4	A\$	11,635.45	—	

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
 VOYAGE No. 13(b)

	Method		KNPC/Concord	BPA	Invoice Payment Date
6 Demurrage Cost/Tonne	5 ÷ D	A\$	0.188	—	
7 Survey Fee/Tonne		US\$	0.028542	—	(s)
8 Survey Value	7 × D	US\$	1,769.60	—	28/5/76
9 Exchange Rate	US\$ = A\$		(i) 1.2609	—	
10 Survey Value	8 ÷ 9	A\$	1,403.44	—	
11 Survey Cost/Tonne	10 ÷ D	A\$	0.023	—	
12 Total Freight Value	1+5+10	A\$	717,954.60	—	
13 Total Freight Cost/Tonne	2+6+11	A\$	11.581	—	
14 BP—Base Contract Price/Tonne		A\$	—	9.42	(t)
15 BP—Cargo Value	14 × E	A\$	—	582,174.84	16/8/76
16 BP—Freight AFRA Adjustment/Tonne		A\$	—	(u) 4.26	(t)
17 BP—Freight Adjustment Value	17 × E	A\$	—	263,276.52	16/8/76
18 Total Delivered Gove—Value		A\$	V + 12 4,164,280.96	15 + 17 845,451.36	(v)
19 Total Delivered Gove Cost/Tonne		A\$	W + 13 67.167	14 + 16 13.68	
20 Excess Cost to Nabalco		A\$	3,318,829.60		

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD
TO BP AUSTRALIA 17/11/75
VOYAGE NO. 13(b)

NOTES

—Actual

(a) New contract price effective 17/10/75 (re KNPC's telex 28/10/75).

—Assumption

- (b) Vessel not nominated but assume "Russel H. Green" as typical vessel.
- (c) Estimated 6.5 bbls/tonne based on previous voyages.
- (d) Estimated maximum quantity loaded. 10
- (e) Outturn loss estimated at 0.32% based on average of Voyages 1 to 10.
- (f) Calculated on average 19 day voyage based on average of voyages 1 to 8 i.e.: arrival date less 19.
- (g) Assumed vessel in Gove for 3 days.
- (h) Preferential exchange rate as at 17/11/75.
- (i) Official exchange rate as at 17/11/75.
- (j) MHTC have decreased commission rate from 0.25% to 0.20% effective Voyage 11.
- (k) A\$/CAN\$ exchange rate same as A\$/US\$ exchange rate at 17/11/75.
- (l) Assume World Scale 100 for voyage Shuaiba/Gove increases on 1/1/76 for current published rate (effective 1/10/75) for US\$8.21 per long ton. The increase is expected to be 7.5% to US\$8.83 per long ton. Nabalco's contract rate of WS165 will be US\$14.5695 per long ton or US\$14.33935 per metric ton. 20
- (m) Demurrage based on average NET Laytime used at Gove for nominal 60,000 tonne cargoes for voyages 4, 5, 6, and 7 i.e.: 58 hours (re particulars to Pritchard on 11/11/75 Page 4). Therefore, average demurrage is 22 hours (58–36 hours Laytime allowed for discharge) or 0.91666 days.
As Russel H. Green summer Dwt is 63442 = US\$9,700 per day which at WS165 = US\$16005 per day or pro rata. Average demurrage value = US\$16005 × 0.91666 = US\$14,671.14. 30
- (n) Payment by IRREVOC. L/C—60 days after Bill of Lading date.
- (o) Payment by Telegraphic transfer—60 days after Bill of Lading date.
- (p) Payment date—103 days after Bill of Lading date (as per Voyage 8).
- (q) Payment by telegraphic transfer on receipt of cargo at Gove.
- (r) Payment date—66 days after discharge date at Gove (as per Voyage 7).
- (s) Payment by Bank Draft—30 days after Bill of Lading date.
- (t) Payment by cheque—90 days after receipt of cargo at Gove.
- (u) Freight adjustment as per BP Cross Claim APPENDIX C 31/10/75. Assume AFRA does not increase on 1/1/76.
- (v) BP invoices Nabalco for OUTTURN STATEMENT quantity. 40
- N/A Not applicable. From and including Voyage 9 Charterers Liability Insurance is no longer paid by Nabalco. Concord have agreed to cover Nabalco at no cost to Nabalco.

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
 VOYAGE No. 14(a)

	Method		KNPC/Concord	BPA	Invoice Payment Date
A Vessel Name		(b)	RUSSEL H. GREEN	—	
B Gross Registered Tonnage		LT	N/A	—	
C Bill of Lading Qty.		BBL	(c) 403,000	—	
D Bill of Lading Qty.		MT	(d) 62,000	—	
E Gove Outturn Statement Qty.		MT	(e) 61,802	61,802	
F Differential	D - E	MT	+198	—	
G Bill of Lading Date			(f) 8/7/76	—	
H Disch. Date Gove (Hoses Disc) Arrival date 26/7/76 ..			(g) 28/7/76	28/7/76	
I FOB Price Per BBL		US\$	(a) 10.757	—	(n)
J FOB Value	$C \times I$	US\$	4,335,071.00	—	6/9/76
K Exchange Rate	US\$ = A\$	(h)	1.2612	—	
L FOB Value	$J \div K$	A\$	3,437,358.96	—	
M FOB Cost/Tonne	$L \div D$	A\$	55.440	—	
N MHTC L/C Fee	$0.20\% \times J$	US\$	(j) 8,670.14	—	(o)
O Exchange Rate	US\$ = A\$	(i)	1.2609	—	6/9/76
P MHTC L/C Fee Value	$N \div O$	A\$	6,876.15	—	
Q MHTC L/C Fee/Tonne	$P \div D$	A\$	0.111	—	
R Insurance—Charterer's Liability	$A\$0.10 \times B$	A\$	N/A	—	
S Insurance—Charterer's Liability/Tonne	$R \div D$	A\$	—	—	(p)
T Insurance—Marine 0.045% War Risk 0.01875%	$.06375\% \times L$	A\$	(k) 2,191.25	—	18/10/76
U Insurance—Marine/War Risk/Tonne	$T \div D$	A\$	0.035	—	
V Total Cargo Value (Excl. Freight Costs)	$L+P+R+T$	A\$	3,446,326.36	—	
W Cargo Cost/Tonne (Excl. Freight Costs)	$M+Q+S+U$	A\$	55.586	—	
X Actual Freight/Tonne		US\$	(l) 13.33325	—	(q)
Y Freight Value	$X \times D$	US\$	826,661.50	—	28/7/76
Z Exchange Rate	US\$ = A\$	(h)	1.2612	—	
1 Freight Value	$Y \div Z$	A\$	655,456.31	—	
2 Freight Cost/Tonne	$1 \div D$	A\$	10.572	—	(r)
3 Demurrage Value		US\$	(m) NIL	—	—
4 Exchange Rate	US\$ = A\$		NIL	—	
5 Demurrage Value	$3 \div 4$	A\$	NIL	—	

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Exhibit AG
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FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
VOYAGE No. 14(a)

	Method		KNPC/Concord	BPA	Invoice Payment Date
6 Demurrage Cost/Tonne	5 ÷ D	A\$	NIL	—	
7 Survey Fee/Tonne		US\$	0.028542	—	(s)
8 Survey Value	7 × D	US\$	1,769.60	—	6/8/76
9 Exchange Rate	US\$ = A\$		(i) 1.2609	—	
10 Survey Value	8 ÷ 9	A\$	1,403.44	—	
11 Survey Cost/Tonne	10 ÷ D	A\$	0.023	—	
12 Total Freight Value	1+5+10	A\$	656,859.75	—	
13 Total Freight Cost/Tonne	2+6+11	A\$	10.595	—	
14 BP—Base Contract Price/Tonne		A\$	—	9.42	(t)
15 BP—Cargo Value	14 × E	A\$	—	582,174.84	25/10/76
16 BP—Freight AFRA Adjustment/Tonne		A\$	—	(u) 5.16	(t)
17 BP—Freight Adjustment Value	17 × E	A\$	—	318,898.32	25/10/76
18 Total Delivered Gove—Value		A\$	V + 12 4,103,186.11	15 + 17 901,073.16	(v)
19 Total Delivered Gove Cost/Tonne		A\$	W + 13 66.181	14 + 16 14.58	
20 Excess Cost to Nabalco		A\$	3,202,112.95		

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD
TO BP AUSTRALIA 17/11/75
VOYAGE NO. 14(a)

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NOTES

— Assumption

- (a) Assume the contract price US\$10.757 per barrel effective 12/10/75 (re KNPC's telex 28/10/75).
- (b) Vessel not nominated but assume "Russel H. Green" as typical vessel.
- (c) Estimated 6.5 bbls/tonne based on previous voyages.
- 10 (d) Estimated maximum quantity loaded.
- (e) Outturn loss estimated at 0.32% based on average on Voyages 1 to 10.
- (f) Calculated on average 19 day voyage based on average of Voyages 1 to 8 i.e.: arrival date less 19.
- (g) Assume vessel in Gove 3 days.
- (h) Preferential exchange rate as at 17/11/75.
- (i) Official exchange rate as at 17/11/75.
- (j) MHTC have decreased commission for 0.25% to 0.20% effective Voyage 11.
- (k) A\$/CAN\$ exchange rate same as A\$/US\$ rate at 17/11/75.
- 20 (l) Assume World Scale 100 for Voyage Shuaiba/Gove does not increase on 1/1/76 from published rate (effective 1/10/75 US\$8.21 per long ton).
- (m) Assume demurrage not incurred.
- (n) Payment by IRREVOC L/C—60 days after Bill of Lading date.
- (o) Payment by telegraphic transfer—60 days after Bill of Lading date.
- (p) Payment date—103 days after Bill of Lading date (as per Voyage 8).
- (q) Payment by telegraphic transfer on receipt of cargo at Gove.
- (r) Nil payment.
- (s) Payment by Bank Draft—30 days after Bill of Lading date.
- (t) Payment by cheque—90 days after receipt of cargo at Gove.
- 30 (u) Freight adjustment calculated as per BP Contract but assuming AFRA 1/11/75 voyage Aden/Gove $US\$7.86LT @ 129.7 = US\$10.19 \div$ (Reuters exchange 17/11/75 $US\$2.0325 = \pounds STG1) = \pounds STG5.014 - \pounds STG1.792 = \pounds STG3.222 \div$ (Bank Exchange 17/11/75 $A\$0.6147 = \pounds STG1) = A\$5.24LT \div 1.01605 = A\$5.16 mt.$
- (v) BP invoices Nabalco for OUTTURN STATEMENT quantity.
- N/A From and including Voyage 9. Charterers Liability Insurance is no longer paid by Nabalco. Concord have agreed to cover Nabalco at no cost to Nabalco.

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
VOYAGE No. 14(b)

	Method		KNPC/Concord	BPA	Invoice Payment Date
A Vessel Name		(b)	RUSSEL H. GREEN	—	
B Gross Registered Tonnage		LT	N/A	—	
C Bill of Lading Qty.		BBL	(c) 403,000	—	
D Bill of Lading Qty.		MT	(d) 62,000	—	
E Gove Outturn Statement Qty.		MT	(e) 61,802	61,802	
F Differential	D - E	MT	+198	—	
G Bill of Lading Date		(f)	8/7/76	—	
H Disch. Date Gove (Hoses Disc) Arrival date 26/7/76		(g)	28/7/76	28/7/76	
I FOB Price Per BBL		US\$	(a) 11.295	—	(n)
J FOB Value	C × I	US\$	4,551,855.00	—	6/9/76
K Exchange Rate	US\$ = A\$	(h)	1.2612	—	
L FOB Value	J ÷ K	A\$	3,609,169.84	—	
M FOB Cost/Tonne	L ÷ D	A\$	58.212	—	
N MHTC L/C Fee	0.20% × J	US\$	(j) 9,103.77	—	(o)
O Exchange Rate	US\$ = A\$	(i)	1.2609	—	6/9/76
P MHTC L/C Fee Value	N ÷ O	A\$	7,220.06	—	
Q MHTC L/C Fee/Tonne	P ÷ D	A\$	0.111	—	
R Insurance—Charterer's Liability	A\$0.10 × B	A\$	N/A	—	
S Insurance—Charterer's Liability/Tonne	R ÷ D	A\$	—	—	(p)
T Insurance—Marine 0.045% War Risk 0.01875% .. .. .	.06375% × L	A\$	(k) 2,300.85	—	18/10/76
U Insurance—Marine/War Risk/Tonne	T ÷ D	A\$	0.037	—	
V Total Cargo Value (Excl. Freight Costs)	L+P+R+T	A\$	3,618,690.75	—	
W Cargo Cost/Tonne (Excl. Freight Costs)	M+Q+S+U	A\$	58.365	—	
X Actual Freight/Tonne		US\$	(l) 14.33935	—	(q)
Y Freight Value	X × D	US\$	889,039.70	—	28/7/76
Z Exchange Rate	US\$ = A\$	(h)	1.2612	—	
1 Freight Value	Y ÷ Z	A\$	704,915.71	—	
2 Freight Cost/Tonne	1 ÷ D	A\$	11.370	—	(r)
3 Demurrage Value		US\$	(m) 14,671.14	—	1/10/76
4 Exchange Rate	US = A\$	(i)	1.2609	—	
5 Demurrage Value	3 ÷ 4	A\$	11,635.45	—	

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
 VOYAGE No. 14(b)

	Method		KNPC/Concord	BPA	Invoice Payment Date
6 Demurrage Cost/Tonne	5 ÷ D	A\$	0.188	—	
7 Survey Fee/Tonne		US\$	0.028542	—	(s)
8 Survey Value	7 × D	US\$	1,769.60	—	6/8/76
9 Exchange Rate	US\$ = A\$		(i) 1.2609	—	
10 Survey Value	8 ÷ 9	A\$	1,403.44	—	
11 Survey Cost/Tonne	10 ÷ D	A\$	0.023	—	
12 Total Freight Value	1+5+10	A\$	717,954.60	—	
13 Total Freight Cost/Tonne	2+6+11	A\$	11.581	—	
14 BP—Base Contract Price/Tonne		A\$	—	9.42	(t)
15 BP—Cargo Value	14 × E	A\$	—	582,174.84	25/10/76
16 BP—Freight AFRA Adjustment/Tonne		A\$	—	(u) 4.26	(t)
17 BP—Freight Adjustment Value	17 × E	A\$	—	263,276.52	25/10/76
18 Total Delivered Gove—Value		A\$	V + 12 4,336,645.35	15 + 17 845,451.36	(v)
19 Total Delivered Gove Cost/Tonne		A\$	W + 13 69.946	14 + 16 13.68	
20 Excess Cost to Nabalco		A\$	3,491,391.99		

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD
TO BP AUSTRALIA 17/11/75
VOYAGE NO. 14(b)

NOTES

— *Assumption*

- (a) Assume the contract price US\$10.757 per barrel effective 17/10/75 (re KNPC's telex 28/10/75) will increase 5% to US\$11.295 per barrel effective 1/7/76 (advised in letter to Pritchard 14/11/75).
- (b) Vessel not nominated but assume "Russel H. Green" as typical vessel. 10
- (c) Estimated 6.5 bbls/tonne based on previous voyages.
- (d) Estimated maximum quantity loaded.
- (e) Outturn loss estimated at 0.32% based on average of Voyages 1 to 10.
- (f) Calculated on average 19 days voyage based on average of Voyages 1 to 8 i.e.: arrival date less 19.
- (g) Assume vessel in Gove for 3 days.
- (h) Preferential exchange rate as at 17/11/75.
- (i) Official exchange rate as at 17/11/75.
- (j) MHTC have decreased the commission from 0.25% to 0.20% effective Voyage 11.
- (k) A\$/CAN\$ exchange rate same as A\$/US\$ exchange rate at 17/11/75.
- (l) Assume World Scale 100 for voyage Shuaiba/Gove increases on 1/1/76 from current published rate (effective 1/10/75) of US\$8.21 per long ton. The increase is expected to be 7.5% to US\$8.83 per long ton. Nabalco's contract rate of WS165 will be US\$14.5695 per long ton or US\$14.33935 per metric ton. 20
- (m) Demurrage based on average NET Laytime used at Gove for nominal 60,000 tonne cargo for Voyages 4, 5, 6, and 7 i.e.: 58 hours (re particulars to Pritchard on 11/11/75 Page 4). Therefore, average demurrage is 22 hours (58–36 hours Laytime allowed for discharge) or 0.91666 days.
As Russel H. Green summer Dwt is 63442 = US\$9,700 per day which at WS165 = US\$16,005 per day or pro rata. Average demurrage value = US\$16,005 × 0.19666 = US\$14,671.14. 30
- (n) Payment by IRREVOC L/C—60 days after Bill of Lading date.
- (o) Payment by telegraphic transfer—60 days after Bill of Lading date.
- (p) Payment date—103 days after Bill of Lading date (as per Voyage 8).
- (q) Payment by telegraphic transfer on receipt of cargo at Gove.
- (r) Payment date—66 days after discharge at Gove (as per Voyage 7).
- (s) Payment by Bank Draft—30 days after Bill of Lading date.
- (t) Payment by cheque—90 days after receipt of cargo at Gove.
- (u) Freight adjustment as per BP Cross Claim APPENDIX C 31/10/75. Assume AFRA does not increase on 1/1/76.
- (v) BP invoices Nabalco for OUTTURN STATEMENT quantity. 40
- N/A Not applicable. From and including Voyage 9 Charterers Liability Insurance is no longer paid by Nabalco. Concord have agreed to cover Nabalco at no cost to Nabalco.

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
 VOYAGE No. 15(a)

	Method		KNPC/Concord	BPA	Invoice Payment Date
A Vessel Name		(b)	RUSSEL H. GREEN	—	
B Gross Registered Tonnage		LT	N/A	—	
C Bill of Lading Qty.		BBL	(c) 403,000	—	
D Bill of Lading Qty.		MT	(d) 62,000	—	
E Gove Outturn Statement Qty.		MT	(e) 61,802	61,802	
F Differential	D - E	MT	+198	—	
G Bill of Lading Date			(f) 2/9/76	—	
H Disch. Date Gove (Hoses Disc) Arrival date 20/9/76 ..			(g) 22/9/76	22/9/76	
I FOB Price Per BBL		US\$	(a) 10.757	—	(n)
J FOB Value	C × I	US\$	4,335,071.00	—	1/11/76
K Exchange Rate	US\$ = A\$		(h) 1.2612	—	
L FOB Value	J ÷ K	A\$	3,437,258.96	—	
M FOB Cost/Tonne	L ÷ D	A\$	55.440	—	
N MHTC L/C Fee	0.20% × J	US\$	(j) 8,670.14	—	(o)
O Exchange Rate	US\$ = A\$		(i) 1.2609	—	1/11/76
P MHTC L/C Fee Value	N ÷ O	A\$	6,876.15	—	
Q MHTC L/C Fee/Tonne	P ÷ D	A\$	0.111	—	
R Insurance—Charterer's Liability	A\$0.10 × B	A\$	N/A	—	
S Insurance—Charterer's Liability/Tonne	R ÷ D	A\$	—	—	(p)
T Insurance—Marine 0.045% War Risk 0.01875% .. .. .	.06375% × L	A\$	(k) 2,191.25	—	23/12/76
U Insurance—Marine/War Risk/Tonne	T ÷ D	A\$	0.035	—	
V Total Cargo Value (Excl. Freight Costs)	L+P+R+T	A\$	3,446,326.36	—	
W Cargo Cost/Tonne (Excl. Freight Costs)	M+Q+S+U	A\$	55.586	—	
X Actual Freight/Tonne		US\$	(l) 13.33325	—	(q)
Y Freight Value	X × D	US\$	826,661.50	—	22/9/76
Z Exchange Rate	US\$ = A\$		(h) 1.2612	—	
1 Freight Value	Y ÷ Z	A\$	655,456.31	—	
2 Freight Cost/Tonne	1 ÷ D	A\$	10.572	—	(r)
3 Demurrage Value		US\$	(m) NIL	—	
4 Exchange Rate	US\$ = A\$		NIL	—	
5 Demurrage Value	3 ÷ 4	A\$	NIL	—	

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Exhibit AG
 Plaintiff's
 schedules of
 costs

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
VOYAGE No. 15(a)

	Method		KNPC/Concord	BPA	Invoice Payment Date
6 Demurrage Cost/Tonne	5 ÷ D	A\$	NIL	—	
7 Survey Fee/Tonne		US\$	0.028542	—	(s)
8 Survey Value	7 × D	US\$	1,769.60	—	1/10/76
9 Exchange Rate	US\$ = A\$		(i) 1.2609	—	
10 Survey Value	8 ÷ 9	A\$	1,403.44	—	
11 Survey Cost/Tonne	10 ÷ D	A\$	0.023	—	
12 Total Freight Value	1+5+10	A\$	656,859.75	—	
13 Total Freight Cost/Tonne	2+6+11	A\$	10.595	—	
14 BP—Base Contract Price/Tonne		A\$	—	9.42	(t)
15 BP—Cargo Value	14 × E	A\$	—	582,174.84	20/12/76
16 BP—Freight AFRA Adjustment/Tonne		A\$	—	(u) 5.16	(t)
17 BP—Freight Adjustment Value	17 × E	A\$	—	318,898.32	20/12/76
18 Total Delivered Gove—Value		A\$	V + 12 4,103,186.11	15 + 17 901,073.16	
19 Total Delivered Gove Cost/Tonne		A\$	W + 13 66.181	14 + 16 14.58	
20 Excess Cost to Nabalco		A\$	3,202,112.95		

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD
TO BP AUSTRALIA 17/11/75
VOYAGE NO. 15(a)

Exhibit AG
Plaintiff's
schedules of
costs

NOTES

— Assumption

- (a) Assume the contract price US\$10.757 per barrel effective 12/10/75 (re KNPC's telex 28/10/75).
- (b) Vessel not nominated but assume "Russel H. Green" as typical vessel.
- (c) Estimated 6.5 bbls/tonne based on previous voyages.
- 10 (d) Estimated maximum quantity loaded.
- (e) Outturn loss estimated at 0.32% based on average on Voyages 1 to 10.
- (f) Calculated on average 19 day voyage based on average of Voyages 1 to 8. i.e.: arrival date less 19.
- (g) Assume vessel in Gove 3 days.
- (h) Preferential exchange rate as at 17/11/75.
- (i) Official exchange rate as at 17/11/75.
- (j) MHTC have decreased commission for 0.25% to 0.20% effective Voyage 11.
- (k) A\$/CAN\$ exchange rate same as A\$/US\$ rate at 17/11/75
- 20 (l) Assume World Scale 100 for Voyage Shuaiba/Gove does not increase on 1/1/76 from published rate (effective 1/10/75 US\$8.21 per long ton).
- (m) Assume demurrage not incurred.
- (n) Payment by IRREVOC L/C—60 days after Bill of Lading date.
- (o) Payment by telegraphic transfer—60 days after Bill of Lading date.
- (p) Payment date—103 days after Bill of Lading date (as per Voyage 8).
- (q) Payment by telegraphic transfer on receipt of cargo at Gove.
- (r) Nil payment.
- (s) Payment by Bank Draft—30 days after Bill of Lading date.
- (t) Payment by cheque—90 days after receipt of cargo at Gove.
- 30 (u) Freight adjustment calculated as per BP Contract but assuming AFRA 1/11/75 voyage Aden/Gove $US\$7.86LT @ 129.7 = US\$10.19 \div (\text{Reuters exchange } 17/11/75 \text{ US\$2.0325} = \text{£STG1}) = \text{£STG5.014} - \text{£STG1.792} = \text{£STG3.222} \div (\text{Bank Exchange } 17/11/75 \text{ A\$0.6147} = \text{£STG1}) = \text{A\$5.24LT} \div 1.01605 = \text{A\$5.16 mt.}$
- (v) BP invoices Nabalco for OUTTURN STATEMENT quantity.
- N/A From and including Voyage 9. Charterers Liability Insurance is no longer paid by Nabalco. Concord have agreed to cover Nabalco at no cost to Nabalco.

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
VOYAGE No. 15(b)

	Method		KNPC/Concord	BPA	Invoice Payment Date
A Vessel Name		(b)	RUSSEL H. GREEN	—	
B Gross Registered Tonnage		LT	N/A	—	
C Bill of Lading Qty.		BBL	(c) 403,000	—	
D Bill of Lading Qty.		MT	(d) 62,000	—	
E Gove Outturn Statement Qty.		MT	(e) 61,802	61,802	
F Differential	D - E	MT	+198	—	
G Bill of Lading Date		(f)	2/9/76	—	
H Disch. Date Gove (Hoses Disc) Arrival date 20/9/76		(g)	22/9/76	22/9/76	
I FOB Price Per BBL		US\$	(a) 11.295	—	(n)
J FOB Value	C × I	US\$	4,551,885.00	—	1/11/76
K Exchange Rate	US\$ = A\$	(h)	1.2612	—	
L FOB Value	J ÷ K	A\$	3,609,169.84	—	
M FOB Cost/Tonne	L ÷ D	A\$	58.212	—	
N MHTC L/C Fee	0.20% × J	US\$	(j) 9,103.77	—	(o)
O Exchange Rate	US\$ = A\$	(i)	1.2609	—	1/11/76
P MHTC L/C Fee Value	N ÷ O	A\$	7,220.06	—	
Q MHTC L/C Fee/Tonne	P ÷ D	A\$	0.116	—	
R Insurance—Charterer's Liability	A\$0.10 × B	A\$	N/A	—	
S Insurance—Charterer's Liability/Tonne	R ÷ D	A\$	—	—	(p)
T Insurance—Marine 0.045% War Risk 0.01875% .. .. .	.06375% × L	A\$	(k) 2,300.85	—	23/12/76
U Insurance—Marine/War Risk/Tonne	T ÷ D	A\$	0.037	—	
V Total Cargo Value (Excl. Freight Costs)	L+P+R+T	A\$	3,618,690.75	—	
W Cargo Cost/Tonne (Excl. Freight Costs)	M+Q+S+U	A\$	58.365	—	
X Actual Freight/Tonne		US\$	(l) 14.33935	—	(q)
Y Freight Value	X × D	US\$	889,039.70	—	22/9/76
Z Exchange Rate	US\$ = A\$	(h)	1.2612	—	
1 Freight Value	Y ÷ Z	A\$	704,915.71	—	
2 Freight Cost/Tonne	1 ÷ D	A\$	11.370	—	(r)
3 Demurrage Value		US\$	(m) 14,671.14	—	26/11/76
4 Exchange Rate	US\$ = A\$	(i)	1.2609	—	
5 Demurrage Value	3 ÷ 4	A\$	11,635.45	—	

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
 VOYAGE No. 15(b)

	Method		KNPC/Concord	BPA	Invoice Payment Date
6 Demurrage Cost/Tonne	5 ÷ D	A\$	0.188	—	
7 Survey Fee/Tonne		US\$	0.028542	—	(s)
8 Survey Value	7 × D	US\$	1,769.60	—	1/10/76
9 Exchange Rate	US\$ = A\$	(i)	1.2609	—	
10 Survey Value	8 ÷ 9	A\$	1,403.44	—	
11 Survey Cost/Tonne	10 ÷ D	A\$	0.023	—	
12 Total Freight Value	1+5+10	A\$	717,954.60	—	
13 Total Freight Cost/Tonne	2+6+11	A\$	11.581	—	
14 BP—Base Contract Price/Tonne		A\$	—	9.42	(t)
15 BP—Cargo Value	14 × E	A\$	—	582,174.84	20/12/76
16 BP—Freight AFRA Adjustment/Tonne		A\$	—	(u) 4.26	(t)
17 BP—Freight Adjustment Value	17 × E	A\$	—	263,276.52	20/12/76
18 Total Delivered Gove—Value		A\$	V + 12 4,336,645.35	15 + 17 845,451.36	(v)
19 Total Delivered Gove Cost/Tonne		A\$	W + 13 69.946	14 + 16 13.68	
20 Excess Cost to Nabalco		A\$	3,491,193.99		

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FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD
TO BP AUSTRALIA 17/11/75
VOYAGE NO. 15(b)

NOTES

— *Assumption*

- (a) Assume the contract price US\$10.757 per barrel effective 17/10/75 (re KNPC's telex 28/10/75) will increase 5% to US\$11.295 per barrel effective 1/7/76 (advised in letter to Pritchard 14/11/75).
- (b) Vessel not nominated but assume "Russel H. Green" as typical vessel. 10
- (c) Estimated 6.5 bbls/tonne based on previous voyages.
- (d) Estimated maximum quantity loaded.
- (e) Outturn loss estimated at 0.32% based on average of Voyages 1 to 10.
- (f) Calculated on average 19 days voyage based on average of Voyages 1 to 8 i.e.: arrival date less 19.
- (g) Assume vessel in Gove for 3 days.
- (h) Preferential exchange rate as at 17/11/75.
- (i) Official exchange rate as at 17/11/75.
- (j) MHTC have decreased the commission from 0.25% to 0.20% effective Voyage 11.
- (k) A\$/CAN\$ exchange rate same as A\$/US\$ exchange rate at 17/11/75.
- (l) Assume World Scale 100 for voyage Shuaiba/Gove increases on 1/1/76 from current published rate (effective 1/10/75) of US\$8.21 per long ton. The increase is expected to be 7.5% to US\$8.83 per long ton. Nabalco's contract rate of WS165 will be US\$14.5695 per long ton or US\$14.33935 per metric ton. 20
- (m) Demurrage based on average NET Laytime used at Gove for nominal 60,000 tonne cargo for Voyages 4, 5, 6, and 7 i.e.: 58 hours (re particulars to Pritchard on 11/11/75 Page 4). Therefore, average demurrage is 22 hours (58–36 hours Laytime allowed for discharge) or 0.91666 days.
As Russel H. Green summer Dwt is 63442 = US\$9,700 per day which at WS165 = US\$16,005 per day or pro rata. Average demurrage value = US\$16,005 × 0.19666 = US\$14,671.14. 30
- (n) Payment by IRREVOC L/C—60 days after Bill of Lading date.
- (o) Payment by telegraphic transfer—60 days after Bill of Lading date.
- (p) Payment date—103 days after Bill of Lading date (as per Voyage 8).
- (q) Payment by telegraphic transfer on receipt of cargo at Gove.
- (r) Payment date—66 days after discharge at Gove (as per Voyage 7).
- (s) Payment by Bank Draft—30 days after Bill of Lading date.
- (t) Payment by cheque—90 days after receipt of cargo at Gove.
- (u) Freight adjustment as per BP Cross Claim APPENDIX C 31/10/75. Assume AFRA does not increase on 1/1/76.
- (v) BP invoices Nabalco for OUTTURN STATEMENT quantity. 40
- N/A Not applicable. From and including Voyage 9 Charterers Liability Insurance is no longer paid by Nabalco. Concord have agreed to cover Nabalco at no cost to Nabalco.

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
 VOYAGE No. 11(a) Demurrage Excluded

	Method		KNPC/Concord	BPA	Invoice Payment Date
A Vessel Name			RUSSEL H. GREEN	—	
B Gross Registered Tonnage		LT	N/A	—	
C Bill of Lading Qty.		BBL	(b) 403,000	—	
D Bill of Lading Qty.		MT	(c) 62,000	—	
E Gove Outturn Statement Qty.		MT	(d) 61,802	61,802	
F Differential	D - E	MT	+198	—	
G Bill of Lading Date			(e) 18/12/75	—	
H Disch. Date Gove (Hoses Disc) Arrival date 5/1/75			(f) 7/1/76	7/1/76	
I FOB Price Per BBL		US\$	(a) 10.757	—	(m)
J FOB Value	C × I	US\$	4,335,071.00	—	16/2/76
K Exchange Rate	US\$ = A\$	(g)	1.2612	—	
L FOB Value	J ÷ K	A\$	3,437,258.96	—	
M FOB Cost/Tonne	L ÷ D	A\$	55.440	—	
N MHTC L/C Fee	0.20% × J	US\$	(i) 8,670.14	—	(n)
O Exchange Rate	US\$ = A\$	(h)	1.2609	—	16/2/76
P MHTC L/C Fee Value	N ÷ O	A\$	6,876.15	—	
Q MHTC L/C Fee/Tonne	P ÷ D	A\$	0.111	—	
R Insurance—Charterer's Liability	A\$0.10 × B	A\$	N/A	—	
S Insurance—Charterer's Liability/Tonne	R ÷ D	A\$	—	—	(o)
T Insurance—Marine 0.045% War Risk 0.01875% .. .. .	.06375% × L	A\$	(j) 2,191.25	—	29/3/76
U Insurance—Marine/War Risk/Tonne	T ÷ D	A\$	0.035	—	
V Total Cargo Value (Excl. Freight Costs)	L+P+R+T	A\$	3,446,326.36	—	
W Cargo Cost/Tonne (Excl. Freight Costs)	M+Q+S+U	A\$	55.586	—	
X Actual Freight/Tonne		US\$	(k) 13.25132	—	(p)
Y Freight Value	X × D	US\$	821,581.84	—	7/1/76
Z Exchange Rate	US\$ = A\$	(g)	1.2612	—	
1 Freight Value	Y ÷ Z	A\$	651,428.67	—	
2 Freight Cost/Tonne	1 ÷ D	A\$	10.507	—	(u)
3 Demurrage Value		US\$	(l) NIL	—	
4 Exchange Rate	US\$ = A\$		NIL	—	
5 Demurrage Value	3 ÷ 4	A\$	NIL	—	

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 Plaintiff's
 schedules of
 costs

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
VOYAGE No. 11(a) Demurrage Excluded

	Method		KNPC/Concord	BPA	Invoice Payment Date
6 Demurrage Cost/Tonne	5 ÷ D	A\$	NIL	—	
7 Survey Fee/Tonne		US\$	0.028542	—	(q)
8 Survey Value	7 × D	US\$	1,769.60	—	16/1/76
9 Exchange Rate	US\$ = A\$		(h) 1.2609	—	
10 Survey Value	8 ÷ 9	A\$	1,403.44	—	
11 Survey Cost/Tonne	10 ÷ D	A\$	0.023	—	
12 Total Freight Value	1+5+10	A\$	652,832.11	—	
13 Total Freight Cost/Tonne	2+6+11	A\$	10.530	—	
14 BP—Base Contract Price/Tonne		A\$	—	9.42	(r) 5/4/76
15 BP—Cargo Value	14 × E	A\$	—	582,174.84	(r)
16 BP—Freight AFRA Adjustment/Tonne		A\$	—	(s) 5.16	5/4/76
17 BP—Freight Adjustment Value	17 × E	A\$	—	318,898.32	
18 Total Delivered Gove—Value		A\$	V + 12 4,099,158.47	15 + 17 901,073.16	(t)
19 Total Delivered Gove Cost/Tonne		A\$	W + 13 66.116	14 + 16 14.58	
20 Excess Cost to Nabalco		A\$	3,198,085.31		

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD
TO BP AUSTRALIA 17/11/75
VOYAGE NO. 11(a)

Exhibit AG
Plaintiff's
schedules of
costs

NOTES

— *Actual*

(a) New contract price effective 17/10/75 (re KNPC's telex 28/10/75).

— *Assumption*

- (b) Estimated 6.5 bbls/tonne based on previous voyages.
- (c) Estimated maximum quantity loaded.
- 10 (d) Outturn loss estimated at 0.32% based on average of Voyages 1 to 10.
- (e) Calculated on average 19 day voyage based on average of Voyages 1 to 8 i.e.: arrival date less 19.
- (f) Assume vessel in Gove for 3 days.
- (g) Preferential exchange rate as at 17/11/75.
- (h) Official exchange rate as at 17/11/75.
- (i) MHTC have decreased commission rate from 0.25% to 0.20% effective Voyage 11.
- (j) A\$/CAN\$ exchange rate same as A\$/US\$ exchange rate at 17/11/75.
- 20 (k) Due increase in World Scale 100 from US\$8.15 to US\$8.21 per 1.t. Concord invoiced new rate. However, Nabalco has requested Concord by letter 30/11/75 to reconsider and not apply the increase. It is assumed that the lower figure now applies.
- (l) Assume demurrage not incurred.
- (m) Payment by IRREVOC. L/C—60 days after Bill of Lading date.
- (n) Payment by telegraphic transfer—60 days after Bill of Lading date.
- (o) Payment date—103 days after Bill of Lading date (as per Voyage 8).
- (p) Payment by telegraphic transfer on receipt of cargo at Gove.
- (q) Payment by Bank Draft—30 days after Bill of Lading date.
- (r) Payment by cheque 90 days after receipt of cargo at Gove.
- 30 (s) Freight adjustment calculated as per BP contract but assuming AFRA—1/11/75 voyage Aden/Gove US\$7.86/1.t. @ 129.7 = US\$10.19 ÷ (Reuters exchange 17/11/75 US\$2.0325 = £STG1) = £STG5.014 - £STG1.792 = £STG3.222 ÷ (Bank exchange 17/11/75 A\$0.6147 = £STG1) = A\$5.24/1.t. ÷ 1.01605 = A\$5.16 mt.
- (t) BP invoices Nabalco for OUTTURN STATEMENT quantity.
- (u) Nil payment.
- N/A Not applicable. From and including Voyage 9 Charterers Liability Insurance is no longer paid by Nabalco. Concord have agreed to cover Nabalco at no cost to Nabalco.

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
VOYAGE No. 11(b) Demurrage Excluded

	Method		KNPC/Concord	BPA	Invoice Payment Date
A Vessel Name			RUSSEL H. GREEN	—	
B Gross Registered Tonnage		LT	N/A	—	
C Bill of Lading Qty.		BBL	(b) 403,000	—	
D Bill of Lading Qty.		MT	(c) 62,000	—	
E Gove Outturn Statement Qty.		MT	(d) 61,802	61,802	
F Differential	D - E	MT	+ 198	—	
G Bill of Lading Date			(e) 18/12/75	—	
H Disch. Date Gove (Hoses Disc) Arrival date 5/1/76			(f) 7/1/76	7/1/76	
I FOB Price Per BBL		US\$	(a) 10.757	—	(m)
J FOB Value	C × I	US\$	4,335,071.00	—	16/2/76
K Exchange Rate	US\$ = A\$	(g)	1.2612	—	
L FOB Value	J ÷ K	A\$	3,437,758.96	—	
M FOB Cost/Tonne	L ÷ D	A\$	55.440	—	(m)
N MHTC L/C Fee	0.20% × J	US\$	(i) 8,670.14	—	16/2/76
O Exchange Rate	US\$ = A\$	(h)	1.2609	—	
P MHTC L/C Fee Value	N ÷ O	A\$	6,876.15	—	
Q MHTC L/C Fee/Tonne	P ÷ D	A\$	0.111	—	
R Insurance—Charterer's Liability	A\$0.10 × B	A\$	N/A	—	
S Insurance—Charterer's Liability/Tonne	R ÷ D	A\$	—	—	(o)
T Insurance—Marine 0.045% War Risk 0.01875% .. .. .	.06375% × L	A\$	(j) 2,191.25	—	29/3/76
U Insurance—Marine/War Risk/Tonne	T ÷ D	A\$	0.035	—	
V Total Cargo Value (Excl. Freight Costs)	L+P+R+T	A\$	3,446,326.36	—	
W Cargo Cost/Tonne (Excl. Freight Costs)	M+Q+S+U	A\$	55.586	—	
X Actual Freight/Tonne		US\$	(k) 13.33325	—	(p)
Y Freight Value	X × D	US\$	826,661.50	—	7/1/76
Z Exchange Rate	US\$ = A\$	(g)	1.2612	—	
1 Freight Value	Y ÷ Z	A\$	655,456.31	—	
2 Freight Cost/Tonne	1 ÷ D	A\$	10.572	—	(u)
3 Demurrage Value		US\$	(l) 14,671.14	—	12/3/76
4 Exchange Rate	US\$ = A\$	(h)	1.2609	—	
5 Demurrage Value	3 ÷ 4	A\$	11,635.45	—	

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
 VOYAGE No. 11(b) Demurrage Excluded

	Method		KNPC/Concord	BPA	Invoice Payment Date
6 Demurrage Cost/Tonne	5 ÷ D	A\$	0.188	—	
7 Survey Fee/Tonne		US\$	0.028542	—	(q)
8 Survey Value	7 × D	US\$	1,769.60	—	16/1/76
9 Exchange Rate	US\$ = A\$	(h)	1.2609	—	
10 Survey Value	8 ÷ 9	A\$	1,403.44	—	
11 Survey Cost/Tonne	10 ÷ D	A\$	0.023	—	
12 Total Freight Value	1+5+10	A\$	668,495.20	—	
13 Total Freight Cost/Tonne	2+6+11	A\$	10.783	—	
14 BP—Base Contract Price/Tonne		A\$	—	9.42	(r) 5/4/76
15 BP—Cargo Value	14 × E	A\$	—	582,174.84	(r)
16 BP—Freight AFRA Adjustment/Tonne		A\$	—	(s) 4.26	5/4/76
17 BP—Freight Adjustment Value	17 × E	A\$	—	263,276.52	
18 Total Delivered Gove—Value		A\$	V + 12 4,114,821.56	15 + 17 845,451.36	(t)
19 Total Delivered Gove Cost/Tonne		A\$	W + 13 66.369	14 + 16 13.68	
20 Excess Cost to Nabalco		A\$	3,269,370.20		

Alternatively if demurrage is to be excluded

12 becomes	656,859.75
13 becomes	10.595
18 becomes	4,103,186.11
19 becomes	66.181
20 becomes	3,257,734.75

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FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD
TO BP AUSTRALIA 17/11/75
VOYAGE NO. 11(b)

NOTES

— *Actual*

- (a) New contract price effective 17/10/75 (re KNPC's telex 28/10/75)

— *Assumption*

- (b) Estimated 6.5 bbl/tonne based on previous voyage.
(c) Estimated maximum quantity loaded.
(d) Outturn loss estimated at 0.32% based on average of Voyages 1 to 10. 10
(e) Calculated on average 19 day voyage based on average of Voyages 1 to 8 i.e.: arrival date less 19.
(f) Assume vessel in Gove for 3 days.
(g) Preferential exchange rate as at 17/11/75.
(h) Official exchange rate as at 17/11/75
(i) MHTC have decreased commission rate from 0.25% to 0.20% effective Voyage 11.
(j) A\$/CAN\$ exchange rate same as A\$/US\$ exchange rate at 17/11/75.
(k) Assume Nabalco will pay World Scale 100 increase from US\$8.16 to US\$8.21 per l.t. for voyage Shuaiba/Gove which is effective 1/10/75. 20
(l) Assume demurrage incurred based on average NET Laytime used at Gove for nominal 60000 tonne cargos for Voyages 4, 5, 6, 7 i.e.: 58 hours (re particulars to Pritchard on 11/11/75 Page 4). Therefore average demurrage is 22 hours (58–36 hours Laytime allowed for discharge) or 0.91666 days. As Russel H. Green summer Dwt is 63442 = US\$9700 per day which at WS165 = US\$16005 per day or pro rata. Average demurrage value = US\$16005 × 0.91666 = US\$14,671.14.
(m) Payment by IRREVOC. L/C—60 days after Bill of Lading date.
(n) Payment by telegraphic transfer—60 days after Bill of Lading date.
(o) Payment date—103 days after Bill of Lading date (as per Voyage 8). 30
(p) Payment by telegraphic transfer on receipt of cargo at Gove.
(q) Payment by Bank Draft—30 days after Bill of Lading date.
(r) Payment by cheque—90 days after receipt of cargo at Gove.
(s) Freight adjustment calculated as per BP's Cross Claim Appendix C 31/10/75. Assuming AFRA does not increase on 1/1/76.
(t) BP invoices Nabalco for OUTTURN STATEMENT quantity.
(u) Payment date—66 days after discharge at Gove (as per Voyage 7).
N/A Not applicable. From and including Voyage 9 Charters Liability Insurance is no longer paid by Nabalco. Concord have agreed to cover Nabalco at no cost to Nabalco. 40

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
 VOYAGE No. 12(a) Demurrage Excluded

	Method		KNPC/Concord	BPA	Invoice Payment Date
A Vessel Name		(b)	RUSSEL H. GREEN	—	
B Gross Registered Tonnage		LT	N/A	—	
C Bill of Lading Qty.		BBL	(c) 403,000	—	
D Bill of Lading Qty.		MT	(d) 62,000	—	
E Gove Outturn Statement Qty.		MT	(e) 61,802	61,802	
F Differential	D - E	MT	+198	—	
G Bill of Lading Date			(f) 26/2/76	—	
H Disch. Date Gove (Hoses Disc) Arrival date 15/3/76			(g) 17/3/76	17/3/76	
I FOB Price Per BBL		US\$	(a) 10.757	—	(n)
J FOB Value	C × I	US\$	4,335,071.00	—	26/4/76
K Exchange Rate	US\$ = A\$		(h) 1.2612	—	
L FOB Value	J ÷ K	A\$	3,437,258.96	—	
M FOB Cost/Tonne	L ÷ D	A\$	55.440	—	
N MHTC L/C Fee	0.20% × J	US\$	(j) 8670.14	—	(o)
O Exchange Rate	US\$ = A\$		(i) 1.2609	—	26/4/76
P MHTC L/C Fee Value	N ÷ O	A\$	6876.15	—	
Q MHTC L/C Fee/Tonne	P ÷ D	A\$	0.111	—	
R Insurance—Charterer's Liability	A\$0.10 × B	A\$	N/A	—	
S Insurance—Charterer's Liability/Tonne	R ÷ D	A\$	—	—	(p)
T Insurance—Marine 0.045% War Risk 0.01875% .. .. .	.06375% × L	A\$	(k) 2191.25	—	7/6/76
U Insurance—Marine/War Risk/Tonne	T ÷ D	A\$	0.035	—	
V Total Cargo Value (Excl. Freight Costs)	L+P+R+T	A\$	3,446,326.36	—	
W Cargo Cost/Tonne (Excl. Freight Costs)	M+Q+S+U	A\$	55.586	—	
X Actual Freight/Tonne		US\$	(l) 13.33325	—	(q)
Y Freight Value	X × D	US\$	826,661.50	—	17/3/76
Z Exchange Rate	US\$ = A\$		(h) 1.2612	—	
1 Freight Value	Y ÷ Z	A\$	655,456.31	—	
2 Freight Cost/Tonne	1 ÷ D	A\$	10.572	—	(r)
3 Demurrage Value		US\$	(m) NIL	—	—
4 Exchange Rate	US\$ = A\$		NIL	—	
5 Demurrage Value	3 ÷ 4	A\$	NIL	—	

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
VOYAGE No. 12(a) Demurrage Excluded

	Method		KNPC/Concord	BPA	Invoice Payment Date
6 Demurrage Cost/Tonne	5 ÷ D	A\$	NIL	—	
7 Survey Fee/Tonne		US\$	0.028542	—	(s)
8 Survey Value	7 × D	US\$	1769.60	—	26/3/76
9 Exchange Rate	US\$ = A\$		(i) 1.2609	—	
10 Survey Value	8 ÷ 9	A\$	1403.44	—	
11 Survey Cost/Tonne	10 ÷ D	A\$	0.023	—	
12 Total Freight Value	1+5+10	A\$	656,859.75	—	
13 Total Freight Cost/Tonne	2+6+11	A\$	10.595	—	
14 BP—Base Contract Price/Tonne		A\$	—	9.42	(t)
15 BP—Cargo Value	14 × E	A\$	—	582,174.84	14/6/76
16 BP—Freight AFRA Adjustment/Tonne		A\$	—	(u) 5.16	(t)
17 BP—Freight Adjustment Value	17 × E	A\$	—	318,898.32	14/6/76
18 Total Delivered Gove—Value		A\$	V + 12 4,103,186.11	15 + 17 901,073.16	(v)
19 Total Delivered Gove Cost/Tonne		A\$	W + 13 66.181	14 + 16 14.58	
20 Excess Cost to Nabalco		A\$	3,202,112.95		

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD
TO BP AUSTRALIA 17/11/75
VOYAGE NO. 12(a)

Exhibit AG
Plaintiff's
schedules of
costs

NOTES

— *Actual*

(a) New contract price effective 17/10/75 (re KNPC's telex 28/10/75).

— *Assumption*

- (b) Vessel not nominated but assume "Russel H. Green" as typical vessel.
- (c) Estimated 6.5 bbls/tonne based on previous voyages.
- 10 (d) Estimated maximum quantity loaded.
- (e) Outturn loss estimated at 0.32% based on average of Voyages 1 to 10.
- (f) Calculated on average 19 days voyage based on average of voyages 1 to 8 i.e.: arrival date less 19.
- (g) Assumed vessel in Gove 3 days.
- (h) Preferential exchange rate as at 17/11/75.
- (i) Official exchange rate as at 17/11/75.
- (j) MHTC have decreased commission rate from 0.25% to 0.20% effective Voyage 11.
- (k) A\$/CAN\$ exchange rate same as A\$/US\$ exchange rate at 17/11/75.
- 20 (l) Assume World Scale 100 for Voyage Shuaiba/Gove does not increase on 1/1/76 from current published rate (effective 1/10/75) of US\$8.21 per long ton.
- (m) Assume demurrage not incurred.
- (n) Payment by IRREVOC. L/C—60 days after Bill of Lading date.
- (o) Payment by telegraphic transfer—60 days after Bill of Lading date.
- (p) Payment date—103 days after Bill of Lading date (as per Voyage 8).
- (q) Payment by telegraphic transfer on receipt of cargo at Gove.
- (r) Nil payment.
- (s) Payment by Bank Draft—30 days after Bill of Lading date.
- (t) Payment by cheque—90 days after receipt of cargo at Gove.
- 30 (u) Freight adjustment calculated as per BP Contract but assuming AFRA 1/11/75 voyage Aden/Gove $US\$7.86 \text{ LT} @ 129.7 = US\$10.19 \div (\text{Reuters exchange } 17/11/75 \text{ US\$2.0325} = \text{£STG1}) = \text{£STG5.014} - \text{£STG1.792} = \text{£STG3.222} \div (\text{Bank Exchange } 17/11/75 \text{ A\$0.6147} = \text{£STG1}) = \text{A\$5.24 LT} \div 1.0165 = \text{A\$5.16 mt.}$
- (v) BP invoices Nabalco for OUTTURN STATEMENT quantity.
- N/A Not applicable. From and including Voyage 9 Charterers Liability Insurance is no longer paid by Nabalco. Concord have agreed to cover Nabalco at no cost to Nabalco.

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
VOYAGE No. 12(b) Demurrage Excluded

	Method		KNPC/Concord	BPA	Invoice Payment Date
A Vessel Name		(b)	RUSSEL H. GREEN	—	
B Gross Registered Tonnage		LT	N/A	—	
C Bill of Lading Qty.		BBL	(c) 403,000	—	
D Bill of Lading Qty.		MT	(d) 62,000	—	
E Gove Outturn Statement Qty.		MT	(e) 61,802	61,802	
F Differential	D – E	MT	+198	—	
G Bill of Lading Date			(f) 26/2/76	—	
H Disch. Date Gove (Hoses Disc) Arrival date 15/3/76			(g) 17/3/76	17/3/76	
I FOB Price Per BBL		US\$	(a) 10.757	—	(n)
J FOB Value	C × I	US\$	4,335,071.00	—	26/4/76
K Exchange Rate	US\$ = A\$		(h) 1.2612	—	
L FOB Value	J ÷ K	A\$	3,437,258.96	—	
M FOB Cost/Tonne	L ÷ D	A\$	55.440	—	
N MHTC L/C Fee	0.20% × J	US\$	(j) 8,670.14	—	(o)
O Exchange Rate	US\$ = A\$		(i) 1.2609	—	26/4/76
P MHTC L/C Fee Value	N ÷ O	A\$	6,876.15	—	
Q MHTC L/C Fee/Tonne	P ÷ D	A\$	0.111	—	
R Insurance—Charterer's Liability	A\$0.10 × B	A\$	N/A	—	
S Insurance—Charterer's Liability/Tonne	R ÷ D	A\$	—	—	(p)
T Insurance—Marine 0.045% War Risk 0.01875% .. .. .	.06375% × L	A\$	(k) 2,191.25	—	7/6/76
U Insurance—Marine/War Risk/Tonne	T ÷ D	A\$	0.035	—	
V Total Cargo Value (Excl. Freight Costs)	L+P+R+T	A\$	3,446,326.36	—	
W Cargo Cost/Tonne (Excl. Freight Costs)	M+Q+S+U	A\$	55.586	—	
X Actual Freight/Tonne		US\$	(f) 14.33935	—	(q)
Y Freight Value	X × D	US\$	889,039.70	—	17/3/76
Z Exchange Rate	US\$ = A\$		(h) 1.2612	—	
1 Freight Value	Y ÷ Z	A\$	704,915.71	—	
2 Freight Cost/Tonne	1 ÷ D	A\$	11.370	—	
3 Demurrage Value		US\$	(m) 14,671.14	—	(r)
4 Exchange Rate	US\$ = A\$		(i) 1.2609	—	21/5/76
5 Demurrage Value	3 ÷ 4	A\$	11,635.45	—	

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
 VOYAGE No. 12(b) Demurrage Excluded

	Method		KNPC/Concord	BPA	Invoice Payment Date
6 Demurrage Cost/Tonne	5 ÷ D	A\$	0.188	—	
7 Survey Fee/Tonne		US\$	0.028542	—	(s)
8 Survey Value	7 × D	US\$	1,769.60	—	26/3/76
9 Exchange Rate	US\$ = A\$	(i)	1.2609	—	
10 Survey Value	8 ÷ 9	A\$	1,403.44	—	
11 Survey Cost/Tonne	10 ÷ D	A\$	0.023	—	
12 Total Freight Value	1+5+10	A\$	717,954.60	—	
13 Total Freight Cost/Tonne	2+6+11	A\$	11.581	—	
14 BP—Base Contract Price/Tonne		A\$	—	9.42	(t)
15 BP—Cargo Value	14 × E	A\$	—	582,174.84	14/6/76
16 BP—Freight AFRA Adjustment/Tonne		A\$	—	(u) 4.26	(t)
17 BP—Freight Adjustment Value	17 × E	A\$	—	263,276.52	14/6/76
18 Total Delivered Gove—Value		A\$	V + 12 4,164,280.96	15 + 17 845,451.36	(v)
19 Total Delivered Gove Cost/Tonne		A\$	W + 13 67.167	14 + 16 13.68	
20 Excess Cost to Nabalco		A\$	3,318,829.60		

Alternatively if demurrage is to be excluded

12 becomes	706,319.15
13 becomes	11.393
18 becomes	4,152,645.51
19 becomes	66.979
20 becomes	3,307,194.15

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD
TO BP AUSTRALIA 17/11/75
VOYAGE NO. 12(b)

NOTES

— *Actual*

(a) New contract price effective 17/10/75 (re KNPC's telex 28/10/75).

— *Assumption*

- (b) Vessel not nominated but assume "Russel H. Green" as typical vessel.
- (c) Estimated 6.5 bbls/tonne based on previous voyages.
- (d) Estimated maximum quantity loaded. 10
- (e) Outturn loss estimated at 0.32% based on average of Voyages 1 to 10.
- (f) Calculated on average 19 day voyage based on average of voyages 1 to 8 i.e.: arrival date less 19.
- (g) Assumed vessel in Gove for 3 days.
- (h) Preferential exchange rate as at 17/11/75.
- (i) Official exchange rate as at 17/11/75.
- (j) MHTC have decreased commission rate from 0.25% to 0.20% effective Voyage 11.
- (k) A\$/CAN\$ exchange rate same as A\$/US\$ exchange rate at 17/11/75.
- (l) Assume World Scale 100 for voyage Shuaiba/Gove increases on 1/1/76 for current published rate (effective 1/10/75) for US\$8.21 per long ton. The increase is expected to be 7.5% to US\$8.83 per long ton. Nabalco's contract rate of WS165 will be US\$14.5695 per long ton or US\$14.33935 per metric ton. 20
- (m) Demurrage based on average NET Laytime used at Gove for nominal 60,000 tonne cargoes for voyages 4, 5, 6, and 7 i.e.: 58 hours (re particulars to Pritchard on 11/11/75 Page 4). Therefore, average demurrage is 22 hours (58–36 hours Laytime allowed for discharge) or 0.91666 days.
As Russel H. Green summer Dwt is 63442 = US\$9,700 per day which at WS165 = US\$16005 per day or pro rata. Average demurrage value = US\$16005 × 0.91666 = US\$14,671.14. 30
- (n) Payment by IRREVOC. L/C—60 days after Bill of Lading date.
- (o) Payment by Telegraphic transfer—60 days after Bill of Lading date.
- (p) Payment date—103 days after Bill of Lading date (as per Voyage 8).
- (q) Payment by telegraphic transfer on receipt of cargo at Gove.
- (r) Payment date—66 days after discharge date at Gove (as per Voyage 7).
- (s) Payment by Bank Draft—30 days after Bill of Lading date.
- (t) Payment by cheque—90 days after receipt of cargo at Gove.
- (u) Freight adjustment as per BP Cross Claim APPENDIX C 31/10/75. Assume AFRA does not increase on 1/1/76.
- (v) BP invoices Nabalco for OUTTURN STATEMENT quantity. 40
- N/A Not applicable. From and including Voyage 9 Charterers Liability Insurance is no longer paid by Nabalco. Concord have agreed to cover Nabalco at no cost to Nabalco.

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
 VOYAGE No. 13(a) Demurrage Excluded

	Method		KNPC/Concord	BPA	Invoice Payment Date
A Vessel Name		(b)	RUSSEL H. GREEN	—	
B Gross Registered Tonnage		LT	N/A	—	
C Bill of Lading Qty.		BBL	(c) 403,000	—	
D Bill of Lading Qty.		MT	(d) 62,000	—	
E Gove Outturn Statement Qty.		MT	(e) 61,802	61,802	
F Differential	D - E	MT	+198	—	
G Bill of Lading Date			(f) 29/4/76	—	
H Disch. Date Gove (Hoses Disc) Arrival date 17/5/76			(g) 19/5/76	19/5/76	
I FOB Price Per BBL		US\$	(a) 10.757	—	(n)
J FOB Value	C × I	US\$	4,335,071.00	—	28/6/76
K Exchange Rate	US\$ = A\$	(h)	1.2612	—	
L FOB Value	J ÷ K	A\$	3,437,258.96	—	
M FOB Cost/Tonne	L ÷ D	A\$	55.440	—	
N MHTC L/C Fee	0.20% × J	US\$	(j) 8,670.14	—	(o)
O Exchange Rate	US\$ = A\$	(i)	1.2609	—	28/6/76
P MHTC L/C Fee Value	N ÷ O	A\$	6,876.15	—	
Q MHTC L/C Fee/Tonne	P ÷ D	A\$	0.111	—	
R Insurance—Charterer's Liability	A\$0.10 × B	A\$	N/A	—	
S Insurance—Charterer's Liability/Tonne	R ÷ D	A\$	—	—	(p)
T Insurance—Marine 0.045% War Risk 0.01875% .. .. .	.06375% × L	A\$	(k) 2,191.25	—	9/8/76
U Insurance—Marine/War Risk/Tonne	T ÷ D	A\$	0.035	—	
V Total Cargo Value (Excl. Freight Costs)	L+P+R+T	A\$	3,446,326.36	—	
W Cargo Cost/Tonne (Excl. Freight Costs)	M+Q+S+U	A\$	55.586	—	
X Actual Freight/Tonne		US\$	(l) 13.33325	—	(q)
Y Freight Value	X × D	US\$	826,661.50	—	19/5/76
Z Exchange Rate	US\$ = A\$	(h)	1.2612	—	
1 Freight Value	Y ÷ Z	A\$	655,456.31	—	
2 Freight Cost/Tonne	1 ÷ D	A\$	10.572	—	(r)
3 Demurrage Value		US\$	(m) NIL	—	—
4 Exchange Rate	US\$ = A\$		NIL	—	
5 Demurrage Value	3 ÷ 4	A\$	NIL	—	

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FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
VOYAGE No. 13(a) Demurrage Excluded

	Method		KNPC/Concord	BPA	Invoice Payment Date
6 Demurrage Cost/Tonne	5 ÷ D	A\$	NIL	—	
7 Survey Fee/Tonne		US\$	0.028542	—	(s)
8 Survey Value	7 × D	US\$	1,769.60	—	28/5/76
9 Exchange Rate	US\$ = A\$		(i) 1.2609	—	
10 Survey Value	8 ÷ 9	A\$	1,403.44	—	
11 Survey Cost/Tonne	10 ÷ D	A\$	0.023	—	
12 Total Freight Value	1+5+10	A\$	656,859.75	—	
13 Total Freight Cost/Tonne	2+6+11	A\$	10.595	—	
14 BP—Base Contract Price/Tonne		A\$	—	9.42	(t)
15 BP—Cargo Value	14 × E	A\$	—	5,821,74.84	16/8/76
16 BP—Freight AFRA Adjustment/Tonne		A\$	—	(u) 5.16	(t)
17 BP—Freight Adjustment Value	17 × E	A\$	—	318.898.32	16/8/76
18 Total Delivered Gove—Value		A\$	V + 12 4,103,186.11	15 + 17 901,073.16	(v)
19 Total Delivered Gove Cost/Tonne		A\$	W + 13 66.181	14 + 16 14.58	
20 Excess Cost to Nabalco		A\$	3,202,112.95		

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD
TO BP AUSTRALIA 17/11/75
VOYAGE NO 13(a)

Exhibit AG
Plaintiff's
schedules of
costs

NOTES

—Actual

(a) New contract price effective 17/10/75 (re KNPC's telex 28/10/75).

—Assumption

- (b) Vessel not nominated but assume "Russel H. Green" as typical vessel.
- (c) Estimated 6.5 bbls/tonne based on previous voyages.
- 10 (d) Estimated maximum quantity loaded.
- (e) Outturn loss estimated at 0.32% based on average of Voyages 1 to 10.
- (f) Calculated on average 19 days voyage based on average of voyages 1 to 8 i.e.: arrival date less 19.
- (g) Assumed vessel in Gove 3 days.
- (h) Preferential exchange rate as at 17/11/75.
- (i) Official exchange rate as at 17/11/75.
- (j) MHTC have decreased commission rate from 0.25% to 0.20% effective Voyage 11.
- (k) A\$/CAN\$ exchange rate same as A\$/US\$ exchange rate at 17/11/75.
- 20 (l) Assume World Scale 100 for Voyage Shuaiba/Gove does not increase on 1/1/76 from current published rate (effective 1/10/75) of US\$8.21 per long ton.
- (m) Assume demurrage not incurred.
- (n) Payment by IRREVOC. L/C—60 days after Bill of Lading date.
- (o) Payment by telegraphic transfer—60 days after Bill of Lading date.
- (p) Payment date—103 days after Bill of Lading date (as per Voyage 8).
- (q) Payment by telegraphic transfer on receipt of cargo at Gove.
- (r) Nil payment.
- (s) Payment by Bank Draft—30 days after Bill of Lading date.
- (t) Payment by cheque—90 days after receipt of cargo at Gove.
- 30 (u) Freight adjustment calculated as per BP Contract but assuming AFRA 1/11/75 voyage Aden/Gove $US\$7.86 \text{ LT} @ 129.7 = US\$10.19 \div (\text{Reuters exchange } 17/11/75 \text{ US\$}2.0325 = \text{£STG}1) = \text{£STG}5.014 - \text{£STG}1.792 = \text{£STG}3.222 \div (\text{Bank Exchange } 17/11/75 \text{ A\$}0.6147 = \text{£STG}1) = \text{A\$}5.24 \text{ LT} \div 1.0165 = \text{A\$}5.16 \text{ mt.}$
- (v) BP invoices Nabalco for OUTTURN STATEMENT quantity.
- N/A Not applicable. From and including Voyage 9 Charterers Liability Insurance is no longer paid by Nabalco. Concord have agreed to cover Nabalco at no cost to Nabalco.

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
VOYAGE No. 13(b) Demurrage Excluded

	Method		KNPC/Concord	BPA	Invoice Payment Date
A Vessel Name		(b)	RUSSEL H. GREEN	—	
B Gross Registered Tonnage		LT	N/A	—	
C Bill of Lading Qty.		BBL	(c) 403,000	—	
D Bill of Lading Qty.		MT	(d) 62,000	—	
E Gove Outturn Statement Qty.		MT	(e) 61,802	61,802	
F Differential	D - E	MT	+198	—	
G Bill of Lading Date		(f)	29/4/76	—	
H Disch. Date Gove (Hoses Disc) Arrival date 17/5/76		(g)	19/5/76	19/5/76	
I FOB Price Per BBL		US\$	(a) 10.757	—	(n)
J FOB Value	C × I	US\$	4,335,071.00	—	28/6/76
K Exchange Rate	US\$ = A\$	(h)	1.2612	—	
L FOB Value	J ÷ K	A\$	3,437,258.96	—	
M FOB Cost/Tonne	L ÷ D	A\$	55.440	—	
N MHTC L/C Fee	0.20% × J	US\$	(j) 8,670.14	—	(o)
O Exchange Rate	US\$ = A\$	(i)	1.2609	—	28/6/76
P MHTC L/C Fee Value	N ÷ O	A\$	6,876.15	—	
Q MHTC L/C Fee/Tonne	P ÷ D	A\$	0.111	—	
R Insurance—Charterer's Liability	AS\$0.10 × B	A\$	N/A	—	
S Insurance—Charterer's Liability/Tonne	R ÷ D	A\$	—	—	(p)
T Insurance—Marine 0.045% War Risk 0.01875% .. .. .	.06375% × L	A\$	(k) 2,191.25	—	9/8/76
U Insurance—Marine/War Risk/Tonne	T ÷ D	A\$	0.035	—	
V Total Cargo Value (Excl. Freight Costs)	L+P+R+T	A\$	3,446,326.36	—	
W Cargo Cost/Tonne (Excl. Freight Costs)	M+Q+S+U	A\$	55.586	—	
X Actual Freight/Tonne		US\$	(l) 14.33935	—	(q)
Y Freight Value	X × D	US\$	889,039.70	—	19/5/76
Z Exchange Rate	US\$ = A\$	(h)	1.2612	—	
1 Freight Value	Y ÷ Z	A\$	704,915.71	—	
2 Freight Cost/Tonne	1 ÷ D	A\$	11.370	—	
3 Demurrage Value		US\$	(m) 14,671.14	—	(r)
4 Exchange Rate	US\$ = A\$	(i)	1.2609	—	23/7/76
5 Demurrage Value	3 ÷ 4	A\$	11,635.45	—	

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
 VOYAGE No. 13(b) Demurrage Excluded

	Method		KNPC/Concord	BPA	Invoice Payment Date
6 Demurrage Cost/Tonne	5 ÷ D	A\$	0.188	—	
7 Survey Fee/Tonne		US\$	0.028542	—	(s)
8 Survey Value	7 × D	US\$	1,769.60	—	28/5/76
9 Exchange Rate	US\$ = A\$	(i)	1.2609	—	
10 Survey Value	8 ÷ 9	A\$	1,403.44	—	
11 Survey Cost/Tonne	10 ÷ D	A\$	0.023	—	
12 Total Freight Value	1+5+10	A\$	717,954.60	—	
13 Total Freight Cost/Tonne	2+6+11	A\$	11.581	—	
14 BP—Base Contract Price/Tonne		A\$	—	9.42	(t)
15 BP—Cargo Value	14 × E	A\$	—	582,174.84	16/8/76
16 BP—Freight AFRA Adjustment/Tonne		A\$	—	(u) 4.26	(t)
17 BP—Freight Adjustment Value	17 × E	A\$	—	263,276.52	16/8/76
18 Total Delivered Gove—Value		A\$	V + 12 4,164,280.96	15 + 17 845,451.36	(v)
19 Total Delivered Gove Cost/Tonne		A\$	W + 13 67.167	14 + 16 13.68	
20 Excess Cost to Nabalco		A\$	3,318,829.60		

Alternatively if demurrage is to be excluded

12 becomes	706,319.15
13 becomes	11.393
18 becomes	4,152,645.51
19 becomes	66.979
20 becomes	3,307,194.15

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FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD
TO BP AUSTRALIA 17/11/75
VOYAGE NO. 13(b)

NOTES

—*Actual*

(a) New contract price effective 17/10/75 (re KNPC's telex 28/10/75).

—*Assumption*

- (b) Vessel not nominated but assume "Russel H. Green" as typical vessel.
- (c) Estimated 6.5 bbls/tonne based on previous voyages.
- (d) Estimated maximum quantity loaded. 10
- (e) Outturn loss estimated at 0.32% based on average of Voyages 1 to 10.
- (f) Calculated on average 19 day voyage based on average of voyages 1 to 8 i.e.: arrival date less 19.
- (g) Assumed vessel in Gove for 3 days.
- (h) Preferential exchange rate as at 17/11/75.
- (i) Official exchange rate as at 17/11/75.
- (j) MHTC have decreased commission rate from 0.25% to 0.20% effective Voyage 11.
- (k) A\$/CAN\$ exchange rate same as A\$/US\$ exchange rate at 17/11/75.
- (l) Assume World Scale 100 for voyage Shuaiba/Gove increases on 1/1/76 for current published rate (effective 1/10/75) for US\$8.21 per long ton. The increase is expected to be 7.5% to US\$8.83 per long ton. Nabalco's contract rate of WS165 will be US\$14.5695 per long ton or US\$14.33935 per metric ton. 20
- (m) Demurrage based on average NET Laytime used at Gove for nominal 60,000 tonne cargoes for voyages 4, 5, 6, and 7 i.e.: 58 hours (re particulars to Pritchard on 11/11/75 Page 4). Therefore, average demurrage is 22 hours (58–36 hours Laytime allowed for discharge) or 0.91666 days.
As Russel H. Green summer Dwt is 63442 = US\$9,700 per day which at WS165 = US\$16005 per day or pro rata. Average demurrage value = US\$16005 × 0.91666 = US\$14,671.14. 30
- (n) Payment by IRREVOC. L/C—60 days after Bill of Lading date.
- (o) Payment by Telegraphic transfer—60 days after Bill of Lading date.
- (p) Payment date—103 days after Bill of Lading date (as per Voyage 8).
- (q) Payment by telegraphic transfer on receipt of cargo at Gove.
- (r) Payment date—66 days after discharge date at Gove (as per Voyage 7).
- (s) Payment by Bank Draft—30 days after Bill of Lading date.
- (t) Payment by cheque—90 days after receipt of cargo at Gove.
- (u) Freight adjustment as per BP Cross Claim APPENDIX C 31/10/75. Assume AFRA does not increase on 1/1/76.
- (v) BP invoices Nabalco for OUTTURN STATEMENT quantity. 40
- N/A Not applicable. From and including Voyage 9 Charterers Liability Insurance is no longer paid by Nabalco. Concord have agreed to cover Nabalco at no cost to Nabalco.

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
 VOYAGE No. 14(a) Demurrage Excluded

	Method		KNPC/Concord	BPA	Invoice Payment Date
A Vessel Name		(b)	RUSSEL H. GREEN	—	
B Gross Registered Tonnage		LT	N/A	—	
C Bill of Lading Qty.		BBL	(c) 403,000	—	
D Bill of Lading Qty.		MT	(d) 62,000	—	
E Gove Outturn Statement Qty.		MT	(e) 61,802	61,802	
F Differential	D – E	MT	+198	—	
G Bill of Lading Date			(f) 8/7/76	—	
H Disch. Date Gove (Hoses Disc) Arrival date 26/7/76			(g) 28/7/76	28/7/76	
I FOB Price Per BBL		US\$	(a) 10.757	—	(n)
J FOB Value	C × I	US\$	4,335,071.00	—	6/9/76
K Exchange Rate	US\$ = A\$		(h) 1.2612	—	
L FOB Value	J ÷ K	A\$	3,437,358.96	—	
M FOB Cost/Tonne	L ÷ D	A\$	55.440	—	
N MHTC L/C Fee	0.20% × J	US\$	(j) 8,670.14	—	(o)
O Exchange Rate	US\$ = A\$		(i) 1.2609	—	6/9/76
P MHTC L/C Fee Value	N ÷ O	A\$	6,876.15	—	
Q MHTC L/C Fee/Tonne	P ÷ D	A\$	0.111	—	
R Insurance—Charterer's Liability	A\$0.10 × B	A\$	N/A	—	
S Insurance—Charterer's Liability/Tonne	R ÷ D	A\$	—	—	(p)
T Insurance—Marine 0.045% War Risk 0.01875% .. .. .	.06375% × L	A\$	(k) 2,191.25	—	18/10/76
U Insurance—Marine/War Risk/Tonne	T ÷ D	A\$	0.035	—	
V Total Cargo Value (Excl. Freight Costs)	L+P+R+T	A\$	3,446,326.36	—	
W Cargo Cost/Tonne (Excl. Freight Costs)	M+Q+S+U	A\$	55.586	—	
X Actual Freight/Tonne		US\$	(l) 13.33325	—	(q)
Y Freight Value	X × D	US\$	826,661.50	—	28/7/76
Z Exchange Rate	US\$ = A\$		(h) 1.2612	—	
1 Freight Value	Y ÷ Z	A\$	655,456.31	—	
2 Freight Cost/Tonne	1 ÷ D	A\$	10.572	—	(r)
3 Demurrage Value		US\$	(m) NIL	—	—
4 Exchange Rate	US\$ = A\$		NIL	—	
5 Demurrage Value	3 ÷ 4	A\$	NIL	—	

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FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
VOYAGE No. 14(a) Demurrage Excluded

	Method		KNPC/Concord	BPA	Invoice Payment Date
6 Demurrage Cost/Tonne	5 ÷ D	A\$	NIL	—	
7 Survey Fee/Tonne		US\$	0.028542	—	(s)
8 Survey Value	7 × D	US\$	1,769.60	—	6/8/76
9 Exchange Rate	US\$ = A\$		(i) 1.2609	—	
10 Survey Value	8 ÷ 9	A\$	1,403.44	—	
11 Survey Cost/Tonne	10 ÷ D	A\$	0.023	—	
12 Total Freight Value	1+5+10	A\$	656,859.75	—	
13 Total Freight Cost/Tonne	2+6+11	A\$	10.595	—	
14 BP—Base Contract Price/Tonne		A\$	—	9.42	(t)
15 BP—Cargo Value	14 × E	A\$	—	582,174.84	25/10/76
16 BP—Freight AFRA Adjustment/Tonne		A\$	—	(u) 5.16	(t)
17 BP—Freight Adjustment Value	17 × E	A\$	—	318,898.32	25/10/76
18 Total Delivered Gove—Value		A\$	V + 12 4,103,186.11	15 + 17 901,073.16	(v)
19 Total Delivered Gove Cost/Tonne		A\$	W + 13 66.181	14 + 16 14.58	
20 Excess Cost to Nabalco		A\$	3,202,112.95		

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD
TO BP AUSTRALIA 17/11/75
VOYAGE NO. 14(a)

Exhibit AG
Plaintiff's
schedules of
costs

NOTES

— Assumption

- (a) Assume the contract price US\$10.757 per barrel effective 12/10/75 (re KNPC's telex 28/10/75).
- (b) Vessel not nominated but assume "Russel H. Green" as typical vessel.
- (c) Estimated 6.5 bbls/tonne based on previous voyages.
- 10 (d) Estimated maximum quantity loaded.
- (e) Outturn loss estimated at 0.32% based on average on Voyages 1 to 10.
- (f) Calculated on average 19 day voyage based on average of Voyages 1 to 8 i.e.: arrival date less 19.
- (g) Assume vessel in Gove 3 days.
- (h) Preferential exchange rate as at 17/11/75.
- (i) Official exchange rate as at 17/11/75.
- (j) MHTC have decreased commission for 0.25% to 0.20% effective Voyage 11.
- (k) A\$/CAN\$ exchange rate same as A\$/US\$ rate at 17/11/75.
- 20 (l) Assume World Scale 100 for Voyage Shuaiba/Gove does not increase on 1/1/76 from published rate (effective 1/10/75 US\$8.21 per long ton).
- (m) Assume demurrage not incurred.
- (n) Payment by IRREVOC L/C—60 days after Bill of Lading date.
- (o) Payment by telegraphic transfer—60 days after Bill of Lading date.
- (p) Payment date—103 days after Bill of Lading date (as per Voyage 8).
- (q) Payment by telegraphic transfer on receipt of cargo at Gove.
- (r) Nil payment.
- (s) Payment by Bank Draft—30 days after Bill of Lading date.
- (t) Payment by cheque—90 days after receipt of cargo at Gove.
- 30 (u) Freight adjustment calculated as per BP Contract but assuming AFRA 1/11/75 voyage Aden/Gove $US\$7.86LT @ 129.7 = US\$10.19 \div$ (Reuters exchange 17/11/75 $US\$2.0325 = \pounds STG1) = \pounds STG5.014 - \pounds STG1.792 = \pounds STG3.222 \div$ (Bank Exchange 17/11/75 $A\$0.6147 = \pounds STG1) = A\$5.24LT \div 1.01605 = A\$5.16 mt.$
- (v) BP invoices Nabalco for OUTTURN STATEMENT quantity.
- N/A From and including Voyage 9. Charterers Liability Insurance is no longer paid by Nabalco. Concord have agreed to cover Nabalco at no cost to Nabalco.

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
VOYAGE No. 14(b) Demurrage Excluded

	Method		KNPC/Concord	BPA	Invoice Payment Date
A Vessel Name		(b)	RUSSEL H. GREEN	—	
B Gross Registered Tonnage		LT	N/A	—	
C Bill of Lading Qty.		BBL	(c) 403,000	—	
D Bill of Lading Qty.		MT	(d) 62,000	—	
E Gove Outturn Statement Qty.		MT	(e) 61,802	61,802	
F Differential	D - E	MT	+198	—	
G Bill of Lading Date			(f) 8/7/76	—	
H Disch. Date Gove (Hoses Disc) Arrival date 26/7/76			(g) 28/7/76	28/7/76	
I FOB Price Per BBL		US\$	(a) 11.295	—	(n)
J FOB Value	$C \times I$	US\$	4,551,885.00	—	6/9/76
K Exchange Rate	US\$ = A\$		(h) 1.2612	—	
L FOB Value	$J \div K$	A\$	3,609,169.84	—	
M FOB Cost/Tonne	$L \div D$	A\$	58.212	—	
N MHTC L/C Fee	$0.20\% \times J$	US\$	(j) 9,103.77	—	(o)
O Exchange Rate	US\$ = A\$		(i) 1.2609	—	6/9/76
P MHTC L/C Fee Value	$N \div O$	A\$	7,220.06	—	
Q MHTC L/C Fee/Tonne	$P \div D$	A\$	0.111	—	
R Insurance—Charterer's Liability	$A\$0.10 \times B$	A\$	N/A	—	
S Insurance—Charterer's Liability/Tonne	$R \div D$	A\$	—	—	(p)
T Insurance—Marine 0.045% War Risk 0.01875%	$.06375\% \times L$	A\$	(k) 2,300.85	—	18/10/76
U Insurance—Marine/War Risk/Tonne	$T \div D$	A\$	0.037	—	
V Total Cargo Value (Excl. Freight Costs)	$L+P+R+T$	A\$	3,618,690.75	—	
W Cargo Cost/Tonne (Excl. Freight Costs)	$M+Q+S+U$	A\$	58.365	—	
X Actual Freight/Tonne		US\$	(l) 14.33935	—	(q)
Y Freight Value	$X \times D$	US\$	889,039.70	—	28/7/76
Z Exchange Rate	US\$ = A\$		(h) 1.2612	—	
1 Freight Value	$Y \div Z$	A\$	704,915.71	—	
2 Freight Cost/Tonne	$1 \div D$	A\$	11.370	—	
3 Demurrage Value		US\$	(m) 14,671.14	—	(r)
4 Exchange Rate	US\$ = A\$		(i) 1.2609	—	1/10/76
5 Demurrage Value	$3 \div 4$	A\$	11,635.45	—	

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
 VOYAGE No. 14(b) Demurrage Excluded

	Method		KNPC/Concord	BPA	Invoice Payment Date
6 Demurrage Cost/Tonne	5 ÷ D	A\$	0.188	—	
7 Survey Fee/Tonne		US\$	0.028542	—	(s)
8 Survey Value	7 × D	US\$	1,769.60	—	6/8/76
9 Exchange Rate	US\$ = A\$		(i) 1.2609	—	
10 Survey Value	8 ÷ 9	A\$	1,403.44	—	
11 Survey Cost/Tonne	10 ÷ D	A\$	0.023	—	
12 Total Freight Value	1+5+10	A\$	717,954.60	—	
13 Total Freight Cost/Tonne	2+6+11	A\$	11.581	—	
14 BP—Base Contract Price/Tonne		A\$	—	9.42	(t)
15 BP—Cargo Value	14 × E	A\$	—	582,174.84	25/10/76
16 BP—Freight AFRA Adjustment/Tonne		A\$	—	(u) 4.26	(t)
17 BP—Freight Adjustment Value	17 × E	A\$	—	263,276.52	25/10/76
18 Total Delivered Gove—Value		A\$	V + 12 4,336,645.35	15 + 17 845,451.36	(v)
19 Total Delivered Gove Cost/Tonne		A\$	W + 13 69.946	14 + 16 13.68	
20 Excess Cost to Nabalco		A\$	3,491,193.99		

Alternatively if demurrage is to be excluded

12 becomes	706,319.15
13 becomes	11.393
18 becomes	4,325,009.90
19 becomes	69.758
20 becomes	3,479,558.54

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FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD
TO BP AUSTRALIA 17/11/75
VOYAGE NO. 14(b)

NOTES

— Assumption

- (a) Assume the contract price US\$10.757 per barrel effective 17/10/75 (re KNPC's telex 28/10/75) will increase 5% to US\$11.295 per barrel effective 1/7/76 (advised in letter to Pritchard 14/11/75).
- (b) Vessel not nominated but assume "Russel H. Green" as typical vessel. 10
- (c) Estimated 6.5 bbls/tonne based on previous voyages.
- (d) Estimated maximum quantity loaded.
- (e) Outturn loss estimated at 0.32% based on average of Voyages 1 to 10.
- (f) Calculated on average 19 days voyage based on average of Voyages 1 to 8 i.e.: arrival date less 19.
- (g) Assume vessel in Gove for 3 days.
- (h) Preferential exchange rate as at 17/11/75.
- (i) Official exchange rate as at 17/11/75.
- (j) MHTC have decreased the commission from 0.25% to 0.20% effective Voyage 11.
- (k) A\$/CAN\$ exchange rate same as A\$/US\$ exchange rate at 17/11/75.
- (l) Assume World Scale 100 for voyage Shuaiba/Gove increases on 1/1/76 from current published rate (effective 1/10/75) of US\$8.21 per long ton. The increase is expected to be 7.5% to US\$8.83 per long ton. Nabalco's contract rate of WS165 will be US\$14.5695 per long ton or US\$14.33935 per metric ton. 20
- (m) Demurrage based on average NET Laytime used at Gove for nominal 60,000 tonne cargo for Voyages 4, 5, 6, and 7 i.e.: 58 hours (re particulars to Pritchard on 11/11/75 Page 4). Therefore, average demurrage is 22 hours (58–36 hours Laytime allowed for discharge) or 0.91666 days.
As Russel H. Green summer Dwt is 63442 = US\$9,700 per day which at WS165 = US\$16,005 per day or pro rata. Average denurrage value = US\$16,005 × 0.19666 = US\$14,671.14. 30
- (n) Payment by IRREVOC L/C—60 days after Bill of Lading date.
- (o) Payment by telegraphic transfer—60 days after Bill of Lading date.
- (p) Payment date—103 days after Bill of Lading date (as per Voyage 8).
- (q) Payment by telegraphic transfer on receipt of cargo at Gove.
- (r) Payment date—66 days after discharge at Gove (as per Voyage 7).
- (s) Payment by Bank Draft—30 days after Bill of Lading date.
- (t) Payment by cheque—90 days after receipt of cargo at Gove.
- (u) Freight adjustment as per BP Cross Claim APPENDIX C 31/10/75. Assume AFRA does not increase on 1/1/76.
- (v) BP invoices Nabalco for OUTTURN STATEMENT quantity. 40
- N/A Not applicable. From and including Voyage 9 Charterers Liability Insurance is no longer paid by Nabalco. Concord have agreed to cover Nabalco at no cost to Nabalco.

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
 VOYAGE No. 15(a) Demurrage Excluded

	Method		KNPC/Concord	BPA	Invoice Payment Date
A Vessel Name		(b)	RUSSEL H. GREEN	—	
B Gross Registered Tonnage		LT	N/A	—	
C Bill of Lading Qty.		BBL	(c) 403,000	—	
D Bill of Lading Qty.		MT	(d) 62,000	—	
E Gove Outturn Statement Qty.		MT	(e) 61,802	61,802	
F Differential	D - E	MT	+198	—	
G Bill of Lading Date			(f) 2/9/76	—	
H Disch. Date Gove (Hoses Disc) Arrival date 20/9/76			(g) 22/9/76	22/9/76	
I FOB Price Per BBL		US\$	(a) 10.757	—	(n)
J FOB Value	C × I	US\$	4,335,071.00	—	1/11/76
K Exchange Rate	US\$ = A\$	(h)	1.2612	—	
L FOB Value	J ÷ K	A\$	3,437,258.96	—	
M FOB Cost/Tonne	L ÷ D	A\$	55.440	—	
N MHTC L/C Fee	0.20% × J	US\$	(j) 8,670.14	—	(o)
O Exchange Rate	US\$ = A\$	(i)	1.2609	—	1/11/76
P MHTC L/C Fee Value	N ÷ O	A\$	6,876.15	—	
Q MHTC L/C Fee/Tonne	P ÷ D	A\$	0.111	—	
R Insurance—Charterer's Liability	A\$0.10 × B	A\$	N/A	—	
S Insurance—Charterer's Liability/Tonne	R ÷ D	A\$	—	—	(p)
T Insurance—Marine 0.045% War Risk 0.01875% .. .. .	.06375% × L	A\$	(k) 2,191.25	—	23/12/76
U Insurance—Marine/War Risk/Tonne	T ÷ D	A\$	0.035	—	
V Total Cargo Value (Excl. Freight Costs)	L+P+R+T	A\$	3,446,326.36	—	
W Cargo Cost/Tonne (Excl. Freight Costs)	M+Q+S+U	A\$	55.586	—	
X Actual Freight/Tonne		US\$	(l) 13.33325	—	(q)
Y Freight Value	X × D	US\$	826,661.50	—	22/9/76
Z Exchange Rate	US\$ = A\$	(h)	1.2612	—	
1 Freight Value	Y ÷ Z	A\$	655,456.31	—	
2 Freight Cost/Tonne	1 ÷ D	A\$	10.572	—	(r)
3 Demurrage Value		US\$	(m) NIL	—	—
4 Exchange Rate	US\$ = A\$		NIL	—	
5 Demurrage Value	3 ÷ 4	A\$	NIL	—	

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FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
VOYAGE No. 15(a) Demurrage Excluded

	Method		KNPC/Concord	BPA	Invoice Payment Date
6 Demurrage Cost/Tonne	5 ÷ D	A\$	NIL	—	
7 Survey Fee/Tonne		US\$	0.028542	—	(s)
8 Survey Value	7 × D	US\$	1,769.60	—	1/10/76
9 Exchange Rate	US\$ = A\$		(i) 1.2609	—	
10 Survey Value	8 ÷ 9	A\$	1,403.44	—	
11 Survey Cost/Tonne	10 ÷ D	A\$	0.023	—	
12 Total Freight Value	1+5+10	A\$	656,859.75	—	
13 Total Freight Cost/Tonne	2+6+11	A\$	10.595	—	
14 BP—Base Contract Price/Tonne		A\$	—	9.42	(t)
15 BP—Cargo Value	14 × E	A\$	—	582,174.84	20/12/76
16 BP—Freight AFRA Adjustment/Tonne		A\$	—	(u) 5.16	(t)
17 BP—Freight Adjustment Value	17 × E	A\$	—	318,898.32	20/12/76
18 Total Delivered Gove—Value		A\$	V + 12 4,103,186.11	15 + 17 901,073.16	
19 Total Delivered Gove Cost/Tonne		A\$	W + 13 66.181	14 + 16 14.58	
20 Excess Cost to Nabalco		A\$	3,202,112.95		

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD
TO BP AUSTRALIA 17/11/75
VOYAGE NO. 15(a)

Exhibit AG
Plaintiff's
schedules of
costs

NOTES

— Assumption

- (a) Assume the contract price US\$10.757 per barrel effective 12/10/75 (re KNPC's telex 28/10/75).
- (b) Vessel not nominated but assume "Russel H. Green" as typical vessel.
- (c) Estimated 6.5 bbls/tonne based on previous voyages.
- 10 (d) Estimated maximum quantity loaded.
- (e) Outturn loss estimated at 0.32% based on average on Voyages 1 to 10.
- (f) Calculated on average 19 day voyage based on average of Voyages 1 to 8 i.e.: arrival date less 19.
- (g) Assume vessel in Gove 3 days.
- (h) Preferential exchange rate as at 17/11/75.
- (i) Official exchange rate as at 17/11/75.
- (j) MHTC have decreased commission for 0.25% to 0.20% effective Voyage 11.
- (k) A\$/CAN\$ exchange rate same as A\$/US\$ rate at 17/11/75
- 20 (l) Assume World Scale 100 for Voyage Shuaiba/Gove does not increase on 1/1/76 from published rate (effective 1/10/75 US\$8.21 per long ton).
- (m) Assume demurrage not incurred.
- (n) Payment by IRREVOC L/C—60 days after Bill of Lading date.
- (o) Payment by telegraphic transfer—60 days after Bill of Lading date.
- (p) Payment date—103 days after Bill of Lading date (as per Voyage 8).
- (q) Payment by telegraphic transfer on receipt of cargo at Gove.
- (r) Nil payment.
- (s) Payment by Bank Draft—30 days after Bill of Lading date.
- (t) Payment by cheque—90 days after receipt of cargo at Gove.
- 30 (u) Freight adjustment calculated as per BP Contract but assuming AFRA 1/11/75 voyage Aden/Gove $US\$7.86LT @ 129.7 = US\$10.19 \div$ (Reuters exchange 17/11/75 $US\$2.0325 = \pounds STG1) = \pounds STG5.014 - \pounds STG1.792 = \pounds STG3.222 \div$ (Bank Exchange 17/11/75 $A\$0.6147 = \pounds STG1) = A\$5.24LT \div 1.01605 = A\$5.16 mt.$
- (v) BP invoices Nabalco for OUTTURN STATEMENT quantity.
- N/A From and including Voyage 9. Charterers Liability Insurance is no longer paid by Nabalco. Concord have agreed to cover Nabalco at no cost to Nabalco.

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
VOYAGE No. 15(b) Demurrage Excluded

	Method		KNPC/Concord	BPA	Invoice Payment Date
A Vessel Name		(b)	RUSSEL H. GREEN	—	
B Gross Registered Tonnage		LT	N/A	—	
C Bill of Lading Qty.		BBL	(c) 403,000	—	
D Bill of Lading Qty.		MT	(d) 62,000	—	
E Gove Outturn Statement Qty.		MT	(e) 61,802	61,802	
F Differential	D - E	MT	+ 198	—	
G Bill of Lading Date		(f)	2/9/76	—	
H Disch. Date Gove (Hoses Disc) Arrival date 20/9/76		(g)	22/9/76	22/9/76	
I FOB Price Per BBL		US\$	(a) 11,295	—	(n)
J FOB Value	$C \times I$	US\$	4,551,885.00	—	1/11/76
K Exchange Rate	$US\$ = A\$$	(h)	1.2612	—	
L FOB Value	$J \div K$	A\$	3,609,169.84	—	
M FOB Cost/Tonne	$L \div D$	A\$	58.212	—	(o)
N MHTC L/C Fee	$0.20\% \times J$	US\$	(j) 9,103.77	—	1/11/76
O Exchange Rate	$US\$ = A\$$	(i)	1.2609	—	
P MHTC L/C Fee Value	$N \div O$	A\$	7,220.06	—	
Q MHTC L/C Fee/Tonne	$P \div D$	A\$	0.116	—	
R Insurance—Charterer's Liability	$A\$0.10 \times B$	A\$	N/A	—	
S Insurance—Charterer's Liability/Tonne	$R \div D$	A\$	—	—	(p)
T Insurance—Marine 0.045% War Risk 0.01875%	$.06375\% \times L$	A\$	(k) 2,300.85	—	23/12/76
U Insurance—Marine/War Risk/Tonne	$T \div D$	A\$	0.037	—	
V Total Cargo Value (Excl. Freight Costs)	$L+P+R+T$	A\$	3,618,690.75	—	
W Cargo Cost/Tonne (Excl. Freight Costs)	$M+Q+S+U$	A\$	58.365	—	
X Actual Freight/Tonne		US\$	(l) 14.33935	—	(q)
Y Freight Value	$X \times D$	US\$	899,039.70	—	22/9/76
Z Exchange Rate	$US\$ = A\$$	(h)	1.2612	—	
1 Freight Value	$Y \div Z$	A\$	704,915.71	—	
2 Freight Cost/Tonne	$1 \div D$	A\$	11.370	—	(r)
3 Demurrage Value		US\$	(m) 14,671.14	—	26/11/76
4 Exchange Rate	$US\$ = A\$$	(i)	1.2609	—	
5 Demurrage Value	$3 \div 4$	A\$	11,635.45	—	

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD TO BP AUSTRALIA 17/11/75
 VOYAGE No. 15(b) Demurrage Excluded

	Method		KNPC/Concord	BPA	Invoice Payment Date
6 Demurrage Cost/Tonne	5 ÷ D	A\$	0.188	—	
7 Survey Fee/Tonne		US\$	0.028542	—	(s)
8 Survey Value	7 × D	US\$	1,769.60	—	1/10/76
9 Exchange Rate	US\$ = A\$	(i)	1.2609	—	
10 Survey Value	8 ÷ 9	A\$	1,403.44	—	
11 Survey Cost/Tonne	10 ÷ D	A\$	0.023	—	
12 Total Freight Value	1+5+10	A\$	717,954.60	—	
13 Total Freight Cost/Tonne	2+6+11	A\$	11.581	—	
14 BP—Base Contract Price/Tonne		A\$	—	9.42	(t)
15 BP—Cargo Value	14 × E	A\$	—	582,174.84	20/12/76
16 BP—Freight AFRA Adjustment/Tonne		A\$	—	(u) 4.26	(t)
17 BP—Freight Adjustment Value	17 × E	A\$	—	263,276.52	20/12/76
18 Total Delivered Gove—Value		A\$	V + 12 4,336,645.35	15 + 17 845,451.36	(v)
19 Total Delivered Gove Cost/Tonne		A\$	W + 13 69.946	14 + 16 13.68	
20 Excess Cost to Nabalco		A\$	3,491,193.99		

Alternatively if demurrage is to be excluded

12 becomes	706,319.15
13 becomes	11.393
18 becomes	4,325,009.51
19 becomes	69.758
20 becomes	3,479,558.54

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FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE KNPC/CONCORD
TO BP AUSTRALIA 17/11/75
VOYAGE NO. 15(b)

NOTES

— Assumption

- (a) Assume the contract price US\$10.757 per barrel effective 17/10/75 (re KNPC's telex 28/10/75) will increase 5% to US\$11.295 per barrel effective 1/7/76 (advised in letter to Pritchard 14/11/75).
- (b) Vessel not nominated but assume "Russel H. Green" as typical vessel. 10
- (c) Estimated 6.5 bbls/tonne based on previous voyages.
- (d) Estimated maximum quantity loaded.
- (e) Outturn loss estimated at 0.32% based on average of Voyages 1 to 10.
- (f) Calculated on average 19 days voyage based on average of Voyages 1 to 8 i.e.: arrival date less 19.
- (g) Assume vessel in Gove for 3 days.
- (h) Preferential exchange rate as at 17/11/75.
- (i) Official exchange rate as at 17/11/75.
- (j) MHTC have decreased the commission from 0.25% to 0.20% effective Voyage 11.
- (k) A\$/CAN\$ exchange rate same as A\$/US\$ exchange rate at 17/11/75.
- (l) Assume World Scale 100 for voyage Shuaiba/Gove increases on 1/1/76 from current published rate (effective 1/10/75) of US\$8.21 per long ton. The increase is expected to be 7.5% to US\$8.83 per long ton. Nabalco's contract rate of WS165 will be US\$14.5695 per long ton or US\$14.33935 per metric ton. 20
- (m) Demurrage based on average NET Laytime used at Gove for nominal 60,000 tonne cargo for Voyages 4, 5, 6, and 7 i.e.: 58 hours (re particulars to Pritchard on 11/11/75 Page 4). Therefore, average demurrage is 22 hours (58–36 hours Laytime allowed for discharge) or 0.91666 days.
As Russel H. Green summer Dwt is 63442 = US\$9,700 per day which at WS165 = US\$16,005 per day or pro rata. Average demurrage value = US\$16,005 × 0.19666 = US\$14,671.14. 30
- (n) Payment by IRREVOC L/C—60 days after Bill of Lading date.
- (o) Payment by telegraphic transfer—60 days after Bill of Lading date.
- (p) Payment date—103 days after Bill of Lading date (as per Voyage 8).
- (q) Payment by telegraphic transfer on receipt of cargo at Gove.
- (r) Payment date—66 days after discharge at Gove (as per Voyage 7).
- (s) Payment by Bank Draft—30 days after Bill of Lading date.
- (t) Payment by cheque—90 days after receipt of cargo at Gove.
- (u) Freight adjustment as per BP Cross Claim APPENDIX C 31/10/75. Assume AFRA does not increase on 1/1/76.
- (v) BP invoices Nabalco for OUTTURN STATEMENT quantity. 40
- N/A Not applicable. From and including Voyage 9 Charterers Liability Insurance is no longer paid by Nabalco. Concord have agreed to cover Nabalco at no cost to Nabalco.

Exhibit AOExhibit AO
Calculations of
damages**Calculations of damages****EXPLANATORY MEMORANDUM**

Page 1 is a summary showing in the column entitled "Claimed by Nabalco" the total damages of \$23,512,597.50, daily rate of interest at ten per cent per annum on total damages being \$6,441.85 and the interest accrued from the invoice date of each voyage up to 8th July, 1976 being \$2,555,183.37.

The addition of the figures \$23,512,597.60 and \$2,555,183.37 is \$26,067,780.87 being the total amount of damages claimed as at 8th July, 1976.

10 Based on the page 1 summary the total amount claimed as damages and interest and for which a verdict will be entered on 20th August, 1976 is—

Damages	23,512,597.50
Interest to 8th July, 1976	2,555,183.37
Interest from 9th July, 1976 to 19th August, 1976	270,557.70
	<hr/>
	26,338,338.57
	<hr/>

Pages 2 to 12 inclusive give separate particulars of Voyages 1 to 11 inclusive.

20 The claim for damages has been quantified by totalling the amounts claimed in the schedules (Exhibit AG) subject to—

- (a) The amount for Voyage 4 being reduced by one half.
- (b) No demurrage being included.
- (c) Brokerage being reduced to 2.5 per cent.
- (d) Omitting the item "R"—Insurance—Charterer's Liability from Voyages 1 to 8.
- (e) Interest of 10 per cent upon the amount of the differential between what it cost Nabalco by reason of the provisions of the KNPC and Concord contracts and what it would have cost Nabalco if BP had continued to supply Nabalco.
- 30 (f) Exclusion of forward exchange cover taken out in relation to Voyage 11. The amount of that cover was \$39,404.76 and without admissions Nabalco has agreed to the deletion of the same.

**FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE—KNPC/CONCORD TO BP AUSTRALIA
CALCULATION OF INTEREST CLAIM AS AT 8/7/76—TAKING AS INTEREST RATE—10% P.A.
(Excluding Charterer's Liability, Demurrage and Freight Payment reduced by 1.25%)**

Voyage 1 to 11 inclusive	A\$	Daily interest value at 10% pa	Interest from invoice date to 8/7/76
1. KNPC FOB Value	26,962,806.77	7,387.09	2,856,859.72
2. MHTC L/C Fee Value	65,852.52	18.05	7,068.43
3. Insur. Marine/War Risk	16,757.83	4.57	1,362.00
4. Freight Value	5,105,974.34	1,398.89	576,121.23
5. Survey Value	11,792.99	3.25	1,307.69
6. Total Delivered Gove Value ..	32,163,184.45	8,811.85	3,442,719.07
<i>Less</i>			
7. BP Delivered Gove Value ..	7,364,778.45	2,017.73	684,078.53
8. Net Cost to Nabalco	24,798,406.00	6,794.12	2,758,640.54
<i>Less</i> Voyage 4 Reduced by Half	1,285,808.50	352.27	203,457.17
Claimed by Nabalco	23,512,597.50	6,441.85	2,555,183.37

Total Claim 1-11 Voyages to 8/7/76 = \$26,067,780.87

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE—KNPC/CONCORD TO BP AUSTRALIA
 CALCULATION OF INTEREST CLAIM AS AT 8/7/76—TAKING AS INTEREST RATE—10% P.A.
 (Excluding Charterer's Liability, Demurrage and Freight Payment reduced by 1.25%)

	A	B	C	D	VOYAGE 1 E
Voyage 1	A\$	Invoice payment date	No. of days to 8/7/76	Daily interest value at 10% pa	Interest from invoice date to 8/7/76
1. KNPC FOB Value	1,640,661.09	25/9/74	653	449.50	293,523.50
2. MHTC L/C Fee Value ..	4,107.38	26/9/74	652	1.13	736.76
3. Insur. Marine/War Risk ..	920.41	3/12/74	584	0.25	146.00
4. Freight Value	255,711.37	16/8/74	693	70.06	48,551.58
5. Survey Value	677.41	17/9/74	661	0.19	125.59
6. Total Delivered Gove Value ..	1,902,077.66			521.13	343,083.43
<i>Less</i>					
7. BP Delivered Gove Value ..	469,640.86	14/11/74	603	128.67	77,588.01
8. Net Cost to Nabalco	1,432,436.80			392.46	265,495.42

Total claim this voyage to 8/7/76 = \$1,697,932.22

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Exhibit AO
Calculations of
damages

**FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE—KNPC/CONCORD TO BP AUSTRALIA
CALCULATION OF INTEREST CLAIM AS AT 8/7/76—TAKING AS INTEREST RATE—10% P.A.
(Excluding Charterer's Liability, Demurrage and Freight Payment reduced by 1.25%)**

	A	B	C	D	VOYAGE 2 E
Voyage 2	A\$	Invoice payment date	No. of days to 8/7/76	Daily interest value at 10% pa	Interest from invoice date to 8/7/76
1. KNPC FOB Value	1,766,271.26	4/11/74	613	483.91	296,636.83
2. MHTC L/C Fee Value	4,422.10	5/11/74	612	1.21	740.52
3. Insur. Marine/War Risk	1,128.76	3/12/74	584	0.31	181.04
4. Freight Value	310,041.70	27/9/74	651	84.94	55,295.94
5. Survey Value	824.82	15/11/74	602	0.23	138.46
6. Total Delivered Gove Value	2,082,688.64			570.60	352,992.79
<i>Less</i>					
7. BP Delivered Gove Value	508,351.35	27/12/74	560	139.27	77,991.20
8. Net Cost to Nabalco	1,574,337.29			431.33	275,001.59

Total claim this voyage to 8/7/76 = \$1,849,338.88

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE—KNPC/CONCORD TO BP AUSTRALIA
 CALCULATION OF INTEREST CLAIM AS AT 8/7/76—TAKING AS INTEREST RATE—10% P.A.
 (Excluding Charterer's Liability, Demurrage and Freight Payment reduced by 1.25%)

	A	B	C	D	VOYAGE 3 E
Voyage 3	A\$	Invoice payment date	No. of days to 8/7/76	Daily interest value at 10% pa	Interest from invoice date to 8/7/76
1. KNPC FOB Value	1,285,322.68	23/12/74	564	352.14	198,606.96
2. MHTC L/C Fee Value ..	3,216.40	23/12/74	564	0.88	496.32
3. Insur. Marine/War Risk ..	825.41	30/4/75	436	0.23	100.28
4. Freight Value	232,071.98	22/11/74	595	63.58	37,830.10
5. Survey Value	587.84	11/12/74	576	0.16	92.16
6. Total Delivered Gove Value ..	1,522,024.31			416.99	237,125.82
<i>Less</i>					
7. BP Delivered Gove Value ..	355,906.20	21/1/75	535	97.51	52,167.85
8. Net Cost to Nabalco	1,166,118.11			319.48	184,957.97

Total claim this voyage to 8/7/76 = \$1,351,076.08

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Exhibit AO
Calculations of
damages

**FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE—KNPC/CONCORD TO BP AUSTRALIA
CALCULATION OF INTEREST CLAIM AS AT 8/7/76—TAKING AS INTEREST RATE—10% P.A.
(Excluding Charterer's Liability, Demurrage and Freight Payment reduced by 1.25%)**

	A	B	C	D	VOYAGE 4 E
Voyage 4	A\$	Invoice payment date	No. of days to 8/7/76	Daily interest value at 10% pa	Interest from invoice date to 8/7/76
1. KNPC FOB Value	2,926,409.00	3/1/75	553	801.76	443,373.28
2. MHTC L/C Fee Value	7,300.37	10/1/75	546	2.00	1,092.00
3. Insur. Marine/War Risk	1,881.81	30/4/75	436	0.50	218.00
4. Freight Value	460,270.58	2/12/74	585	126.10	73,768.50
5. Survey Value	1,329.07	13/1/75	543	0.36	195.48
6. Total Delivered Gove Value	3,397,190.83			930.72	518,647.26
<i>Less</i>					
7. BP Delivered Gove Value	825,573.84	3/3/75	494	226.18	111,732.92
8. Net Cost to Nabalco	2,571,616.99			704.54	406,914.34
Reduced by half	1,285,808.50				203,457.17
		Total claim this voyage to 8/7/76 = \$1,489,265.67			

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE--KNPC/CONCORD TO BP AUSTRALIA
 CALCULATION OF INTEREST CLAIM AS AT 8/7/76--TAKING AS INTEREST RATE--10% P.A.
 (Excluding Charterer's Liability, Demurrage and Freight Payment reduced by 1.25%)

	A	B	C	D	VOYAGE 5 E
Voyage 5	A\$	Invoice payment date	No. of days to 8/7/76	Daily interest value at 10% pa	Interest from invoice date to 8/7/76
1. KNPC FOB Value	2,550,677.71	3/3/75	494	698.82	345,217.08
2. MHTC L/C Fee Value	6,380.30	3/3/75	494	1.75	864.50
3. Insur. Marine/War Risk	1,664.62	30/4/75	436	0.46	200.56
4. Freight Value	518,458.85	24/1/75	532	142.04	75,565.28
5. Survey Value	1,115.94	26/3/75	471	0.31	146.01
6. Total Delivered Gove Value	3,078,297.42			843.38	421,993.43
<i>Less</i>					
7. BP Delivered Gove Value	709,865.00	21/4/75	445	194.48	86,543.60
8. Net Cost to Nabalco	2,368,432.42			648.90	335,449.83

Total claim this voyage to 8/7/76 = \$2,703,882.25

**FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE—KNPC/CONCORD TO BP AUSTRALIA
CALCULATION OF INTEREST CLAIM AS AT 8/7/76—TAKING AS INTEREST RATE—10% P.A.
(Excluding Charterer's Liability, Demurrage and Freight Payment reduced by 1.25%)**

	A	B	C	D	VOYAGE 6 E
Voyage 6	A\$	Invoice payment date	No. of days to 8/7/76	Daily interest value at 10% pa	Interest from invoice date to 8/7/76
1. KNPC FOB Value	2,854,723.21	13/5/75	423	782.12	330,836.76
2. MHTC L/C Fee Value	7,143.00	13/5/75	423	1.96	829.08
3. Insur. Marine/War Risk	1,765.35	16/7/75	359	0.48	172.32
4. Freight Value	562,611.48	3/4/75	463	154.14	71,366.82
5. Survey Value	1,233.88	21/4/75	445	0.34	151.30
6. Total Delivered Gove Value	3,427,476.92			939.04	403,356.28
<i>Less</i>					
7. BP Delivered Gove Value	774,399.40	1/7/75	375	212.16	79,560.00
8. Net Cost to Nabalco	2,653,077.52			726.88	323,796.28

Total claim this voyage to 8/7/76 = \$2,976,873.80

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE—KNPC/CONCORD TO BP AUSTRALIA
 CALCULATION OF INTEREST CLAIM AS AT 8/7/76—TAKING AS INTEREST RATE—10% P.A.
 (Excluding Charterer's Liability, Demurrage and Freight Payment reduced by 1.25%)

	A	B	C	D	VOYAGE 7 E
Voyage 7	A\$	Invoice payment date	No. of days to 8/7/76	Daily interest value at 10% pa	Interest from invoice date to 8/7/76
1. KNPC FOB Value	3,089,894.25	28/7/75	347	846.55	293,752.85
2. MHTC L/C Fee Value	7,731.54	28/7/75	347	2.12	735.64
3. Insur. Marine/War Risk	1,872.58	24/7/75	351	0.51	179.01
4. Freight Value	597,411.86	18/6/75	387	163.67	63,340.29
5. Survey Value	1,310.99	27/6/75	378	0.36	136.08
6. Total Delivered Gove Value	3,698,221.22			1,013.21	358,143.87
<i>Less</i>					
7. BP Delivered Gove Value	813,232.60	15/9/75	298	222.80	66,394.40
8. Net Cost to Nabalco	2,884,988.62			790.41	291,749.47

Total claim this voyage to 8/7/76 = \$3,176,738.09

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Exhibit AO
Calculations of
damages

**FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE—KNPC/CONCORD TO BP AUSTRALIA
CALCULATION OF INTEREST CLAIM AS AT 8/7/76—TAKING AS INTEREST RATE—10% P.A.
(Excluding Charterer's Liability, Demurrage and Freight Payment reduced by 1.25%)**

	A	B	C	D	VOYAGE 8 E
Voyage 8	A\$	Invoice payment date	No. of days to 8/7/76	Daily interest value at 10% pa	Interest from invoice date to 8/7/76
1. KNPC FOB Value	3,086,954.10	12/9/75	301	845.74	254,567.74
2. MHTC L/C Fee Value	7,723.00	12/9/75	301	2.12	638.12
3. Insur. Marine/War Risk	1,853.92	22/10/75	261	0.51	133.11
4. Freight Value	612,581.66	11/8/75	333	167.83	55,887.39
5. Survey Value	1,332.17	20/8/75	324	0.36	116.64
6. Total Delivered Gove Value	3,710,444.85			1,016.56	311,343.00
<i>Less</i>					
7. BP Delivered Gove Value	820,704.24	6/11/75	246	224.85	55,313.10
8. Net Cost to Nabalco	2,889,740.61			791.71	256,029.90

Total claim this voyage to 8/7/76 = \$3,145,770.51

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE—KNPC/CONCORD TO BP AUSTRALIA
 CALCULATION OF INTEREST CLAIM AS AT 8/7/76—TAKING AS INTEREST RATE—10% P.A.
 (Excluding Charterer's Liability, Demurrage and Freight Payment reduced by 1.25%)

	A	B	C	D	VOYAGE 9 E
Voyage 9	A\$	Invoice payment date	No. of days to 8/7/76	Daily interest value at 10% pa	Interest from invoice date to 8/7/76
1. KNPC FOB Value	1,382,566.65	17/11/75	235	378.79	89,015.66
2. MHTC L/C Fee Value	3,471.46	18/11/75	234	0.95	222.30
3. Insur. Marine/War Risk	853.44	15/6/76	24	0.23	5.52
4. Freight Value	276,931.54	10/10/75	273	75.87	20,712.51
5. Survey Value	604.16	9/10/75	274	0.17	46.58
6. Total Delivered Gove Value ..	1,664,427.25			456.01	110,002.57
<i>Less</i>					
7. BP Delivered Gove Value ..	362,533.68	6/1/76	185	99.32	18,374.20
8. Net Cost to Nabalco	1,301,893.57			356.69	91,628.37

Total claim this voyage to 8/7/76 = \$1,393,521.94

**FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE—KNPC/CONCORD TO BP AUSTRALIA
CALCULATION OF INTEREST CLAIM AS AT 8/7/76—TAKING AS INTEREST RATE—10% P.A.
(Excluding Charterer's Liability, Demurrage and Freight Payment reduced by 1.25%)**

	A	B	C	D	VOYAGE 10 E
Voyage 10	A\$	Invoice payment date	No. of days to 8/7/76	Daily interest value at 10% pa	Interest from invoice date to 8/7/76
1. KNPC FOB Value	3,156,441.00	8/12/75	214	864.78	185,062.92
2. MHTC L/C Fee Value	7,901.52	9/12/75	213	2.16	460.08
3. Insur. Marine/War Risk	1,970.88	15/6/76	24	0.54	12.96
4. Freight Value	{ 627,197.81	7/11/75	245	171.84	42,100.80
	3,874.71	27/11/75	225	1.06	238.50
5. Survey Value	1,369.85	6/11/75	246	0.38	93.48
6. Total Delivered Gove Value	3,798,755.77			1,040.76	227,968.74
Less					
7. BP Delivered Gove Value	825,328.08	2/2/76	157	226.12	35,500.84
8. Net Cost to Nabalco	2,973,427.69			814.64	192,467.90

Total claim this voyage to 8/7/76 = \$3,165,895.59

FUEL OIL COMPARATIVE ANALYSIS BY VOYAGE—KNPC/CONCORD TO BP AUSTRALIA
 CALCULATION OF INTEREST CLAIM AS AT 8/7/76—TAKING AS INTEREST RATE—10% P.A.
 (Excluding Charterer's Liability, Demurrage and Freight Payment reduced by 1.25%)

	A	B	C	D	VOYAGE 11 E
Voyage 11	A\$	Invoice payment date	No. of days to 8/7/76	Daily interest value at 10% pa	Interest from invoice date to 8/7/76
1. KNPC FOB Value	3,222,885.82	17/2/76	143	882.98	126,266.14
2. MHTC L/C Fee Value ..	6,455.45	17/2/76	143	1.77	253.11
3. Insur. Marine/War Risk ..	2,020.65	15/6/76	24	0.55	13.20
4. Freight Value	648,810.80	14/1/76	177	177.76	31,463.52
5. Survey Value	1,406.86	22/1/76	169	0.39	65.91
6. Total Delivered Gove Value ..	3,881,579.58			1,063.45	158,061.88
<i>Less</i>					
7. BP Delivered Gove Value ..	899,243.20	7/4/76	93	246.37	22,912.41
8. Net Cost to Nabalco	2,982,336.38			817.08	135,149.47

Total claim this voyage to 8/7/76 = \$3,117,485.85

1247

Exhibit AO
Calculations of
damages

20th June 1974

Exhibit AK**Platt's Diagram Price Service****MAJORS TO FEA: ONLY MARKET PRICES ARE VALID**

New York 6/19—There used to be a time, about 15 years ago, when Arabian crude oil was \$1.80 a bbl if the XYZ Company in Sweden or Italy wanted to buy it and \$1.35 to the partner producers. The figures were referred to as the “outside” price and the “inside” price. Today, in perspective, it can be seen that they were not market oriented.

The comments submitted to the Federal Energy Administration on proposed rules concerning landed costs of crude indicate that the era of the “inside” and the “outside” price is over. The marketplace is a piece of today, and must be studied constantly. 10

The comments of the oil companies speak for themselves.

“In today’s market, spot and shorter-term contract prices accurately reflect market price and, indeed, are the market.

“Sun has found that it is virtually impossible in the current market to negotiate term contracts at prices below spot and short-term levels. . . . A prime example is Sun’s contract with Sonatrach. Initially, this was a four-year contract at a fixed price, with specific, limited escalators. To date, the price provision has been renegotiated four times, and rather than paying under \$4.00 a bbl as originally provided, Sun now pays \$14 a bbl.” 20

Sun Oil.

“We fully support the concept that, insofar as transactions with affiliates are concerned, allowable landed cost should equal what the cost of product would have been to the US affiliate if it has purchased the product in an arms-length transaction with a non-affiliated party. Our intercompany pricing of imported crude has been and is in accord with that principle.”

Standard Oil Co. (Indiana).

“Our historical procedure has been based on transferring from foreign affiliates at market price as best determined by our crude oil supply buyers.” 30

Phillips Petroleum.

“Our procedures . . . call for intercompany pricing on the basis that each affiliated customer, whether US or abroad, will be treated fairly and that management responsible for local operations can be fairly judged on its performance in a competitive market.”

Standard Oil Co. of California.

“Unless all factors such as spot purchases, host government crude sales, published information of crude and product sales transactions, as well as the experiences of those individuals who are constantly in the business of buying and selling crude and products are taken into account, such prices will not be set on a true arms-length basis.” 40

Texaco.

“In the final analysis, the worldwide competitive price is the only true indicator of a covered product’s value. The ultimate goal should be to

establish, in a timely manner, this worldwide, competitive price which can only be done by evaluating all comparable sales.”

Conoco.

Exhibit AK
Platt's Oilgram
Price Service

20th June 1974

“We are in complete agreement that market price is the correct value to use in determining landed cost.”

Union Oil Co. of California.

“Prices for any commodity moving in international trade must be both market-oriented and adaptable to a rapidly changing and uncertain industry environment if the US is to compete effectively for the supplies it requires.”

Exxon Co., USA.

10

Exhibit AA

Proof of Evidence: H. J. Colish

Exhibit AA
Proof of
Evidence:
H. J. Colish

HARRY J. COLISH, Consultant, 155 East 76th Street, New York, N.Y. 10021, USA

Until his retirement on the 1st May, 1974 Mr Colish had been employed by Mobil Oil Corporation in varying executive capacities. Throughout much of his career he has been concerned with the prices of crudes, products and tanker transportation. This included the development of pricing policies and rationales for such pricing, establishing and administering posted prices and selling prices, defending prices and freight rates in discussions or disputes with government agencies in Australia, USA, New Zealand, UK, Germany etc, and forecasting future prices.

20

During the last war and in the first postwar years Mr Colish developed and administered a joint industry oil and tanker supply program for 5 companies to all of West Africa (about 25 countries). In 1955 he undertook a study of the Eastern Hemisphere crude and product price structure appraised certain inconsistencies in that structure and forecast future developments. Methodology and format of the then novel study were his responsibility. In 1960–61 he was in charge of and responsible for the first comprehensive appraisal of Mobil's worldwide competitive position within the oil industry. This was apparently the first comprehensive appraisal undertaken by any oil company. In the last years of his Mobil career he held the title of International Economic Consultant and, freed from administrative duties, devoted himself to major price and other policy questions.

30

In the discharge of his various assignments he kept in regular touch with informed people in the industry and in Government, with independent economic consultants, journalists etc. After his retirement from Mobil on the 1st May, 1974 he declined job offers and established himself as an independent consultant in oil and tanker industry matters. In the past year his clients included an oil company and a tanker company on an annual contract basis, and on specific problems another oil company, a major Japanese company with shipping tanker and oil interests. Mr Colish has maintained his contacts, with people in several major oil companies with independent experts and consultants and with the trade press.

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NABALCO PTY LTD VS BP AUSTRALIA LTD

On 11th July, 1970 Nabalco entered into a long-term supply contract with BP Australia (BPA) covering the supply of Furnace Oil (Heavy Residual Fuel Oil) delivered to Gove in Northern Australia. Nabalco regarded communications and actions by BPA as decisions to terminate the supply of Furnace Oil at Gove as of 24th July, 1974. Nabalco, therefore, entered into a contract dated 21st June, 1974 with Kuwait National Petroleum Company (KNPC) covering the supply of Heavy Fuel Oil FOB Arabian Gulf Port for a period of 3 years with option to extend to 5 years beginning 1st August, 1974 and concluded a contract with Concord Petroleum Company dated 18th June, 1974 for the transportation of the Heavy Fuel Oil from the Middle East to Gove. Nabalco now claims damages from BPA for the difference between the BPA price and "the relevant market price" prevailing when it became necessary for Nabalco to arrange substitute supplies. It is the purpose of this paper to determine whether the prices and other terms of the contracts concluded with KNPC and Concord reasonably reflected "relevant market price or prices" at the time of and/or in the period immediately preceding the conclusion of these two contracts. 10

Market conditions for Heavy Residual Fuel Oil and those for tanker transportation will be considered separately, and thereafter other factors will be reviewed which give rise to additional damage claims. 20

I. The Market for Heavy Residual Fuel Oil in the Second Quarter of 1974

General Characteristics of the International Oil Markets

Oil is by far the largest commodity in volume moving in international commerce but no organized markets exist for crude oil or petroleum products in contrast to many other internationally traded staple commodities for which organized markets exist, such as the London Metal Exchange for non-ferrous metals, the exchanges for grains and other agricultural commodities in Chicago and elsewhere, and wool auction markets in Australia and other producing countries, etc., etc. There are several reasons why commodity markets have failed to develop in the oil industry but one important factor is the high degree of vertical integration which has characterized this industry. All sales and supplies among related companies are arranged in private negotiations. However, most sales to third-party buyers are also concluded privately, in particular virtually all sales of petroleum products. The prices agreed upon have, therefore, never been uniform at any given time but have ranged over a considerable spread of numbers. 30

The prices and terms agreed upon in private transactions hardly ever become publicly known. Only some crude sales by producing countries and a few tenders to government entities, such as YPF in Argentina, were reported in the trade press. Up to the period under review the aggregate volume of these transactions represented a very small percentage of total crude movements. The publicly known transactions have sometimes been dubbed "the tip of the iceberg" since so many more transactions remained unknown than became known. Quite understandably, the few transactions which became a matter of public knowledge attracted a good deal of attention, more attention than the share of the total they represented actually warranted. Although these reported prices were part of the total spectrum of "market prices" they were by no means representative of all "market prices". 40

Virtually all longer-term contract sales of petroleum products are privately negotiated and rarely reported by the trade press. The exception is the publication by Platt's Oilgram Press Service of US East Coast contract prices for several petroleum products. Almost all other reports about product market prices by Platt's or other trade publications refer to spot or short-term sales. This applies, in particular, to 50

the European Bulk prices at Rotterdam and in Italy which Platt's publishes every working day. Platt's shows a "High" and a "Low" price for each product, and individual transactions may be assumed to have been concluded at any price between those two limits. (The manner in which Platt's collects these data is explained in some detail in Platt's issue of 13 May, 1974.)

10 For the Caribbean, the Persian (Arabian) Gulf and Singapore, Platt's published only "posted" prices on a daily basis which postings are not market prices (see Attachment "AA" for a discussion of "posted prices"). Platt's has, however, published "market prices" of products in the Persian Gulf and in the Caribbean at
10 irregular intervals, 6 to 12 times per year. In 1974, Platt's published such market prices on 2nd April and on 17th June. In both instances prices for 3.5% sulfur and for 4.5% sulfur heavy fuel oil were reported. (See page 7 for details). All reported Persian Gulf market prices are understood to have reflected spot sales. Platt's has not published such data since 17th June, 1974. I understand from the editor of Platt's Oilgram Price Service that further publication of Persian Gulf product market prices was discontinued because Platt's considered available data inadequate to provide the degree of reliability required by Platt's as a prerequisite for publication of any price data.

Two important conclusions arise from these facts:

- 20 (1) publicly known product market prices in international trade represent a small portion of such third-party product sales, reflect almost always only spot or short-term transactions and cannot be regarded as necessarily representative of the whole gamut of such market prices;
- (2) even though European Bulk prices for Rotterdam and Italy are published daily, reflect only spot transactions whose non-price terms are presumably very similar and refer to quite uniform product qualities the reported prices cover a price *range* (although in normal market conditions a fairly narrow one) and not a single uniform price—see Table A. the range of prices is
30 undoubtedly much wider for period contracts where contract date, duration and other terms differ much more than is the case for the daily (spot) Bulk prices.

Selection of the Second Quarter of 1974 as the Relevant Period

The Arab countries lifted most embargoes after mid-March 1974 and permitted increases in production levels. During the second quarter of 1974 oil markets began to function again under more normal conditions of supply and demand. On 26th March, 1974 Nabalco received from BPA notice of a price increase under Clause 9 C (iii) of the contract with BPA. During the second quarter of 1974 Nabalco canvassed the heavy fuel oil and tanker (freight) markets. On 21st June, 1974 Nabalco signed the contract with KNPC and on 18th June the contract with Concord. Market
40 developments after the second quarter of 1974 were not relevant.

Oil Industry Views in the Second Quarter of 1974

Oil prices rose steadily in 1973 and very steeply after the multiple increase of OPEC government take and the imposition of embargoes and production cutbacks by the Arab states. Even after the embargo was largely lifted and cutbacks were eased the industry and oil markets were confused and uncertain. The fear was widespread that OPEC would institute production quotas or, at least, keep production tightly controlled and that further price increases were in the offing. The following press citations illustrate the prevailing mood:

"All assumptions that Middle East oil would be available to fuel economic

Exhibit AA
Proof of
Evidence:
H. J. Colish

growth in Europe and Japan and to help make up the growing shortfall in US energy supplies now have to be re-examined.”

John Swearingen, Chairman of Standard Oil of Indiana, quoted by Platt's Price Service on 21st March, 1974.

“Future price levels are unreadable. . . . If new restrictions are drawn up by the Arabs, the entire situation could change. There are just too many unknowns to make any production beyond the first half of the year”, one German expert sums up.

(Platt's—3/25/74.)

“The right of the producing countries to obtain from their wealth what the market can give them should not be questioned.”

Abderraman Khene, Secretary General of OPEC (Platt's—3/28/74).

10

“The biggest question about how much additional Arab oil will be made available for world markets still hasn't really been answered yet, despite lifting of the embargo against the United States. It's still unclear whether the remaining production cuts will be restored by most Arab states, even to pre-embargo rates.”

Petroleum Intelligence Weekly, 1st April, 1974, page 1.

“Many views shape up at the end of the week on trading prices for crude oil, all at variance.”

(Platt's—4/8/74.)

20

“In the period ahead—perhaps even until 1980—the oil producing countries' influence on the market will keep crude oil prices unpredictable with fluctuations, leading mainly to upward pressure . . .”

Excerpt from Report by Pakhoed Holding NV, Netherlands (Platt's—5/23/74.)

“The whole industry is sitting and wringing its hands, waiting for OPEC to decide the major issues, price and supply.”

Petroleum Intelligence Weekly, quoting one oil marketer—6/17/74.

It is not surprising that under these circumstances most trading was confined to spot and short-term transactions. During the period of the embargo and production cutbacks oil companies had been compelled to ration supplies to their customers. The companies now gave priority to restoring supply levels to those customers and even increasing them to permit rebuilding of depleted inventory levels. Producing countries had already demanded an increase in their equity participation from 25% to 60% and had publicly stated their objective to sell as much as possible of these increased supplies direct to customers in consuming countries. The companies were, therefore, uncertain what supplies they could expect to receive from OPEC countries in future and on what terms. The companies' attitude was basically defensive, and their objective at that time was to serve long-term affiliated and non-affiliated customers. They were not interested in aggressive marketing to increase their market shares at that time. If they had any product surplus they were usually not willing to sell to new customers on a long-term basis but preferred to sell spot or short-term. This is corroborated by Nabalco's own experience. If suppliers were

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prepared to sell for longer periods ahead, prices were as high as or higher than spot prices.

Exhibit AA
Proof of
Evidence:
H. J. Colish

“Crude prices drop as Spot Markets come alive again. The new spurt of activity is partly due to great uncertainties over availabilities and prices. One major . . . scheduling sales month by month . . . and wouldn't sell as far ahead as late 1974.”

PIW—5/6/74, page 1.

10 “Sun Oil, a medium-size US oil company, primarily active in the US, commented to the Federal Energy Administration on crude import prices as follows: “Sun has found that it is virtually impossible in the current market to negotiate term contracts at prices below spot and short-term levels.”

Platt's—6/20/74

Since the international companies had taken a basically defensive posture, almost the only potential suppliers prepared to enter into long-term contracts were the national oil companies of producing countries who wanted to secure a larger share of the market for their newly increased avails of participation crudes and for products derived therefrom.

20 *The Heavy Fuel Oil Market and Heavy Fuel Oil prices in the Second Quarter of 1974*

European Bulk prices developed different trends for different products during the course of 1974, as can be seen from Table “A”, which lists prices for Rotterdam and Italy on selected dates. (See Platt's Oilgram Price Service or Oil Price Handbook for full details). While prices for gasolines, naphtha and jet fuel dropped quite drastically during the period 1st April to 1st July, 1974 prices for heavy fuel oils were rather well maintained. The modest declines of heavy fuel oils reflected normal seasonal trends. Heavy fuel oil market prices in the Persian Gulf followed a similar course. On the two dates previously mentioned Platt's reported as follows:

30 Heavy Fuel Oil	Market Price	Variance from Posting 4/2/74	Changes from late 1973
3.5% max. sulfur	\$9.15	+25	+\$4.85
4.5% max. sulfur	\$9.00	+10	+\$4.95
		6/17/74	from 4/2/74
3.5% max. sulfur	\$9.00	+20	-15
4.5% max. sulfur	\$8.80	—	-20

The trade generally regarded the residual market to be in balance and expected price increases rather than declines. The following press excerpts illuminate the prevailing market views:

40 “Spot bulk market prices (products are here referred to) are directionally down. Panic buying has apparently run its course.—Future price levels are unreadable but consensus is that many spot prices are going to once again slide under contract levels. Contract prices may not slide down at all in

some markets but they may not move up drastically either. If new restrictions are drawn up by the Arabs, the entire situation could change. There are just too many unknowns to make any projection beyond the first half of this year”—one German expert sums up.

Platt's—3/25/74.

“Singapore 4/25. Heavy residual fuel appears to be in balance. There is still continuingly strong demand for bunker fuel oil in the Singapore areas with spot sales at \$3.00 to \$5.00 per ton premium over posting. Therefore, although the bunker postings have remained steady for some time, there are indications that with the increase in demand in Singapore and the improved market conditions elsewhere bunker postings will see some increase in the near future.”

10

Platt's—4/26/74.

“Milan 5/17/74. 3.5% fuel oil—strong demand but no offerings.”

Platt's—5/20/74.

“Bunker Prices. The supply situation appears to be stabilizing. (refers to spot supplies). Traders in ships' bunkers say that business is active and that supplies can be lined up with better regularity than during the embargo period . . . increased willingness to sell oil . . .”

20

Platt's—5/24/74.

“The trading week in Europe, thin as it was, saw some novelty. Some offerings of term supply deals started showing up again for the first time in months. Buyers suddenly appeared to recall that contract prices don't always go up and called for more complete escalation, which means down as well.”

“Crude Markets. One US buyer is reported to have bid 85% of posted for June liftings of Arabian. July and August were bid at 95% of posted.”

Platt's—6/10/74.

“Cargo Price Notes. This year continues to show enormous fluctuations in prices for cargoes in principal refining centers. . . . Heavy fuel oil prices have varied little over the spring season.”

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Platt's—6/17/74.

“Singapore. Some weakening in heavy fuel prices has been noted over much of the Far East and stems from a long position both in Japan and on the US West Coast. Trade sources say they believe this situation is temporary, and developed because of overbuying in the past two months along with reduced demands and conservation measures. By September, it is thought, Japan's high inventories will be run down and stockpiling of distillates and residual will start for the winter.”

“Europe Cargo Scene. Rotterdam 6/28. Another nearly dead week closed out in Rotterdam Friday, and it also was the finish of a disastrous first half of the year for position-takers and speculators. However, after weeks of declines, prices appear to be hitting a floor and perhaps even gathering for a rebound.”

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Platt's—7/1/74.

The trade's appraisal of the residual market was borne out by subsequent developments. Table "A" shows that during the second half of 1974 prices of gasoline and naphtha showed further large declines, prices for distillates remained practically unchanged but that heavy fuel oil prices rose. If Persian Gulf market prices had been published after 6/17/74 they would almost certainly have shown parallel developments.

10 The Persian Gulf market prices reported by Platt's on 4/2/74 and on 6/17/74 were consistent with the prices for heavy fuel sold as bunkers at Persian Gulf ports during the same period. The list price of Bunker "C" (Heavy Fuel Oil) at Ras Tanura was US\$32.25/LT on 12/31/73. Effective 1/1/74 the price was increased by US\$31.65/LT to US\$64.90/LT, equal to about US\$9.68 per barrel. This price remained in effect throughout the first half of 1974. From my informants in the trade I understand that actual bunker sales in the Persian Gulf were made at list prices, and that no discounts or rebates were granted in the first half of 1974. In past years bunker prices had usually been 10 to 15 cents per barrel higher than term contract cargo prices in the Persian Gulf to compensate the bunker seller for the higher handling costs involved. The price of US\$9.68 indicates a differential of about 50 to 70 cents over the cargo market prices in the Persian Gulf reported by Platt's for 3.5% sulfur fuel oil. Platt's cargo market prices reflect only spot sales. In my opinion the 50 to 20 70 cents differential suggests that PG fuel oil sellers were accustomed to higher price levels for their regular term business than reported by Platt's for spot sales.

KNPC Contract Price in the light of the Second Quarter 1974 Market

In view of the many uncertainties facing the oil industry in the period under review buyers and sellers alike frequently preferred to conclude short-term arrangements and to wait for conditions to settle before considering longer-term commitments. However, a consumer like Nabalco absolutely dependent upon regular supplies would quite understandably seek long-term arrangements. Heavy fuel oil prices looked stable at the time and were, in fact, expected to increase. However, 30 potential long-term suppliers were scarce. As already mentioned, international oil companies were reluctant to take on additional long-term commitments. National oil companies of producing countries therefore operated in a seller's market as far as long-term supplies were concerned.

The base price contracted with KNPC was \$9.25. From the two sets of spot market prices reported by Platt's on 4/2/74 and 6/17/74 for 3.5% and 4.5% sulfur fuel oil, prices of \$9.07 and \$8.90 can be estimated for those two dates for heavy fuel oil of 4.0% sulfur. In the weeks prior to concluding the Nabalco/KNPC contract the spot market price for 4.0% sulfur product was probably around \$9.00. The premium of about 25 cents over market would seem fully justified by the long-term nature of the KNPC supply contract and within the conditions of the market at that 40 time. The contract price varied only about 3% from the spot price, a range of market prices which would be narrow at any time. There should be no doubt that the price agreed with KNPC was a reasonable and relevant market price.

II. The Market for Tanker Transportation—Second Quarter 1974

The Nature of the Agreement between Nabalco and Concord

Before discussing the freight rate stipulated in the agreement dated 18th June, 1974 between Nabalco and Concord against the background of the prevailing tanker market the nature of the agreement must be clarified. It is neither a period charter nor a consecutive voyage charter but a Contract of Affreightment.

Under a *Contract of Affreightment* the owner (or operator) of tankers obligates himself to provide tanker transportation from specified port(s) of loading to specified port(s) of discharge of specified quantities of cargo during a specified period of time. The Contract of Affreightment usually indicates the approximate frequency and size of cargoes to be lifted during the duration of the contract. Within the limits stipulated in the contract with respect to vessel and cargo size the party providing transportation may select the size and type of tankers. A blank Single Voyage Charter Party is customarily attached to and made part of a Contract of Affreightment. The charterer pays a stipulated freight rate per ton of cargo lifted. Contracts of Affreightment are considerably rarer than the several types of tanker charters customary in the shipping industry. It seems advisable to define those other arrangements as well. 10

Under a *Period (Time) Charter* the owner lets (or leases) a particular specified vessel to the charterer for a stated period of time, fully manned, provisioned and stored and insured for normal risks. The charterer may instruct the vessel to proceed to any port or ports at his discretion unless the charter provides for specified geographical limitations. The owner (operator) is responsible for all operating expenses with the exception of bunker fuel and port charges which are for charterer's account. The owner receives as rental or charter hire an agreed sum per month regardless of where the vessel trades. Charter hire is usually expressed as a rate per ton of dead-weight capacity per month. 20

Under a *Consecutive Voyage Charter* the tanker owner undertakes to transport cargo by a specified vessel from one or more specified loading port(s) to one or more specified discharge port(s) for a stated number of voyages, or for as many voyages as the vessel can perform within a stated period of time. The owner is responsible for the operation of the vessel. All vessel operating costs including crew's wages, provisions and stores, repairs, insurance, overhead, port charges and bunker fuel are for the owner's account. The charterer pays freight on the quantity of cargo lifted although occasionally a lump sum freight is agreed upon.

Compared with an owner's responsibility under a Period Charter or under a Consecutive Voyage Charter the party providing transportation under a Contract of Affreightment assumes the added responsibility to schedule vessels of appropriate size to be ready to load on an appropriate date. In such instances the freight rate payable per ton of cargo carried is usually higher than a time charter rate (plus bunker costs and port charges) or a consecutive charter rate for the same size of vessel and period. 30

Moreover in setting a rate for contracts of affreightment to ports west of Suez a vessel owner would take into account the occasional opportunity to utilize the vessel for other transportation after the port of discharge without therefore having necessarily to return to ballast to the port of loading. This opportunity does not present itself for hauls from PG eastwards because there is hardly any availability of economic intermediate loading. 40

The Nature of the Tanker Market

In contrast to the severely limited transparency of the oil market, the tanker charter market is characterized by a very high degree of transparency. While the oil industry is highly integrated with respect to production, refining and marketing, oil companies generally own (or bareboat charter) only 30 to 40% of the tanker tonnage they use. The balance of the companies' tanker requirements are met by chartering tankers from independent owners, usually through the intermediary of tanker brokers. A number of brokerage firms regularly publish lists of charter arrangements of which they have knowledge in which the name of the ship, the iden- 50

tity of the parties, the type and duration of the charter, the charter rate and further details are indicated. Howard Houlder (Chartering) Ltd., London, Dietze, Inc., New York, Lambert Brothers Shipbroking Ltd. London and Drewry's of London are among publishers of widely circulated charter reports a number of which I have examined. Some lists cover only spot charters—such is the case for Dietze, Inc. Others cover all types of charters. Some reports appear monthly, others biweekly, still others weekly. From these various sources most charter arrangements become known shortly after their conclusion. The London Tanker Brokers Panel (LTBP) which computes and publishes the monthly AFRA (Average Freight Rate Assessment) rates and which is composed of six of the most reputable London Tanker Brokers and is in touch with other brokerage firms in London and elsewhere has stated that it has knowledge of 95 to 99% of all arm's length charters.

An explanation of AFRA may be called for. Since 1st April, 1954 a Panel of six London Tanker Brokers has periodically computed the total weighted average charter rates for various categories of tanker sizes, in effect during the period or at the time covered by the assessment. Arm's length charters of whatever duration current at the time of assessment of all tankers commercially employed in the carriage of petroleum have been reflected with the exception of vessels employed in restricted trades. The assessments are not estimates, but are the result of detailed factual calculations. It is the intent of AFRA to determine the oil industry's aggregate freight cost at the time of the assessment not the costs of the owners or operators of the ships. The assessment is made for a standard voyage and is expressed as a percentage of Worldscale.

After the Second World War the growing volume of oil moving in international commerce and the rapidly increasing chartering activity made the availability of standard freight schedules in sterling or US dollars per ton very desirable and convenient against which actual freight rates could be measured and in relation to which actual freight rates could be expressed. Freight schedules or scales are not actual or, in any sense, "normal" rate levels. They are purely nominal reference bases to which market rates can be related. The scales thus provide a logical and accurate relationship among different voyages. With the objectives in mind of making the Scales as precise as possible and of keeping the net return for all voyages as uniform as possible, the Scales were periodically revised. London Scale # 1 was a modification of the wartime MOWT (Ministry of War Transport) Scale and of postwar Scales. It was introduced in 1952, replaced by Scale # 2 effective 1st October, 1954 and on 1st January, 1959 by Scale # 3. On 1st July, 1962 Intascale replaced the various Scales, and effective 15th September, 1969 Worldscale superseded Intascale. Worldscale were revised in 1971, 1972, 1973, 1974 and 1975 in order to keep individual voyage rates in proper relation to one another. Revisions are due to changes in bunker prices, port charges and currency exchange rates.

While the tanker market is a highly transparent one, it is not an organized market. There exists, consequently, no uniform single market charter or freight rate even for vessels of comparable size chartered on the same day for equal time periods. Rates are privately negotiated and may vary considerably at any given time.

The State of the Charter Market in the Second Quarter of 1974

In the expectation that oil demand would continue to grow at 10% per annum or more (see appended Tanker Market Report of Lambert Brothers of 28th June, 1974, #1317, p. 1, paragraph 3) a huge volume of tanker building contracts was placed in past years and particularly in 1973 when booming oil demand caused very high freight rate levels. However, as a result of quintupled oil prices, conservation measures adopted in consuming countries and worldwide recession oil consumption

not only did not increase but dropped. Tanker tonnage supply soon exceeded demand, and with the continued delivery by shipyards of new vessels the surplus grew to unprecedented proportions. Charter rates dropped apace. Charterers expected further declines and preferred to temporize by relying on the spot market. Owners were reluctant to commit themselves for extended periods at prevailing low rates. Period chartering activity, consequently declined and spot chartering increased.

Charter rates and freight rates had begun to decline after Arab countries curtailed production. The decline continued in the second quarter, and due to the growing surplus of tanker tonnage, the decline of charter rates was expected to continue further. Tanker tonnage on order on 1/1/74 amounted to almost 200 million DWT, only slightly less than the total existing world fleet at mid-1973. About 95% of the tankers on order were over 80,000 DWT, and about 73% were over 200,000 DWT, the so-called VLCC's (Very Large Crude Carriers). The developing tanker surplus was, therefore, greatest in those size classes. 10

Smaller vessels were affected to a lesser extent, and there has been uncertainty to this day whether the current surplus of smaller vessels, many of which are fast approaching the end of their useful lives, would not before long become a deficit. Operating costs of all ships have greatly increased but those of smaller ships proportionately more due to the greater impact of bunker prices and crew's wages. Consequently, the difference in period charter rates for vessels in different size classes rose, rates for smaller vessels being considerably higher than for large ones. The anticipated further rapid rise in operating costs made owners of smaller tonnage unwilling to let these vessels for longer periods at the 2nd quarter 1974 rate levels which were severely depressed compared with 1973. 20

The Freight Rate agreed between Nabalco and Concord

Contracts of Affreightment are relatively rare, as can be seen from the charter lists published by Howard Houlder and Drewry's. Large oil buyers usually have their own tanker fleets available made up of owned and/or chartered vessels. Smaller buyers often purchase on a delivered basis. Not too many shipowners are prepared to conclude contracts of affreightment. Small tanker operators lack the necessary flexibility, and oil companies often consider tanker operations as an adjunct to oil supplies and are not interested in providing transportation services by themselves. Only one contract of affreightment is listed for the entire first half of 1974 in any publication to which I referred viz in Howard Houlder: the arrangement concluded by United Refining on 7th June for Occidental tonnage to move over a period of 18 to 24 months 35/45,000 tons of dirty cargo per voyage from the Persian Gulf to the US Atlantic Coast, at a rate of W150 per ton. This rate appears consistent with the rate of W170 agreed between Nabalco and Concord (an Occidental affiliate). The route from the Persian Gulf to the US East Coast offers considerably more scope and flexibility in scheduling tonnage than the route to Northern Australia, justifying a somewhat higher freight rate for the latter. The longer term of the Nabalco contract may also have been a reason for asking for a higher rate. Finally, a spread of 20 Worldscale points (150 vs. 170) is not at all unusual. The five charters by YPF in April, 1974 (shown on the Howard Houlder lists) of vessels of practically equal size were made at rates ranging from W209 to W250. 30 40

While the rate of W170 does not reflect the lowest rates contracted in the freight market at the time it is within the range of charter and freight market rates which in my opinion were reasonable and relevant in the Second Quarter and, more particularly, in June, 1974.

III. Additional Claims

Exhibit AA
Proof of
Evidence:
H. J. Colish

Published product market prices (almost always spot prices as previously discussed) are usually silent about the remaining sales terms except for broad quality characteristics such as sulfur content, and an indication of the location to which the price applies. The contract terms other than price agreed with BPA differ from those agreed with KNPC and Concord in several respects. Both sets of non-price terms were usual market terms and, by no means, exceptional. Differences are reviewed below to determine whether they may give rise to additional claims:

10 (1) *Payment Terms* BPA contract: originally 90 days after presentation of invoice for the quantity delivered at Gove—but by agreement subsequently modified to 90 days after delivery. KNPC: 60 days after loading by means of irrevocable Letter of Credit. Concord: upon delivery. Hence, difference for cargo, approximately 50 days (assuming a voyage of 20 days) plus cost of Letter of Credit; freight: at least 90 days.

(2) *Ocean loss* Under the BPA contract outturn quantities delivered at Gove were to be paid for while the KNPC contract applies the price to the loaded quantities. The difference, if any, represents ocean loss.

(3) *Cargo Insurance*

20 (4) *Product Quality*

(a) *Sulfur Content* I consider the contract price in each case to be in line with the respective market price.

(b) *Calorific Value* The BP contract stipulated a calorific value of 18660 BTU/lb while KNPC's was 18000 BTU/lb/min. The actual calorific values varied by shipments. The average of 16 BP cargoes was 18444 BTU/lb and the average for 7 KNPC cargoes was 18250 or 1.06% less than BP's. This would be the measure of Nabalco's additional consumption of fuel.

(c) *Viscosity* The maximum allowable viscosity is the same in both contracts.

30 (d) *Vanadium* The higher vanadium content of the KNPC product might result in faster corrosion and more frequent cleaning and repairs.

(e) *Sediment* The small difference of 0.05 represents a loss of product and freight.

IV. Contingencies

A. *As of June 1974*

(1) *Posted Prices for Fuel Oil at Persian Gulf Locations and/or increases in underlying crude costs*

40 Since these postings are escalation bases under the KNPC contract an opinion on these postings is called for. The crude price and crude cost increases decreed by OPEC in October and December 1973 left a difference of \$1.50 or more between the official "market price" of crude decreed by OPEC and the average cost of the same crude to the companies as frequently published in trade journals. It was to be expected that OPEC would narrow this gap and that this would be accomplished primarily by increasing the companies' cost. By the end of 1974 the difference had been reduced to 22 cents, primarily by crude costs having been raised by about US\$1.00 per barrel and partly by some decrease in official market prices as decreed. Higher crude costs were bound to be reflected in higher posted prices for fuel oil at Persian Gulf locations. This has happened.

50 A similar development was to be expected for 1st October, 1975. I anticipated that OPEC would raise crude costs by about 10%. Such an increase has, in fact, been decreed. Posted fuel oil prices have so far been raised by a lesser amount.

Article E(iv) of the KNPC contract contemplates the possibility that the posted price increases for fuel oil may fall short of the increases in cost of the underlying crude in which case KNPC is entitled to seek to raise the contract price by reference to the latter and not the former.

For example, effective 1st October, 1975 the "market price" of Kuwait Crude was raised from US\$10.365 per barrel by US\$1.036 to US\$11.401 and therefore KNPC would be entitled to raise the contract price by US\$1.036 if the average posted prices by reference to which the posted price escalator operates would produce a less favourable result to KNPC.

I believe that the majority of expert industry opinion anticipated 1974 developments, although not necessarily to the same extent and in quite the same way. There was more optimism in the industry for 1st October, 1975, and the general expectation was for a smaller raise. 10

(2) *Freight Rates* A huge tanker surplus was clearly foreseeable by mid-1974, primarily in large tankers. I expected spot charter rates to decline steeply and term rates to decline to a lesser extent. This has happened.

On the other hand Worldscale rates were expected to increase in January, 1975 and thereafter, primarily to take into account the steep increase in Bunker costs.

(3) *Production Quotas* Many people in the industry expected OPEC to adopt production quotas which would have strengthened the market price of crudes and products. I did not and still do not believe that this would be done. No quotas have been instituted. 20

(4) *Embargoes* Renewed embargoes by OPEC seemed unlikely to me.

(5) *Australian Dollar Exchange Rate* I express no opinion on this subject.

B. *As of November 1975 and looking forward till September, 1976*

(1) *Persian Gulf Fuel Oil Prices* I expect another crude price increase both as to official OPEC market price and Posted prices of at least 5% on 1st July, 1976. In such event fuel oil postings in the Persian Gulf are likely to rise by at least 50 to 60 cents.

(2) *Freight Rates* Spot and Period Charter rates will remain depressed for two or more years but rate levels will be higher than in the first half of 1975. 30

I expect a 5-10 percent increase in worldscale rates over 1975 levels as of the 1st January, 1976 with a consequential increase in the Concord freight rate.

(3) *Production Quotas* The views expressed by Sheikh Zaki Yamani, the Oil Minister of Saudi Arabia, in a recent interview have strengthened my belief that production quotas will not be adopted by OPEC in the foreseeable future.

(4) *Embargoes* I consider a renewed embargo by all OPEC Arab countries unlikely unless hostilities between Israel and Arab states also involve Egypt.

V. Comparison of KNPC/Concord Prices with BPA New Contract Proposal and BPA Cross-Claim 40

Table B is my study of this matter which goes some way towards further supporting my views that the KNPC/Concord prices were reasonable and representative of "relevant market prices" at that time. I draw attention to the absence of material differences between the first and the second and third grouping (particularly had Concord freight not increased so steeply in January, 1975).

ATTACHMENT AA

Exhibit AA
Proof of
Evidence:
H. J. Colish

POSTED PRICES

The term "posted prices" originated in the United States where buyers of crude oil "posted" in the field the price at which they were prepared to purchase the crude from producers. Outside the United States prices were posted by sellers. Crude prices were first posted in Iraq in November, 1950 by Socony-Vacuum (as Mobil was then known). The practice spread to other countries and was followed by other companies. By 1953 crude prices were generally posted in the Middle East.

10 Product prices were first posted at Caribbean Refineries (Aruba and Curacao) and in 1957 in the Persian Gulf (Abadan, Ras Tanura and Bahrein). Postings at Abadan were later transferred to Bandar Mah Shahr when this location became the loading port for products from Iran. It was connected to Abadan by pipeline.

20 Posted crude prices were introduced in the Middle East when producing companies agreed with the host countries to submit to income tax—from which they had theretofore been exempt—in addition to paying royalties. Since that time companies paid royalties computed from posted prices, usually at the rate of $12\frac{1}{2}\%$ and income taxes, at the rate of 50% , from a tax base which represented posted prices less physical producing costs and less a specified marketing allowance (initially over 2% and thereafter repeatedly reduced). Royalties were creditable against income taxes till 1964. The Royalty Expensing Agreements of 1965 provided for a gradual change of treating royalties from being creditable against tax to being deductible cost items in computing the income tax base.

Posted crude prices were increased in the Persian Gulf in 1953 and 1957 and decreased in 1959 and 1960. The last decrease prompted the formation of OPEC. Posted crude prices remained virtually unchanged from 1960 till 1970. Throughout that period the companies proclaimed their right to establish posted prices unilaterally but preferred not to test OPEC's reaction to a further decrease.

30 Posted product prices were changed much more frequently than crude postings. To this day, the companies have retained the right to establish product prices, and they continue to vary them. Whenever one company initiated a change in crude or product price postings, other companies responded either by following or by making a lesser change or by making no change at all. After a period during which postings differed and were sometimes changed further by certain companies, prices generally settled at a common level, usually at the lowest posting. Occasionally differences in postings persisted for longer periods. In the more recent past such discrepancies have become more common.

US Dollars per Metric Ton

1974 EUROPEAN BULK PRICES—Selected Dates

TABLE "A"

Date	Gasoline 98/99 oct.	Gasoline 91/92 oct.	Naphtha	Jet-Grade Kerosine	Gasoil 53 di min.	Heavy Fuel 1% sulfur	Heavy Fuel 3.5% sulfur
BARGES FOB ROTTERDAM							
1/1	160.0–180.0	150.0–170.0	150.0–370.0	200.0–210.0	150.0–170.0	140.0–150.0	130.0–140.0
2/1	142.5–155.0	137.5–150.0	140.0–145.0	110.0–117.5	107.0–117.0	85.0– 95.0	75.0– 90.0
3/1	163.0–175.0	155.0–162.0	145.0–150.0	108.0–113.5	100.0–105.0	80.0– 85.0	75.0– 80.0
4/1	190.0–198.0	180.0–188.0	163.0–170.0	104.0–110.0	91.0– 93.0	65.0– 68.0	62.0– 67.0
5/1	174.0–183.0	164.0–173.0	159.0–165.0	98.0–103.0	87.0– 92.0	66.0– 69.0	64.5– 68.0
5/15	179.0–184.0	169.0–174.0	150.0–153.0	99.0–105.0	91.0– 95.0	66.0– 69.0	66.0– 69.0
6/1	156.0–162.0	146.0–152.0	135.0–140.0	99.0–103.0	84.0– 88.0	69.0– 72.0	64.0– 67.0
7/1	130.0–133.0	120.0–123.0	110.0–113.0	96.0–100.0	87.0– 91.5	65.0– 67.5	61.5– 64.0
10/1	110.5–113.0	100.5–104.0	97.0– 99.0	96.0– 97.5	90.5– 92.5	67.0– 69.5	62.5– 64.0
12/30	115.0–118.0	105.0–108.0	92.0– 94.0	105.0–106.5	92.5– 95.2	78.0– 80.0	69.0– 70.5
CARGOES FOB ITALY							
1/1	160.0–180.0	150.0–170.0	130.0–145.0	160.0–180.0	150.0–170.0	120.0–140.0	115.0–135.0
2/1	137.5–147.5	130.0–145.0	120.0–130.0	102.0–108.0	97.0–104.0	82.5– 95.0	80.0– 92.5
3/1	162.0–172.0	152.0–162.0	140.0–145.0	100.0–105.0	92.0– 94.0	85.0– 95.0	80.0– 92.5
4/1	183.0–190.0	173.0–180.0	150.0–155.0	96.0– 99.0	86.0– 88.0	67.0– 71.0	62.0– 67.0
5/1	165.0–168.0	155.0–158.0	148.0–152.5	89.0– 91.0	79.0– 82.0	64.0– 66.0	61.0– 64.0
6/1	153.0–157.0	143.0–147.0	127.0–132.0	92.0– 95.0	85.0– 88.0	65.0– 68.0	61.0– 64.0
7/1	124.0–130.0	114.0–120.0	105.0–110.0	92.0– 94.0	85.0– 87.0	64.0– 67.0	60.0– 63.0
10/1	101.0–104.0	91.0– 93.0	92.5– 94.5	94.0– 96.0	87.0– 89.0	66.0– 67.0	62.0– 64.0
11/1	97.0– 99.0	87.0– 89.0	92.5– 94.5	99.0–100.0	86.5– 87.5	66.0– 68.0	66.0– 67.5
12/30	108.0–110.0	98.0–100.0	86.0– 88.0	101.0–102.5	90.0– 91.5	69.5– 71.5	67.0– 69.0

TABLE "B"

COMPARISON OF KNPC/CONCORD PRICES WITH BPA CLAIM AND BPA SUPPLY PRICE

						1974					1975		
Loading Date KNPC (Att. I)	..	..	..	..	27.7	5.9	24.10	11.11	2.1	14.3	27.5	14.7	16.9
KNPC fob US\$/MT	..	..	..	..	60.83	60.84	62.49	62.67	65.78	65.78	66.03	65.97	65.43
Concord freight US\$/MT	..	..	..	..	9.92	9.92	9.92	9.92	13.25	13.25	13.25	13.25	13.25
c & f delivered price US\$	..	..	..	..	70.75	70.76	72.41	72.59	79.03	79.03	79.28	70.22	78.68
= A\$/MT*	..	..	..	..	54.14	54.04	54.95	54.91	57.94	59.11	60.80	62.06	61.64
BPA's claim A\$/MT	..	..	..	..	53.84	53.84	60.30	60.30	59.83	59.83	59.83	60.11	60.11
BPA's indicated supply (= transfer) price c & f A\$/MT	..	..	..	..	46.31	46.31	53.29	53.29	55.61	55.61	55.61	60.40	60.40

Notes: (1) KNPC and Concord price, freight and exchange rate data as per Attachment I
 (2) BPA's claimed price to Nabalco and BPA's cost (transfer price as per Revised Schedule A to Cross Claim)
 * excluding minor additional expenses eg survey fees, insurance, etc.

PLATT'S OILGRAM PRICE SERVICE—New York Edition May 13, 1974

WEST COAST

Western markets displayed a remarkable quiet at early weekend, and dealers, jobbers, and motorists kept watching for news on, or confirmation of, price inaction by Arco, Mobil, and Phillips. By Friday noon, these three suppliers were the last remaining without announced price adjustments for May.

All western states claimed higher gasoline allocations for the current month—total gallonage for the west falling at about 1,300-million gal, up 107,600,000 gal over the April allotment. The figures look significant in any language.

SOME THOUGHTS ON OUR EUROPEAN COVERAGE

10

New York 5/10—This publication has noted widespread interest in its European Bulk prices and particularly in Barges, FOB Rotterdam section.

Government bodies, in particular the Cartel Commissions of Germany and Sweden and the Directorate for Competition for the EEC, have studied the subject.

Many consumers and suppliers have also expressed an interest in the background and our Rotterdam market coverage.

Perhaps a summary of the subject is in order.

Background

Back in 1960 the publication's editors approached principally active majors in Europe to see if we could gather a listing of their posted prices similar to the prices shown for Caribbean, Far and Middle East products. Middle East crude was rapidly supplanting supplies from the US Gulf and the Caribbean. Italy had surplus refining capacity. It was time for coverage of Europe.

20

In 1960, there was widely varying interest in price publication for Italy or Rotterdam. (At the time, one large seller had a fixed policy of never allowing personnel of two different country affiliates in the room during price discussion.) In effect, European prices were a closed book.

Two majors were actively against the idea. Others were non-committal as companies, but individual managers expressed interest. One supplier offered information but insisted on non-attribution.

30

Faced with that OILGRAM's editors developed the Channel Port Index. It was a products index. Underlying it was the concept that marginal flow of refined product from the Caribbean to Europe was a sufficient (as a nearer source) to effectively establish ceilings on Middle East crude prices.

The low of the range was the estimated spot market in the Caribbean plus spot freight to Rotterdam. (Some time later a graph of German import statistics developed by the government reinforced the concept.)

Reaction

The thought of so-called price transparency in Europe was abhorrent to some companies. But if there can be any statement about the history of this publication, it is that listing a price in print will cause market sources to comment on the rightness or wrongness of the price. One number thus leads to other numbers and market coverage begins. In 1960 one of our editors made a month-long expedition to Europe. Not once was there a mention of a price per ton on cargoes or barge lots.

40

Reporting Approach

Today, the situation is totally different. This paper has contacts all over Europe, all of them informative.

One question asked often by government commissions is "Why do companies report prices to you?"

The answer—from brokers, trading companies and majors is to the effect that tomorrow we may be a buyer or a seller next week, or next month. We don't know what our situation will be in the future but it is in our long-term interest to see prices that represent the market as it exists.

The resources of McGraw-Hill's World News bureaus in the major world cities, and the staff editors in New York stay in touch with market sources.

Literally dozens of market items are called to enable the staff to reach market assessments.

10 If it is possible the volume involved in transactions are listed so readers can make an assessment of the market.

Conclusions

Price reporting on oil, where word-of-mouth reports are the basis, and not the inner files of the selling or buying companies, is bound to be an inexact science. But it has been our experience that the longer the Rotterdam tables have been published, the more sources of information come forth.

One Cartel Commission was interested in the number of each type of market source. Were majors' opinions given more consideration than other type sources? Or was it the other way around?

20 The answer is some majors are totally inactive on a day to day basis but when they enter they are quickly noticed by the traders who are active daily. Majors, when they enter a market, can be important sources of information. Majors and traders thus tend to balance out each other's prejudices.

If it can be simply stated our policy is to seek the best information we can find from as many sources as we can and then assess the market all those sources have created.

It must also be noted that our policy has always been to report price information. What individual subscribers do with the information is entirely their decision.

ATLANTIC COAST

30 A large east coast utility is reportedly stocking its heavy fuel tanks by dumping in sizable quantities of bargain-rate No. 2 oil out of the Caribbean. Product is mentioned in mid-to-high 20's on price and sources estimate that the utility makes money on anything under 30c gal.

Spot markets are said to be without note at weekend, and many traders are beginning to wonder if product demand is going to be what some had optimistically forecasted. Late figures for the month of March show demand off by 8.4% as compared to last year. If the trend continues, some marginal refiners may find themselves in a bind before year end.

40 Note that refinery runs during March were off by 6.3%, reflecting short crude supplies in part, but also reflecting effect of increasing emphasis on conservation efforts by the nation's consumers.

Texaco, in releasing its inventory report for May, shows mogas stocks up 600,000 bbl over figure for the same time last year. Compared to 1 April inventories, mogas is up by about 200,000 bbl.

Random glances along the New York metropolitan area thoroughfares on Friday showed recently announced gasoline adjustments reflected on the pump postings. Exxon prices for regular grade (except for Manhattan) were in the 54c-55c gal range; Gulf was showing lower prices at about 53c gal; Shell had 54c and 55c; and Phillips was at 54c. A true independent "SOS" dealer in north Jersey had signs at 59c gal.

Exhibit AA
Proof of
Evidence:
H. J. Colish

GREECE GETS NOTICE OF \$10.40 ARABIAN

Athens 5/10—Mobil-Shell-BP have notified the Greek government of price changes in crudes that are to be supplied under the RSC agreement (5 Feb. PS). The new price, informed sources said, will be \$10.40 a bbl for Arabian Light, FOB the Gulf, up from \$9.50. Under the RSC agreement, the group has the right to change the price.

Athens 5/10—The Greek government is preparing to announce an international call for offerings against its requirements of 1,500,000 tons of crude oil, it was learned here.

Athens 5/10—Thessaloniki Refining Co., an Exxon affiliate, has asked the Greek government to change the price of crude oil the company is paying. The refiner has an agreement with the government whereby Thessaloniki shall obtain its own supplies of crude which shall be charged at prices no higher than the lowest posted FOB port of shipment for crude oil imported from time to time into Greece. 10

Up to now an agreement has been reached on prices, and shipments are delayed. A quantity of 75,000 tons has been shipped in from Petrola which has an agreement with Thessaloniki for processing.

Exhibit 65

Exhibit 65.
Proof of
Evidence:
Mr P. Abt
1st December
1975

Proof of Evidence: Mr P. Abt**PROOF OF EVIDENCE**

PAUL BRENNAN ABT of 9516 Chimney Corner, Dallas, Texas, USA Petroleum Consultant states as follows:

1.0 *QUALIFICATIONS*

- 1.1 I carry on practice on my own account as a consultant to the petroleum industry, predominantly for Japanese and American clients; I commenced in that practice in 1973.
- 10 1.2 In addition to advising clients on pricing matters I also advise on and participate in negotiation of contracts for the purchase, sale, exchange, transportation and storage of both crude oil and petroleum products.
- 1.3 Prior to entering practice as a consultant I had 17 years experience in the petroleum industry. After graduating in economics from Xavier University Cincinnati and completing three years army service I had seven years experience in international crude oil sales with Gulf Oil Corporation, where I worked in the United States, Japan and the United Kingdom. Then from 1964–1970 I worked in the Crude and Cargo Sales Department at the head office of Mobil Oil Corporation in New York where, as Manager of Sales and Contracts, I was responsible for worldwide sales of foreign crude oil and the contractual relationships arising therefrom. Then from 1971–1973 I was Manager of the Petroleum Department of Fairfield Maxwell Company Limited and President of its subsidiary companies Olympic Oil Company Ltd and Crescent Oil Company Ltd. During this time I negotiated contracts with a number of entities within the petroleum industry, including the Government of Abu Dhabi and Japan's largest tanker company, Japan Line; the contracts included crude oil, bunker oil and other product contracts.
- 20

2.0 *CONCORD CONTRACT OF AFFREIGHTMENT*

- 30 2.1 I have perused the terms and conditions of the Contract of Affreightment dated 18th June, 1975 made by Nabalco Pty Limited as charterer with Concord Petroleum Corporation as owner ("the Concord Contract") as well as the amending agreement dated 5th November, 1974.
- 2.2 Before expressing my conclusions as to the reasonableness of the financial structure of the Contract, I would like to make some introductory observations. The basic index for Worldscale is 100 but the value or cost of such basic index in terms of the appropriate currency (US dollars) per long ton in fact varies annually, based on the factors to which I shall shortly refer. Consequently, 1974 Worldscale 100 which was fixed on 1st January, 1974 for the ensuing 1974 calendar year, has a different monetary value from 1975 Worldscale 100, which was fixed on 1st January, 1975 for the ensuing 1975 calendar year. Therefore a tanker contract negotiated for a term of years at a fixed and continuing rate of say Worldscale 170 does not mean stability in monetary terms of the freight cost for the term or duration of the contract. Rather, the actual freight cost will rise or fall according to rise or fall in the annual value or cost of the basic Worldscale index. I should express one qualification to the foregoing general description as to the annual revision of Worldscale, namely that in the course of a calendar
- 40

Exhibit 65.
Proof of
Evidence:
Mr P. Abt
1st December,
1975

- year, the publishers of Worldscale will vary the basic unit or index value if a significant change occurs in port charges for particular voyages in the course of that year.
- 2.3 The escalation provisions of the Concord contract were predicated upon a changing Worldscale index (that is Worldscale 100) for the full duration of the Contract. I will illustrate what I mean by “changing”. As at 1st January, 1974, the Worldscale 100 index, in terms of a basic unit cost or value (i.e. long ton) was US\$5.88, for the voyage Shuaiba to Gove. As at 1st January, 1975, the same unit voyage cost for Worldscale 100 increased to US\$8.16. Consequently, had the Concord/Nabalco Worldscale rate remained contractually fixed at 170 for the full term of 3 years, the increased cost per long ton payable by Nabalco would have escalated from \$10.08 to \$13.87. In fact, by reason of the negotiated decrease in Worldscale rate to 165, which was effected in Nabalco’s favour in October 1974, the actual increase to Nabalco was to \$13.46 instead of \$13.87. 10
- 2.4 The two major factors which vary the value or cost of Worldscale indices and can therefore produce annual revision in Worldscale value or cost are bunker costs and port charges. In late 1973, substantial increases were occurring in bunker costs due primarily to increases in the tax paid cost of crude. I interpolate here to point out that revision as at 1st January each year of Worldscale is based upon known data for the year ending on the preceding 30th September. By early 1974 and in particular by June 1974, it was obvious to persons involved in the oil industry, including tanker owners, charterers and brokers, that there would be an increase in the value of Worldscale indices as at 1st January, 1975 by virtue of substantial increased costs occurring during the period of 12 months ended 30th September, 1974. Ample evidence to that effect was available in the published monthly bulletins issued by for instance H. P. Drewry (Shipping Consultants) Limited of London; those bulletins were issued in order to acquaint oil and tanker interests of the trends that were occurring in bunker costs. Such data enabled charterers to assess likely increases in the value or cost of Worldscale rates for 1975 and therefore to form a judgment as to prudent charter negotiation for the short or long term. In other words, the substantial bunker price increases, as they occurred, were being reflected in the current market quotations during the period from late 1973 to June 1974. 20
- 2.5 I will later refer to what would have been in my opinion a reasonable market Worldscale rate as at June 1974 but am dealing now with the adverse consequences to Nabalco in tying future increases to a Worldscale index. In the Concord Contract, the effect of tying Worldscale 170 to future increases in the Worldscale index 100 meant that in fact, Nabalco paid approximately Worldscale 205 in terms of the 1974 Worldscale index. I elaborate further on this point below. 30
- 2.6 As stated earlier, the Worldscale 170 rate for 1974 equalled \$10.08 US currency per long ton for the relevant voyage. But by no later than June 1974, it was perfectly evident that increases in bunker costs would lead to increases in Worldscale indices to the extent of 30% to 40%, with the consequence that within six months, Worldscale 170 would represent an even greater increase in monetary terms. Accordingly, a prudent negotiator, would have anticipated an increase of that range when negotiating a term contract and in particular if he was assessing a Worldscale rate for the purpose of future increases. 40 50

- 2.7 In my opinion, the prudent course for Nabalco to have taken would have been to negotiate upon escalation indices or criteria which reflected true market increases or decreases (as the case may be), rather than an index which, on factors then known, would lead on 1st January, 1975 to an even higher monetary rate, for reasons totally unrelated to changes in market conditions. For example, Nabalco could have negotiated the contract without any escalation at all, having regard to the safeguard for Concord contained in Clause 19. I will seek to give other suggested illustrations in oral evidence.
- 10 2.8 It is pertinent to make the point here that Worldscale 100 rates are not intended to necessarily reflect market freight rates or indeed true costs. For instance, by way of illustration, bunker costs were rapidly increasing, as indicated above, late in 1973 and early in 1974, which resulted in the substantial anticipated increase in the value or cost of Worldscale 100 as at 1st January, 1975, yet during 1974, freight rates generally were, after October 1973, in contrast to bunker costs, falling rapidly due to the combined effects of increasing tonnage becoming available on the market and a decrease in oil demand. Incidentally Worldscale publish an index (i.e. 100) for each shipping voyage.
- 20 2.9 I have dealt above with one of what I regard as the two most critical matters of disadvantage, namely the tying of future increases to the Worldscale Index 100. The other critical matter is in my opinion the original assessment of Worldscale 170 as a true market rate as at June 1974 for the relevant voyage. I am of the opinion that taking into account all relevant data known to the tanker industry and readily available for ascertainment by June 1974, the true market 1974 Worldscale rate for the requirements of the subject tanker contract did not exceed the range of 1974 Worldscale 120 to 130, and even then, on the basis that the rate in that range was not tied to the Worldscale Index 100, for the reasons elaborated upon earlier.
- 30 I would like to have the opportunity, when giving oral evidence, of referring to material ascertained by me in relation to market shipping rates which were in fact negotiated during 1974.
- 2.10 I have prepared tables showing calculations as to what in my view constitute the extent of the range of excessive freight costs paid and to be paid by Nabalco to Concord which, with the exercise of what in my view would have been reasonable and diligent prudence, should have been avoided by Nabalco. Those tables are predicated upon 1974 Worldscale 120 and 130 respectively for the duration of the Contract that is to say, those Worldscale percentages or rates based upon 1974 Worldscale Index 100 for all shipments whether in 1974, 1975 and 1976. I have also caused to be prepared a graph showing what Nabalco paid Concord, the range of what in my view was the actual market rate and for additional comparison purposes, the rate which Nabalco would have paid at actual AFRA monthly rates. I would like the opportunity of explaining the graph in more detail when giving evidence.
- 40 2.11 I desire to add, on the question of assessment of market values, that Contracts of Affreightment are as a general rule available to charterers at lower rates than either time charters or consecutive voyage charters, primarily due to the "combination benefits" available to the fleet owner below referred to. The application of this general principle obviously varies according to several factors, primarily the relevant voyage and the degree to which flexibility is allowed to the owner under the written provisions of
- 50

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- the particular contract. The opportunity for combination benefits, whilst not normally as great as voyages west of the Persian Gulf, is certainly not absent from voyages east from the Gulf. I would like to elaborate upon my reasons for this view when giving evidence, bearing in mind that my view on this subject differs from that expressed by Mr Colish (page 12 of Exhibit AA).
- 2.12 I would like to further add, on the same question, that the Concord contract allows Concord to transport the cargo at approximately two month intervals; the voyage times from Shuaiba to Gove including laytime for loading and discharge are approximately twenty-two days; Concord is thereby provided with what is known in the tanker trade as "combination benefits", which is the opportunity for "back haul" or other inter-related voyages of which a fleet owner can take advantage. A second advantage to Concord is the flexibility it has in size of tanker utilized (from 36,000 to 66,000 metric tonnes). 10
- 2.13 I would like to make two specific further observations in relation to the Nabalco/Concord contract:
- (a) Ordinary prudence in my opinion would have dictated a maximum commission in the present case of 2.5% and not 3.75%. The normal industry commission for a contract of this nature is 1.25%, although I can say that it is not unusual to see a commission as high as 2.5% where it is necessary for two shipping brokers to be involved. 20
- (b) Prudence also in my opinion dictates against entering into a contract, where one knew or ought to know in advance that the laytime allowed for loading and discharge is insufficient and that demurrage claims would inevitably occur as a consequence.
- 2.14 I would like to comment on several other matters referred to by Mr Colish in his evidences:
- (a) If the one fixture cited by him as representative of the market for medium range vessels reflects fair market value at the time, then the market rate for LR—1 vessels should then have been in the vicinity of Worldscale 100. 30
- (b) If, as indicated on page 17 of Exhibit AA, a "spread" of 20 Worldscale points is not unusual, there is no reason why the "spread" could not be equally applied downwards to Worldscale 130.
- (c) If the true two year market rate in 1974 for 40,000 to 45,000 ton shipping was Worldscale 150 as suggested by the example cited by Mr Colish then the true market rate for a three year contract for 60,000 ton vessels would be substantially lower. In this regard there was no shortage at all in June 1974 of 60,000 ton vessels, which are of course within the LR 1 category, nor was any such shortage then projected, as has been borne out by events which have happened. 40
- (d) The "spot" market for both transportation and fuel oil at the time of the signing of the Concord and KNPC contracts was lower than the term market. In this regard I do not accept as realistic the suggestion that "spot market" in either transportation or fuel oil has dangerous or imprudent connotations, whether in 1974 or otherwise, for reasons upon which I will elaborate in oral evidence.
- 3.0 *FUTURE TRENDS IN FUEL OIL MARKET PRICES*
- 3.1 The two substantial reasons for any alterations in a market price of fuel oil are: 50

(a) Alterations in taxpaid costs of crude oil (this now being dependent on OPEC decisions);

(b) Alterations in levels of supply and demand.

3.2 With respect to cost of crude oil, OPEC recently announced that it has frozen the taxpaid cost of crude oil, as at 1/10/75, until 1/7/76, at which time the situation is to be reviewed. Although political considerations have been in the past the predominant factor in increased crude costs paid to OPEC countries, future changes in postings must always remain a matter for speculation. There is a strongly held view in the oil industry that there may well not be any further increases in crude tax paid prices or post-ings in 1976.

3.3 With regard to the levels of supply and demand, the only significant increase in the level of demand to justify any future increase in product postings would be a significant increase in world industrial activity and productivity; there are as yet no reliable signs of the type of Worldwide recovery that would be necessary to significantly increase energy demand.

3.4 For the foregoing reasons, I join issue with Mr Colish on his view that there will be any increase in crude or fuel oil postings either on 1st July, 1976 or in the quarter then next ensuing.

20 4.0 *FORM OF KNPC CONTRACT CONTRASTED WITH
PROPOSED BP ESCALATION DIVISIONS*

4.1 I have perused the foregoing material comprising Exhibits K and N respectively. In my opinion, the substance and effect of the provisions of the KNPC Contract, relative to price increases and the continuing obligation to supply, are not to any material extent more favourable to the consumer than the relevant provisions of the proposed BP Contract which I understand to have been proffered for consideration by Nabalco in May 1974. On the contrary, having regard to the virtual identity of KNPC with the Government of Kuwait I am of the opinion that the provisions of the proposed BP Contract relevant to supply obligations are more favourable than the corresponding provisions of the KNPC Contract, and in particular, Article VIII thereof.

4.2 I am of the opinion that in substance and effect, Articles VI, VII and VIII of the KNPC do not give Nabalco any long term security of supply.

5.0 *FINANCIAL STRUCTURE OF KNPC CONTRACT*

5.1 The price, namely US\$9.25 per barrel, initially agreed to at the time of the contract, was above the then posted price for fuel oil. The error, as I see it, of the financial structure of the contract is the gearing or tying of the price of US\$9.25 per barrel over a long term to future changes in the posted fuel oil price. This means that Nabalco will be paying above postings for the duration of the contract, which is not only a situation that is highly abnormal in contracts of this type but fails to take into account past, present and future market trends. In this regard, the contract is less favourable to Nabalco than the proposed new BP provisions (Exhibit N). The KNPC contract also provides for increasing the fob price in the event product postings do not reflect total crude cost increases. Recent fuel oil posting increases does not reflect total crude post increases. Although KNPC has not passed this difference in cost to Nabalco, they have the contractual right to do so.

5.2 Consequently, Nabalco has contracted to pay for the duration of the

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contract, prices above the posted price for fuel oil for the time being, notwithstanding that historically, that is to say from the 1950's onwards, fuel oil prices have usually been obtainable "spot" or long term at a discount from posted fuel prices. When I say "historically" I concede that there have been on rare occasions several short periods during which market prices for fuel oil have exceeded posted prices.

5.3 It is pertinent to point out that the quality of fuel oil supplied by KNPC is inferior in every respect to the quality of fuel oil supplied by BP, by reason of the sulphur, vanadium, viscosity and BTU components thereof.

6.0 *GENERALLY*

6.1 As regards payment terms, I make the following observations: Under the BP contract, Nabalco was given 90 days credit after discharge for CIF value whereas the KNPC contract affords 60 days credit only, commencing from the date of loading and calculated on FOB value; Concord must be paid its freight charges promptly on discharge. Consequently, the terms of BP credit were substantially more favourable to Nabalco than those given by KNPC/Concord. Not only should that factor be taken into account when comparing costs, but should also be taken into account in relation to Nabalco's claim for reimbursement for the cost of Letters of Credit which it has been obliged to use in order to discharge its financial commitments to KNPC. In fact, it is not in the oil industry a normal commercial requirement that the supplier be paid by means of a letter of credit unless the consumer is, in the view of the supplier, a financial risk.

6.2 BP's contract with Nabalco permitted Nabalco to inspect cargo deliveries at the port of discharge, namely Gove, at Nabalco's expense. Similarly, the KNPC contract permits inspection by Nabalco at the port of loading, namely Shuaiba. In the event of dispute between Nabalco and KNPC as to quantity and quality there is a contractual provision for an outside inspection, the cost of which is to be shared. Nabalco has, as I understand it, in fact elected to select an outside inspector to witness all loadings at Shuaiba. This particular charge of US\$0.029 per long ton or about US\$1,700 per 60,000 ton cargo has, as I understand it, been claimed against BP in these proceedings. I do not understand how that claim can with justification be pursued.

10

20

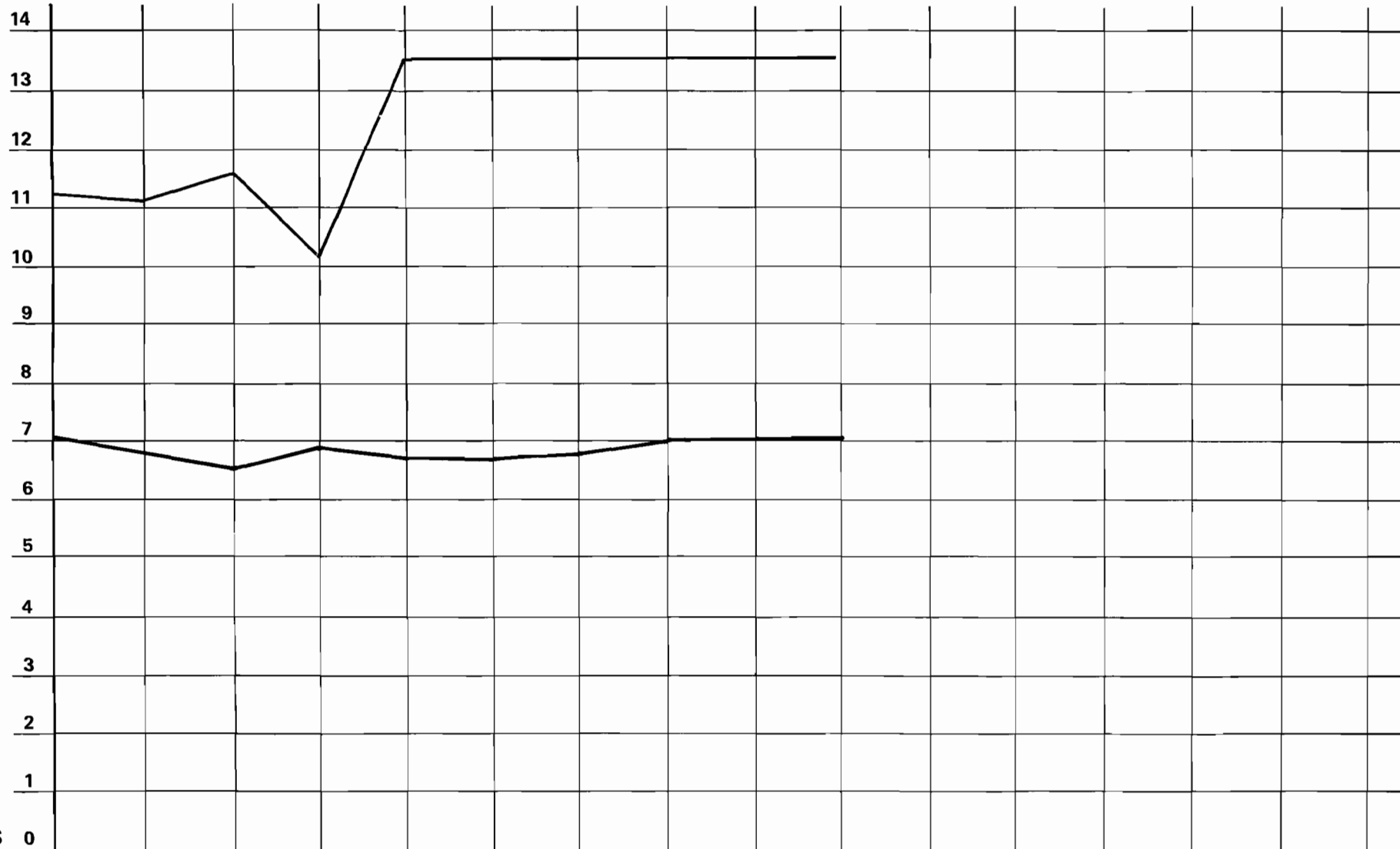
30

1	2	3	4	5	6	7	8	9	10	11
Voyage Number	Vessel	Bill of Lading Quantity (Source: Nabalco)		Concord cost (source: Nabalco) per MT Total			True market costs (assuming average of range to be consistent at \$7.35 per LT (\$7.23 per MT) throughout period of all shipments)*		Excess over market	
		MT	LT	(\$US)	\$US	\$A	\$US	\$A	\$US (6-8)	\$A (7-9)
1	Nai Gino	35 245	34 688	10.91247	384 610	258 948	254 957	171 654	129 653	87 294
2	Nai Gino	38 010	37 410	10.79264	410 228	313 966	274 963	210 442	135 265	103 524
3	Mikton	27 104	26 676	11.36093	307 927	235 010	196 069	149 637	111 858	85 373
4	Russel H. Green	61 727	60 752	9.92177	612 441	466 097	446 527	339 823	165 914	126 274
5	Russel H. Green	52 893	52 057	13.25132	700 895	525 022	382 619	286 606	318 276	238 416
6	Talamba	58 020	57 103	13.25132	768 835	569 733	419 707	311 009	349 128	258 724
7	Frances Hammer	60 929	59 967	13.25132	807 396	604 974	440 757	330 254	366 639	274 720
8	Frances Hammer	59 734	58 790	13.25132	791 549	620 336	432 107	338 642	359 442	281 694
9	Mikton	26 650	26 229	13.25132	353 147	280 437	192 783	153 087	160 364	127 350
10	Russel H. Green	60 761	59 801	13.25132	805 161	635 137	439 537	346 720	365 624	288 417
Totals						4 509 660		2 637 874		1 871 786

* True market cost (column 9) is based on the 1974 Worldscale 125 rate. Should the top of the market range (1974 Worldscale 130) or the bottom of the market range (1974 Worldscale 120) be adopted the total for column 9 would be \$2 743 389 and \$2 532 359 respectively.

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\$US LONG TON



SHIPMENT No.	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
BILL of LADING DATE	27.7.74	5.9.74	24.10.74	11.11.74	2.1.75	14.3.75	27.5.75	14.7.75	16.9.75	8.10.75						
DISCHARGE DATE	17.8.74	28.9.74	14.11.74	2.12.74	22.1.75	3.4.75	16.6.75	9.8.75	9.10.75	3.11.75						

CONCORD COSTS

EST. TRUE MARKET RANGE

AFRA LR1 RATE (AFRA RATE REFERABLE
TO TANKERS 45,000-79,999 DWT)

COMPARISON CONCORD FREIGHT COSTS IN \$US PER
LONG TON WITH RANGE OF ESTIMATED TRUE
MARKET COSTS FOR SAME PERIOD.

NABALCO SHIPMENTS 1-10
FREIGHT RATE COMPARISON

The most widely used assessment is AFRA—Average Freight Rate Assessment—which is made by the London Tanker Brokers' Panel. The Panel now consists of six brokers and was formed over the years 1948 and 1949 at the request of Shell and BP. The Panel is an independent body acting within terms of reference provided by Shell and BP.

Exhibit 65.
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AFRA provides an independently assessed average of the level of freight actually paid for commercially chartered vessels engaged in the carriage of oil during the period over which the assessment is made. It is widely used by the oil industry as the basis for inter-affiliate pricing and as a price variation indicator in third party contracts. It is also accepted in a number of countries as the basis for freight in official price structures. Acceptance is, however, not universal.

AFRA rates are expressed as percentages or points of Worldscale. They are for the following vessel size categories—

		tons SDW
GP	(General Purpose)	16,500–24,999
MR	(Medium Range)	25,000–44,999
LR1	(Large Range 1)	45,000–79,999
LR2	(Large Range 2)	80,000–159,000
VLCC	(Very Large Crude Carrier)	160,000 and over

The objective of Worldscale, as of the other freight scales that it has replaced, is to furnish a list of basic freight rates for all voyages upon which tankers ply, calculated according to a common set of assumptions so that it provides a yardstick which accurately reflects the relationship between one voyage and another. It is not intended to be an expression of actual freight rates or operating costs but it does give a means whereby rates for all voyages and market levels can be readily assessed and compared.

The Worldscale voyage rates are in US currency. The basic Worldscale rate for any voyage is referred to as 100 points or 100% of Worldscale. The freight level to be applied to the rate for a particular voyage is expressed as a percentage or points of Worldscale.

Exhibit 67
Projection of excess cost of projected shipments

1	2	3	4	5	6	7	8	9	10	11
Voyage Number	Vessel	Bill of Lading Quantity (Source: Nabalco)		Concord cost (source: Nabalco) per MT		True market costs (assuming average of range to be consistent at \$7.35 per LT (\$7.23 per MT) throughout period of all shipments)*		Excess over market		
		MT	LT	(\$US)	\$US	\$A	\$US	\$A	\$US (6-8)	\$A (7-9)
11	Russel H. Green	62 000	61 021	13.33325	826 661	655 456	448 504	355 617	378 157	299 839
12	Russel H. Green	62 000	61 021	14.33935	889 040	704 916	448 504	355 617	440 536	349 299
13	Russel H. Green	62 000	61 021	14.33935	889 040	704 916	448 504	355 617	440 536	349 299
14	Russel H. Green	62 000	61 021	14.33935	889 040	704 916	448 504	355 617	440 536	349 299
15	Russel H. Green	62 000	61 021	14.33935	889 040	704 916	448 504	355 617	440 536	349 299
Totals						3 475 120		1 778 085		1 697 035

* True market cost (column 9) is based on the 1974 Worldscale 125 rate. Should the top of the market range (1974 Worldscale 130) or the bottom of the market range (1974 Worldscale 120) be adopted the total for column 9 would be \$1 849 208 and \$1 706 962 respectively.

Note: The Concord costs shown in this table are not actual costs but only as projected by Nabalco.

Exhibit 69

Exhibit 69
Reconciliation of
Usage of Fuel
Oil delivered to
Gove

Reconciliation of Usage of Fuel Oil delivered to Gove

RECONCILIATION OF USAGE OF FUEL OIL BY
NABALCO PTY LIMITED WITH SHIPMENTS DELIVERED TO
GOVE BY KNPC/CONCORD

<i>Usage to 31/12/75</i>			
	15/8/74 to 27/10/75	(1)	406 047 tonnes
	28/10/75 to 29/12/75	(2)	59 172 tonnes
	30/12/75 to 31/12/75	(3)	1 874 tonnes
10	Total		<u>467 093 tonnes</u>
<i>Stock adjustment:</i>			
	Stock on hand at Gove at 15/8/74	(4)	23 096
	Less BP's stock obligation as at 31/12/75—2 weeks' estimated usage	(2)	13 650
			<u>9 446 tonnes</u>
	Total Notional BP obligation		<u>457 647 tonnes</u>
<i>Reconciliation with Shipments from KNPC/Concord</i>			
20	Total shipments 1-10	(5)	479 555 tonnes
	Less notional BP obligation		<u>457 647 tonnes</u>
	Oversupply on voyage 10		<u>21 908 tonnes</u>

Notes:

- (1) Source: Nabalco's Schedule of Usage of Fuel Oil (Attachment A)
(2) Source: Nabalco's Schedule of Estimated Usage of Fuel Oil (Attachment B)
(3) 2/7 of weekly usage of 6 560 tonnes (see Note 2)
(4) Advised by Dudley Westgarth & Co. letter 11/11/75 to Arthur R. Pritchard & Co.
(5) Source: Nabalco's Fuel Oil Comparative Analyses (Exhibit)

ATTACHMENT 'A'

SCHEDULE OF USAGE OF FUEL OIL

30	<i>Period</i>	<i>Tonnes</i>
	15th August, to 20th August, 1974	4445
	<i>week ending</i> 27th August, 1974	6086
	„ 3rd September, 1974	5763
	„ 10th September, 1974	6256
	„ 17th September, 1974	6376

Exhibit 69
Reconciliation of
Usage of Fuel
Oil delivered to
Gove

<i>Period week ending</i>	<i>Tonnes</i>	
24th September, 1974	6121	
1st October, 1974	6731	
8th October, 1974	6667	
15th October, 1974	6934	
22nd October, 1974	5623	
29th October, 1974	7919	
5th November, 1974	6459	
12th November, 1974	6792	
19th November, 1974	7957	10
26th November, 1974	5849	
3rd December, 1974	5821	
9th December, 1974	7220	
16th December, 1974	7083	
23rd December, 1974	7018	
31st December, 1974—8 days	8043*	
6th January, 1975—5 days	3799*	
13th January, 1975	5879	
20th January, 1975	5396	
28th January, 1975—8 days	6976*	20
3rd February, 1975	5269	
10th February, 1975	6405	
17th February, 1975	6326	
24th February, 1975	5812	
3rd March, 1975	6794	
10th March, 1975	6357	
17th March, 1975	6006	
24th March, 1975	6016	
1st April, 1975—8 days	6477*	
7th April, 1975—6 days	5831*	30
14th April, 1975	6323	
21st April, 1975	6343	
28th April, 1975	5896	
5th May, 1975	7030	
12th May, 1975	5293	
19th May, 1975	6073	
26th May, 1975	6318	
2nd June, 1975	6217	
9th June, 1975	7158	
17th June, 1975—8 days	8982*	40
23rd June, 1975—6 days	5719*	
30th June, 1975	6582	
7th July, 1975	7114	
14th July, 1975	6780	
21st July, 1975	6799	
28th July, 1975	6448	
4th August, 1975	6609	
11th August, 1975	6147	
18th August, 1975	6892	
25th August, 1975	6731	50
1st September, 1975	6063	

<i>Period</i>		<i>Tonnes</i>
<i>week ending</i>	8th September, 1975	6135
	15th September, 1975	7746
	22nd September, 1975	6377
	29th September, 1975	6724
	6th October, 1975	6607
	13th October, 1975	6786
	20th October, 1975	7111
	27th October, 1975	6538
10	3rd November, 1975	6273

Exhibit 69
Reconciliation of
Usage of Fuel
Oil delivered to
Gove

*Indicates if actual figure reported is for a period more than or less than the normal 7 day period.

ATTACHMENT "B"

SCHEDULE OF ESTIMATED USAGE OF FUEL OIL

Period 4th November, 1975 to 5th September, 1976		
	<i>Week ending at 0700</i>	<i>Estimated usage</i>
	3rd November, 1975	A) 6273
	10th November, 1975	A) 7335
	17th November, 1975	A) 6374
20	24th November, 1975	6475
	1st December, 1975	6475
	8th December, 1975	6560
	15th December, 1975	6560
	22nd December, 1975	6560
	29th December, 1975	6560
	5th January, 1976	6825
	12th January, 1976	6825
	19th January, 1976	6825
	26th January, 1976	6825
30	2nd February, 1976	6825
	9th February, 1976	6825
	16th February, 1976	6825
	23rd February, 1976	6825
	1st March, 1976	6825
	8th March, 1976	6825
	15th March, 1976	6825
	22nd March, 1976	6825
	29th March, 1976	6825
	5th April, 1976	6613
40	14th April, 1976	6613
	19th April, 1976	6613
	26th April, 1976	6613

Exhibit 69 Reconciliation of Usage of Fuel Oil delivered to Gove	3rd May, 1976	6611	
	10th May, 1976	6611	
	17th May, 1976	6611	
	24th May, 1976	6611	
	31st May, 1976	6611	
	7th June, 1976	6613	
	14th June, 1976	6613	
	21st June, 1976	6613	
	28th June, 1976	6613	
	5th July, 1976	6613	10
	12th July, 1976	6613	
	19th July, 1976	6613	
	26th July, 1976	6613	
	2nd August, 1976	6611	
	9th August, 1976	6611	
	16th August, 1976	6611	
	23rd August, 1976	6611	
	30th August, 1976	6611	
	5th September, 1976	5668	
	Total	298817	20

Note: First three figures are actual.

Exhibit 70
Document:
"The
Development of
Tanker Rate
Schedules"

Exhibit 70

Document: "The Development of Tanker Rate Schedules"

THE DEVELOPMENT OF TANKER RATE SCHEDULES

Produced jointly by

THE INTERNATIONAL TANKER NOMINAL
FREIGHT SCALE ASSOCIATION LIMITED
Rodwell House,
Middlesex Street,
London E1 7HD

THE ASSOCIATION OF SHIP BROKERS
AND AGENTS (WORLDSCALE) INC.
17, Battery Place,
New York,
N.Y. 10004.

30

(c)
1973

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The Association of Ship Brokers and Agents (WORLDSCALE) Inc.
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I	MOT & USMC
II	SCALE No. 1
III	SCALE No. 2
IV	SCALE No. 3
V	ATRS
VI	INTASCALE
VII	WORLDSCALE

I MOT & USMC

PRE-WAR

10 Before World War II, rates of freight under voyage charters for tankers carrying oil in bulk were negotiated and agreed in terms of shillings and pence per ton or dollars per ton just as today voyage charter rates for vessels carrying other bulk cargoes are expressed in monetary terms. This meant that when Charterers required wide options of loading and/or discharging ports it was necessary to agree upon not one but many rates of freight. In fact, in certain trades it was the practice to attach to the charter, particularly in the case of one for a series of voyages, as many as 2/3 pages of rates for voyages that might be performed. Doubtless in agreeing such a list of rates, Owners would have been concerned to ensure that their financial position was not impaired no matter what voyage was performed, while Charterers would have been anxious to avoid paying more than the current market rate for any particular voyage. Obviously, such a system caused protracted negotiations at times and comparisons between rates in different trades could not readily be made. On the other hand, much of the business concluded was between named loading and discharging ports so that the impact of long-listed options was less felt.

MOT

At the outbreak of the war, the British Government requisitioned all British Flag vessels, including tankers, and Owners were remunerated on what was essentially a time charter basis. Incidentally, during the course of the war, a substantial number of tankers under the flag of Allied Governments in exile, such as Norwegian, Dutch, Danish and French, also came under the operational control of the British Government in the same manner.

30 From time to time tankers were made available to the major oil companies operating in the UK, who were pooling their oil supplies, and naturally, freight for voyages performed by vessels under this arrangement was payable to the British Government. For this purpose the responsible Ministry devised a series of freight rate schedules, the underlying principle being that, irrespective of the voyage performed, and after due allowance for voyage expenses such as port charges, canal dues and bunker costs, the Government should receive the same net return per day. This return could be compared to a time charter rate. Thus, here was the genesis of the idea which provided the principle for all subsequent tanker rate schedules.

40 The last of these schedules was that issued on 22nd December, 1945 by the Ministry of Transport, which became known as the MOT Schedule or simply MOT. This gave the rates effective for voyages on which loading commenced on or after 1st January, 1946.

While it has not been possible to establish exactly the calculation factors for this MOT Schedule, it is believed that they were approximately as follows:

Exhibit 70
Document:
"The
Development of
Tanker Rate
Schedules"

Standard Vessel	12,000 tons dw motor vessel,
Service Speed	230 miles per day (say 9.5 knots),
Daily Consumption at sea	12.5 tons diesel oil
Port Time	7 days,
Daily Hire	£376.

The rates were on a range to range basis, each rate being calculated in respect of a round voyage from a central port in the loading range to a central port in the discharging range, and back to the same port in the loading range. Rates were quoted in shillings and pence per ton. For example, the rate for a voyage from a port in the Netherlands West Indies, Venezuela or Trinidad to a port in the UK—Continent (Bordeaux/Hamburg Range) was 32/6d per ton, this rate being of particular significance when considering subsequent scales. 10

Certain differentials applied—for instance 1/- per ton was added to the rate if the vessel loaded at more than one port; 2/- being added if the vessel discharged at more than one port (2/6d in some cases); whilst if the vessel discharged in the Manchester Ship Canal or Humber River 1/6d per ton was added to cover special extra costs.

Laytime varied according to the size of vessel, but for a vessel of the size of the MOT standard tanker, it was 168 hours (7 days) i.e. the same as the port time used for calculating rates. Laytime was less for smaller and more for larger size vessels. 20

USMC

A very similar situation occurred in the United States as a result of the War. The Government requisitioned all United States flag tankers and some that were actually American owned but flying flags of convenience. Following the pattern set by the British Government, the US Government issued schedules of tanker freight rates which were used for charging freight to oil companies when requisitioned tankers were re-let on a voyage basis.

As closer co-operation developed between the two countries it was agreed that both Governments would calculate freight rates in accordance with the same principles although the calculation factors would be different. It was also agreed that, generally, the British would calculate rates for voyages involving ports in the eastern hemisphere and for transatlantic voyages, while the United States would calculate rates for voyages involving ports in the western hemisphere. When one Government required the use of a rate for a voyage calculated by the other, they simply converted the other's rate at the exchange rate then prevailing, i.e. £1 = \$4.03. Thus in 1946 the rate used by the United States for a voyage from a port in the Netherlands West Indies, Venezuela or Trinidad to a port in the UK—Continent (Bordeaux/Hamburg Range) was \$6.55 (32/6d at £1 = \$4.03). 30

The rates issued by the United States Government took the form of "Rate Orders" and "Rate Advices" and they were collectively known as USMC rates after the United States Maritime Commission who had issued them. "Rate Order No. 438", which was dated 27th February, 1946, gave rates effective 1st February, 1946 for voyages to ports in the eastern hemisphere and was the counterpart of the MOT Schedule issued on 22nd December, 1945, the rates being quoted in dollars per ton. 40

The main calculation factors for USMC were as follows:

Standard Vessel	12,551 tons dw steam vessel,
Service Speed	290 miles per day (say 12.5 knots),
Daily Consumption at sea	30 tons fuel oil,
Port time	2½, 3, 4, 5 or 6 days according to voyage,
Daily Hire	\$1791. 50

USMC rates were again basically on a range to range basis although many rates for voyages in the western hemisphere were quoted on a port to port basis. Certain differentials applied when loading or discharging at more than one port and laytime was the same as port time but did not vary according to size of vessel as under MOT.

Exhibit 70
Document:
"The
Development of
Tanker Rate
Schedules"

POST-WAR

Government control of shipping continued in both the UK and the US during the immediate post war years and was not completely relinquished until 1948. The tanker trade had come to recognize the advantages of having schedules of freight rates so that rates could be freely negotiated without the waste of time and possibility of error involved in specifying many different rates in a charter that covered a number of voyages. With the ensuing free market, a system evolved of quoting on the basis of the MOT or USMC rates plus or minus a percentage as dictated by market conditions.

Clearly such a system facilitated the swift negotiation of business. Rates in various trades could be readily compared while the rapid introduction of new tanker loading and discharging ports during the post war years made a scale system virtually indispensable.

Certain anomalies and inconsistencies were, however, recognised in the MOT and USMC rates and the sterling devaluation in September 1949 had, of course, brought about a new relationship between them. One of the main reasons for discontent was in connection with voyages which involved a transit of the Suez or Panama Canal. Both MOT and USMC rates included allowances for the Canal dues as part of the rate, which meant that if Charterers took a vessel at USMC plus 100% or MOT plus 100% for a voyage via the Suez Canal, they were, in effect, paying Owners twice the dues which they would have to pay.

This argument could also be advanced for all port costs, of course, but these were not as significant in terms of cost per ton of cargo carried as were Canal dues. For example, Panama Canal dues were equivalent to about 90 US cents per ton of cargo.

30 II. Scale No. 1. (1st November, 1952–30th June, 1954)

In an effort to eliminate the disadvantages experienced under MOT, the London Tanker Brokers' Panel distributed, at the instigation of Shell and BP, the London Market Tanker Nominal Freight Scale on 1st November, 1952. Apart from slight modifications of port ranges, the rates contained in this Scale were virtually the same as those in the MOT Schedule, but with the important innovation that fixed differentials, not subject to any percentage variation applied to the Scale rates, covered canal dues.

The MOT differentials of 1/6d per ton applicable to discharges in the Manchester Ship Canal or River Humber were specified as fixed differentials not subject to any percentage variation and other fixed differentials covering exceptional costs were introduced in respect of particular loading and discharging ports. These fixed differentials covered costs confined to the port in question which were not adequately covered by the port costs applicable to the central port in the range. The fixed differentials for the Suez Canal and the Panama Canal were both 6/6d per ton of cargo loaded.

Trinidad, with Caripito and Guiria, became a separate loading area, but the Scale rate for a voyage from a port in the Netherlands West Indies or Venezuela to a port in the UK—Continent (Bordeaux/Hamburg Range) remained at 32/6d (as in

MOT). However, the rate for a voyage from the US Gulf to a port in New Zealand, which under MOT had been 66/-, became 59/6d plus the fixed differential of 6/6d covering Panama Canal dues.

Extras for additional loading and/or discharging ports were for negotiation when chartering a vessel.

The list of rates was not fully comprehensive but the main routes for which vessels were chartered on the London market were covered and a basis provided for the calculation of any other rates, which was as follows:

Standard Vessel	12,000 tons dw motor vessel,	
Service Speed	11 knots,	10
Daily Consumption at Sea	13 tons Diesel Oil,	
Daily Hire	£351,	
Port Time	7 days for the Standard vessel for voyages involving discharge in the eastern hemisphere; as per USMC for voyages involving discharge in the western hemisphere.	
Port Charges	1st November, 1952,	
Bunker Prices	1st November, 1952.	

Published rates covering discharging in the western hemisphere were confined to ports in South America and it is interesting to note that these were virtually the old USMC rates converted, as in MOT days, to Sterling at £1 = \$4.03. For example, the USMC rate from Aruba or Curacao to Montevideo was \$6.80 and the Scale rate for this voyage was 33/9d. 20

Laytime for voyages shown in the Scale was as per MOT and for other voyages it was the same as the port time included in the rate calculation.

This Scale, which can now conveniently be referred to as Scale No. 1, served its purpose for a short time but its use was very restricted. Its chief disadvantage was that rates for main routes took no account of variations in port charges and bunker prices which had occurred since the war years, so that the comparability of the rates was seriously impaired. 30

III. Scale No. 2. (1st July, 1954–14th December, 1958)

The London Tanker Brokers' Panel was therefore requested by the same two companies to distribute a completely new Scale based on up-to-date bunker prices and port charges. The name of this was London Market Tanker Nominal Freight Scale No. 2, generally referred to as Scale No. 2, for which the main calculation factors were as follows:

Standard vessel	12,000 tons dw motor vessel,	
Service Speed	11 knots,	
Daily Consumption at sea	13 tons Diesel Oil,	
Daily Hire	£346,	40
Port Time	7 days,	
Port Charges	1st June, 1954,	
Bunker Prices	1st June, 1954,	
Brokerage	2½%.	

The rates were again on a range to range basis and became effective on 1st July, 1954. However, some of the old ranges were modified and many new ones introduced to cover newly developed ports and trading areas.

The rates under Scale No. 2 were each related to the former MOT rate of 32/6d for a voyage from a port in the Netherlands West Indies to a port in the UK—

Continent, the daily hire of £346 being derived from this rate on the basis of a round voyage Curacao/London/Curacao using bunker prices and port charges as at 1st June, 1954 and a port time of 7 days. The system of fixed differentials, not subject to any percentage variation applied to the rates, was again used for the Suez and Panama Canals, that for the former becoming 6/3d per ton. This system was also used for Exceptional costs incurred at particular ports, as in Scale No. 1, but the number of ports so involved was considerably extended. Certain differentials, which were subject to the same percentage variation as applied to the rates, were also provided e.g. 1/- per ton for each extra loading port in the same or adjacent range, 10 2/- per ton extra for each extra discharge port (2/6d in some cases) in the same or adjacent range. In other words, a similar system to MOT for extra ports, but making it clear that these differentials were to be subject to the percentage variation.

If a rate involved more than two loading or two discharging ports and the ports were not in the same or adjacent ranges a rate had to be specially calculated, 1 day's extra hire in respect of each additional loading or discharging port being allowed in the rate calculation.

Laytime varied according to the size of vessel but was the same for all areas. For the standard vessel laytime was 168 hours (7 days) i.e. the same as the port time used for calculating rates from loading ports in the same or adjacent ranges to discharging ports in the same or adjacent ranges.

Scale No. 2 was widely used for fixtures made on the London market.

IV. Scale No. 3 (15th December, 1958–14th May, 1962)

By 1958 further changes had taken place in the cost of bunkers and port charges and, moreover, vessels of 12,000 tons dw were rapidly disappearing from the tanker scene. The London Tanker Broker's Panel was therefore once again requested to distribute a completely new schedule of rates based on a standard vessel of 19,500 tons dw and using up-dated bunker prices and port charges.

The main calculation factors for Scale No. 3 were as follows:

Standard Vessel	19,500 tons dw motor vessel,
30 Service Speed	14 knots,
Daily Consumption at sea	28 tons Diesel Oil,
Daily Hire	£672,
Port Time	6 days,
Contingent Delays	$\frac{1}{2}$ day,
Port Charges	1st October, 1958,
Bunker Prices	1st October, 1958,
Brokerage	$2\frac{1}{2}\%$.

The rates, which were still on a range to range basis, became effective on 15th December, 1958 and were again each related to the former MOT rate of 32/6d for a voyage from Netherlands West Indies to UK—Continent. The daily hire of £672 was derived from this rate on the basis of a round voyage from Curacao/London/Curacao using bunker prices and port charges as at 1st October, 1958 and a port time of 6 days plus $\frac{1}{2}$ day allowance for contingent delays.

The Scale No. 2 system of fixed differentials, not subject to percentage variation, for canal dues etc. was continued as also was the system of differentials for extra ports of loading and discharge which were subject to percentage variations. Moreover, the Scale No. 2 system of 1 day's extra hire per port when calculating rates involving loading or discharging at ports not in the same or adjacent ranges was retained. Laytime still varied according to size of vessel but the laytime of 144 hours

(6 days) for the standard vessel applied to all vessels over 8000 tons dw and was the same for all areas. Laytime was the same as the port time used for calculating rates from loading ports in the same or adjacent ranges to discharging ports in the same or adjacent ranges (excluding the $\frac{1}{2}$ day allowance for contingent delays).

V. ATRS

While charters concluded in Europe were being fixed on Scale No. 1 or 2, charters on the other side of the Atlantic were still being fixed on the basis of the old USMC rates in spite of the fact that there was no official post-war machinery either for up-dating them or for calculating rates for new voyages. In 1953 the Tanker Committee of the Association of Ship Brokers and Agents, New York, had recognized the need for a more up-to-date schedule but it was not until early 1956 that they introduced the American Tanker Rate Schedule, referred to as ATRS. 10

The main calculation factors for ATRS were as follows:

Standard Vessel	16,600 tons dw steam vessel,	
Service Speed	14.25 knots,	
Daily Consumption at sea	285 barrels (approximately 44 tons) Fuel Oil,	
Daily Hire	\$2,500,	
Port Time	2 $\frac{1}{2}$, 3, 4, 5 or 6 days according to voyage,	
Port Charges	December 1953,	
Bunker Prices	December 1953.	20

The rates in ATRS were each related to the former USMC rate of \$2.85 for a voyage from a port in the US Gulf to New York, the daily hire of \$2,500 being derived from this rate on the basis of a round voyage from Port Arthur/New York/Port Arthur using bunker prices and port charges as at December 1953 and a port time of 3 days. All rates were quoted in US Dollars and cents per ton (to the nearest 5 cents).

Apart from introducing fixed differentials for the Suez and Panama Canals, the main innovation of ATRS was that all rates were on a port to port basis. However, certain differentials, which were subject to percentage adjustment, applied for extra ports of loading or discharging e.g. 15 cents per ton was added to the highest applicable rate for each extra port of call when diversion was less than 75 miles, or 25 cents if more than 75 but less than 325 miles. Diversions greater than that were dealt with by specifically calculating the rate, while rates for voyages involving more than 4 ports were always individually calculated. 30

The number of rates calculated upon request increased steadily and some of them were issued in supplements. Eventually an enlarged version of ATRS was issued on 1st February, 1961 but that Schedule was never revised for changes in port costs or bunker prices from those applying in December 1953.

VI. Intascale (15th May, 1962–14th September, 1969)

On the eastern side of the Atlantic it became evident by 1961 that further changes in port costs and bunker prices made necessary a new scale to replace Scale No. 3. There had been growing dissatisfaction with the range system used in Scale No. 3 and previous London Scales where only one rate was calculated to cover all voyages from any one loading port in a range to any one discharging port in another range, with differentials applied for additional ports of call in the same or adjacent ranges. The port costs and distances were based on a central port in each range or in some 40

cases on the average for two main ports at either end of a range. Under this system there could be a significant difference in the net daily revenue to Owners when performing a voyage from a port at the extreme end of a loading range to a port at the extreme end of a discharging range, as compared with a voyage between the nearest ports in the respective ranges. The difference in mileage sometimes seriously affected the time and fuel costs; also port charges were tending to vary significantly between the various ports in a range.

Under the circumstances, the London interests felt that the only satisfactory solution was to adopt a complete port to port basis with all rates based on the correct distances, with port charges and bunker prices for the actual ports concerned.

In order that this could be handled by a properly constituted body, the International Tanker Nominal Freight Scale Association Limited was formed, with the member firms of the London Tanker Brokers' Panel constituting a Management Committee. This organisation published a Scale known as INTASCALE which was effective 15th May, 1962.

The main calculation factors for INTASCALE were as follows:

Standard Vessel	19,500 tons dw motor vessel,
Service Speed	14 knots,
Daily Consumption at sea	28 tons Fuel Oil (1500 secs. viscosity),
Daily Hire	£789,
Port Time	3, 4 or 5 days according to voyage,
Contingent Delays	$\frac{1}{2}$ day,
Extra port time for each additional port	1 day,
Port Charges	"Current",
Bunker Prices	1st September, 1961,
Brokerage	$2\frac{1}{2}\%$.

The rates under INTASCALE were again each related to the old MOT rate of 32/6d for a voyage from a port in the Netherlands West Indies to a port in the UK—Continent, the daily hire of £789 being derived from this rate on the basis of a round voyage from Curacao/London/Curacao using bunker prices and port charges as at 1st September, 1961 and a port time of 5 days plus $\frac{1}{2}$ day allowance for contingent delays. Laytime was the same as port time (excluding the allowance for contingent delays and extra time for extra ports) and applied to all vessels irrespective of size. Broadly speaking, the 3 and 4 day laytime allowances applied to those voyages which had this amount of laytime under ATRS (which in turn had followed USMC in this respect). The standard vessel was the same as for Scale No. 3 except that it was now deemed to burn Fuel Oil of 1500 seconds viscosity instead of Diesel Oil.

Although rates were calculated in sterling, they were shown in the Schedule in both shillings/pence and US Dollars/cents (at an exchange rate of £1 = \$2.80). The previous Scales issued in London had shown rates only in shillings and pence. The system of fixed differentials was continued for Canal dues and for certain ports where a particular item led to heavy expenses. There was, of course, no system of differentials for extra loading or discharging ports as rates were individually calculated for each voyage irrespective of the number of ports involved.

Within a year or so of its introduction INTASCALE had been adopted in both the London and New York markets for international trading purposes but ATRS was still used exclusively for voyages between American ports and for vessels chartered by the US Government Agency.

Although from time to time certain amendments had been made to the various London Scales, no concerted effort had been made whilst one was in force to amend it on a regular basis for changes in port costs in order to maintain the comparability of

rates. Of course, the insensitive range to range system was not, in any case, susceptible to such revision.

INTASCALE rates were, however, regularly revised to reflect significant changes in port costs. For example, as a result of increased costs all rates involving London were revised in December 1965, with the result that the familiar and historic rate of 32/6d for a voyage from Curacao to London became 32/10d.

When in November 1967 sterling was devalued, the Association emphasized that INTASCALE was basically a sterling Schedule and announced that the sterling rates would continue in effect, the Dollar rates being obtained by converting at the new rate of exchange viz: £1 = \$2.40. However, shortly afterwards, on the 1st January, 1968, a surcharge of 3% was introduced to reflect, on an average basis, the effect of increases in port costs and bunker prices, in terms of sterling, directly attributable to the devaluation of that currency. The surcharge was originally intended as a temporary measure pending the recalculation of rates and the reprinting of the Schedule but, later on, the impending issue of an entirely new Schedule caused the reprinting to be abandoned. 10

VII. Worldscale (From 15th September, 1969-)

It had become evident to practically all parties concerned that it was advisable to have one authoritative and properly maintained tanker rate schedule which could be used worldwide for all trades. 20

Discussions between The International Tanker Nominal Freight Scale Association of London and The Association of Ship Brokers and Agents of New York extended over a period of some years and eventually led to a decision to issue jointly a new freight scale to replace both INTASCALE and ATRS. At the same time, the opportunity could be taken to combine the best features and eliminate some of the anomalies of both schedules.

The new Schedule was duly issued and became effective on the 15th September, 1969. Its full name is "WORLDWIDE TANKER NOMINAL FREIGHT SCALE" but it is invariably referred to under its code name "WORLDSCALE".

It was decided to calculate rates by reference to the same standard vessel as used for INTASCALE and daily hire elements of £750/\$1,800 were chosen. These were not derived, as on former occasions, from a rate for a voyage such as Curacao/London/Curacao as in previous London scales, but were chosen simply because they were both convenient round numbers at £1 = \$2.40 and would produce rates that were not vastly different from INTASCALE rates, the Schedule mostly used for international trading. 30

As compared with INTASCALE and ATRS, the most important change was in connection with Port Time/Laytime. It was considered illogical for the purpose of a comparative freight rate schedule that laytime should vary according to area and it was therefore decided to have a single laytime of 72 hours. It was also recognised that the total time spent by a vessel in port is not synonymous with laytime, which is essentially the time allowed for loading/discharging operations. It was therefore decided that for WORLDSCALE there should be an allowance of 12 hours port time additional to laytime for each port of call for all voyages. Thus for a voyage from a single loading port to a single discharging port, the total port time taken into consideration when calculating a rate is 96 hours; laytime being 72 hours. 40

WORLDSCALE rates are on a completely port to port basis and the system of fixed differentials for Canal dues and for special costs at certain ports has been retained.

The basic philosophy of WORLDSCALE could not be better expressed than by quoting Section One of the Preamble to the current (1974) Edition.

"This Schedule of nominal freight rates is intended solely as a standard of reference, by means of which rates for all voyages and market levels can be compared and readily judged. It is the custom to express market levels of freight in terms of a percentage of the WORLDSCALE nominal freight rate. Thus WORLDSCALE 100 (or WORLDSCALE FLAT which is sometimes used) means the rate as calculated and published by the Associations, while WORLDSCALE 175, for example, means 175 per cent of the published rate and WORLDSCALE 75 means 75 per cent of that rate.

The Schedule was originally issued, effective 15th September, 1969, in replacement of the International Tanker Nominal Freight Scale issued in London and the American Tanker Rate Schedule issued in New York.

There is a regular annual revision of rates contained in a reprinted Schedule issued towards the end of each year, such rates becoming effective for all voyages on which loading is commenced on or after the 1st January of the following year. For the original edition bunker prices as at 1st January, 1969 were used, but for subsequent editions weighted average bunker prices over a stated period have been used. Port charges are the most up-to-date ones it is possible to take into account. Such a policy obviously precludes any intermediate revisions for changes in bunker prices, and intermediate revisions for changes in port costs or other factors are kept to a minimum, these only being made if the changes are significant.

As originally introduced the Schedule was a dual currency one, separate rates being shown both in UK Sterling and in US Dollars but on the 26th November, 1971 it was announced that it had been decided to discontinue the concept of a dual currency schedule and that for business concluded on or after 1st January, 1972 only the WORLDSCALE US Dollar rates would have validity, also that thereafter current WORLDSCALE rates would be calculated and quoted only in terms of US Dollars.

It is desired to make it completely clear that the responsibility of the two Associations is limited to providing subscribers with a schedule of comparative rates. The Associations do not and cannot accept any responsibility for the application of rates and, it is stressed that, while only Dollar rates are official, it is important that parties to a contract should specify clearly the currency of payment and the rate of exchange to be used should this currency be other than US Dollars. It is equally important to specify clearly to what extent, if any, any future adjustments in the rates or basis of the Schedule are to apply."

As mentioned in the Preamble, WORLDSCALE was originally a dual currency schedule and Subscribers were strongly recommended to make it clear when chartering whether the Sterling or US Dollar column rate should apply to the voyage(s) to be performed, but in November 1971 it was decided to discontinue sterling rates as from 1st January, 1972. However, arrangements were made to continue to provide WORLDSCALE Sterling rates for the implementation of contracts concluded before 1st January, 1972. Such rates are calculated entirely in terms of sterling using the daily hire element of £750 per day. The fact that the Schedule now only gives rates in US Dollars does not prevent Owners/Charterers agreeing for freight payment to be made in some other currency provided a suitable formula is incorporated in the charter party to cover the conversion from US Dollars to the chosen currency.

Basis of Calculation

This is given in Section Three of the Preamble, part of which is quoted below:

"A. All rate calculations are per ton of 2240 lbs for a full cargo based on a round voyage from loading port or ports to discharging port or ports and back to the first loading port using the following factors:

- | | | |
|------------------------------------|---|----|
| (i) Standard Vessel | 19,500 tons dw summer, | |
| Summer draught laden in salt water | 30' 6" | |
| Average service speed | 14 knots, | |
| Bunker Consumption at sea | 28 tons High Viscosity Fuel Oil (1500 secs.) per day, | 10 |
| Bunker Consumption in port | 5 tons High Viscosity Fuel Oil (1500 secs.) per day, | |
| Port Time Allowance | 96 hours subject to (iii) below, | |
| Fixed Hire Element | \$1,800 per day, | |
| Brokerage | 2.5%. | |
- (ii) Current port charges and weighted average contract bunker prices applicable during the period 1st September, 1972 to 30th September, 1973 have been taken into account.
- (iii) For rate calculation purposes only: 20
 An extra 12 hours is allowed for each additional loading or discharging port used.
 An extra 30 hours is allowed for each transit of the Suez Canal and an extra 24 hours for each transit of the Panama Canal, mileage not being taken into account in either case.

B. (i) The fixed hire element of \$1,800 per day is not intended to represent an actual level of operating costs, nor to produce rates providing a particular level of income or margin of profit, either for the standard tanker or for any other tanker under any flag. This figure of \$1,800 is purely nominal and for calculation purposes only. 30

(ii) In calculating rates to or from ports which may be outside normal trading warranties, whether for the whole or part of a year no allowance has been made for any additional Marine Insurance on hull or machinery which may be incurred by Owners.

(iii) It is assumed that the standard vessel will perform the round voyage from loading port or ports to discharge port or ports and back to the first loading port by the most economical routeing, i.e. whichever route produces the cheapest rate for the voyage in question, including any applicable differential for Canal transit.

(iv) It is realized that this Schedule includes rates for voyages to and from ports which the standard tanker could not reach fully loaded due to draught limitations, or to which it could not proceed for other reasons. However, such rates are included for the convenience of subscribers who may desire to use them but it should be remembered that the rates have been calculated on the assumption that the ports are accessible to the standard tanker on her full draught." 40

It cannot perhaps be over stressed that WORLDSCALE is now a single currency Schedule with rates calculated and quoted in terms of US Dollars and that the fixed daily hire element of \$1,800, which is the essential element of the basis of calculation, is purely nominal and for calculation purposes only. Therefore, there is no question of the daily hire element being revised to reflect changes in operating costs and/or changes in the value of the US Dollar in relation to other currencies. The Schedule does not, therefore, afford any protection against fluctuation in the value of the US Dollar and if such protection is sought the parties concerned must provide expressly 50

for it within their contract.

As already mentioned, the Worldscale Schedule of Tanker Freight Rates is jointly sponsored and issued by The International Tanker Nominal Freight Scale Association in London and The Association of Ship Brokers & Agents (Worldscale) Inc. in New York, and is obtainable by becoming a subscriber to either Association, the current annual subscription for 1974 being £80 and \$200 respectively. This entitles the subscriber to one copy of the Schedule (additional copies are available at £5 or \$12 each) and all circulars amending rates etc. and any announcements that are issued from time to time.

- 10 The responsibility for calculating and servicing rates is with New York for the Western area comprising North, Central and South America (including Caribbean Islands, Greenland, Hawaii, Wake, Midway Island and South Georgia) and with London for the Eastern area covering the remainder of the World, based in each case on the discharging port(s). Both centres maintain a comprehensive record of all rates but enquiries should normally be made to the office responsible for the area in which the subscriber is resident.

Exhibit 70
Document:
"The
Development of
Tanker Rate
Schedules"

Exhibit 17**Oil Mining Lease: Government of Nigeria and Shell-BP
Petroleum Development Company of Nigeria****THE MINERAL OILS ACT (CHAPTER 120)
OIL MINING LEASE No. 31**

Exhibit 17
Oil Mining
Lease:
Government of
Nigeria and
Shell-BP
Petroleum
Development
Company of
Nigeria
6th March 1964

This Deed made the SIXTH day of MARCH 1964 BETWEEN

10 The Federal Minister of Mines and Power (hereinafter referred to as "The Minister") which expression includes the member of the Council of Ministers for the time being charged with responsibility for matters relating to Mineral Oils for and on behalf of the Government of the Federal Republic of Nigeria of the one part and THE SHELL-BP PETROLEUM DEVELOPMENT COMPANY OF NIGERIA LIMITED whose registered office is at Lagos (hereinafter referred to as "the Lessee") of the other part.

WHEREAS the Lessee in pursuance of the right accorded to him under the provisions of an oil prospecting licence granted to him on the twentieth day of May, 1957 has called upon the Minister to grant him an oil mining lease in respect of the lands specified in Part I of the Schedule marked "A" hereunder written (hereinafter referred to as the "said lands").

NOW THIS DEED WITNESSETH AS FOLLOWS:—

20 In exercise of the powers conferred upon the Minister by section 5 of the Mineral Oils Act or otherwise in him vested and in consideration of the rents royalties covenants and agreements hereinafter reserved and contained on the part of the Lessee to be paid and observed the Minister doth hereby demise unto the Lessee all or any petroleum lying or being within or throughout the lands mentioned and described in Part I of the said Schedule marked "A" hereunder written and the Minister doth hereby grant the liberties powers and privileges to be exercised in connection with the said petroleum mentioned in Part II of the said Schedule marked "A" subject to the restrictions and conditions which are specified in Part III of the said Schedule marked "A" and to the provisions contained in Part IV of the said Schedule marked "A".

30 TO HOLD EXERCISE AND ENJOY all and singular the premises liberties powers and privileges hereby granted and demised unto the Lessee from the first day of January, 1962, for the term of thirty years then next ensuing yielding and paying free and clear from all rates taxes charges and deductions the several rents royalties and sums of money mentioned and specified in Part V of the said Schedule marked "A" subject to the provisions relating to rents and royalties contained in Part VI of the said Schedule marked "A".

40 And the Lessee doth hereby covenant with the Minister as in Part VII of the said Schedule marked "A" is expressed and the Minister doth hereby covenant with the Lessee as in Part VIII of the said Schedule marked "A" is expressed and it is hereby mutually agreed and declared by and between the parties hereto as in Parts IX and X of the said Schedule marked "A" is expressed and it is hereby declared that the Schedule marked "A" hereunder written shall be deemed part of these presents and be read and construed accordingly.

IN WITNESS whereof the said Minister has hereunto set his hand and caused the Public Seal of the Federal Republic of Nigeria to be hereunto affixed and the said The Shell-BP Petroleum Development Company of Nigeria Limited has caused its common seal to be hereunto affixed the day and year first above written.

Exhibit 17
Oil Mining
Lease:
Government of
Nigeria and
Shell-BP
Petroleum
Development
Company of
Nigeria
6th March 1964
(Cont'd)

(SEAL)
FEDERATION
OF
NIGERIA

SIGNED SEALED with the Public Seal
of the Federal Republic of Nigeria and
DELIVERED by the said

(Sgd.) Yusuf Maitama Sule
FEDERAL MINISTER OF MINES
& POWER

in the presence of:—

(Sgd.) Musa Daggash
Signature:

10

THE COMMON SEAL of The Shell-BP
Petroleum Development Company of
Nigeria Limited was hereunto affixed in
the presence of:—

(SEAL)
THE SHELL-BP PETROLEUM
DEVELOPMENT COMPANY OF
NIGERIA LIMITED

Director: (Sgd.) D. Fleming
Director: (Sgd.) J. R. Lewis
Secretary: (Sgd.) R. L. Hamilton

THE SCHEDULE MARKED "A" ABOVE REFERRED TO
PART I—THE LANDS REFERRED TO IN THIS LEASE

20

Area

All those lands including land beneath inland and tidal waters, situated within the EASTERN and WESTERN Regions of the Federation of Nigeria, containing approximately 139103 acres and coloured pink on plan Drawing No. 7709-2/4 prepared by the Shell-BP Petroleum Development Company of Nigeria Limited and attached to this Schedule; the vertices and the boundaries of which are described as follows.

Reference
Point

The Reference Point, marked RP 31 on the plan, is defined on the ground by shotpoint marker 5123 of seismic line Amassama 51, the position of which is determined approximately by the following Coordinates.

Grid Coordinates	.....	.....	.....	Northing	412 012 feet
(West Belt)	.....	.....	.....	Easting	1361 167 feet
Geographical Coordinates	.....	.....	.....	Latitude	5° 08' 02" North
				Longitude	6° 09' 39" East

30

This position is approximately 7 miles south south-west of the town of Patani in Delta Province.

Vertices

The Location Beacon marked LB 3100 on the plan is situated 4219 feet north and 387 feet east of the Reference Point RP 31.

Vertex No. 3101 is defined as on the meridian 6° 15' 10.000" East, 699 feet north and approximately 6655 feet east of shotpoint marker 3243 of seismic line Amassama 32.

40

Vertex No. 3102 is defined as on the meridian 6° 15' 10.000" East, 430 feet south and approximately 1894 feet east of the intersection of seismic lines Amassama 16 and Amassama 24.

Vertex No. 3103 is defined as 3806 feet south and 4531 feet east of shotpoint marker 3095 of seismic line Amassama 30.

Vertex No. 3104 is defined as 6992 feet due east of shotpoint marker 962 of seismic line Bomadi 9.

Vertex No. 3105 is defined as on the meridian $5^{\circ} 58' 15.000''$ East, due west of shotpoint marker 962 of seismic line Bomadi 9 and approximately 8540 feet from it.

Vertex No. 3106 is defined as on the meridian $5^{\circ} 58' 15.000''$ East, 1142 feet north and approximately 10313 feet west of shotpoint marker 735 of seismic line Bomadi 7.

Vertex No. 3107 is defined as 1142 feet north and 8094 feet east of shotpoint marker 735 of seismic line Bomadi 7.

10 Vertex No. 3108 is defined as 738 feet due north of shotpoint marker 2004 of seismic line Bomadi 20.

Vertex No. 3109 is defined as 10692 feet due north of the Location Beacon LB 3100.

20 From the Location Beacon the boundary runs in an easterly direction, through a point on seismic line Amassama 32, distant 722 feet from shotpoint marker 3243 in the direction of shotpoint marker 3244, at a distance of approximately 26539 feet from the Location Beacon, to Vertex No. 3101 at a distance of approximately 33014 feet from the Location Beacon; thence in a southerly direction along the meridian $6^{\circ} 15' 10.000''$ East to Vertex No. 3102 at a distance of approximately 61828 feet from Vertex No. 3101; thence in a westerly direction through shotpoint marker 3194 of seismic line Amassama 32 at a distance of approximately 16215 feet from Vertex No. 3102 to Vertex No. 3103 at a distance of approximately 47255 feet from Vertex No. 3102; thence in a northwesterly direction through a point on seismic line Amassama 31 distant 984 feet from shotpoint marker 3123 in the direction of shotpoint marker 3124 at a distance of approximately 45522 feet from Vertex No. 3103, to Vertex No. 3104 at a distance of approximately 56441 feet from Vertex No. 3103; thence in a westerly direction through shotpoint 962 of seismic line Bomadi 9 at a distance of approximately 6992 feet from Vertex No. 3104, to Vertex No. 3105 at a distance of approximately 15532 feet from Vertex No. 3104; thence in a northerly direction along the meridian $5^{\circ} 58' 15.000''$ East to Vertex No. 3106 at a distance of approximately 53649 feet from Vertex No. 3105; thence in an easterly direction to Vertex No. 3107 at a distance of approximately 18407 feet from Vertex No. 3106; thence in a southerly direction to Vertex No. 3108 at a distance of approximately 21037 feet from Vertex No. 3107; thence in an easterly direction through shotpoint marker 5103 of seismic line Amassama 51 at a distance of approximately 27618 feet from Vertex No. 3108, to Vertex No. 3109 at a distance of approximately 51230 feet from Vertex No. 3108; and thence in a southerly direction to the Location Beacon, the starting point, at a distance of approximately 10692 feet from Vertex No. 3109.

40 All bearings used in this description are grid bearings (West Belt) based on the projection system as used in Nigeria, and areas are calculated from Coordinates based on the same system.

PART II—LIBERTIES, POWERS AND PRIVILEGES TO BE EXERCISED OR ENJOYED BY THE LESSEE, BUT SUBJECT TO THE RESTRICTIONS AND CONDITIONS IN PART III

1. To enter upon and remain upon for operations hereunder the said lands and to search bore for win and work all or any petroleum lying or being within under or throughout the said lands.

50 2. Subject to the approval of the Minister, and such conditions (other than conditions imposing a charge or requiring a money payment for the use of water) as he may at his discretion impose, to appropriate and use for any purpose connected

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Boundary
Description

To bore, etc.

To appropriate
water, etc.

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3. To appropriate
surface of
land for
work, etc.
To refine.

with the borings or works or refining operations connected therewith (including the domestic use of servants or workmen of the Company employed in such operations), the water upon or within any of the said lands, and to collect, impound and bore for the same for the purpose of working the said borings or works or carrying out refining operations, but so that in the exercise of this privilege the Lessee shall not deprive any lands, villages, houses or watering places for cattle of a reasonable supply of water as heretofore accustomed.

3. To enter upon, use and occupy a sufficient part of the said lands adjoining any borings for depositing thereon the products of the said borings and all the earth soil and other substances brought to the surface and for otherwise carrying on the works of the said borings and operations hereunder. 10

4. To refine or otherwise treat the aforesaid petroleum in and upon the said lands whether for purposes of sale or otherwise save as hereinafter provided.

If a refinery shall be established in accordance with Clause 22 hereof at any place in Nigeria not being within the said lands the Lessee shall have the further right to refine or otherwise treat petroleum therein.

The Lessee shall have the right to procure the formation of a separate Company and may assign to such separate Company its rights under this clause subject only to the conditions of Clause 31, to the previous written consent of the Minister which consent shall not be unreasonably withheld and to the execution of a deed of covenant by the assignee to observe and perform the covenants and the conditions on the part of the Lessee in these presents contained but subject to no other condition. 20

To store, lead
and carry away
oil, etc.

5. To store, take, lead, pipe, and carry away, on, under or over the said lands the aforesaid petroleum and the products thereof and to dispose of the same at his own will and pleasure, save as hereinafter provided.

To erect
houses, etc.

6. Subject to the law for the time being in force in Nigeria to erect set up make and operate in upon and over the said lands, offices, dwelling-houses, schools, hospitals or other buildings whatsoever, clubs, recreation grounds and all other sports facilities and amenities, sheds, engines, machinery, furnaces, erections, pipelines, storage tanks, refineries, and other installations, telephone and power lines, railroads, tram-roads and other roads, loading places, wharves for ships, aircraft landing strips, reservoirs, waterworks, sewage works and all other works whatsoever necessary or convenient for the effectual carrying out of any operations hereunder. 30

To cut down
timber, etc.

7. To cut down and clear timber (except protected trees), brush wood and undergrowth now standing or growing, or which at any time hereafter may grow on the said lands for the purpose of facilitating ingress and egress to and from the said lands and also for the purpose of clearing lands for the buildings and works mentioned in this Part of this Schedule which may be erected and made by the Lessee and also for the purpose of clearing lands for protection against damage by fire.

Provided that the Lessee shall pay such compensation as the Minister shall determine for all timber and undergrowth cut down or felled by him for the purposes aforesaid, and provided further that this Clause shall not apply to any land which shall be a Forest Reserve without the consent of the Minister in writing first had and obtained. 40

Provided also that in the event of any dispute or uncertainty as to the owner of any timber or undergrowth for which compensation is payable, the Lessee shall deposit the compensation with the appropriate Regional Minister wherein the timber or undergrowth is situate.

Gravel,
sand, etc.

8. Subject to the consent of the Chief Federal Land Officer in respect of Lands held for the purposes of the Government of the Federal Republic of Nigeria and to the consent of the Commissioner of Lands of the Eastern and Mid-Western 50

Region in respect of Lands held for the purposes of the Government of the Eastern and Mid-Western Region to search for dig and get free of charge gravel sand clay and stone within unoccupied Government Lands not subject to any lease or licence which are comprised within the said lands provided that (a) any such gravel sand clay or stone won shall not be sold and (b) that at the expiration of this Lease any excavation shall be fenced or filled in or levelled and left otherwise fit for cultivation and occupation as far as may be reasonably practicable if so required by the Minister.

10 9. To enclose with a fence the surface of any of the said lands provided that the liberties and powers reserved to the Minister in Part IV of this Schedule shall not thereby be affected and provided further that if such fences interfere with any existing rights of way or roads the Lessee shall provide and construct an alternative path or road to the satisfaction of the Minister.

PART III—RESTRICTIONS AND CONDITIONS AS TO THE EXERCISE OF THE ABOVE LIBERTIES, POWERS AND PRIVILEGES

10. (1) The Lessee shall not enter upon or occupy for the purposes of operations hereunder any area held to be sacred (and if any question arises whether any area is held to be sacred it shall be decided by the Regional or other Minister responsible whose decision shall be final).

20 (2) The Lessee shall not enter upon or occupy any of the following lands for the purpose of operations hereunder unless permission in writing so to do shall have been obtained either during the currency of this Lease or during the currency of any Oil Prospecting Licence in force up to the effective date of this Lease from the Minister by the Lessee which permission shall be subject to such conditions as the Minister may impose:

- 30
- (a) land set apart for or used or appropriated or dedicated to any public purpose
 - (b) land situate within any township or Government station
 - (c) land occupied by any township, town, village, market, burial-ground or cemetery
 - (d) land which is the site of or is within fifty yards of any Government public buildings reservoir dam public road or tramway
 - (e) land appropriated for any railway or situate within fifty yards of any railway

40 (3) The Lessee shall not enter upon or occupy any private lands (other than private lands coming within the immediately preceding clause) unless permission in writing so to do shall have been obtained either during the currency of this Lease or during the currency of any Oil Prospecting Licence in force up to the effective date of this Lease by the Lessee from the Minister who shall grant such permission if the Lessee has:

- 50
- (a) given previous notice in writing to the Minister specifying by name or other sufficient designation and by quantity the land proposed to be occupied and the purpose for which the land is required
 - (b) paid or tendered to the persons in lawful occupation of such land such compensation as the Minister has determined in accordance with Clause 24 hereof and
 - (c) paid or tendered to the owner or owners of such land such compensation for the exercise of the rights powers and liberties hereby conferred as the Minister has determined as aforesaid. Provided that in the event of any dispute as to who is in lawful occupation or the owner of such

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To enclose
with a fence

Notice to be
given before
entering on
lands for
surface
purposes.

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Distance of
boreholes or
wells from
boundaries of
the said lands.

Cutting of
timber.

Minister may
work other
minerals, etc.

Certain
yearly rent.

land, or as to the amount of compensation payable, the Lessee shall deposit with the Minister such sum as shall appear to the Minister to be reasonable satisfaction in full or in part of whatever compensation the Lessee may be found liable to pay to such person but without prejudice to its right to recover any amount paid in excess of the said compensation. Nothing herein shall make the Lessee liable to pay compensation in respect of the same disturbance of rights more than once.

11. No borehole or well shall except with the consent in writing of the Chief Petroleum Engineer be drilled or made within a distance of 400 feet from the boundaries of the said lands. 10

12. Save as provided in Clause 7 (to cut timber, etc.) of this Schedule the Lessee shall not without the express sanction of the Minister cut down or injure any trees or timber in the said lands.

PART IV—LIBERTIES AND POWERS OF THE MINISTER AND OTHERS

13. These presents or anything herein contained shall not prejudice or affect the exercise from time to time of all or any of the following liberties and powers, that is to say:—

- (a) in respect of such parts of the said lands as are Government Lands and as are not enclosed with a fence full power and liberty to the Minister or any person authorised by him to enter into and upon such lands for all or every purpose other than those for which this Lease is issued and 20
- (b) full power and liberty to the Minister or any person authorised by him to search for dig work and get any minerals or substances other than petroleum upon or under any part of the said lands as are not enclosed with a fence
- (c) liberty and power for the Minister in respect of such part of the said lands as are Government Lands to grant or demise to any person all or part thereof for any purpose and in respect of the whole of the said lands to grant leases or licences under the Minerals Act to any person to search for dig work and get any minerals other than petroleum upon or under the said lands or any part thereof but so that any such grant or demise be made subject to the rights of the Lessee hereunder. 30

Provided always that the said reserved liberties and powers shall be exercised and enjoyed in such manner as not to hinder or interfere with the rights and privileges of the Lessee under these presents and provided also that the rights of the Lessee conferred by Section 112 of the Minerals Act shall not be deemed to be hereby affected.

PART V—RENTS AND ROYALTIES RESERVED BY THIS LEASE

14. (1) The Lessee shall pay to the Accountant-General of the Federation on behalf of the Minister during the term hereby granted, a certain yearly rent, as specified in the table hereunder written, for each acre or part of an acre comprised in the said lands:— 40

	Per acre	
	Per annum	
	s	d
In respect of the 1st year of the said term	2	6
In respect of the 2nd year of the said term	3	6

Per acre
Per annum

In respect of the 3rd year of the said term	.....	.....	.....	s	d
In respect of the 4th year of the said term	.....	.....	.....	4	6
In respect of the 5th year of the said term	6	0
In respect of the 6th and each subsequent year of the said term	8	0
				10	0

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10 (2) Payment of the certain yearly rent reserved by this Lease shall be made annually in advance, and the receipt of the first payment of the sum of £17,387/17/6 in respect of the first year is hereby acknowledged.

15. The Lessee shall pay to the Accountant-General of the Federation on behalf of the Minister within two months after the end of each year of the term hereby granted, the Royalties hereunder specified:—

Royalties.

20 (1) A royalty of 12½ per cent on the value of all crude oil won and saved by the Lessee from the said lands within each such year, ascertained in the manner provided by Clause 19 (Measurement of petroleum obtained from the said lands) of this Schedule. From the quantity so ascertained the Lessee shall be entitled to deduct the quantity ascertained according to a method approved by the Chief Petroleum Engineer of any crude oil (or products thereof) produced on the said lands and used during such year by the Lessee for the purpose of carrying on drilling and production operations and pumping to field storage and refineries. The value of crude oil for the purpose of royalty shall be the value on the field of production at field storage tanks and shall be calculated in such manner as may be determined from time to time by agreement between the Minister and the Lessee or, in default of such agreement, by arbitration in accordance with Clause 60 (Arbitration) hereof:

Provided that, if there is any dispute between the parties or failure to agree affecting the amount of the royalty for any year, such royalty shall not be payable as aforesaid but shall be payable when the amount is determined by agreement or arbitration as the case may be.

30 (2) A royalty at the following rates on all casinghead petroleum spirit recovered by the Lessee within each such year:—

(a) Where the casinghead petroleum spirit recovered does not exceed 2 imperial gallons per 1,000 cubic feet of gas treated the royalty shall be equal to 10 per cent of the value.

(b) Where the casinghead petroleum spirit recovered is over 2 imperial gallons per 1,000 cubic feet of gas treated, the royalty shall be equal to 10 per cent of the value in respect of the yield up to 2 gallons per 1,000 cubic feet, and equal to 12½ per cent of the value in respect of the yield over 2 gallons per 1,000 cubic feet.

40 The quantity of casinghead petroleum spirit recovered by the Lessee within each such year shall be ascertained in the manner provided by Clause 19 (Measurement of petroleum obtained from the said lands) of this Schedule. From the quantity so ascertained, the Lessee shall be entitled to deduct the quantity ascertained according to a method approved by the Chief Petroleum Engineer of any such spirit used during such year by the Lessee for the purpose of carrying on drilling and production operations and pumping to field storage and refineries.

50 The value of casinghead petroleum spirit for the purpose of royalty shall be the value on the field of production after deduction of due allowance for the cost to the Lessee of extracting such casinghead petroleum spirit and shall be calculated in such manner as may be determined from time to time by agreement between the Minister and the Lessee, or, in default of such agreement, by arbitration in accordance with Clause 60 (Arbitration) hereof:

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Provided that, if there is any dispute between the parties or failure to agree affecting the amount of royalty for any year, such royalty shall not be payable as aforesaid but shall be payable when the amount is determined by agreement or arbitration as the case may be.

(3) A royalty of two pence per 1,000 cubic feet of natural gas obtained from the said lands and sold by the Lessee within each such year and calculated at an absolute pressure of one atmosphere and at a temperature of 60°F.

Provided that in respect of any natural gas sold to other persons holding oil prospecting licences or oil mining leases in Nigeria for repressuring the natural oil reservoir, the rate of royalty shall be reduced to one half of the rate specified in this sub-clause. 10

(4) From the amount of royalties payable under the foregoing provisions of this Clause in respect of any such year there shall be deducted the amount of the certain yearly rent actually paid in respect of that year under the provisions of Clause 14 (Certain yearly rent) of this Schedule.

(5) For the purposes of the preceding sub-clause (4) this lease and the lease(s) described as Oil Mining Lease(s) No(s) 30, 32 and 33 in plan No. 7709²/₄ deposited in the Registries at Enugu and Benin City or Thadan being derived from the same precedent oil prospecting licence shall be deemed to be one lease and the aggregate of the certain yearly rent actually paid in respect of this lease and the said Oil Mining Lease(s) No(s) 30, 32 and 33 shall be deducted from the aggregate of the royalties payable under this lease and the said Oil Mining Lease(s) No(s) 30, 32 and 33. 20

Surface Rents.

16. The Lessee shall pay to the Accountant-General of the Federation on behalf of the Minister the further yearly rent of 1s per acre or part of an acre of Government Land, the surface whereof shall be actually occupied by the Lessee for any of the purposes of this demise, the said rent to be paid yearly in advance on the 1st January in each year. The first of such payments to be made on the 1st January next after such occupation or use shall commence.

PART VI—PROVISIONS RELATING TO RENTS AND ROYALTIES 30

Refund of
certain yearly
rent on
determination
or surrender.

17. Upon the determination by the Lessee of the term hereby granted or any renewal thereof or upon the surrender by him of the rights granted by this Lease in respect of any part or parts of the said lands the Minister will refund to the Lessee an apportioned part of any certain yearly rent paid by the Lessee in advance in respect of the said lands or any such part or parts thereof for a period the whole of which has not expired at the date of such determination or surrender.

PART VII—THE LESSEE'S COVENANTS

Payment of
rents and
royalties.

18. The Lessee shall pay the several rents and royalties hereby reserved at the time and in the manner above appointed in that behalf.

Measurement
of petroleum
obtained from
the said lands.

19. (1) The Lessee shall measure or weigh by a method or methods customarily used in good oilfield practice and from time to time approved by the Chief Petroleum Engineer. 40

(a) all crude oil won and saved and casinghead petroleum spirit recovered from the said lands; and

(b) all natural gas sold from the said lands;
during the term hereby granted or any renewal thereof.

(2) The Chief Petroleum Engineer or any officer authorised by him shall at all

times during the said term or any renewal thereof be entitled to be present whenever such measurement or weighing takes place.

(3) If any measuring or weighing appliance shall at any time be found to be false or unjust the same shall, if the Chief Petroleum Engineer so determines after considering any representations in writing made by the Lessee, be deemed to have existed in that condition during the period of three months prior to the discovery thereof or the period elapsed since the last occasion upon which the same was examined or tested, whichever shall be the less, and accordingly the royalties payable in respect of such period shall be adjusted.

10 (4) The Lessee shall not make any alteration in the method or methods of measurement or weighing used by him or any appliances used for that purpose without first informing the Chief Petroleum Engineer and the Chief Petroleum Engineer may in any case require that no alteration shall be made save in the presence of an officer authorised by the Chief Petroleum Engineer.

20. (1) The Lessee shall at all times during the term hereby granted or any renewal thereof keep full and correct accounts in a form from time to time approved by the Chief Petroleum Engineer which shall contain accurate entries of

- 20 (a) the quantity of crude oil won and saved from the said lands; and
 (b) the method and result of test made on crude oil; and
 (c) the quantity of crude oil refined and the products recovered therefrom; and
 (d) the quantity of crude oil otherwise disposed of and the manner of its disposal; and
 (e) the quantity of natural gas sold and the price at which it has been sold; and
 (f) the quantity in cubic feet of natural gas treated and the quantity in imperial gallons of casinghead petroleum spirit recovered; and
 (g) the quantity of crude oil and products thereof or casinghead petroleum spirit used for drilling or production operations or pumping to field storage and refineries; and
 30 (h) the quantity of natural gas returned to the formation; and
 (i) such further particulars and statistics as the Chief Petroleum Engineer may from time to time reasonably require.

(2) The Lessee shall within two months after the end of each year of the term hereby granted or any renewal thereof deliver to the Chief Petroleum Engineer an abstract in a form from time to time approved by the Chief Petroleum Engineer of the said accounts for each such year together with a statement in the like form of all royalties payable in respect of each such year.

40 21. The Lessee shall if so required by the Chief Petroleum Engineer at his own expense forthwith erect and at all times maintain and keep in repair substantial boundary marks of brick, stone or concrete not less than one foot high at every angle or corner of the boundary line of the said lands. Such boundary marks shall be referenced by survey to at least two readily identifiable points in such a manner that the boundaries of the said lands can be accurately traced on the ground. The Lessee shall ensure that the area demarcated on the ground shall conform as closely as possible to the area delineated on the plan hereto annexed.

50 22. (1) As soon as the output of crude oil of a quality suitable for refining obtained from the area or areas from time to time held under oil mining lease by the Lessee in Nigeria amounts in the aggregate to 500,000 tons per annum, assessed on the average daily production over a period of not less than six consecutive calendar months (such calculation not to include such portion of the production of any wells

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Keeping of
accounts.

Establishment
of boundary
marks.

Refinery.

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as may not be under control), and adequate reserves of crude oil have been developed to ensure production in accordance with the methods and practice customarily used in good oilfield practice at that rate for a substantial period, the Lessee shall consider with the Minister the economic feasibility of the erection of a refinery capable:

- (a) of supplying to the extent possible with the crude oil production available the local requirements of gasoline of the general quality in current use for motor vehicles and fuel oil, and
- (b) of so treating the said crude oil as to produce fuel oil that shall comply with the Admiralty specification at the time, provided that the said crude oil be of a suitable kind and quality for this purpose. Where, after consideration of the matter by the Lessee and the Minister as aforesaid, the erection of a refinery is agreed upon, the Lessee shall complete the refinery and put and maintain it in efficient working order with due diligence and dispatch, but in any event within five years from the date on which such erection is so agreed upon. The Lessee shall, if required by the Minister and if in the opinion of the parties it is economically feasible so to do at intervals of not less than three years, make such additions to this refinery as may be requisite for maintaining capacity for meeting the said local requirements to the extent possible with the crude oil production available.

The site of such refinery and all tanks for the storage of petroleum shall be selected by the Lessee with the previous written approval of the Minister, such approval not to be unreasonably withheld, due regard being had to the commercial interests of the undertaking; provided that the site of such refinery shall be submitted for the approval of the Minister within six months from the date on which the erection of a refinery shall have been agreed upon.

23. The Lessee shall before commencing any operations in the said lands furnish to the Chief Petroleum Engineer the name and address of the Manager resident in the locality of the said lands under whose supervision such operations are to be carried on. Any notice which the Minister or any person authorised by him is in accordance with the terms of this Lease required or entitled to serve upon the Lessee shall be sufficiently served if the same shall be delivered or sent by post to such Manager at such address.

24. In addition to any liability for compensation to which the Lessee may be subject under any other clause hereof, the Lessee shall, for the exercise of the rights and powers conferred by this Lease, pay fair and adequate compensation for disturbance of surface rights to any person who is in lawful occupation of the leased lands or any part thereof. Provided that in the event of any dispute as to who is in lawful occupation or the owner of such land, or as to the amount of compensation payable, the Lessee shall deposit with the Minister such sum as shall appear to the Minister to be reasonable satisfaction in full or in part of whatever compensation the Lessee may be found liable to pay to such person but without prejudice to its right to recover any amount paid in excess of the said compensation. Nothing herein shall make the Lessee liable to pay compensation in respect of the same disturbance of rights more than once.

25. The Lessee shall at all times indemnify and keep harmless the Minister and every officer of the Government of the Federal Republic of Nigeria against all actions, costs, charges, claims and demands, whatsoever which may be made or brought by any third party in relation to or in connection with this Lease or any matter or thing done or purported to be done in pursuance thereof.

Local
Resident
Manager.

Compensation.

Indemnity
against third
party claims.

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26. The Lessee shall not except with the consent of the Minister cultivate or use the said lands in any manner save for the purpose of this demise and the rights thereby granted.

27. Notwithstanding the rights conferred upon the Lessee under this Lease, the Minister shall have power at any time to require the exclusion from the lands included in Part I of this Schedule of any area or areas which may from time to time be required for villages, new villages, village extensions, water reservoirs, or any other public purposes whatsoever provided as follows

- (a) that during the subsistence of this Lease the area or areas so excluded shall not exceed in all 1 per cent (one per centum) of the area of the said lands,
- (b) lands excluded under this clause shall continue to form part of the lands subject to the Lease but none of the operations hereunder shall be carried on upon or within such lands other than searching for or mining petroleum by means of directional drilling from lands not so excluded,
- (c) that the exclusion of any area or areas upon which any active operations such as well-drilling, road construction, water works or other works relating to the winning of petroleum have previously been commenced or are in progress or any area in respect of which the Lessee shall have given notice that such area is required and tendered or paid compensation in accordance with Clause 10(3) hereof shall not be required but in lieu thereof an equal area or areas upon which active operations as aforementioned have not already been commenced or are not at the time being in progress shall be excluded, provided that such alternative area or areas are in the opinion of the Minister suitable for the public purposes aforementioned.

28. (1) No statement shall be made either in any notice advertisement prospectus or other document issued by or to the knowledge of the Lessee or in any other manner claiming or suggesting whether expressly or by implication that the Minister or any Department of the Government of the Federal Republic of Nigeria or any person or body acting on behalf of the Minister has or have formed or expressed any opinion that the said lands are from their geological formation or otherwise likely to contain petroleum.

(2) The foregoing provisions of this Clause or a statement to the effect thereof shall be included in or endorsed on any prospectus, statement in lieu of prospectus, notice, circular, advertisement or other invitation issued by or to the knowledge of the Lessee offering to the public for subscription or purchase any shares or debentures of a company or intended company.

29. (1) The Lessee shall report to the Minister particulars of any fresh issues of capital which may from time to time be made by him and any alteration which may be made in the Memorandum or Articles of Association or in the constitution of the Lessee.

(2) The Lessee shall not make any alteration in paragraph B of Article 68 of the Articles of Association without the consent of the Minister and a director appointed in accordance with that Article shall at all times during the currency of this Lease be a member of the Board of Directors of the Lessee.

30. The Lessee shall not grant or assign any interest under this Lease nor part with the possession of any of the rights hereby granted to any person or persons whomsoever without the previous consent in writing of the Minister who may (without prejudice to his right to make such consent subject to any conditions he may think fit) require as a condition of giving such consent the assignee or assignees at

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26.
Lessee not to
cultivate, etc.

27.
Exclusion of
land for public
purposes, etc.

Advertisements,
prospectuses
etc.

Notice of
fresh issues
of capital.

Consent to
assignment.

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31.
Assignment.

his or their expense to execute a deed of covenant to observe and perform the covenants and conditions on the part of the Lessee in these presents contained.

31. (1) The Lessee shall not assign or purport to assign this Lease or any of the rights, powers or licences granted by this Lease or any interest in the same without the previous consent in writing of the Minister, except that the consent of the Minister shall not be required where the assignment is to another company which is itself a member of the group or groups of which the Lessee or any one of the companies owning the Lessee is a member, provided that the Minister shall be informed of any such assignment.

(2) The Minister shall not give his consent unless he is satisfied— 10

(a) that the proposed assignee is itself of good reputation or is a member of a group or groups of companies of good reputation or is owned by a company or companies of good reputation;

(b) that there is likely to be available to the proposed assignee either from its own resources or through other companies in the group of which it is a member, or otherwise, sufficient technical knowledge, experience and know-how and sufficient financial resources to enable it effectually to carry out a programme satisfactory to the Minister for the operations hereunder; and,

(c) that the proposed assignee is in all other respects acceptable to the Government of the Federal Republic. 20

(3) Provided that the Minister is satisfied as aforesaid, he shall not unreasonably withhold his consent.

Rights in
relation to
reciprocity
and to control
of Lessee.

32. (1) Unless the President on appeal by the Lessee shall otherwise determine, the Minister may at any time revoke this Lease if the Lessee shall be or become controlled directly or indirectly by a subject of or a company incorporated in any state or country other than the Lessee's country of origin, the laws of which do not permit citizens of Nigeria or companies incorporated in Nigeria or companies incorporated in that country controlled directly or indirectly by citizens of Nigeria, to acquire, hold and operate petroleum concessions on conditions which in the opinion of the Minister are reasonably comparable with the conditions upon which such rights are granted to subjects of that country. 30

(2) For the purposes of this clause the Lessee shall have a right of appeal to the President but any decision on such appeal shall relate only to the relevant conditions then in force and shall not restrict the powers of the Minister hereunder if relevant conditions subsequently change.

(3) The Minister shall determine whether any of the events specified in sub-clause (1) of this clause shall have happened. Any such determination by the Minister shall (unless the Minister shall himself reverse or alter such determination) be final and binding on the Lessee and neither any such determination nor any decision by the Minister or, on appeal, by the President to revoke this lease shall be capable of being referred to or subject to arbitration. 40

Lessee not to
obstruct
working of
other
minerals.

33. The Lessee shall exercise the liberties and powers hereby granted in such a manner as to offer no unnecessary or reasonably avoidable obstruction or interruption to the development and working within the said lands or lands adjacent thereto of any minerals not included in this Lease and shall at all times afford to the Minister or his representative and to the holders of prospecting licences or mining rights or leases in respect of any such minerals or any minerals within any lands adjacent to the said lands reasonable means of access and safe and convenient passage upon and across the said lands to such minerals for the purpose of getting, working, developing and carrying away the same. 50

34. The Lessee shall not hinder or prevent any person from having access to or using any road constructed in accordance with the provisions of this Lease, provided that:—

- (a) where any person uses such road in such a manner as in the opinion of the Lessee to do appreciable damage thereto or to enhance substantially the cost of upkeep thereof, the Lessee may call upon such user to contribute to the cost of upkeep of such road, and if such user shall fail to contribute such an amount as the Lessee may reasonably require towards the cost of upkeep of such road, the Lessee may prevent such person from having access to or using such road;
- (b) where any person uses such road in such a manner as to interfere materially with the free use and enjoyment of such road by the Lessee, the Lessee may call upon such person to limit his use of the road so as to cause a cessation of such interference, and if such person shall not so limit his use of such road the Lessee may prevent such person from having access to or using such road.

35. (1) As soon as the site of any borehole or well has been decided the Lessee shall notify the Chief Petroleum Engineer and the Director of Geological Survey in writing of the situation and elevation thereof and the same shall be described by a certain number in the plans and records which the Lessee is required to keep under the provisions of this Lease. The Lessee shall notify the Chief Petroleum Engineer and the Director of Geological Survey of any change of the number of any such borehole or well which may be made.

(2) No borehole or well shall be commenced and no borehole or well shall be recommenced after work has been discontinued thereat for more than six months unless fourteen days' notice in writing shall first have been given to the Chief Petroleum Engineer and the Director of Geological Survey. Provided that the provisions of this sub-clause shall not apply to cleaning out operations in a producing well.

36. (1) No borehole or well shall be abandoned and no cemented string or other permanent form of casing shall be withdrawn from any borehole or well which it is proposed to abandon without the prior consent in writing of the Chief Petroleum Engineer and the Director of Geological Survey, such consent not to be unreasonably withheld in the case of boreholes or wells which have become or are unproductive.

(2) Every borehole or well which the Lessee intends to abandon shall, unless the Chief Petroleum Engineer and the Director of Geological Survey otherwise determine, be so securely plugged by the Lessee as to prevent ingress and egress of water in and from any portion of the strata bored through.

(3) The Chief Petroleum Engineer and the Director of Geological Survey may in any case require that no borehole or well shall be plugged or any works be executed for that purpose save in the presence of an officer authorised by them.

37. Within two months after the expiration or sooner determination of this Lease the Lessee shall deliver up to the Minister in good order repair and condition and fit for further working all productive boreholes or wells (unless ordered by the Chief Petroleum Engineer to plug them as provided in the next succeeding Clause hereof and except such boreholes and wells as shall have been previously abandoned with the consent of the Chief Petroleum Engineer) which shall have been made by the Lessee under the liberty or power in that behalf hereinbefore contained, together with all casings and other appurtenances to such boreholes or wells below surface level and which cannot be moved without causing injury to the said boreholes and wells, and the Lessee shall also fill up or fence all holes or excavations that he may have made in the said lands to such extent as the Chief Petroleum Engineer may require

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34.
Lessee not to
hinder persons
using roads.

Notice of the
site and
commencement
of boreholes
and wells.

Abandonment
and plugging
of boreholes.

Delivering up
of productive
boreholes and
wells, etc., in
good order.

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38.
Plugging of
boreholes on
determination
of Lease, etc.

39.
Health and
safety of
workers and
employees.

40.
Avoidance of
harmful
methods of
workings.

Provision of
storage tanks,
pipes, pipelines
or other
receptacles.

Disposal of
waste oil,
salt water
and refuse.

Lessee to
keep records
of boreholes

and shall to the like extent restore so far as may be to their natural and original condition the surface of the said lands.

38. Within two months after the expiration or sooner determination of this Lease the Lessee shall if required so to do by the Chief Petroleum Engineer plug all boreholes and wells as provided in Clause 36 (Abandonment and plugging of boreholes) of this Schedule.

39. The Lessee shall comply with any instructions from time to time given in writing by the Chief Petroleum Engineer for securing the health and safety of persons employed in or about the said lands.

40. (1) The Lessee shall maintain all apparatus and appliances and all boreholes and wells capable of producing petroleum in good repair and condition and shall execute all operations in or in connection with the said lands in a proper and workmanlike manner in accordance with methods and practice customarily used in good oilfield practice and without prejudice to the generality of the foregoing provision the Lessee shall take all steps practicable in order:—

- (a) to control the flow and to prevent the escape or avoidable waste of petroleum discovered in or obtained from the said lands; and
- (b) to prevent damage to adjoining petroleum bearing strata; and
- (c) to prevent the entrance of water through boreholes and wells to petroleum bearing strata; and
- (d) to prevent the escape of petroleum into any water-well spring stream river lake reservoir estuary or harbour; and
- (e) to cause as little damage as possible to the surface of the said lands and to the trees crops buildings structures and other property thereon; and
- (f) to prevent the pollution of any watercourse.

(2) The Lessee shall comply with any instructions from time to time given by the Chief Petroleum Engineer in writing relating to any of the matters set out in paragraph (a) to (f) of sub-clause (1) hereof. If the Lessee objects to any such instruction on the ground that it is unreasonable he may within fourteen days from the date upon which the same was given refer the matter to arbitration in manner provided by Clause 60 (Arbitration) of this Schedule.

41. The Lessee shall use methods and practice customarily used in good oilfield practice for confining the petroleum obtained from the said lands in tanks gasholders pipes pipe-lines or other receptacles constructed for that purpose. No petroleum shall, save as a temporary measure during an emergency, be placed or kept in an earthen reservoir.

42. The Lessee shall drain all waste oil, salt water and refuse from tanks gas holders boreholes and wells into proper receptacles constructed and maintained by him for that purpose at a safe distance from such tanks gas holders and boreholes and wells and from any buildings or structures whether situate within the said lands or not and shall dispose of such waste oil salt water and refuse in the manner from time to time approved by the Chief Petroleum Engineer.

43. The Lessee shall keep accurate records in a form from time to time approved by the Chief Petroleum Engineer and the Director of Geological Survey of the drilling deepening plugging or abandonment of all boreholes and wells and of any alterations to the casing thereof. A log of all boreholes and wells shall be kept in a form from time to time approved by the Chief Petroleum Engineer and the Director of Geological Survey containing particulars of the following matters:—

- (a) the strata and subsoil through which the borehole or well was drilled; and
- (b) the casing inserted in any borehole or well and any alteration to such casing; and

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(c) any petroleum water workable minerals or mine workings encountered; and

(d) such other matters as the Chief Petroleum Engineer and the Director of Geological Survey may from time to time require.

The Lessee shall deliver copies of the said records and log to the Chief Petroleum Engineer and the Director of Geological Survey as and when required.

44. The Lessee shall as far as reasonably practicable correctly label and preserve for reference for a period of twelve months characteristic samples of the strata or water encountered in any borehole or well and samples of any petroleum discovered in the said lands.

And the Chief Petroleum Engineer and the Director of Geological Survey or their representatives shall have access to such samples at all reasonable times and shall be entitled to require that representative specimens not exceeding one half of any such sample be delivered to him and to retain any specimen so delivered.

45. (1) Within two months after the end of each year comprised in the term hereby granted or any renewal thereof the Lessee shall furnish to the Chief Petroleum Engineer and the Director of Geological Survey a record in a form from time to time approved by the Chief Petroleum Engineer and the Director of Geological Survey of the operations conducted in the said lands during each such year, together with a plan upon a scale approved by the Chief Petroleum Engineer showing the situation of all boreholes or wells and indicating all development and other works executed by him in connection with searching, boring for and getting petroleum.

(2) The Lessee shall also keep accurate geological plans maps and records relating to the said lands.

(3) The Lessee shall furnish to the Chief Petroleum Engineer and the Director of Geological Survey such plans and informations as to the progress of operations in the said lands as the Chief Petroleum Engineer and the Director of Geological Survey may from time to time reasonably require.

46. All logs records plans maps accounts and information which the Lessee is or may be from time to time required to furnish under the provisions of this Lease shall be supplied at the expense of the Lessee and shall (except with the consent in writing of the Lessee which shall not be unreasonably withheld) be treated by the Chief Petroleum Engineer and the Director of Geological Survey as confidential. The Chief Petroleum Engineer and the Director of Geological Survey shall nevertheless be entitled at any time to make use of any information received from the Lessee for the purpose of preparing and publishing aggregated returns and general reports on the extent of oil prospecting or oil mining operations in Nigeria and for the purposes of any arbitration or litigation between the Minister and the Lessee.

PART VIII—THE COVENANTS OF THE MINISTER

47. The Lessee paying the rents and royalties hereby reserved and observing and performing the covenants and provisions herein contained and on his part to be observed and performed, shall and may peaceably and quietly hold and enjoy the rights and privileges hereby demised for and during the term hereby granted without any lawful interruption from or by the Minister or any person rightfully claiming from or under him.

48. (1) The Lessee having paid the several rents and royalties due and having observed and performed the terms and conditions herein contained shall be entitled, on giving to the Minister not less than twelve months' previous notice in writing in that behalf not more than two years nor less than one year before the termination of the term hereby granted, to a renewal of this Lease in respect of the whole of the said

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Lessee to keep
samples of
strata,
petroleum
and water.

Plans and
records.

Reports to
be treated as
confidential.

For quiet
enjoyment.

Renewal.

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lands or any part thereof which complies with any written law for the time being in force for a further term of thirty years from the expiration of the said term upon the terms and conditions contained in any written law then in force relating to oil mining leases in Nigeria, or, if there shall not be any terms and conditions as aforesaid, upon the terms and conditions of the present Lease (other than this present clause). Provided that, in the event that the rate of royalty payable by the Lessee under the said lease so renewed cannot be precisely determined under any written law, such rate of royalty shall be fixed by agreement between the Minister and the Lessee or, in default of such agreement, shall be the rate of royalty payable in accordance with the provisions of the present Lease increased by 25 per cent of such rate.

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Right of
Lessee to
determine
Lease.

(2) In this Clause the expression "rate of royalty" includes certain yearly rents.

49. Without prejudice to any obligation or liability imposed by or incurred under the terms and conditions hereof the Lessee may at any time during the term hereby granted or any renewal thereof determine this Lease by giving to the Minister not less than twelve months' previous notice in writing to that effect.

Right of
Lessee to
abandon
portions of
the said
lands.

50. Without prejudice to any obligation or liability imposed by or incurred under the terms and conditions hereof the Lessee shall be entitled at any time during the term hereby granted or any renewal thereof by giving six months' notice in writing to the Minister to surrender the rights granted by this Lease in respect of any part or parts of the said lands. Provided that the part of the said lands in respect of which the said rights are retained shall be a compact area and either limited by well marked permanent physical boundaries or bounded by straight lines and the length thereof shall be not more than six times its average width.

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PART IX—GENERAL PROVISIONS

Power to
inspect plants,
records,
accounts, etc.

51. Any person or persons authorised by the Chief Petroleum Engineer or the Director of Geological Survey shall be entitled at all reasonable times to enter into and upon any land for the time being possessed or occupied by the Lessee in the said lands for the purposes hereinafter mentioned:

- (a) to examine the boreholes wells plant appliances buildings and works made or executed by the Lessee in pursuance of this Lease and the state of repair and condition thereof; and
- (b) to inspect and check the accuracy of the weighing or measuring appliances weights measurements logs records plans and maps which the Lessee is required to keep or make in accordance with the provisions of this Lease; and
- (c) to inspect and make abstracts or copies of any logs records plans maps or accounts which the Lessee is required to keep or make in accordance with the provisions of this Lease; and
- (d) to inspect the samples of strata petroleum or water which the Lessee is required to keep in accordance with the provisions of this Lease; and
- (e) to execute any works which the Chief Petroleum Engineer may be entitled to execute in accordance with the provisions of this Lease.

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Unit
development.

52. If at any time during the term hereby granted or any renewal thereof the Minister shall be satisfied that the said lands or any part thereof form part of a single geological petroleum structure or petroleum field (hereinafter referred to as "an oil-field") in respect of other parts of which other oil mining leases are then in force and the Minister shall consider that it is in the interest of Nigeria in order to secure the maximum ultimate recovery of petroleum and to avoid unnecessary competitive drilling that the oilfield should be worked and developed as a unit in co-operation by all the

persons, including the Lessee, whose leases extend to or include any part thereof, the following provisions shall apply:

(1) (a) The Lessee shall upon being so required by notice in writing by the Minister co-operate with such other persons, being persons holding oil mining leases in respect of any part or parts of the oilfield (hereinafter referred to as "the other Lessees"), as may be specified in the said notice in the preparation of a scheme (hereinafter referred to as "a development scheme") for the working and development of the oilfield as a unit by the Lessee and the other Lessees, in co-operation, and shall, jointly with the other Lessees submit such scheme for the approval of the Minister.

(b) The said notice shall also contain a description by reference to a map of the area in respect of which the Minister requires a development scheme to be submitted and shall state the period within which such scheme is required to be submitted for approval by the Minister.

(2) If a development scheme shall not be submitted to the Minister within the period limited in that behalf by the said notice, or, if a development scheme submitted in pursuance of the foregoing provisions of this Clause shall not be approved by the Minister, the Minister shall himself prepare a development scheme which shall be fair and equitable to the Lessee and the other Lessees and the Lessee shall perform and observe all the terms and conditions thereof.

(3) If the Lessee shall object to any such development scheme prepared by the Minister he may within 28 days from the date on which notice in writing of the said scheme shall have been given to him by the Minister refer the matter to arbitration in accordance with the provisions of the Arbitration Act Chapter 13 or any Act or Law amending or replacing the same for the time being in force. Notwithstanding any such reference to arbitration the Lessee shall, unless the arbitrator otherwise determines, perform and observe the terms and conditions of the development scheme pending the decision of the arbitrator.

53. In the event of a state of national emergency or war (of the existence of which the Minister shall be the sole judge):

(1) The Minister shall have the right of pre-emption of all crude oil gotten under this Lease and of all the products thereof and shall have the right to require the Lessee to the extent of any refinery capacity he may have in Nigeria to produce oil fuel that shall comply with the Admiralty specification at the time, provided that the said crude oil be of a suitable kind and quality for this purpose.

(2) The Lessee shall use his utmost endeavours to increase so far as reasonably possible with existing facilities the supply of oil and/or products thereof for the Government to the extent required by the Minister.

(3) The Lessee shall with every reasonable expedition and so as to avoid demurrage on the vessel or vessels engaged to convey the same, do his utmost to deliver all oil or products of oil purchased by the Minister under his said right of pre-emption in the quantities at the time and in the manner required by the Minister at a convenient place of shipment or at a place of storage in Nigeria to be determined by the Minister whether belonging to the Government or otherwise. In the event of a vessel employed to carry any such oil or products thereof on behalf of the Government being detained on demurrage at the port of loading, the Lessee shall pay the amount due for demurrage according to the terms of the charter party and/or the rates of loading previously agreed with the Lessee unless the delay is due to causes beyond the control of the Lessee. Any disputes which may arise as to whether the delay is due to causes beyond the control of the Lessee shall be settled by agreement

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In the event
of state of
emergency or
war Minister
to have right
of pre-emption.

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between the Minister and the Lessee and in default of such agreement the question shall be referred to arbitration in accordance with the provisions of the Arbitration Act or any Act or Law amending or replacing the same for the time being in force.

(4) The price to be paid for all oil or products of the refining or treatment of oil taken in pre-emption by the Minister shall be either

- (a) as specified in a separate agreement, or
- (b) if no such agreement shall have been entered into prior to the exercise of the right of pre-emption a fair price for the time being at the point of delivery as the same shall be settled by agreement between the Minister and the Lessee or in default of such agreement by arbitration in the manner provided by the last preceding sub-clauses.

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To assist in arriving at a fair price at the point of delivery the Lessee shall furnish for the confidential information of the Minister, if so required, particular of the quantities, descriptions and prices of oil or products sold to other customers and of charters or contracts entered into for carriage and shall exhibit to the Minister original or authenticated copies of contracts or charter parties entered into for the sale or carriage of such oil or products.

(5) The Minister shall be at liberty to take control of the works plant and premises of the Lessee in Nigeria and in such event the Lessee shall conform to and obey all directions issued by the Minister or on his behalf. Compensation shall be paid to the Lessee for any loss or damage that may be proved to have been sustained by the Lessee by reason of the exercise by the Minister of the powers conferred by this sub-clause. Any such compensation shall be settled by agreement between the Minister and the Lessee or, in default of agreement, by arbitration in manner provided by sub-clause (3).

20

Power to
execute works.

54. If the Lessee shall at any time fail to perform the obligations arising under the terms and conditions of any of the undermentioned Clauses of this Schedule:

- (a) Clause 19 (Measurement of petroleum obtained from the said lands);
- (b) Clause 36 (Abandonment and plugging of boreholes);
- (c) Clause 37 (Delivering up of productive boreholes and wells, etc., in good order);
- (d) Clause 38 (Plugging of boreholes on determination of Lease, etc.);
- (e) Clause 39 (Health and safety of workers and employees);
- (f) Clause 40 (1) (a) to (f) (Avoidance of harmful methods of working);
- (g) Clause 41 (Provision of storage tanks, pipes, pipe-lines or other receptacles);
- (h) Clause 42 (Disposal of waste oil, salt water and refuse);

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then and in any such case the Chief Petroleum Engineer shall be entitled after giving to the Lessee reasonable notice in writing of such his intention to execute any works which in the opinion of the Chief Petroleum Engineer or his agents may be necessary to secure the performance of the said obligations or any of them and to recover the costs and expenses of so doing from the Lessee.

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Rights of
distress.

55. If and whenever any of the rents or royalties reserved by this Lease or any part thereof respectively shall be in arrear or unpaid for the space of two calendar months next after any of the days whereon the same ought to be paid (whether the same shall have been legally demanded or not) then and so often as the same may happen the Chief Petroleum Engineer may (as an additional remedy and without prejudice to the power of distress and other the rights and remedies to which he would be entitled) enter into and upon any land which shall for the time being be possessed or occupied by the Lessee for the purposes of this Lease or the exercise of any of the rights thereby granted and may seize and distrain and sell as landlords

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may do for rent in arrear all or any of the stocks of petroleum and products thereof live and dead stock engines machinery tools implements chattels and effects belonging to the Lessee which shall be found in or upon the land so entered upon and out of the moneys arising from the sale of such distress may retain and pay all the arrears of the said rents and royalties and also the costs and expenses incident to any such distress and sale rendering the surplus (if any) to the Lessee.

10 56. If, and whenever the rents and royalties reserved by this Lease or any part thereof shall be in arrear for the space of six calendar months next after any of the days whereon the same ought to have been paid or if there shall be any breach or non-observance by the Lessee of any of the terms and conditions of this Lease or if the Lessee shall become bankrupt or make or enter into any arrangement or composition with his creditors or, if, where the Lessee is a company a Receiver shall be appointed or the company shall enter into liquidation whether compulsory or voluntary (except a voluntary liquidation of a solvent company for the purpose of reconstruction) or if the Lessee shall fail to perform and observe the terms and conditions of any development scheme prepared in accordance with the provisions of Clause 52 (Unit Development) of this Schedule then and in any such case the Minister may revoke this Lease and thereupon the same and all the rights hereby granted shall
20 cease and determine but subject nevertheless and without prejudice to any obligation or liability imposed by or incurred under the terms and conditions of this Lease.

Provided always that save as to the non-payment of rents or royalties the aforesaid power shall not be exercisable unless and until notice has been given to the Lessee specifying the particular breach complained of and if the breach is capable of remedy, requiring the Lessee to remedy the breach, and, in any case, requiring the Lessee to make compensation in money for the breach, and the Lessee fails, within a reasonable time thereafter, to remedy the breach if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the Minister, for the breach.

30 57. Subject to the provisions of Clause 37 (Delivering up of productive boreholes and wells, etc., in good order) of this Schedule the Lessee may, provided that all rents, royalties and other impositions payable by him by virtue of these presents have been paid and that all the covenants and conditions herein contained have been observed and performed, at any time or times within six calendar months after the determination of this Lease whether by effluxion of time or otherwise enter into and upon the said lands or any part thereof for the purpose of taking down, removing and disposing of, for his own use and benefit all or any of the buildings, works, railways, pipe-lines, machinery, utensils, implements, articles and things set up and used or employed by him in or about the said lands which the Minister shall not have elected to purchase under the provisions of Clause 58 (Power to Minister to purchase plant, etc.)
40 of this Schedule (except buildings and erections of brick stone or concrete) making reasonable compensation for all damage done to the said lands by such removal provided that if the completion of such taking down removal or disposal within the period of six calendar months aforesaid is not reasonably practicable, such period shall at the request of the Lessee be extended for a further period of six calendar months.

50 58. If at the expiration or sooner determination of this Lease the Minister shall be desirous of purchasing all or any of the buildings, works, railways, pipe-lines, machinery, utensils, implements, articles or things constructed set up or used or employed by the Lessee in or about the said lands and shall signify such his desire by notice in writing to the Lessee six calendar months at least before the expiration of this Lease (or if this Lease shall be determined under the powers of revocation

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56.
Power of
Revocation.

Power to
Lessee to
remove
plant, etc.

Power to
Minister to
purchase
plants, etc.

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hereinbefore contained at any time within three calendar months after the determination of this Lease) the Lessee shall sell to the Minister the articles and things specified in such notice at a price which failing agreement shall be fixed by arbitration as provided in Clause 60 (Arbitration) of this Schedule.

59. (1) Failure on the part of the Lessee to fulfil any of the terms and conditions of this Lease shall not give the Minister any claim against the Lessee or be deemed a breach of this Lease in so far as such failure arises from force majeure and if through force majeure the fulfilment by the Lessee of any of the terms and conditions of this Lease be delayed the period of such delay shall be added to the periods fixed by this Lease.

(2) In this Clause the expression "force majeure" includes the act of God, war, insurrection, riot, civil commotion, tide, storm, tidal wave, flood, lightning, explosion, fire, earthquake, and any other happening, which the Lessee could not reasonably prevent or control.

60. If at any time during the continuance of this Lease or after the determination thereof any question or dispute shall arise regarding this Lease other than matters expressed to be at the discretion of the Minister or any matter or thing connected herewith or the powers duties or liabilities of the Lessee hereunder or the amount or payment of any rent or royalty then and in all such cases the matter in difference shall be referred to arbitration in accordance with the provisions of the Arbitration Act, Chapter 13 or any act or law amending or replacing the same for the time being in force.

61. The marginal notes are for convenience only and do not form part of this Lease.

PART X

62. For the purpose of this Lease:—

(1) "Lessee" means a person to whom an oil mining lease is granted his successor in title and the person deriving title under him.

(2) "Petroleum" includes any mineral oil or relative hydro-carbon and natural gas existing in its natural condition in strata but does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation.

(3) "Crude Oil" means oil in its natural state before the same has been refined or otherwise treated but excluding water and foreign substances.

(4) "Natural gas" means gas obtained from boreholes and wells and consisting primarily of hydro-carbons.

(5) "Casinghead petroleum spirit" means any liquid hydro-carbons obtained from natural gas (before the crude oil from which it is derived has been measured for royalty) by separation or by any chemical or physical process.

(6) "Public purpose" has the meaning assigned to it in the Public Lands Acquisition Act.

(7) "Private land" means any land which is not Government Land within the meaning of the Government Lands Act or native land as defined in the Land and Native Rights Act.

(8) "Protected tree" means a tree which is for the time being protected by law and includes all trees within a Forest Reserve.

59.
Force
Majeure.

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Arbitration.

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Marginal
Notes.

Interpretation.

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Exhibit 18**Crude Offtake Agreement: Shell-BP Petroleum Company
of Nigeria and BP Trading Ltd.**

**Exhibit 18
Crude Offtake
Agreement:
Shell-BP
Petroleum
Company of
Nigeria and
BP Trading
Ltd.
25th August
1964**

AN AGREEMENT made the 25th day of August 1964, between THE SHELL-BP PETROLEUM DEVELOPMENT COMPANY OF NIGERIA LIMITED whose registered office is situated at 40 Marina, Lagos (hereinafter called "the Seller") and BP TRADING LIMITED whose registered office is situated at Britannic House, Finsbury Circus, London, E.C.2. (hereinafter called "the Buyer").

10 WHEREAS the Seller is engaged in the business of searching for and producing oil in Nigeria, and will from time to time have available for sale by way of export certain quantities of such oil.

NOW THEREFORE IT IS HEREBY AGREED as follows:—

1. Definitions

"affiliated company" means

- (a) The British Petroleum Company Limited; and
- (b) any company (other than the Buyer) which is for the time being directly or indirectly controlled by The British Petroleum Company Limited.

For the purposes of the foregoing

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- (a) a company is directly controlled by another company or companies carrying in the aggregate the majority of votes exercisable at general meetings
 - (b) a particular company is indirectly controlled by a company or companies (hereinafter called "the parent company or companies") if a series of companies can be specified, beginning with the parent company or companies and ending with the particular company, so related that each company of the series, except the parent company or companies, is directly controlled by one or more of the companies earlier in the series.

"oil" means any grade or grades of crude oil, condensate, and casing head petroleum spirit.

2. Quantity

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- (1) Subject as hereinafter provided the Seller shall sell and deliver, and the Buyer shall purchase, receive and pay for, or procure to be purchased, received and paid for, a quantity of oil which the Buyer may require from time to time for export from Nigeria.

The Buyer shall give to the Seller not less than nine months notice of its estimated requirements hereunder and such shorter notice of its actual requirements as the Seller may reasonably require, in accordance with a programme to be agreed.

(2) The Seller having entered into an Agreement with Shell International Petroleum Company Limited (hereinafter referred to as Shell) on like terms herewith, the following provisions shall apply:—

- 40
- (a) If the oil available to the Seller from its own production for sale by way of export in any period is less than the total of the requirements of the oil in question advised by the Buyer and Shell for that period, the shortfall shall be deemed first to reduce the higher requirement to or towards the level of the lower and as necessary thereafter to reduce both equally or to reduce the respective requirements of the Buyer and Shell in such other proportions as they may agree between themselves and advise to the Seller.
 - (b) If the oil available to the Seller from its own production for sale by way of export in any period exceeds the total of the requirements of the oil

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in question advised by the Buyer and Shell for that period the Buyer shall have the option to purchase one half of such excess or, in the event of Shell exercising its like option for a quantity less than half of such excess or not exercising its like option at all, the greater quantity then remaining available to the Seller. The Buyer shall not unreasonably delay the exercise or relinquishment by it of such option.

3. Delivery

The oil shall be delivered by the Seller free of expense to the Buyer on board vessels provided by or on behalf of the Buyer at Bonny Terminal or at such other delivery point or terminal as may be agreed between the Seller and the Buyer from time to time.

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4. Risk and Property

The oil shall be at the risk of the Buyer upon passing the vessel's permanent hose connection at the port of loading and property therein shall pass to the Buyer at the same time.

5. Measurement, Sampling and Testing

(1) The quantity and quality of the oil in each delivery shall be determined by measurement and sampling at the loading terminal, and testing at the Seller's laboratory and shall be so certified in Certificates of Quality and Quantity prepared by the Seller. The results of such measurement, sampling and testing shall for the purposes of this Agreement be treated as conclusive as to the quantity and quality of the oil loaded unless the Buyer within ninety days of commencement of loading of the delivery in question gives notice in writing to the Seller that it wishes to dispute the accuracy of such results. If such notice is not given within ninety days of commencement of loading the Seller shall be under no obligation to entertain or investigate the Buyer's complaint. If such notice is so given within ninety days of commencement of loading the parties shall consult together for the purpose of reaching agreement as to the quantity and quality of the oil loaded. If agreement has not been reached within sixty days of the notice in question having been given the matter shall be referred to an Expert appointed under Clause 13 whose findings upon testing a set of reference samples, in the case of disagreement regarding quality, shall be final and binding upon both parties.

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(2) Unless otherwise agreed the measurement, sampling and testing of each delivery of oil shall be carried out in accordance with the methods from time to time prescribed, approved or accepted by the American Society for Testing and Materials (ASTM) and/or the Institute of Petroleum (IP) and/or the American Petroleum Institute (API). The ASTM/IP Petroleum Measurement Tables, 1952 edition, or the latest revised edition thereto, shall be used for the calculation of volumes at 60°F based on such measurement and sampling.

(3) Unless otherwise agreed the quantities supplied by the Seller to the Buyer shall be determined at the time of loading each shipment by reference to measurements in the shore tankage from which the shipment in question is drawn. All reasonable facilities shall be given to the Buyers' representative to enable him to supervise and check the readings and calculations used in the determination of such quantities. Should the Buyer not appoint such representative by the time that the Master of the tankship declares his readiness to load then the Seller shall proceed alone.

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(4) Unless otherwise agreed the quality of the oil contained in each delivery certified in the Certificate of Quality shall be ascertained from samples taken prior to the commencement of loading of the delivery in question and representative of the oil contained in each of the shore tanks from which the oil in question is drawn. If the Buyer has a representative present prior to the commencement of loading, all

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reasonable facilities shall be extended to him on request to witness the drawing of the reference samples. The reference sample for each shore tank shall be divided into three portions and sealed. One such portion shall be made available to the Buyer or his nominee and the other two portions shall be retained by the Seller for three months.

(5) The Seller shall advise the Buyer of the exact methods to be used for the determination of quantity and quality as mentioned in paragraph (2) of this Clause 5, and shall thereafter advise the Buyer as and when they are significantly changed or modified.

6. Nominations

- 10 (1) The Buyer shall give to the Seller adequate advance notice of
- (a) the quantity of each type or grade of the oil to comprise each delivery, and
 - (b) the dates between which it requires the Seller to make each such delivery.
- (2) Upon receipt of such notice, the Seller shall promptly advise the Buyer as to the loading terminal or delivery point in accordance with Clause 3.
- 20 (3) The Buyer shall as soon as practicable advise the Seller of the name, capacity and expected date of arrival at the designated terminal or delivery point of the vessel nominated by it to receive delivery of the oil, provided that the length, beam and draught of such vessel are within maximum limits agreed from time to time for that terminal or delivery point. The Seller shall promptly accept or reject each such nomination, but may not unreasonably reject any nomination. In the case of rejection of a nomination, the Seller shall indicate the date or dates on which an alternative vessel would be acceptable and the Buyer may renominate accordingly. The Buyer may, by giving adequate notice to the Seller, cancel, amend or substitute by another vessel of similar size any previous nomination.
- (4) If it is anticipated that a vessel will arrive later than 48 hours after the nominated arrival date, the Buyer shall, as soon as practicable, renominate the expected arrival date of the vessel. The remaining conditions for renominating shall mutatis mutandis be in accordance with Clause 6 (3). Notwithstanding the renomination period mentioned above the Sellers undertake to load a vessel as expeditiously and as soon as possible after the vessel's notice of readiness to load is given.

7. Loading Conditions

- 30 (1) In respect of the oil comprising each delivery hereunder the following conditions shall apply:—
- (a) The Seller shall load each vessel at a berth or berths which it shall provide or cause to be provided free of charge and which a vessel of maximum dimensions agreed from time to time can safely reach and leave and at which such vessel can lie and load always safely afloat.
 - 40 (b) The Seller shall arrange to load each vessel as expeditiously as possible. The Seller shall at all material times and at its own expense provide and maintain or cause to be provided and maintained in good working order all necessary flexible hoses, connections, pipelines, tankage facilities, pumps and other accommodation for such expeditious loading of the vessel.
- (2)
- 50 (a) The time allowed for loading each cargo shall begin to run from six hours after written notice has been given to the Seller or its representative of the vessels readiness to load (berth or no berth) provided however that such time shall not commence before 48 hours prior to 0.01 a.m. or later than 54 hours after 24.00 hours on the estimated date of arrival as accepted by the Seller under Clause 6 hereof, unless the Seller shall

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actually commence loading before such notified first date of arrival, in which event the time allowed for loading shall commence to run either from six hours after written notice has been given or from the commencement of the loading, whichever is the later. Thereafter the time allowed for loading each vessel shall run continuously and shall be for such length of time on which the parties will agree from time to time.

Failing such agreement an expert appointed in accordance with the provisions of Clause 13 hereof shall decide reasonable rates having regard to loading conditions and performance of the type and size of the vessel used.

- (b) Save as is provided in paragraph (2) (c) and (2) (d) of this Clause 7 if the time allowed for loading any cargo is exceeded (whether or not such excess is due to any cause falling within the scope of Clause 17) the Seller shall unless otherwise agreed pay to the Buyer demurrage at a fair and reasonable rate applicable to vessels of the size of the vessel in question which unless otherwise agreed shall be calculated by applying the London Tanker Brokers' Panel Average Freight Rate assessment appropriate to the size of the vessel concerned and applicable to the date of commencement of loading of such vessel to the demurrage rate applicable to the size of such vessel provided for in the International Tanker Nominal Freight Scale as amended from time to time or such other freight scale as may be issued in replacement thereof.
- (c) If the time allowed for loading any cargo is exceeded as a result of breakdown of machinery or fire in or about the loading facilities, the rate of demurrage payable shall be one half of the rate provided in paragraph (2) (b) of this Clause 7.
- (d) The Seller shall not be liable to pay any demurrage incurred as a result of fault or failure of the vessel or if loading of the delivery is suspended for the vessel's purposes.
- (e) Payment of demurrage shall be due on demand by the Buyer and shall be payable in sterling in London or in such other currency or at such other place as may be agreed between the parties.
- (f) The Seller shall pay all charges for wharfage and dockage at the port of loading including expenses if any of shifting berth unless such shift shall be for the vessel's purposes.

8. Price

The price for oil to be sold and delivered hereunder shall be fair and commercial and shall be established between the parties in periodical negotiations, with due regard to the prices of comparable oil at the principal competitive world market export centres that is where such oil is traded in full cargo lots within a normal commercial framework, taking into account differences in quality, location and other relevant circumstances. Review of the price, to be established with due regard to the above criteria, may be requested by either party at any time and shall in any event take place at intervals of not more than 12 months.

9. Payment

- (1) Payment for each delivery of the oil shall be made
 - (a) for the quantity and quality determined in accordance with Clause 5;
 - (b) at the prices established in accordance with the terms of Clause 8; and
 - (c) by the Buyer to the order of the Seller in sterling in London (or in such other currency or in such other place as may from time to time be agreed between the parties) and shall become due when property in the oil passes

to the Buyer, and payment shall be made within 14 days of receipt of invoice, unless the parties agree (for any delivery or series of deliveries) on a period within which payment may be made after becoming due as first provided in which case payment shall be made within the period as agreed.

Provided that if with respect to any delivery a notice is given in accordance with Clause 5, disputing the accuracy of the quantity and/or quality of the oil concerned as recorded in the Certificates of Quantity and Quality, provisional payment shall be made in accordance with the quantity and quality first determined and any necessary adjustments shall be made by further payment or repayment as the case may require when the correct information has been agreed or determined.

(2) If the Buyer shall fail either wholly or in part to comply with the provisions of paragraph (1) (c) hereof, whether or not the failure of the Buyer shall fall within the scope of Clause 17, the provisions of Clause 18 (2) hereof shall apply.

10. Rates of Exchange

The following rates of exchange of currency shall be used as necessary for all payments pursuant to this Agreement:—

(1) For the conversion of United States dollars into pounds sterling: the 11 o'clock a.m. rate for selling United States dollars by telegraphic transfer on New York quoted by the London Office of the Chase Manhattan Bank on the date of commencement of loading of the cargo in question, or if no such rate is quoted for such date, for the nearest available day within the seven days immediately preceding such date. If no such rate can be ascertained under the foregoing provision, the parties shall adopt for such conversion the telegraphic transfer selling rate quoted by an alternative bank in London, to be agreed between the parties, or failing such agreement a reasonable rate of exchange to be determined by an expert appointed in accordance with Clause 13.

(2) For the calculation of any currency conversion other than as provided in paragraph (1) hereof, the rate of exchange to be used shall be a rate on which the parties will agree, or, failing their agreement, a reasonable rate of exchange which an expert appointed in accordance with Clause 13 shall determine.

11. Imposts Taxes and Duties

The Seller shall be responsible for any taxes, duties or other imposts in Nigeria arising in connection with the sale and delivery of the oil, other than Harbour Dues.

12. Arbitration

Except where otherwise expressly provided herein, any dispute between the parties touching the construction, meaning or effect of this Agreement or the rights or liabilities of the parties hereunder or any matter arising thereout or connected therewith shall, except where otherwise specifically agreed, be referred to two arbitrators in England, one to be appointed by each party. Any such reference shall be deemed a submission to arbitration under the provisions of the English Arbitration Act, 1950, or any statutory modification or re-enactment thereof for the time being in force.

The termination of this Agreement shall not prejudice any rights or remedies accruing before, at or in consequence of the termination, or any proceedings with respect to any rights or remedies, including proceedings by way of arbitration hereunder.

13. Appointment of Experts

(1) Where pursuant to any provisions of this Agreement any matter is required to be determined by an expert, the expert shall be a person fitted by the possession of expert knowledge for the determination of the particular matter in question.

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(2) The expert shall be appointed by agreement between the parties or, in default of such agreement, by the President of the Institute of Petroleum, London, England.

(3) The parties shall furnish the expert with all information written or oral which he may reasonably require for his determination.

14. Jurisdiction

This Agreement shall be construed and take effect in accordance with English law, and both parties shall submit to the jurisdiction of the English courts.

15. Assignment

(1) The Buyer may assign all its rights and obligations hereunder to any affiliated company. 10

(2) The Buyer may from time to time, with the prior consent of the Seller which shall not be unreasonably withheld, make arrangements under which another company will be bound to purchase receive and pay for and the Seller will be bound to sell and deliver to such company the whole or any part of the oil which under this Agreement is to be sold and delivered to the Buyer upon terms and conditions to the like effect as the terms and conditions of this Agreement, excepting Clause 2 (2).

Upon making any such arrangements the Buyer shall stand discharged from all its obligations in respect of the quantities of the oil comprised in the arrangements, save that the Buyer shall stand bound as guarantor to the Seller of the performance by the said company of its obligations as regards such oil. 20

16. Notices

(1) All notices required or permitted to be given by one party to the other under this Agreement shall be sufficiently given if in writing and delivered to the other party or sent by first class air mail, telegraph, telex or cable to the other party at the address of the party in question as stated in the preamble hereto, which address in the case of the Seller shall be that of its principal place of business.

(2) Either party may at any time by written notice to the other appoint a different or further address for the purposes of paragraph (1) hereof.

17. Force Majeure 30

Neither the Seller nor the Buyer shall be responsible for any failure to fulfil any term of this Agreement if fulfilment has been delayed, hindered, interfered with or prevented by any circumstances whatsoever which are not within the control of the Seller or the Buyer as the case may be or by compliance with any order or request of any national, port, transportation, local or other authorities, or of any body or person purporting to be or to act for such authority.

18. Additional Conditions

(1) If either party shall go into liquidation or if a Receiver or Sequestrator of the undertaking and assets (or any part thereof) of either party shall be appointed or if either party shall become insolvent or shall enter into a Deed of Arrangement for the Benefit of its creditors, or shall do or suffer any equivalent act or thing under any applicable law, the other party may, by written notice, forthwith terminate this Agreement but without prejudice to any right of action or claim accrued at the date of termination. 40

(2) If the Buyer shall fail to pay the whole or any portion of the price of each delivery of oil as provided in Clause 9 within fourteen days of such price becoming due and payable, the Seller may on written notice to the Buyer forthwith suspend all or any deliveries of oil until the Buyer has paid any such amount owing, or may, at its option on written notice to the Buyer forthwith terminate this Agreement without prejudice to any right or claim vested at the date of termination. 50

19. Period

This Agreement shall come into force on 1st July 1964, and shall continue in force until it has been terminated in accordance with either:—

- (a) the expiry of not less than three years prior written notice of intention to terminate given by either party to the other, provided however that such notice shall not take effect before 30th June 1968 or
- (b) the provisions of Clause 18 hereof.

IN WITNESS WHEREOF THIS AGREEMENT has been entered into the day and year first above written.

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SIGNED FOR AND ON BEHALF OF
BP TRADING LIMITED

W. H. S. McCOLL
Asst. General Manager
Supply and Development Department

SIGNED FOR AND ON BEHALF OF
THE SHELL-BP PETROLEUM DEVELOPMENT COMPANY
OF NIGERIA LIMITED

S. GRAY
General Manager

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Exhibit 4

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**Supplemental Agreement: Government of Kuwait, BP
(Kuwait), Gulf Kuwait Company and Kuwait Oil
Company**

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IN THE NAME OF GOD THE MERCIFUL THE COMPASSIONATE THIS AGREEMENT is made in Kuwait on the Sixth day of Sha'aban 1386 corresponding to the Nineteenth day of November, 1966 between the GOVERNMENT OF KUWAIT as represented by His Excellency Shaikh Sabah al-Ahmad Al-Sabah in his capacity as Minister of Finance and Oil (hereinafter referred to as "the Government") of the first part and BP (KUWAIT) LIMITED and GULF KUWAIT COMPANY (hereinafter jointly referred to as "the Companies") and KUWAIT OIL COMPANY LIMITED (hereinafter referred to as "the Operating Company") of the second part SUPPLEMENTAL to and in variation of existing agreements between the said parties.

NOW THEREFORE IT IS HEREBY AGREED AS FOLLOWS:

ARTICLE 1

A. For the purpose of providing for the expensing of royalties on crude petroleum (instead of crediting them against income tax) and for the capitalisation and amortisation of exploration and drilling expenses the Government proposes that the

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Kuwait Income Tax Decree No. 3 of 1955 be amended and to this end to submit to the National Assembly of the State of Kuwait a Bill in the form appearing (together with an agreed translation) in the Annexe to this Agreement. The law when enacted and promulgated in such form is hereinafter referred to as the "1966 Income Tax Law".

B. Upon the enactment and promulgation of the 1966 Income Tax Law the Companies and the Operating Company shall forthwith admit its applicability to them with effect for all taxable periods ending on or after 31st December, 1964 and shall within ten days after this Agreement has been ratified and the 1966 Income Tax Law has been enacted and promulgated make or cause to be made to the Government such payments as will bring the total of the amounts already due and paid under the existing income tax legislation up to the total of the amounts due and payable at that date under the provisions thereof as amended by the 1966 Income Tax Law. 10

C. The total income of the Government and its administrative entities, in respect of the production, refining, purchases, sales, exports, transportation and profits (and distribution therefrom) of crude petroleum, natural gas or the products of such petroleum or gas produced in Kuwait by the Companies and sold by them or by their purchasers who are tax payers in Kuwait, for export from Kuwait shall be equal in respect of any year to the amount payable to the Government in respect of such year calculated in accordance with existing agreements as amended by this Agreement. 20

D. However, if after the Effective Date hereof, changes should be made in the terms of any agreement now existing between a Government of a Middle East country and an oil company operating in that country and producing crude petroleum in quantities comparable to those produced by the Companies in Kuwait which result in that Government receiving a higher stated share of the profits arising from the production and sale of such petroleum than the share of the profits to be paid to the Government of Kuwait under the existing agreements as amended by this Agreement, then the Government shall have the right to ask the Companies to introduce any equitable alteration to the terms of these agreements in the light of all relevant circumstances. 30

ARTICLE 2

The Companies have agreed with effect from 24th Rajab 1381 corresponding to 1st January, 1962 to reduce to the sterling equivalent of one-half ($\frac{1}{2}$) United States cent per barrel of crude petroleum the permanent selling charge provided for under the Crude and Products Agreement of 24th Safar 1375 corresponding to 11th October, 1955.

ARTICLE 3

A. As the existing agreements between the parties do not provide for the Government to receive royalty in the form of crude petroleum instead of in money, it is agreed that the Government shall have the right to acquire crude petroleum from each of the Companies in any year not exceeding the percentage amount of royalty ($12\frac{1}{2}\%$) of the volume of net crude petroleum produced for the account of such Company in that year in accordance with the following provisions: 40

B. The crude petroleum so acquired shall be valued at the posted price of the Company from which such petroleum is acquired in effect on the date of each delivery for the relevant quality and gravity thereof, less:

- (1) the permanent selling charge described in Article 2 hereof, and

(2) an allowance calculated on the aforesaid posted price at the rate provided in Article 4 hereof for the calculation of the Allowance.

C. In implementation of this Article the Ministry of Finance and Oil and the Companies shall agree upon suitable procedure to govern deliveries.

D. Crude petroleum acquired by the Government under this Article (whether or not exported) shall, for all relevant purposes of the existing agreements between the parties and of this Agreement, be deemed to be sales to be exported to have been produced for the account of the Company making the delivery and to have been exported from Kuwait.

10 E. The provisions of this Article shall in no way affect the existing arrangements regarding the supply of products to the Government for local consumption.

ARTICLE 4

A. In order partially to offset and in consideration of the submission on the part of the Companies to the expensing of royalties herein contained, from each of the sums specified in Clause 3(a)(1) and (b)(1) of the Crude and Products Agreement an additional deduction shall be allowed:

(1) with respect to Clause 3(a)(1), applicable to each quality and gravity of crude petroleum sold by each of the Companies for export or acquired by the Government under Article 3 hereof whether or not exported;

20 and

(2) with respect to Clause 3(b)(1), applicable to each quality and gravity of crude petroleum attributable to the petroleum products sold by each of the Companies for export.

Such deduction is hereinafter called "the Allowance".

B. The maximum rates of the Allowance shall be such that the maximum monetary amount per barrel shall be equal in respect of

(1) any part of the year 1964, to eight-and-a-half percent of the posted price applicable thereto,

30 (2) any part of the year 1965, to seven-and-a-half per cent of the posted price applicable thereto plus United States \$0.0013235 per barrel for each full degree by which the gravity of such crude petroleum exceeds twenty-seven degrees API gravity, and

(3) any part of the year 1966 and of any year thereafter, to six-and-a-half per cent of the posted price applicable thereto, plus United States \$0.0026470 per barrel for each full degree by which the gravity of such crude petroleum exceeds twenty-seven degrees API gravity.

40 C. (1) From time to time the Companies shall assess whether the rate of the Allowance should be changed in respect of a year or years after 1966. Each such assessment shall be made in the light of the competitive, economic and market situation of the quality and gravity of crude petroleum concerned which is expected at the time of such assessment to prevail during the then reasonably foreseeable future as compared with the competitive, economic and market situation in 1964 of crude petroleum of such quality and gravity which was produced for the account of each of the Companies, and the Companies agree that the Allowance shall be eliminated if such assessment reveals that its elimination is justified. Subject to the condition stated in sub-paragraph (2), the rate of the Allowance shall not be changed to a rate greater than the rate of the Allowance applicable immediately prior to such change.

50 (2) The condition referred to in sub-paragraph (1) is that, if the Companies

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have reduced the rate of the Allowance as a result of circumstances which can be recognised as extraordinary and provided that, when making such reduction, the Companies, in notifying the Ministry of Finance and Oil of such reduction, have referred to this condition, the Companies may, when such extraordinary circumstances have ceased to exist and notwithstanding any other provision of this Article, after notification to the said Ministry, increase the rate of the Allowance applicable to crude petroleum of such quality and gravity to a rate not greater than that existing immediately prior to such reduction.

D. If and when a change is asked for by the Ministry of Finance and Oil in the rate of the Allowance applicable in respect of a year or years after 1966 to any quality and gravity of crude petroleum the Companies shall consult with the said Ministry and consider such data and views put forward by the said Ministry as are relevant to the comparison referred to in paragraph C(1) above as well as the rate of Allowance, if any, then prevailing in similar arrangements in other Middle East countries. 10

E. The rate of the Allowance applicable to any quality and gravity of crude petroleum shall be changed only after prior notification to the Ministry of Finance and Oil by the Companies of their intention to make such change, and such change shall become effective in accordance with notice in writing thereof given by the Companies to the said Ministry.

ARTICLE 5

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A. If in any year any other company (excluding the Kuwait National Petroleum Company) is engaged directly or indirectly either alone or with others in producing and exporting crude petroleum from any area under rights granted by the Government on terms which, if they were applied to either of the Companies, would result in that Company and its purchasers who are tax payers in Kuwait together making total payments to the Government in respect of crude petroleum produced and exported in that year (hereinafter called "other payments") which would be less than they are required to make under the existing agreements as amended by this Agreement, the total payments to be made by them in that year shall be limited to the higher of

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(i) the payments which would have been payable under the agreements existing between the Government and the Companies immediately before the Effective Date hereof;

or

(ii) the "other payments".

B. If either of the Companies consider that the circumstances envisaged in Paragraph A have arisen it shall, before invoking the provisions of the said paragraph, enter into discussion with the Government for the purpose of exchanging information regarding the pertinent facts and circumstances and discussing together such facts and circumstances. In such discussions due regard shall be given inter alia to the conditions in which operations are carried out and to the basic differences between the arrangements (including agreements and laws) applicable to the Companies and those applicable to the other company concerned. 40

C. The Companies shall continue to make payments to the Government in accordance with the provisions of existing agreements as amended by this Agreement (excluding this Article) until the amounts which would have been payable by them under the provisions of this Article have been settled by mutual agreement or by arbitration in accordance with Article 7 hereof. If the total payments so made to the Government in any year are found to have exceeded the amounts payable for

that year in accordance with the provisions of this Article the excess amounts shall be deducted from the next payments due.

D. For the purpose of implementing this Article the Ministry of Finance and Oil and the Companies may agree on the elements which would lead to a proper and equitable comparison.

ARTICLE 6

It is hereby agreed and declared that this Agreement constitutes a satisfactory settlement in respect of all matters relating to:

- 10 (i) the posted prices used by each of the Companies and its respective purchasers who are tax payers in Kuwait in calculating their income tax liability for all periods prior to the Effective Date hereof provided however that the rights of the Government in respect of the examination of the costs and operating expenses of the Companies and the Operating Company for these periods shall in no way be affected and also provided that the Government reserves its rights under existing agreements with respect to the level of posted prices established by each of the Companies for periods subsequent to the Effective Date;
- (ii) the percentage amount of royalty and its treatment for income tax purposes; and
- 20 (iii) the permanent selling charge referred to in Article 2 and the Allowance referred to in Article 4 of this Agreement.

ARTICLE 7

A. Without prejudice to the exercise of the jurisdiction of the Courts of the State of Kuwait in respect of matters arising between the Companies or the Operating Company and third parties in the State of Kuwait which do not affect the rights or obligations of the Companies under this Agreement and any existing or future agreements or writings between the parties, the provisions of this Article shall apply in substitution for those appearing in existing agreements between the parties.

30 B. If at any time any difference or dispute shall arise between the parties hereto concerning the aforesaid agreements and writings, the interpretation or execution of the same or anything therein contained or in connection therewith, or the rights or liabilities of the parties thereunder, the same shall, failing any agreement to settle it in any other way, be referred to two arbitrators, one of whom shall be appointed by each party to the difference or dispute, and a referee, who shall be appointed by the arbitrators before proceeding to arbitration.

40 C. Each party to such difference or dispute shall appoint its own arbitrator within sixty days after the delivery of a request in writing so to do by the other party, failing which its arbitrator may at the request of the other party be appointed by the President of the International Court of Justice, or, if the President is a citizen or national of the State of Kuwait or of the country of incorporation of either of the Companies, the Vice-President. In the event of the arbitrators failing within sixty days after the later of their respective appointments to agree upon the referee to be appointed by them the referee may be appointed at the request of the arbitrators or of either of them by the President of the International Court of Justice, or, if the President is a citizen or national of the State of Kuwait or of the country of incorporation of either of the Companies, the Vice-President, provided always that the referee shall not, unless the parties otherwise agree in writing, be a citizen or national of the State of Kuwait, any other Arab State, the United Kingdom or any

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(Cont'd)

country within the British Commonwealth of Nations or the United States of America.
D. Should the International Court of Justice be replaced by or its functions be substantially transferred to any new international tribunal, the functions of the President or Vice-President (as the case may be) of the International Court of Justice exercisable hereunder shall be exercisable by the President or Vice-President (as the case may be) of the new international tribunal without further agreement between the parties.

E. Should an arbitrator or the referee die, resign, refuse or become unable to act before a decision is given, the vacancy shall be filled by the method laid down in this Article for the original appointment.

F. The place and time of the arbitration proceedings shall be determined by the referee who shall also determine the procedure of arbitration after consultation with both arbitrators.

G. The decision of the arbitrators or, in the case of a difference of opinion between them the decision of the referee shall be final and binding upon the parties, and there shall be no appeal therefrom to any court.

H. In giving a decision the arbitrator or the referee shall specify an adequate period of delay during which the parties shall conform to the decision, and a party shall be in default if it has failed to conform to the decision prior to the expiry of that period and not otherwise.

I. The parties base their relations with regard to the agreements between them on the principle of goodwill and good faith. Taking account of the different nationalities of the parties the agreements between them shall be given effect and must be interpreted and applied in conformity with principles common to the laws of Kuwait and of England, and, in the absence of such common principles, then in conformity with the principles of law normally recognised by civilised states in general, including those which have been applied by international tribunals.

J. In the event of a dispute to which either of the Companies or the Operating Company are party arising in connection with any Kuwait income tax legislation to which it shall have submitted, the dispute shall be settled in accordance with the procedural provisions of the Kuwait Income Tax Decree No. 3 of 1955 as amended by the 1966 Income Tax Law.

ARTICLE 8

This Agreement is written in Arabic and English and both languages shall be given equal weight in the interpretation thereof. In the interpretation of this Agreement the words and phrases defined in any existing agreements between the parties hereto and mentioned herein shall have the same meaning as therein defined.

ARTICLE 9

This Agreement shall become effective as from the 1st day of January, 1964 (in this Agreement called "the Effective Date") provided that within two months of the signature hereof and in accordance with the Constitution of the State of Kuwait,

(1) The Agreement has been ratified; and

(2) the 1966 Income Tax Law as set out in the Annexe hereto has been enacted.

IN WITNESS WHEREOF the Minister of Finance and Oil of the Government

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and the authorised representatives of the Companies and the Operating Company have signed their names on the day and year first above written.

For the GOVERNMENT OF KUWAIT
Minister of Finance and Oil

.....
Sabah al Ahmad al Sabah

For BP (KUWAIT) LIMITED

.....
J. W. R. Sutcliffe

10 For GULF KUWAIT COMPANY

.....
Elston R. Law

For KUWAIT OIL COMPANY
LIMITED

.....
James E. Lee

Exhibit 4
Supplemental
Agreement:
Government
of Kuwait,
BP (Kuwait),
Gulf Kuwait
Company and
Kuwait Oil
Company.
19th November
1966
(Cont'd)

Exhibit 2

Supplemental Geneva Agreement

Exhibit 2
Supplemental
Geneva
Agreement.
1st June, 1973

From J. W. R. Sutcliffe
To the Minister of Oil and Minerals (Iraq)
To the Minister of Finance and Oil (Kuwait)
Dear Excellency,
Geneva, June 1, 1973

20 To the Minister of Oil and Minerals (Iraq)
To the Minister of Finance and Oil (Kuwait)
Dear Excellency,

30 With reference to the Supplemental Agreement signed today, I confirm that with reference to the last paragraph of Article (I) of the Geneva Supplemental Agreement signed on the 1st June, 1973, the re-affirmation referred to in above-mentioned Article will in no way affect or prejudice the respective positions of Iraq and Kuwait and the Companies concerned as regards the application of exchange rates for converting the Dollar to Pound Sterling during the period from 19th December 1971 to January 19, 1972 (inclusive) referred to in letters number 411, 711 and 759 from the Minister of Oil and Minerals of Iraq dated 22 March 1972, 15 May 1972 and 23 May 1972 respectively addressed to Iraq Petroleum Company Limited, Mosul Petroleum Company Limited and Basrah Petroleum Company Limited (letter number GOA/CAC/1/1/1-2241 from the Minister of Finance and Oil of Kuwait dated February 27, 1972 addressed to the Managing Director, Kuwait Oil Co. Limited) and subsequent correspondence with reference thereto.

I would be grateful if you indicated your agreement with the foregoing by countersigning the duplicate original of this letter.

Please accept my highest respects.

J. W. R. SUTCLIFFE.

40 Accepted.
ABDUL-RAHMAN AL-ATEEQY.
SADOON HAMMADI.

THE GENEVA SUPPLEMENTAL AGREEMENT

This Agreement signed on 1st June amends the original Geneva Agreement dated 20th January 1972 and the Nigerian Agreements dated June, to make them more sensitive to fluctuations in currency movements against the dollar and with a consequent bias to make more frequent adjustments to posted prices. Similar Agreements were made between Libya and Oil Companies operating in that country.

The main points of the Supplemental Agreement are:—

- 8.49
- (1) The formula has been reconstituted to eliminate the factor of $\frac{8.49}{11.02}$ which was 10
previously included reducing the effect of currency changes on the posted prices movements by approximately 77%.
- (2) The currency adjustments under the Agreement will now apply to all the escalations in posted prices provided for under the Tehran and related Agreements. Previously the adjustments applied only to the 2½% escalation.
- (3) The arithmetic average is now based on eleven currencies instead of nine, as Canada and Australia have been introduced, with the effect of reducing the arithmetic average to date.
- (4) One point movement in the arithmetic average will now trigger a posted price adjustment instead of two points. 20
- (5) The calculation of the arithmetic average will be made on the 23rd of each month and posted prices will be adjusted on the 1st of the following month. Certain amendments regarding the treatment of floating currencies in the calculation have been introduced.
- (6) Special arrangements are made for the calculation of posted prices effective 1st June and 1st July 1973.
- (7) The new formula for posted prices is:

$$P^1 = P + T^1 \frac{(B-A)}{100} \quad 30$$

Where P = the Posted Price that would have applied on the first day of the month of adjustment absent such adjustment, and excluding with respect to East Mediterranean exports any Suez Canal and Temporary Freight Allowances.

P^1 = the Adjusted Posted Price and in the case of East Mediterranean exports the Adjusted Posted Price excluding any Suez Canal and Temporary Freight Allowances.

A^1 = the most recent prior Effective Average preceding the currency change (or the Base Average if no prior Effective Average had superseded it). 40

B^1 = the new Effective Average.

T^1 = the Posted Price that would have applied on the first day of the month of adjustment under the Tehran and Related Agreements excluding the effect of any adjustment under the Geneva Agreement as signed on January 20, 1972, the Nigerian Agreements, or as amended by this Supplemental Agreement and excluding with respect to East Mediterranean Exports any Suez Canal and Temporary Freight Allowances.

- (8) The new formula for adjusting to Suez Canal allowance and Temporary

Freight Premium is to multiply such amounts by $\frac{P^1}{T^1}$.

Exhibit 2
Supplemental
Geneva
Agreement.
1st June, 1973
(Cont'd)

(9) The OPEC demand was to tie the price of oil to the official gold price as a floor and to provide for further adjustment upwards if the dollar depreciated further against other currencies. The effect of this demand would have been to increase the posted prices at 1st June 1973 by approximately 15% over the prices at 1st January 1973 whereas the Supplemental Agreement increases such postings by approximately 11.85%. 5.8% of this increase was given at 1st April under the original Agreement.

10 (10) There is no retroactivity in the Agreement apart from an adjustment relating an interpretation of the wording of the original agreements regarding the treatment of floating currencies.

J. H. LOOSEMORE

6th June 1973

JHL/AVS

1st of June 1973

GENEVA

SUPPLEMENTAL AGREEMENT

20 Each of the States of Abu Dhabi, Iran, Iraq, Kuwait, Nigeria, Qatar and Saudi Arabia (hereinafter referred to as "States") and each of the Companies listed in Annexe "A" hereto and their affiliates (hereinafter referred to as "Companies") is a party to one or more of the following agreements which provide for changes in the posted prices of crude oil in relation to changes in the relative values of specified currencies:

The Geneva Agreement dated January 20, 1972 between certain Gulf States and various Companies and the Nigerian Agreements dated in June 1972 between Nigeria and various Companies.

30 Due to the recent currency changes the States and the Companies have considered modifications in the application of the formula for adjusting crude oil posted prices set forth in the above-mentioned Agreements that are appropriate to achieve their objectives more precisely. As a result, the States and the Companies which are respectively parties to each of those Agreements have agreed as follows:

1. Annexe 2 to the Geneva Agreement and Annexe 1 to each of the Nigerian Agreements are hereby modified in accordance with Annexe "B" hereto. The provisions of this Agreement are embodied in and hereby made a part of the Geneva Agreement and the Nigerian Agreements. All provisions of those Agreements, whether amended or unaffected by this Agreement, are hereby specifically reaffirmed.
- 40 2. Each of the Companies will recalculate the March 1, 1973 arithmetic average of the Exchange Rate change of the nine specified currencies against the U.S. Dollar against the April 30, 1971 IMF parities in accordance with paragraph 2 of the Geneva Agreement and paragraph 5 of each of the Nigerian Agreements in effect on March 1, 1973, except that in such recalculation, the Exchange Rates used for the Japanese Yen and the Italian Lire shall be the arithmetic average of the mean of the commercial buying and selling rates for each of such currencies on those days in February 1973 on which such currencies floated. The Company's obligations to the State concerned in respect of crude oil produced and/or exported as the case may be in April and May 1973 shall then be computed on the basis of the notional posted prices which result from the Effective Average thus established. Within 30 days of the Effective Date hereof or on the respective dates

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- on which such obligations for April and May are payable, whichever in each case is later, each Company will pay to the State concerned the difference between such Company's obligations as thus computed for April and May 1973 and its obligations for those months computed on the basis of the crude prices in fact posted for those months.
3. Each State shall adopt within its jurisdiction such measures as may be necessary to implement the provisions of this Supplemental Agreement. Each Company shall adopt and adhere to the provisions of this Supplemental Agreement as of the Effective Date.
4. The Effective Date of this Supplemental Agreement is June first 1973. 10
Done this first day of June 1973 at Geneva, Switzerland.
- | | | |
|--|--|-----------|
| <p>For the States:</p> <p>Abdulla Absi
Abu Dhabi</p> <p>Jamshid Amouzegar
Iran</p> <p>Sadoon Hammadi
Iraq</p> <p>Abdul-Rahman Al-Ateeqy
Kuwait</p> <p>Shettima Ali Monguno
Nigeria</p> <p>Ali Jaidah
Qatar</p> <p>Ahmed Zaki Yamani
Saudi Arabia</p> | <p>For the Companies:</p> <p>J. W. R. Sutcliffe</p> <p>J. D. Bonney</p> <p>G. T. Piercy</p> <p>W. P. Schmoe</p> <p>H. van der Schaaf</p> | <p>20</p> |
|--|--|-----------|

ANNEXE A TO
SUPPLEMENTAL AGREEMENT

- | | |
|---|---------------------|
| <p>Mobil Oil Corporation</p> <p>Exxon Corporation</p> <p>Texaco Inc.</p> <p>The British Petroleum Company Limited</p> <p>Standard Oil Company of California</p> <p>Shell Petroleum Company Limited</p> <p>Shell Petroleum Maatschappij</p> <p>Atlantic Richfield Company</p> <p>Continental Oil Company</p> <p>Gulf Oil Corporation</p> <p>Arabian Oil Company</p> <p>Hispanica de Petroleos S.A.</p> <p>American Independent Oil Company of Iran</p> <p>Compagnie Francaise des Petroles</p> <p>Charter (Iran) Petroleum Company</p> <p>Participation and Exploration Corporation</p> <p>Phillips Petroleum Company</p> <p>Standard Oil Company (Ohio)</p> | <p>30</p> <p>40</p> |
|---|---------------------|

ANNEXE "B" TO
SUPPLEMENTAL AGREEMENT

Exhibit 2
Supplemental
Geneva
Agreement.
1st June, 1973
(Cont'd)

I. GENEVA AGREEMENT

Paragraph 2 of Annexe 2 to the Geneva Agreement is amended effective May 1, 1973 to read as follows:

"2. (a) As of the Effective Date of this Supplemental Agreement the posted price for each crude oil exported from the Gulf States shall be calculated as follows:
Step 1: Add to posted price of January 1, 1973 an amount equal to 8.49% of the January 1, 1973 increase of 5 U.S. cents.

10 Step 2: Add to the resulting price an amount equal to T^1 (as defined in subparagraph (c) (ii) below) multiplied by the difference between the arithmetic average (hereinafter called the Base Average) of the percentage Exchange Rate changes of the 11 currencies listed in Attachment 1 against the U.S. Dollar during the period 15th to 29th May 1973 inclusive against April 30th, 1971 official, IMF par value or floating exchange rates as the case may be, as set out in Attachment 1 (which is 22.50%) and the arithmetic average of the percentage Exchange Rate changes of the same 11 currencies on January 20, 1972 (in terms of official central, par value, or floating rates as the case may be) against such April 30, 1971 exchange rates (which is 9.85%), divided by 100.

20 With regard to posted prices for Eastern Mediterranean Exports, Steps 1 and 2 will be applied to the posted prices excluding Suez Canal Allowance and Temporary Freight Premium, and to the result will be added the Suez Canal Allowance and Temporary Freight Premium applicable as of the Effective Date (as determined under the Tehran Agreement, excluding the effect of any adjustments under the Geneva Agreement or this Supplemental Agreement) multiplied by the result of Steps 1 and 2 on posted prices excluding Suez Canal Allowance and Temporary Freight Premium, divided by T^1 .

Thereafter posted prices will be further adjusted as follows:

30 (b) On the 23rd day of each month in each year the arithmetic average of the percentage Exchange Rate changes of the said 11 currencies against the U.S. Dollar against the April 30, 1971 exchange rates set out in Attachment 1 shall be recalculated. If such recalculation shows a variation of one whole point or more up or down from the Base Average (or the latest Effective Average as the case may be) the new average resulting from such recalculation shall become the Effective Average commencing on the first day of the following calendar month. "Exchange Rate" as used herein means the rate of exchange existing on the day of such recalculation between any one of the 11 currencies by virtue of that currency's rate and the rate for the U.S. Dollar notified to the IMF or any successor thereto, or for the Swiss Franc the official parity established by the Swiss Bundesrat. If, on the day of recalculation, any of the currencies concerned is floating in relation to the U.S. Dollar (that is to say its exchange rate against the U.S. Dollar is not being maintained by the Central Bank of the Country concerned within the margin limits applicable to members of the IMF), the Exchange Rate for such currency to be used in the aforesaid calculation shall be the arithmetic average as certified by the National Westminster Bank Limited in London of the mean of the commercial buying and selling rates in respect of telegraphic transfers for the currency concerned into U.S. Dollars quoted by the Bank at 10.30 G.M.T. for those consecutive business days next preceding the day of such recalculation on which the currency was floating and which fall within the 30 calendar days preceding that date (except that for the recalculation to be made on June 23, 50 1973, the calendar period will be May 30th through June 22nd only). If the U.S.

Government announces a devaluation or revaluation of the U.S. Dollar during the 30 calendar days next preceding the date of such recalculation, the Exchange Rate for such floating currency shall be the arithmetic average as so certified for the days commencing the day after such announcement through the day preceding the date of recalculation, or for the five days preceding the date of recalculation whichever is the longer period. If such floating currency was floating less than five consecutive business days next preceding the day of such recalculation, then the Exchange Rate for such currency to be used in such recalculation shall be the arithmetic average of the Exchange Rates for such currency during those of the preceding five days on which said currency was floating using the buying and selling rates as aforesaid for those days and for one further day using the rate notified to the IMF (or any successor thereto) or that established by the Bundesrat for the Swiss Franc for that day. A business day is for this purpose a day when the London Foreign Exchange Market is open.

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(c) Effective with establishment of a new Effective Average the posted price for each crude oil shall be adjusted in the manner indicated below:

(i) With respect to posted prices of crude oils exported from the Gulf:

$$\text{Adjusted Posted Prices } (P^1) = P + T^1 \frac{(B^1 - A^1)}{100}$$

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(ii) With respect to posted prices for Eastern Mediterranean exports, the formula set forth in (i) above shall apply. In addition the sum of Suez Canal and Temporary Freight Allowances, whenever applicable, shall be adjusted in accordance with the following formula and the result added to the separate posted price calculation performed under the first sentence of this sub-paragraph (c) (ii):

$$\begin{array}{l} \text{Adjusted Suez Canal} \\ \text{Allowance plus Temporary} \\ \text{Freight Premium} \end{array} = \begin{array}{l} \text{Suez Canal Allowance and Tem-} \\ \text{porary Freight Premium as deter-} \\ \text{mined under appropriate Related} \\ \text{Agreement, Excluding the effect of} \\ \text{any adjustment under the Geneva} \\ \text{Agreement as signed January 20,} \\ \text{1972 or as amended by this Supple-} \\ \text{mental Agreement, multiplied by} \\ P^1 \\ \hline T^1 \end{array}$$

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Where P = the Posted Price that would have applied on the first day of the month of adjustment absent such adjustment, and excluding with respect to East Mediterranean exports any Suez Canal and Temporary Freight Allowances.

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P¹ = the Adjusted Posted Price and in the case of East Mediterranean exports the Adjusted Posted Price excluding any Suez Canal and Temporary Freight Allowances.

A¹ = the most recent prior Effective Average preceding the currency change (or the Base Average if no prior Effective Average had superseded it).

B¹ = the new Effective Average.

T¹ = the Posted Price that would have applied on the first day of the month of adjustment under the Tehran and Related Agreements excluding the effect of any adjustment under

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the Geneva Agreement as signed on January 20, 1972 or as amended by this Supplemental Agreement and excluding with respect to East Mediterranean Exports any Suez Canal and Temporary Freight Allowances.

(d) The 5 U.S. cents increase in posted prices due to be made pursuant to the Tehran and Related Agreements on January 1, 1974 and January 1, 1975 shall be adjusted to 5 U.S. cents multiplied by $\frac{P^1}{T^1}$ as applicable on December 31 of the preced-

10 ing year and such adjustment shall be made prior to any application of sub-paragraph (c) above.

(e) Notwithstanding sub-paragraphs (c) or (d) above, no posted price in respect of any period shall be below the level which would have prevailed in respect of that period under the appropriate Related Agreement excluding the effect of any adjustment under this Agreement. If the calculation in sub-paragraph (c) or (d) produced an adjusted posted price below such level the calculation will continue to be made from time to time as if the posted price had been reduced to this adjusted posted price and the posted price will be adjusted whenever the calculation again produces an adjusted posted price exceeding such level.

20 1.6.73

ANNEXE "B" TO
 SUPPLEMENTAL AGREEMENT

II. NIGERIAN AGREEMENTS

Paragraph 2 of Annexe I to the Nigerian Agreements is amended effective May 1, 1973 to read as follows:

"2. (a) As of the Effective Date of this Supplemental Agreement the posted price for each crude oil exported from Nigeria shall be calculated as follows:

Step 1: Add to the Base Posting (which excludes any Suez Canal Allowance and Temporary Freight Premium) of January 1, 1973 an amount equal to 8.49% of the January 1, 1973 increase of 5 U.S. cents and of the 2 U.S. cents Sulphur Premium.

Step 2: Add to the resulting price an amount equal to T^1 (as defined in sub-paragraph (c) (ii) below) multiplied by the difference between the arithmetic average (hereinafter called the Base Average) of the percentage Exchange Rate changes for the 11 currencies listed in Attachment 1 against the U.S. Dollar during the period 15th to 29th May 1973 inclusive against April 30, 1971 official, IMF par values or floating exchange rates as the case may be as set out in Attachment 1 (which is 22.50%) and the arithmetic average of the percentage Exchange Rate changes of the same 11 currencies on January 20, 1972 (in terms of official, central, par values or floating rates as the case may be) against such April 30, 1971 exchange rates (which is 9.85%) divided by 100.

Step 3: Add to the result of Step 2 the Suez Canal Allowance and Temporary Freight Premium applicable as of the Effective Date (as determined under the 1971 Agreement excluding the effect of any adjustments under the June 1972 Agreement, or this Supplemental Agreement) multiplied by the result of Step 2, divided by T^1 (as defined in sub-paragraph (c) (ii)).

Thereafter posted prices will be further adjusted as follows:

(b) On the 23rd day of each month in each year the arithmetic average of the percentage Exchange Rate change of the said 11 currencies against the U.S. Dollar

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against the April 30, 1971 exchange rates set out in Attachment I shall be recalculated. If such recalculation shows a variation of one whole point or more up or down from the Base Average (or the latest Effective Average as the case may be) the new average resulting from such recalculation shall become the Effective Average commencing on the first day of the following calendar month. "Exchange Rate" as used herein means the rate of exchange existing on the day of such recalculation between any one of the 11 currencies by virtue of that currency's rate and the rate for the U.S. Dollar notified to the IMF or any successor thereto or for the Swiss Franc the official parity established by the Bundesrat. If, on the day of recalculation, any of the currencies concerned is floating in relation to the U.S. Dollar (that is to say its exchange rate against the U.S. Dollar is not being maintained by the Central Bank of the Country concerned within the margin limits applicable to members of the IMF), the Exchange Rate for such currency to be used in the aforesaid calculation shall be the arithmetic average as certified by the National Westminster Bank Limited in London of the mean of the commercial buying and selling rates in respect of telegraphic transfers for the currency concerned into U.S. Dollars quoted by the Bank at 10.30 G.M.T. for those consecutive business days next preceding the day of such recalculation on which the currency was floating and which fall within the 30 calendar days preceding that date (except that for the recalculation to be made on June 23, 1973 the calendar period will be May 30 through June 22 only). If the U.S. Government announces a devaluation or revaluation of the U.S. Dollar during the 30 calendar days next preceding the date of such recalculation, the Exchange Rate for such floating currency shall be the arithmetic average as so certified for the days commencing the day after such announcement through the day preceding the date of recalculation, or for the five days preceding the date of recalculation whichever is the longer period. If such floating currency was floating less than five consecutive business days next preceding the day of such recalculation, then the Exchange Rate for such currency to be used in such recalculation shall be the arithmetic average of the Exchange Rates for such currency during those of the preceding five days on which said currency was floating using the buying and selling rates as aforesaid for those days and for one further day using the rate notified to the IMF (or any successor thereto) or for the Swiss Franc the official parity established by the Bundesrat, for that day. A business day is, for this purpose, a day when the London Foreign Exchange Market is open.

(c) Effective with establishment of a new Effective Average the posted price for each crude oil shall be the sum of the "Adjusted Base Posting" and "Adjusted Suez Canal Allowance plus Temporary Freight Premium" as defined under (i) and (ii) of this sub-paragraph (c).

$$(i) \text{ The Adjusted Base Posting } (P^1) = P + T \frac{(B^1 - A^1)}{100} \quad 40$$

(ii) The sum of Suez Canal and Temporary Freight allowances, whenever applicable, shall be adjusted in accordance with the following formula and the result added to the separate Base Posting calculation performed under this sub-paragraph (c) (i):

$$\begin{array}{l} \text{Adjusted Suez Canal} \\ \text{Allowance plus Temporary} \\ \text{Freight Premium} \end{array} = \begin{array}{l} \text{Suez Canal Allowance and Tem-} \\ \text{porary Freight Premium as deter-} \\ \text{mined under the 1971 Agreements,} \\ \text{excluding the effect of any} \\ \text{adjustment under the Nigerian} \\ \text{Agreements as signed in June 1972,} \end{array} \quad 50$$

or as amended by this Supplemental
 Agreement, multiplied by $\frac{P^1}{T^1}$

Exhibit 2
 Supplemental
 Geneva
 Agreement.
 1st June, 1973
 (Cont'd)

Where P = the Base Posting that would have applied on the first day of the month of adjustment absent such adjustment, and excluding any Suez Canal and Temporary Freight Allowances.

P¹ = the Adjusted Base Posting (excluding any Suez Canal and Temporary Freight allowances).

10 A¹ = the most recent prior Effective Average preceding the currency change (or the Base Average if no prior Effective Average had superseded it).

B¹ = the new Effective Average.

T¹ = the Base Posting that would have applied on the first day of the month of adjustment under the 1971 Agreements excluding the effect of any adjustment under the Nigerian Agreements as signed in June, 1972 or as amended by this Supplemental Agreement and excluding any Suez Canal and Temporary Freight Allowances.

20 (d) The 5 U.S. cents and the 2 U.S. cents Sulphur Premium increase in posted prices due to be made pursuant to 1971 Agreements on January 1, 1974 and January 1, 1975 shall be adjusted to 5 U.S. cents and 2 U.S. cents each multiplied

by $\frac{P^1}{T^1}$ as applicable on December 31 of the preceding year and such adjustment shall be made prior to any application of sub-paragraph (c) above.

30 (e) Notwithstanding sub-paragraphs (c) or (d) above, no posted price in respect of any period shall be below the level which would have prevailed in respect of that period under the appropriate Related Agreement excluding the effect of any adjustment under this Agreement. If the calculation in sub-paragraph (c) or (d) produced an adjusted posted price below such level the calculation will continue to be made from time to time as if the posted price had been reduced to this adjusted posted price and the posted price will be adjusted whenever the calculation again produces an adjusted posted price exceeding such level."

Attachment 1 to Annexe 2

Percentage changes in central, parity or floating exchange rates, as appropriate, for the periods indicated against an April 30, 1971 base expressed in terms of U.S. dollars

	Local currency units per U.S. dollar 30 April 1971*	Local currency units per U.S. dollar 20 January 1972	% change to 20 January 1972	Local currency units per U.S. dollar Avg. 15-29 May 73 inclusive	% change to 15-29 May 73 inclusive
Australia	0.892857	0.822370	8.57%	0.705885	26.49
Belgium	50.00	44.8159	11.57%	38.9195	28.47
Canada	1.00857	1.00624	0.23%	0.99979	0.88
France	5.55419	5.1157	8.57%	4.4302	25.37
Germany	3.66	3.2225	13.58%	2.76345	32.44
Italy	625.00	581.50	7.48%	588.275	6.24
Japan	360.00	308.00	16.88%	263.62	36.56
Netherlands	3.62	3.2447	11.57%	2.8595	26.60
Sweden	5.17321	4.8129	7.49%	4.37925	18.13
United Kingdom	0.41667	0.383772	8.57%	0.39134	6.47
Switzerland	4.373	3.84	13.88%	3.126925	39.85
Total			108.39%		247.50
Average			9.85%		22.50%

* IMF parity rates except for Canada which is based on the mean between the buying and selling rates in respect of telegraphic transfers for April 30, 1971 quoted by the National Westminster Bank in London and for Switzerland which is the official parity established by the Swiss Bundesrat.

Exhibit 7**Sale and Purchase Agreement: Government of Iran,
National Iranian Oil Company and others**

Exhibit 7
Sale and
Purchase
Agreement:
Government
of Iran,
National
Iranian Oil
Company and
others.
19th July 1973

THIS AGREEMENT made by and between IRAN (acting through the Imperial Government of Iran), and the NATIONAL IRANIAN OIL COMPANY (a corporation organised and existing under the laws of Iran), as First Parties and as Second Parties the following:

10 GULF OIL CORPORATION (a corporation organised and existing under the laws of Pennsylvania, U.S.A.), MOBIL OIL CORPORATION (a corporation organised and existing under the laws of New York, U.S.A.), EXXON CORPORATION (a corporation organised and existing under the laws of New Jersey, U.S.A.), STANDARD OIL COMPANY OF CALIFORNIA (a corporation organised and existing under the laws of Delaware, U.S.A.), TEXACO INC. (a corporation organised and existing under the laws of Delaware, U.S.A.), THE BRITISH PETROLEUM COMPANY LIMITED (a corporation organised and existing under the laws of England), SHELL PETROLEUM N.V. (a corporation organised and existing under the laws of the Netherlands), COMPAGNIE FRANCAISE DES PETROLES (a corporation organised and existing under the laws of France), AMERICAN INDEPENDENT OIL COMPANY (a corporation organised and existing under the laws of Delaware, U.S.A.), ATLANTIC RICHFIELD COMPANY (a corporation organised and existing under the laws of Pennsylvania, U.S.A.), CONTINENTAL OIL COMPANY (a corporation organised and existing under the laws of Delaware, U.S.A.), GETTY OIL COMPANY (a corporation organised and existing under the laws of Delaware, U.S.A.), CHARTER OIL COMPANY (a corporation organised and existing under the laws of Florida, U.S.A.), THE STANDARD OIL COMPANY (OHIO) (a corporation organised and existing under the laws of Ohio, U.S.A.), GULF INTERNATIONAL COMPANY (a corporation organised and existing under the laws of Delaware, U.S.A.), MOBIL OIL IRAN INC. (a corporation organised and existing under the laws of Delaware, U.S.A.), ESSO TRADING COMPANY OF IRAN (a corporation organised and existing under the laws of Delaware, U.S.A.), IRAN CALIFORNIA OIL COMPANY (a corporation organised and existing under the laws of Delaware, U.S.A.), TEXACO IRAN LTD. (a corporation organised and existing under the laws of Delaware, U.S.A.), CALTEX (IRAN) LIMITED (a corporation organised and existing under the laws of the Bahama Islands), OIL TRADING COMPANY (IRAN) LIMITED (a corporation organised and existing under the laws of England), NEDERLANDS-IRAANSE AARDOLIE HANDEL-MAATSCHAPPIJ (NETHERLANDS IRANIAN OIL TRADING COMPANY) N.V. (a corporation organised and existing under the laws of the Netherlands), AMERICAN INDEPENDENT OIL COMPANY OF IRAN (a corporation organised and existing under the laws of Delaware, U.S.A.), ARCO IRAN, INC. (a corporation organised and existing under the laws of Delaware, U.S.A.), SAN JACINTO EASTERN CORP. (a corporation organised and existing under the laws of Delaware, U.S.A.), GETTY IRAN LTD. (a corporation organised and existing under the laws of Delaware, U.S.A.), CHARTER (IRAN) PETROLEUM COMPANY (a corporation organised and existing under the laws of California, U.S.A.) and SOHIO-IRAN TRADING, INC. (a corporation organised and existing under the laws of Delaware, U.S.A.);

40 WITNESSETH:

WHEREAS the Government of Iran and the National Iranian Oil Company desire to

Exhibit 7
Sale and
Purchase
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develop and exploit the hydrocarbon resources of the country to the optimum extent and thereby to maximise the benefits to and prosperity of the Iranian Nation resulting therefrom; and

WHEREAS in fulfilment of the above objective Iran is determined that the right of full and complete ownership, operation and control in respect of all hydrocarbon reserves, assets and administration of the petroleum industry shall be exercised by NIOC; and

WHEREAS the international oil companies named above as Second Parties to this Agreement, having interests in transportation, refining and marketing facilities established throughout the world, entered into an Agreement in 1954 with Iran and NIOC (hereinafter referred to as the Consortium Agreement) and have thereunder marketed substantial quantities of Iranian crude oil and the products derived therefrom throughout a large part of the world; and

WHEREAS Iran and NIOC are desirous that consumers throughout the world should continue to have access to supplies of Iranian crude oil and products, and are able to make such crude oil and products available to such consumers to an increasing extent; and

WHEREAS the above-named companies are in a position and willing to ensure the continued flow of such crude oil and products to such consumers on the assurance of security of supply and the prospect of reasonable rewards; and

WHEREAS, with a view to the full realisation of the objectives set out above, the Parties hereto agree that the general relationship of Iran/NIOC and the above mentioned oil companies shall be revised and adjusted as set forth in this Agreement; and

WHEREAS each of the Parties has willingly entered into the negotiations leading up to this Agreement, and such negotiations have been amicably carried out resulting in this Sale and Purchase Agreement in replacement of the Consortium Agreement to achieve the foregoing objectives.

NOW THEREFORE, it is hereby agreed by and between the Parties:

ARTICLE 1

Unless the context requires otherwise the following terms used in this Agreement and the Annexes hereto have the meanings ascribed to them below:

"Abadan Refinery" or "the Refinery" means the following property situated in Iran and belonging to NIOC:

- (1) all plant and process units and all facilities and equipment appurtenant thereto for the refining of crude oil, situated at Abadan;
- (2) the tank farm at Bawarda, the jetties at Bawarda serving the said tank farm, and the packed oil depot at Braim Creek;
- (3) the pipeline terminal and tankage for crude oil and products derived therefrom, together with the jetties and their loading lines serving that terminal and tankage, at Bandar Mahshahr but excluding therefrom the tankage for NGL products and the propane and butane loading lines to jetty no. 6; and
- (4) the pipeline systems associated with (1), (2) and (3), above.

"Affiliate" in relation to a Consortium Member or Trading Company nominated by such Consortium Member, means any corporation

- (1) which owns 50 per cent or more of the voting shares of that Consortium Member, or
- (2) 50 per cent or more of the voting shares of which are owned by either the Consortium Member, or a Parent company of the Consortium Member, or

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either of them together with one or more additional persons each of which is a Consortium Member or a Parent company.

"Area" as referred to in this Agreement and the Annexes hereto means the area described in Schedule 1 hereto.

"Applicable posted price" means, in relation to any Iranian crude oil, the individual posted price as defined herein of the particular Trading Company or its affiliate for such crude oil as of the date of export or delivery to refinery, as the case may be.

"Bandar Mahshahr Refinery" means the gas liquid fractionation facilities (excluding the de-ethanizer tower), the NGL product storage tanks, and the propane and butane loading system excluding jetties, all situated at Bandah Mahshahr.

10 "Barrel" means a barrel of 42 standard U.S. gallons at sixty degrees Fahrenheit and at normal atmospheric pressure.

"Chartered Accountant" means a practicing accountant holding the highest professional qualification or government-approved status that may be held by an accountant in any country in which any Party is incorporated.

"Consortium Members" mean all or any of the companies listed in Schedule 2 hereto.

20 "Crude Oil" means crude petroleum, asphalt and all liquid hydrocarbons in their natural state or obtained by condensation or extraction from natural gas (except methane and ethane whether in liquid or gaseous form which shall be considered for all purposes as natural gas). When crude oil is processed otherwise than at refinery and a part thereof is put back into the crude oil stream, "crude oil" shall include the part so put back.

"Date of Enactment" means the date on which this Agreement comes into force under Article 30.

"Depreciation Charges" means depreciation of all fixed and moveable assets and the amortization of all other capital expenditures, including, but not limited to, expenditures incurred in respect of the use of land and capitalised exploration and drilling expenditures in accordance with the provisions of Article 8.

"Effective Date" means 21st March 1973.

30 "Estimated Net Total Installed Capacity" means in respect of any year, NIOC's estimate of the total volume of crude oil by grades which could be produced and delivered from the Area through existing or planned facilities during that year, taking into account planned maintenance and estimated unscheduled downtime of all facilities (including producing oil wells), plant and equipment. Such estimate shall be expressed as an average daily rate of barrels for each grade of crude oil in respect of the year concerned.

"Internal Consumption" means the consumption in Iran of the product or substance concerned or the use of crude oil for the manufacture of product so consumed, in contrast to its export from Iran.

40 "Natural Gas" means wet gas, dry gas, all other gaseous hydrocarbons produced through oil or gas wells, and the residue gas remaining after the extraction of liquid hydrocarbons from such wet gas, and includes methane and ethane in liquid form.

"NGL" means natural gas liquid hydrocarbons extracted from natural gas.

"NGL product" means any hydrocarbon product manufactured from NGL by any process whether now known or not.

"NIOC" means the National Iranian Oil Company.

"Parent Company" means a corporation or corporations which own all the voting shares of a Consortium Member.

50 "Person" means natural or juridical person and includes partnership, firm, company, unincorporated association and corporation.

"Posted price" of Iranian crude oil means:

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(1) in the case of crude oil loaded on board tankship for export from Iran the price f.o.b. tankship at seaboard terminal being the price at which crude oil of equivalent quality and gravity is offered for sale by a Trading Company or its affiliate to buyers generally for delivery under similar conditions and at the same seaboard terminal, and

(2) in the case of crude oil delivered to refinery the price of crude oil of equivalent quality and gravity offered for sale as above f.o.b. tankship at refinery port less an agreed transfer charge

and each posted price shall be in conformity with the Tehran Agreement and the Geneva Agreement (as amended on 1st June 1973) so long as the said Agreements are in force or with any other relevant future agreements.

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“Product” means any finished or semi-finished product manufactured or derived from crude oil or natural gas by condensation, refining, chemical treatment or any other method or process, whether now known or not.

“Service Company” means the Company referred to in Article 17.

“Stated Payment” means a charge equal to 12½ per cent of the applicable posted price.

“Stated Quantity” shall have the meaning set out in Article 2.

“Subsidiary” in relation to a Consortium Member means any corporation all the voting shares of which (less the minimum number of shares, if any, required by law to be held by third parties) are owned by either the Consortium Member, or a Parent company of the Consortium Member, or either of them together with one or more additional persons each of which is a Consortium Member or Parent company; and “own” as used in this definition and the definitions of “Affiliate” and “Parent company” means beneficially owned directly or through one or more other corporations.

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“This Agreement” means this Agreement and the Annexes hereto.

“Ton” means a long ton of 2240 pounds avoirdupois.

“Trading Companies” shall have the meaning set out in Article 2, and shall include the Second Parties other than the Consortium Members, and any Consortium Member which makes the purchases and resales referred to in the last sentence of Article 2 E (1).

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Periods of time referred to in this Agreement shall be reckoned on the basis of the solar calendar. “Year” means a calendar year beginning 1st January, and “quarter” means a period of three months beginning 1st January, 1st April, 1st July, or 1st October, each in accordance with the Gregorian calendar.

ARTICLE 2

A. After having allowed in each year for its requirements for internal consumption, and the Stated Quantity of its own export crude oil in that year as set out in Section B below, NIOC shall notify the Consortium Members of the remaining quantity of crude oil by grades from the Area which quantity shall be available for sale to them for export.

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B. The Stated Quantities of NIOC’s own export crude oil referred to above to be exported in the form of crude oil or products, and which shall be made up of the various grades of crude oil available for export as crude oil in the same proportions as those in which they are available for sale to the Consortium Members, shall be as follows:

(1)	1973	.....	.....	.....	.....	200,000 barrels per day
						(i.e. at the rate of 200,000 barrels per day from 21st

					March to 31st December 1973)			
1974	.....	.....	.....	.....	300,000	barrels per day		
1975	.....	.....	.....	.....	450,000	”	”	”
1976	600,000	”	”	”
1977	750,000	”	”	”
1978	900,000	”	”	”
1979	1,100,000	”	”	”
1980	1,300,000	”	”	”
1981	1,500,000	”	”	”

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- 10 (2) Thereafter the Stated Quantity of NIOC's own export crude oil in each year shall be the proportion of the total quantity of crude oil available for export in such year which 1,500,000 barrels per day represents of the total quantity of crude oil available for export in 1981. If the total quantity of crude oil available for export in 1981 is reduced by reason of force majeure then the total quantity of crude oil which would otherwise have been available for export but for force majeure will be used to calculate the Stated Quantities of NIOC's own export crude oil provided that:
- 20 (a) if prior to 1981 NIOC has entered into contractual commitments to supply crude oil from the Area to refining or other downstream facilities owned as to 50 per cent or more by NIOC, and
- (b) if in any year after 1981 the Stated Quantity for such year calculated as above would be less than the quantity required to enable NIOC to meet such commitments,
- the Stated Quantity for that year will be increased to the extent necessary to enable NIOC to meet such downstream commitments up to a maximum quantity of 1,500,000 barrels per day or 50 per cent of the crude oil available for export in that year, whichever is less.
- 30 C. NIOC shall produce and sell to the Consortium Members for export in each year such quantities of crude oil as they may require in accordance with nominations made by them under Article 3.
- D. The Consortium Members shall resell in Iran for export from Iran:
- (1) the crude oil purchased hereunder, except so much thereof as is delivered to Abadan Refinery or Bandar Mahshahr Refinery hereunder; and
- (2) the products manufactured in Iran from the crude oil so delivered; subject to the terms of this Agreement.
- 40 E. (1) The rights and obligations of the Consortium Members relating to the purchase and resale of crude oil hereunder may be exercised and performed by Trading Companies. Any Consortium Member may from time to time assign to one or more subsidiaries, nominated by it to act as Trading Companies hereunder, a part or all of that Consortium Member's rights and obligations pertaining to the purchases and resales referred to herein, provided however that no such assignment shall relieve any Consortium Member of its obligations under this Agreement. Any Trading Company to which such an assignment is made shall be deemed to become a party to this Agreement. Any Consortium Member which makes the purchases and resales provided for herein either itself or through a branch office in Iran shall be included in the term "Trading Company".
- 50 (2) Each Trading Company shall be registered in Iran and shall have the same nationality as that of the Consortium Member by which it is nominated unless such Consortium Member considers that tax or foreign exchange

- requirements outside Iran make another nationality desirable, in which case the Consortium Member may choose such other nationality for the Trading Company in question.
- (3) Trading Companies already recognised and registered in Iran on the Effective Date may continue to be Trading Companies under this Agreement.
- F. Title to crude oil, vested in NIOC, shall be transferred to the Trading Companies by sale under this Agreement at wellhead.
- G. Notwithstanding the definition of "crude oil" contained in Article 1, for the purposes of Sections A, B and C above and of Article 3 the expression crude oil shall be deemed not to include NGL.

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ARTICLE 3

- A. By 1st September in each year NIOC shall notify the Trading Companies of the Estimated Net Total Installed Capacity for the following year and the quantity of each grade of crude oil available for sale to them in the following year pursuant to Article 2.
- B. By 1st October in each year the Trading Companies shall nominate to NIOC their requirements by grade for crude oil for export as crude oil and their requirements for crude oil to be refined for their account at Abadan Refinery during the following year.
- C. (1) Crude oil sold by NIOC to the Trading Companies hereunder shall be delivered by NIOC f.o.b. tankship or to Abadan Refinery or to any other point of export from Iran as the Trading Company purchasing the same may request. 20
- (2) The lifting of crude oil for export by NIOC and the Trading Companies shall be carried out in accordance with detailed procedures to be agreed between them from time to time, such procedures to include the principles set out in Schedule 5 hereto.
- D. If in any year the quantity of crude oil available for sale to the Trading Companies as referred to in Section A above is in excess of the quantity nominated by the Trading Companies under Section B above, such excess quantity shall be available for export by NIOC for its own account in that year. Such excess quantity to the extent, if any, not committed for export by NIOC, may also be made available for purchase by the Trading Companies in accordance with any subsequent nominations made by them under procedures to be agreed. 30
- E. (1) If in any year through an inaccuracy in the estimate made under Section A above the actual net total installed capacity exceeds the Estimated Net Total Installed Capacity notified by NIOC to the Trading Companies under Section A above the Trading Companies shall have the right to increase their nominations made under Section B above up to the amount of such excess. 40
- (2) If in any year through an inaccuracy in the estimate made under Section A above actual net total installed capacity is less than Estimated Net Total Installed Capacity notified by NIOC to the Trading Companies under Section A above any quantities available to NIOC and the Trading Companies under Section D above shall be reduced rateably. If such reduction shall not be sufficient to meet the difference between Estimated Net Total Installed Capacity and actual net total installed capacity, the Trading Companies' nominations under Section B above shall be reduced accordingly.

- F. If in any year NIOC is unable by reason of force majeure to make available for export the total quantity of crude oil necessary to meet the total quantity required by NIOC and the Trading Companies for export as crude oil or products as established in accordance with the above provisions NIOC's Stated Quantity and the quantities to be purchased by the Trading Companies shall be reduced rateably.

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ARTICLE 4

- 10 A. NIOC shall process for the Trading Companies at Abadan Refinery up to 300,000 barrels per day of crude oil purchased under this Agreement in accordance with a Processing Agreement, which shall have a term of twenty years from the Effective Date, to be entered into hereunder between NIOC and the Consortium Members and the Trading Companies.
- B. The Processing Agreement shall include the following matters, to be set out more fully therein:
- 20 (1) The processing of crude oil for the Trading Companies shall be subject to NIOC's preemptive right to take products required for internal consumption.
- (2) Subject to the Trading Companies giving priority in the selection of crude streams to the quality and yield requirements of NIOC's internal consumption, they shall have the right to select the refinery crude slate. The Trading Companies shall have the right to obtain product yields and qualities consistent with the existing capability of the Refinery.
- (3) The Trading Companies shall pay to NIOC a processing fee related to the costs of operating the Refinery.
- (4) The Trading Companies may give notice to NIOC that they wish to have processed thereunder less than 300,000 barrels per day of crude oil, and the quantity of crude oil which they are entitled to have processed by NIOC thereunder shall thereafter be reduced accordingly.
- 30 (5) If the Trading Companies have delivered for processing thereunder in any year less than 95 per cent of the total quantity of crude oil which they are entitled to have processed thereunder in that year, they shall pay NIOC the processing fees due in respect of 95 per cent of that total quantity unless the delivery of crude oil to the Refinery has been prevented by circumstances beyond their control.
- (6) The existing capacity and capability of the Refinery shall be maintained during the term of the Processing Agreement and, in addition to the processing fee the Trading Companies shall pay NIOC interest on investments (including working capital) required for that purpose. NIOC shall take into consideration the views of the Trading Companies in respect of such investments, which investments shall be developed on an economical and efficient basis.
- 40 (7) The Trading Companies shall receive from NIOC a non-cash credit against the processing fee equal to 100 per cent of the annual Depreciation Charges calculated upon the remaining book value of assets as at 20th March 1973 and shall pay NIOC in cash the fee charged less such credit.
- (8) If, after meeting its own requirements for products for internal consumption and the requirements of the Trading Companies for export, NIOC wishes to utilise any spare refining capacity for export purposes, NIOC shall notify the Trading Companies so that mutually agreeable arrangements are established.
- 50 C. (1) The Trading Companies' total gross receipts in each year from income

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derived by them from sales of products in Iran, manufactured for them under the Processing Agreement, shall be computed in accordance with Article 5B.

- (2) For the purpose of computing the liability of the Trading Companies to Iranian income tax:
- (a) processing fees charged by NIOC to the Trading Companies shall be allowed as deductions, and the non-cash credit referred to in Section B (7) above shall not reduce the amount of the processing fees for that purpose;
 - (b) interest paid to NIOC by the Trading Companies pursuant to Section B (6) above shall not be allowed as a deduction. 10

ARTICLE 5

- A. Each Trading Company shall publish, or cause to be published, and notify to NIOC posted prices for each point of export from Iran and for each quality and gravity of its crude oil. Such prices shall be in conformity with the Tehran Agreement and the Geneva Agreement (as amended 1st June 1973) so long as the said Agreements are in force.
- B. Each Trading Company shall sell crude oil and products in Iran at such prices that its total gross receipts in each year from such sales are not less than the following: 20
- (1) a sum equal to the value at the applicable posted price of all crude oil exported from Iran in that year by that Trading Company and its customers; plus
 - (2) the aggregate of the following:
 - (a) a sum equal to the value at the applicable posted price of all crude oil delivered to Abadan Refinery in that year for the account of that Trading Company, plus
 - (b) the amount of the fee charged to that Trading Company by NIOC in respect of processing at Abadan Refinery, plus
 - (c) profit on sales of products (excluding NGL products) manufactured by NIOC for the Trading Companies at Abadan Refinery which shall be calculated in accordance with Schedule 4 hereto; plus 30
 - (3) its gross receipts from the sale of NGL products calculated in accordance with Article 13.
- C. As between Trading Companies sales may be made at any price and in such cases only the Trading Company to which such a sale is made shall be obliged to resell the crude oil or products so acquired at such prices that its total gross receipts conform with the provisions of Section B above.

ARTICLE 6

- A. The price payable to NIOC by each Trading Company for crude oil sold and delivered to it either on board ship or at Abadan Refinery in any year shall be the sum of the following elements: 40
- (1) Operating costs attributable to such crude oil calculated in accordance with Article 8;
 - (2) The Stated Payment;
 - (3) A balancing margin calculated in accordance with the provisions of Part

Two of Schedule 3 hereto, the level of which, when taken together with all other financial and fiscal benefits accruing to Iran and NIOC, will be such as to assure Iran that the total financial benefits and advantages to Iran and NIOC under this Agreement shall be no less favourable than those applicable (at present or in the future) to other countries in the Persian Gulf under the General Agreement and related arrangements;

- (4) Interest as provided for in Part Five of Schedule 3 hereto.
- B. (1) For the period 21st March 1973-31st December 1973 and for the years 1974 and 1975 the balancing margin is estimated at 6.5 U.S. cents per barrel.
- (2) For each subsequent year NIOC and the Trading Companies shall agree upon an estimated balancing margin before the beginning of the year, using estimates of the elements set out in Part Two of Schedule 3 hereto. Failing agreement the balancing margin in effect at the end of the preceding year shall provisionally be the estimated balancing margin for the year until otherwise established.
- C. (1) Interest for the period 21st March 1973-31st December 1973 is estimated at 0.418 U.S. cents per barrel.
- (2) For each subsequent year NIOC and the Trading Companies shall agree upon the estimated amount of interest in U.S. cents per barrel by 1st March of the year, determined in accordance with Part Five of Schedule 3 hereto. Failing agreement the estimated amount of interest in effect at the end of the previous year shall provisionally be the estimated amount of interest for the year until otherwise established.

ARTICLE 7

A. Payment of the price due to NIOC from each Trading Company for crude oil purchased under this Agreement shall be made as follows:—

(1) during the course of each year payments of estimated amounts due shall be made as follows:

(a) an amount equal to the estimated operating costs due in respect of crude oil delivered in each month shall be paid by the 15th day of the following month;

(b) an amount equal to

(i) the estimated amount of the Stated Payment,

(ii) the estimated balancing margin, and

(iii) the estimated interest,

in respect of crude oil delivered during each month shall each be paid by the 15th day of the second month following the month in which it was delivered;

(2) final calculation and settlement of any outstanding balances of the price due in respect of crude oil delivered during any year shall be made as follows:

(a) operating costs and the Stated Payment in respect of any year shall each be finally calculated by 15th March of the following year and any balances outstanding settled in accordance with paragraph (4) below;

(b) the balancing margin and the interest in respect of any year shall each be finally calculated, and audited in accordance with the provisions of Article 9, by 15th April of the following year and any balances outstanding settled as provided for in paragraph (4) below;

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- (3) each Trading Company shall set-off against payments due in accordance with the above paragraphs:
- (a) the portion of advance payments which may be set-off by that Trading Company on the date payment falls due in accordance with the provisions of Article 11; and
 - (b) the amount to be set-off by that Trading Company in that month under the provisions of Article 10; and
 - (c) the whole or any part of the amount, if any, due to that Trading Company in respect of overpayments made by it during the previous year as provided for in paragraph (4) below; and
 - (d) the amount of interest, if any, due to that Trading Company under Section B below;
- (4) any balances owing from any Trading Company to NIOC or from NIOC to any Trading Company as a result of under- or over-payments shall be settled in each case by a single payment in accordance with paragraph (5) below in the case of amounts owed by that Trading Company to NIOC, and by being set-off against payments next due to NIOC hereunder in the case of amounts owed by NIOC to that Trading Company.
- (5) payments of any balances due from any Trading Company to NIOC hereunder in respect of operating costs and the Stated Payment shall be made by 31st March, and of any balances due in respect of the balancing margin and interest by 30th April, of the following year, or in each case within 15 days of receipt of the invoices therefor, whichever is the later.
- (6) the amounts set-off under paragraph (3) above, against payments due to NIOC shall not, with the exception of that provided for in paragraph (3) (C) above, reduce the price of such crude oil deductible for purposes of calculating the taxable income of the Trading Companies in Iran.
- B. (1) If the difference between the total amount due to NIOC in respect of the balancing margin and operating costs as finally determined for any year and the total amount paid by the Trading Companies in respect thereof pursuant to Section A (1) (a) and A (1) (b) (ii) above, when multiplied by the difference between 100 per cent and the percentage rate of Iranian income tax applicable to the Trading Companies in that year (the "Net Amount") is five million dollars or more, the Trading Companies shall pay to NIOC (in the case of underpayment by the Trading Companies), or NIOC shall pay to the Trading Companies (in the case of over-payment by the Trading Companies) interest for a period of ten months on the Net Amount at the rate of 1 per cent per annum above the simple arithmetical average of the six months' London inter-bank rates offered for U.S. dollar deposits on each business day and certified by the National Westminster Bank Ltd., London for each month of the year in question and for the first three months of the following year.
- (2) Interest due from the Trading Companies to NIOC hereunder shall be paid by a single payment in each case within fifteen days of the receipt of invoices therefor. Interest due to any Trading Company shall be set-off against payments next due to NIOC in respect of crude oil purchased under this Agreement.
- (3) Interest paid by the Trading Companies to NIOC hereunder shall not be deductible for the purposes of calculating the liability of the Trading Companies to Iranian income tax, and interest paid by NIOC to the Trading Companies hereunder shall not constitute taxable income.

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ARTICLE 8

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- A. (1) Operating costs relating to the operations provided for in this Agreement shall be computed in accordance with the accounting principles and procedures applied in respect of such operations immediately prior to the Effective Date, which shall continue to be based upon generally accepted oil industry accounting principles consistently applied. Such operating costs shall include Depreciation Charges and the costs of transportation to the point of delivery, and shall be limited to costs incurred by NIOC and properly attributable to the relevant operations in accordance with programmes and budgets for operating and capital expenditure, approved and issued by NIOC under Article 16 in the case of crude oil operations and NGL refinery facilities, including for these purposes a reasonable allocation of NIOC's overhead costs.
- (2) The operating costs attributable to crude oil produced under this Agreement, the costs of processing crude oil at Abadan Refinery, the costs of processing NGL at Bandar Mahshahr Refinery, and the costs of any other operations shall each be segregated and separately accounted for.
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- B. (1) Depreciation Charges included in the costs referred to in Section A (2) above in respect of all assets in use immediately prior to the Effective Date shall be computed in accordance with the arrangements applied in relation to such operations immediately prior to the Effective Date and in respect of all assets coming into use after the Effective Date, Depreciation Charges shall be computed in accordance with generally accepted oil industry accounting principles consistently applied.
- (2) In applying the provisions of paragraph (1) above:
- (a) Depreciation Charges relating to assets in existence at the Effective Date shall be calculated by reference to their net book value on that Date; and
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- (b) Depreciation Charges relating to assets brought into existence during the term of this Agreement shall be calculated by reference to the capital expenditures incurred thereon. In the case of crude oil operations, and NGL refinery facilities the relevant capital expenditures shall be those incurred in accordance with capital budgets and revisions thereto approved and issued by NIOC in accordance with Article 16.
- (3) All sums recovered from third parties in respect of services charged to or for the use of those facilities which are used in the operations provided for in this Agreement shall be credited to operating costs.
- (4) Costs attributable to NGL obtained from existing NGL facilities and its delivery to Bandar Mahshahr Refinery shall be treated as costs attributable to crude oil; the treatment of costs attributable to any new NGL facilities shall be subject to agreement between the parties.
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- (5) The costs and fees of the Chartered Accountants appointed pursuant to Articles 9A and 13B and to Section H of Part Three of Schedule 3 hereto shall be paid by NIOC and included in operating costs.
- C. In the interests of economy relevant to the conduct of operations provided for in this Agreement, NIOC shall, during the term of this Agreement, take advantage of the rights, exemptions and privileges which it may at any time enjoy, and no import duties or other charges, taxes or fees of any nature howsoever levied shall be included in operating costs to be paid by the Trading Companies except such reasonable and non-discriminatory charges taxes and fees properly attributable to the operations relating to the exploration for, production, transportation
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- and sales of crude oil under this Agreement as are referred to in Article 19D.
- D. The proportion of operating costs for any year chargeable to the Trading Companies in respect of crude oil sold to them shall be that proportion which the crude oil sold to the Trading Companies in that year represents of the total crude oil produced and delivered from the Area in that year.
 - E. By 15th March each year NIOC shall provide each Trading Company with a statement of operating costs for the previous year duly certified by NIOC's independent Chartered Accountants as being correct and as having been compiled in accordance with sound accounting principles and the provisions of this Agreement.

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ARTICLE 9

- A. NIOC and the Consortium Members shall jointly appoint an internationally recognised firm of Chartered Accountants to calculate annually the balancing margin and interest payable with respect to the preceding year to NIOC by the Trading Companies in accordance with the provisions of Article 6 A (3) and (4).
- B. Not later than 31st March of each year NIOC and the Consortium Members shall provide the Chartered Accountants with all relevant information and supporting material that they require to make the calculations in accordance with the procedures set out in Parts Two and Five of Schedule 3 hereto. The information supplied under this Section by NIOC and each Consortium Member shall be certified by their respective independent Chartered Accountants as being accurate and as having been compiled in accordance with sound accounting principles.
- C. In the course of calculating the balancing margin the Chartered Accountants referred to in Section A above shall also calculate and certify the Amount Deductible in accordance with Part Four of Schedule 3 hereto.
- D. Not later than 15th April of each year the Chartered Accountants shall certify to NIOC and each Consortium Member and Trading Company the result of their calculations which shall be used in determining the price payable under Article 6 for crude oil sold and delivered to the Trading Companies in the previous year.

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ARTICLE 10

The Trading Companies shall set-off against payments due to NIOC under Article 7 A (1) the monthly amount of Depreciation Charges with respect to 100 per cent of the undepreciated and unamortized portion of the net book value of all assets employed and under construction by the Exploration and Producing Company and the Refining Company in crude oil production and the manufacturing of NGL products on the day preceding the Effective Date, calculated by dividing the relevant amount of such Depreciation Charges for each accounting period subsequent to the Effective Date by the number of months in such period.

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ARTICLE 11

- A. NIOC shall provide all capital and other funds required for the purpose of all operations provided for in this Agreement.
- B. The Trading Companies shall advance to NIOC by way of prepayment for crude oil to be purchased by them, a proportion of the funds required by NIOC for

annual budgeted capital expenditure, relating to the operations under this Agreement, and any revisions thereto, approved and issued by NIOC in accordance with Article 16 for each year in accordance with procedures agreed between the Trading Companies and NIOC.

- 10 C. The amount of such advance for each year by the Trading Companies shall be 40 per cent of such funds as are required by NIOC for such capital expenditure. The Trading Companies shall have the option to vary the proportion from time to time upon giving two years' prior written notice to NIOC, but no notice to vary the proportion shall be given to take effect earlier than five years after the Effective Date.
- D. Each annual advance made by the Trading Companies under Section B above shall be set-off against any sums due from them in respect of subsequent sales of crude oil by NIOC in equal annual instalments over a period of ten years following the year in which such advance was made, in accordance with procedures agreed between the Trading Companies and NIOC.
- E. Each annual advance made by the Trading Companies during the final ten years of the Agreement shall be set-off in equal annual instalments against sums due from them in respect of crude oil sold to them during the remaining term of the Agreement.

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ARTICLE 12

- A. After allowing for the quantities of NGL required by NIOC for internal consumption the Trading Companies shall purchase from NIOC as owner and operator all NGL obtained from facilities established to provide natural gas for the I.G.A.T. project.
- B. NGL purchased by the Trading Companies under Section A above shall be delivered to Bandar Mahshahr Refinery and processed by NIOC for the Trading Companies in accordance with a Contract entered into between NIOC and the Trading Companies to put into effect the procedures for process programming and delivery of products in existence at Bandar Mahshahr Refinery immediately prior to the Effective Date.
- 30 C. The price payable to NIOC by the Trading Companies for NGL purchased under Section A above shall be calculated in accordance with Article 6A excluding elements (3) and (4) thereof.
- D. The Trading Companies shall pay to NIOC the costs (including Depreciation Charges), of processing and refining NGL delivered to Bandar Mahshahr Refinery together with the costs of delivery of the resulting NGL products on board ship. Such costs shall be limited to costs incurred by NIOC and properly attributable to refining the said NGL and delivery of the resulting NGL products on board ship in accordance with approved programmes and budgets for operating and capital expenditure including for this purpose a reasonable allocation of NIOC's overhead costs.
- 40 E. The costs payable under Section D above shall be computed in accordance with the provisions of Article 8.
- F. Payment of amounts due to NIOC under Section D above shall be made in accordance with Article 7 A (1) (a) and (2) (a).
- G. All the NGL delivered to Bandar Mahshahr Refinery for the account of the Trading Companies, and all products manufactured therefrom, shall remain the property of the Trading Companies.

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- A. It is the objective of the Parties to ensure that the terms and conditions herein, in conjunction with the overall terms and conditions in respect of the manufacture and export of NGL products from Iran, shall result in economic benefits to Iran no less favourable than those which currently prevail in respect of the manufacture and export of similar products by Consortium Members in and from other countries in the Persian Gulf area. In compliance with the said objective, the provisions set out below will ensure to Iran and NIOC, 55 per cent of the net profits realised by the Trading Companies computed in accordance with the provisions of Section B below. 10
- B. (1) Each Trading Company will pay Iran and NIOC 55 per cent of the difference between its realisations (as computed in accordance with paragraph (2) below) from sales of NGL products and the sum of the amounts payable by it to NIOC in respect of the NGL in accordance with Article 12C and 12D excluding element (2) in Article 6A.
- (2) In computing realisations from sales of NGL products, the following provisions shall apply:
- (a) Realisations from sales of each NGL product by each Trading Company, or its affiliate, to third parties shall be computed at the actual prices realised from such sales. For these purposes, sales to third parties shall mean sales by such Trading Company, or its affiliate, to customers owned as to 50 per cent or more by entities other than the Consortium Members. Such realisations shall be computed annually and the computation shall be certified by an independent firm of chartered accountants or certified public accountants mutually acceptable to the Ministry of Finance and the Trading Company concerned. 20
- (b) Realisations by each Trading Company from sales other than to third parties shall be computed on the basis of publicly offered prices as follows:
- (i) In the event that any Trading Company, or its affiliate, shall have established a publicly offered price or prices for any NGL product for shipment in full cargo lots, f.o.b. Iranian loading port, all such sales of such NGL product by that Trading Company shall be computed at the publicly offered prices applicable on the date of commencement of loading. 30
- (ii) In the event that any Trading Company, or its affiliate, shall not have established a publicly offered price or prices for any NGL product, all such sales of such product by that Trading Company shall be computed at the arithmetical average on the date of commencement of loading of the publicly offered prices of those Trading Companies which have established such prices. 40
- (iii) For the purpose of this Section, a publicly offered price shall mean a price for an NGL product which the Trading Company concerned, or its affiliate, has made known to buyers generally (either by publication in a recognised trade journal or by other effective means) as the price at which it is prepared to sell such product f.o.b. Iranian loading port.
- (c) Any NGL products which from time to time are blended with finished or semi-finished products manufactured in Abadan Refinery shall be 50

accounted for by the Trading Companies in accordance with the provisions of paragraph 2 (b) above in the case of sales to which that paragraph applies. In the case of sales to which paragraph 2 (a) above applies such NGL products shall be accounted for at the average amount realised per barrel from the sale of the resulting blend computed in accordance with the provisions of paragraph 2 (a).

- (d) If, in respect of its total sales of any NGL products to third parties in the fourth full year after the commencement of exports of NGL products from Iran, or in any full year thereafter, the realisations of any Trading Company are on average less per barrel than nine-tenths of the average realisation from all sales of such product to third parties by all Trading Companies during the third full year after the commencement of the said exports, then such Trading Company shall adjust the total value of its sales of such product to third parties in such year to the equivalent of nine-tenths of the average realisation per barrel for sales of such product to third parties by all Trading Companies in the said third full year.

C. The gross receipts of each Trading Company in each year from the sale of NGL products shall be:

(1) the aggregate of the following:

- (a) a sum equal to the value at the applicable posted price of all NGL delivered to Bandar Mahshahr Refinery in that year for the account of that Trading Company, plus
- (b) the amount of the costs charged by NIOC in that year to that Trading Company pursuant to Article 12D, plus
- (c) (i) the profit of that Trading Company realised from the sale of NGL products manufactured for it at Bandar Mahshahr Refinery which shall be equal to the difference between its realisations from sales of such products in that year (computed in accordance with Section B above) and the sum of the amounts under paragraphs (1) (a) and (1) (b) above; or
- (ii) 5 per cent of the amount in paragraph (1) (a) above whichever is the greater;

minus

(2) an amount equal to the sum of:

- (a) the amount, if any, by which 5 per cent of the amount calculated under paragraph (1) (a) above exceeds the amount calculated under paragraph (1) (c) (i) above; and
- (b) element (2) of the price referred to in Article 6A, charged to that Trading Company in that year for NGL, multiplied by the difference between 100 per cent and the percentage rate of income tax divided by the percentage rate of income tax.

ARTICLE 14

A. NIOC shall inform the Consortium Members of any plans to establish new facilities from which NGL may be obtained, and shall offer the Consortium Members the opportunity to participate in any project for processing of such NGL with an interest of up to 50 per cent. NIOC and the Consortium Members shall also notify each other of any proposals for NGL recovery projects, and either party may elect to participate in any such project with an interest of up to 50 per cent, failing which the party may proceed with the project.

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- B. The organisation of such projects, the financing, construction and operation of the processing plants and the transportation of NGL or NGL products manufactured therein to the point of export, as well as the fiscal terms applicable to such projects, shall in each case be discussed and agreed between NIOC and the Consortium Members.
- C. The Trading Companies shall be entitled to purchase up to 50 per cent of the NGL obtained from facilities established in accordance with Section A above.
- D. The price payable to NIOC by the Trading Companies for NGL purchased under Section C above shall be the commercial price less discounts so as to equate the price with the costs of production. Fiscal arrangements shall be agreed between the parties. 10

ARTICLE 15

- A. After allowing for the quantities of natural gas required by NIOC for internal consumption, for use in operations under this Agreement (including secondary recovery and otherwise) and to meet NIOC's requirements for the export by pipeline of natural gas from Iran in its gaseous state, natural gas from the Area other than such gas reserved by NIOC under the Aide Memoire dated 23rd December 1966 at various stages prior to the Effective Date (while such reservation would have remained effective under Paragraph 6 of such Aide Memoire) shall be available to NIOC and for sale to the Consortium Members (or to joint ventures in which the Consortium Members have an interest) for processing in plants established under projects acceptable to Iran for the export of gas or products. 20
- B. If either NIOC or the Consortium Members have a proposal for establishing a plant for the processing of natural gas, notice shall be given to the other party of such proposal and the other party may elect to participate in the project with an interest of up to 50 per cent.
- C. Upon the sending and receipt of a notice under Section B above, discussions shall be held promptly to:
 - (1) ascertain whether a project for the export of natural gas or products proposed by the Consortium Members is generally acceptable to Iran; 30
 - (2) determine whether both NIOC and the Consortium Members wish to participate in the project and the extent of their respective interests;
 - (3) determine the financial and fiscal terms applicable to the processing of the gas and the fiscal terms applicable to the sale of products, which terms shall not be less favourable to the Consortium Members than those applicable to third parties in respect of gas processing.
- D. If within six months of the receipt of the notice the party to which the proposal was made has not elected to participate then the other party may, subject to the provisions of Section C (1) above, proceed with the proposed project. 40
- E. (1) If both NIOC and the Consortium Members are to participate in the project they shall enter into an agreement to provide inter alia for the following:
 - (a) the quantities and quality of gas to be supplied and the continuity of supply;
 - (b) in the case of non-associated gas, the production of the gas and its delivery to the plant;
 - (c) in the case of associated gas, the separation of the gas from crude oil and its delivery to the plant;

- (d) the organisation of the project and the financing, construction and operation of the plant and the transport of products manufactured therein; and
- (e) the trading arrangements in Iran and the relevant financial and fiscal terms as determined in accordance with Section C (3) above.
- (2) If NIOC does not elect to participate in a project proposed by the Consortium Members, the Consortium Members shall enter into an agreement with NIOC to provide for the matters referred to in sub-paragraphs (a), (b), (c) and (e) of paragraph (1) above, as well as the arrangements for the operation of the plant.
- 10 F. If effective site work has not been commenced to implement a project within 24 months of the proposal the rights of the proposing party in respect of the project shall lapse, but without prejudice to subsequent proposals.
- G. In any joint project the participants shall bear the costs of constructing and operating the plant and shall be entitled to the production from the plant in proportion to their respective interests.
- H. NIOC as owner and operator shall produce and sell natural gas required for plants established as above at the following prices:—
- 20 (1) In respect of joint ventures between NIOC and the Consortium Members only, the price payable to NIOC by joint ventures for natural gas purchased hereunder shall be the commercial price of the gas as delivered into the plant less agreed discounts.
- (2) In respect of ventures in which the Consortium Members alone have an interest, joint ventures between NIOC and the Consortium Members involving third parties and joint ventures between the Consortium Members and third parties without participation by NIOC, the price payable to NIOC by such ventures for natural gas purchased hereunder shall be the commercial price of the gas as delivered into the plant less agreed discounts calculated by reference to the percentage equity share of the Consortium Members (including the share of any third parties introduced by them) up
- 30 to 50 per cent.
- (3) The Consortium Members shall be entitled to receive the whole benefit of the discounts referred to in paragraph (2) above and mutually acceptable arrangements between Iran and NIOC and the Consortium Members shall, if necessary, be made to achieve this provided that such arrangements do not involve a reduction in the revenue which Iran would otherwise have received from the taxable income of the project.
- I. Where in the future NIOC plans to export by pipeline natural gas from Iran in its gaseous state, NIOC will offer to the Consortium Members the opportunity
- 40 to enter into joint ventures on NGL recovery projects with an interest of up to 50 per cent.
- J. Without prejudice to the provisions of Section C (1) above and subject to such terms and conditions as may be agreed in accordance with this Article, which terms and conditions shall be incorporated in the relevant agreement for implementation of a project, the Consortium Members, the Trading Companies, the affiliates of any of them and their respective customers shall each have complete freedom to dispose of natural gas and natural gas products for export and consumption outside Iran, to such persons and at such prices as they may individually determine and to determine by what means and on what terms and
- 50 conditions (including those relating to insurance) the same are carried away from Iran.

ARTICLE 16

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- A. For the purpose of developing the programmes and budgets in respect of the operations to be carried out under this Agreement:
- (1) during November of each year the Consortium Members shall submit to NIOC their offtake requirements of each grade of crude oil for the next year but one, and their estimated offtake requirements of each grade of crude oil for each of the four subsequent years;
 - (2) during December of each year NIOC and the Consortium Members shall meet for consultation concerning a provisional Exploration and Capacity Development Plan for the five years referred to in paragraph (1) above; 10
 - (3) NIOC shall review the Consortium Members' requirements for crude oil notified to it under paragraph (1) above together with its own requirements for crude oil during the same years; and in the light of the latest budget and with due regard to the consultation with the Consortium Members referred to in paragraph (2) above NIOC shall prepare a provisional outline for a five-year Exploration and Capacity Development Programme;
 - (4) during September of each year the Capital Budget for the following year will be issued by NIOC and copies thereof sent to the Consortium Members. NIOC shall at the same time send to the Consortium Members copies of the most recent outline five-year Capacity Development Programme together with an estimate (accurate to within 25 per cent) of the annual capital expenditure required therefor; 20
 - (5) during December of each year NIOC shall send to the Consortium Members copies of the budget prepared in respect of estimated operating costs for the following year expressed in U.S. cents per barrel, together with a forecast of the operating costs for the next year but one also expressed in U.S. cents per barrel;
 - (6) during April or May of the following year NIOC and the Consortium Members shall meet to review the provisional Exploration and Capacity Development Programmes prepared by NIOC in accordance with paragraph (3) above; after taking into consideration the views of the Consortium Members NIOC shall establish the basis of the detailed Exploration and Capacity Development Programme and Capital and Operating Budgets for the next following year in accordance with good oilfield practice and sound engineering principles; 30
 - (7) the timing of the matters provided for in this Section may be varied by agreement between NIOC and the Consortium Members as may be convenient;
 - (8) meetings between NIOC and the Consortium Members additional to those expressly provided for in this Section may be held at any time at the request of either of them to discuss major issues. 40
- B. The Capacity Development Programmes developed in accordance with the provisions of this Article shall provide for achieving a total installed crude oil production capacity of 8,000,000 barrels per day by 1st October 1976, provided that that is technically feasible and economically justifiable.
- C. In accordance with agreed arrangements:
- (1) NIOC shall provide the Consortium Members upon request with information on such aspects of the operations as they may indicate; and
 - (2) the Consortium Members undertake to treat as confidential any information relating to operations in Iran and will not disclose such information to any third party without prior consent of NIOC. NIOC likewise undertakes not 50

to disclose to any third party without the prior consent of the Consortium Members, any confidential information supplied to NIOC by the Consortium Members.

- D. During the term of the Service Contract referred to in Article 17 NIOC shall entrust to the Service Company the duty of working out the detailed programmes and budgets provided for in this Article as directed and controlled by NIOC. Such programmes and budgets shall be submitted for final approval to NIOC and shall become operative after such approval.

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ARTICLE 17

- 10 A. The Consortium Members shall cause a Service Company to be formed in Iran as a non-profit private joint stock company to carry out operations as assigned to it by NIOC in accordance with a Service Contract to be entered into with NIOC. The Service Contract shall have an initial term of five years. It shall continue in effect thereafter subject to termination by either party on two years' prior written notice.
- B. NIOC shall provide as necessary to the Service Company in accordance with the provisions of the Service Contract all capital and other funds to enable the Service Company to carry out the operations assigned to it.

ARTICLE 18

- 20 A. Crude oil and products, including NGL products, delivered for export shall be measured at jetty and crude oil delivered to refinery shall be measured at refinery, both in accordance with good oil industry practice.
- B. Natural gas delivered for processing and/or export in gaseous or liquid form in accordance with Article 15 hereof shall be measured at the appropriate points of delivery in accordance with good industry practice.
- C. The Trading Companies as purchasers shall be afforded adequate opportunity to satisfy themselves of the accuracy of such measurements.

ARTICLE 19

- 30 A. The Trading Companies shall pay income tax on their total net income in accordance with Articles 134 and 173 of the Direct Taxation Act of 19th March 1967 as the said Act was in force on 1st January 1973.
- B. The purchase price payable by the Trading Companies to NIOC for crude oil purchased, payments by the Trading Companies to each other for crude oil and products purchased, fees payable to NIOC for processing (including special plant costs) at Abadan Refinery and the costs of processing and refining NGL and delivery of NGL products shall be allowed as deductions in calculating their taxable income for the purposes of the Iranian Income Tax Act consistent with Articles 6, 5, 4 and 13 respectively.
- 40 C. The Trading Companies shall not, for Iranian tax purposes, be deemed to have any further income or receipts from their sales provided their sales and receipts are in accordance with the provisions of Article 5.
- D. Except for income taxes in accordance with Section A above, other payments payable in accordance with this Agreement, and such reasonable and non-discriminatory charges, taxes and fees of whatever nature as are levied generally in respect of services rendered upon request or to the public generally, such as municipality, sanitary charges, documentary stamp taxes, civil and commercial registry fees and patent and copyright fees, no taxation, fee or charge of any

nature shall be levied in Iran on the Consortium Members, Trading Companies, their respective affiliates, the customers of any of them or any transportation companies, or upon any dividends paid by any of them out of income derived from their transactions under this Agreement. The export of crude oil and products shall not be subject to any duties or taxes nor to any licences, permits or special formalities.

- E. The Service Company, functioning solely as a contractor for NIOC on a non-profit making basis, shall not be liable to any contractor's or income tax.

ARTICLE 20

The Consortium Members, the Trading Companies (subject only to the provisions of Article 5 B), the affiliates of any of them and their respective customers shall each have complete freedom to dispose of crude oil purchased hereunder and products manufactured therefrom, for export and consumption outside Iran, to such persons and at such prices as they may individually determine and to determine by what means and on what terms and conditions (including those relating to insurance) the same are carried away from Iran.

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ARTICLE 21

The bunkering of vessels at Iranian ports with products manufactured from crude oil produced under this Agreement shall be carried out in accordance with agreed arrangements.

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ARTICLE 22

- A. All payments from the Trading Companies to Iran and NIOC, including advances against the purchase price of crude oil, shall be made in U.S. dollars.
- B. The principal books and accounts of NIOC and of the Trading Companies relating to the operations provided for in this Agreement shall be kept in U.S. dollars.
- C. Expenditures by NIOC in any one month relating to the operations provided for in this Agreement, which are incurred in Iranian rials, shall be converted into U.S. dollars at the monthly arithmetical average of the daily buying rate of dollars by Bank Markazi Iran for that month.
- D. Expenditures by NIOC in any one month relating to the operations provided for in this Agreement which are incurred in currencies other than U.S. dollars or Iranian rials shall be converted into U.S. dollars at the monthly arithmetical average for that month of the mean of the daily buying and selling rates for the currencies in question for telegraphic transfers at 10.30 hours GMT as provided by the National Westminster Bank Ltd., London.
- E. Receipts by NIOC in Iranian rials in any one month relating to the operations provided for in this Agreement shall be converted into U.S. dollars at the monthly arithmetical average of the daily selling rate of U.S. dollars by Bank Markazi Iran for that month.
- F. Exchange differences due to variations in exchange rates in each year shall be deducted from or added to, as the case may be, operating costs for that year.
- G. For the purpose of determining the U.S. dollar amounts of Depreciation Charges referred to in Article 4 B (7), Article 8 B (2) (a) and Article 10 and in the Processing Agreement referred to in Article 4:
- (1) Expenditures incurred on fixed assets under construction at 21st March

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1973 shall be converted to U.S. dollars at the mean of the buying and selling rates for telegraphic transfers of U.S. dollars at 10.30 hours GMT on 21st March 1973 as certified by the National Westminster Bank Ltd., London.

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- 10 (2) (a) In respect of the net book values of other assets in use immediately prior to the Effective Date relating to crude oil production, the manufacture of NGL products, and refining at Abadan Refinery, separate memorandum accounts for such net book values shall be maintained in pounds sterling. The sterling amounts of Depreciation Charges relating thereto shall be converted to U.S. dollars at the arithmetical average of the mean of the daily buying and selling rates for telegraphic transfers of U.S. dollars at 10.30 hours GMT as certified by the National Westminster Bank Ltd., London for the period 21st March 1973 to 31st December 1973 and for each year thereafter.
- 20 (b) For the purpose of establishing provisional rates required to be used for the period 21st March to 31st December 1973 the arithmetical average of the mean of the daily buying and selling rates for telegraphic transfers of U.S. dollars at 10.30 hours GMT as certified by the National Westminster Bank Ltd., London for the month of April 1973 shall be used. For each calendar year commencing with 1974, a similar arithmetical average rate of the month of December of the preceding year shall be used. If at any time there is a significant change in exchange rates an appropriate adjustment shall be promptly agreed and applied.
- (c) Notwithstanding the provisions of Section F above, if future exchange differences should result in dollar balances remaining in the accounts associated with the sterling memorandum accounts referred to herein at the end of the period of write-off such balances shall be transferred between these accounts in order that such accounts shall be closed.
- 30 H. Notwithstanding the provisions contained in Section G above relating to the conversion of pre-21st March 1973 net book values, the method of calculating the Amount Deductible in each year shall be in accordance with the provisions of Part Four of Schedule 3 for periods subsequent to 21st March 1973.

ARTICLE 23

- A. Within Iran, and in connection with this Agreement, the Consortium Members and the Trading Companies shall exclusively bank with, and conduct all their banking transactions through, Bank Markazi Iran or any other bank approved by the Bank Markazi Iran to act as agent to that Bank.
- 40 B. Within the provisions of this Agreement:
- (1) The Consortium Members and the Trading Companies shall be entitled freely to buy rials on a non-discriminatory basis and may freely reconvert into foreign exchange for transfer out of Iran any rials so purchased in excess of their requirements, within a reasonable length of time, but shall not be obliged to convert into rials any part of their funds. No special rates of exchange shall apply to the Consortium Members and the Trading Companies.
- (2) None of the Consortium Members or Trading Companies shall be restrained from freely retaining or disposing of any funds or monetary assets outside Iran, including such funds or monetary assets as may result from their activities in Iran, or be restrained from maintaining foreign exchange
- 50

accounts in Iran with the Bank Markazi Iran and freely retaining or disposing of, including transferring out of Iran, any funds standing to the credit thereof.

ARTICLE 24

The assets and facilities used in the operations under this Agreement as well as the hydrocarbon reserves are exclusively owned by NIOC, and the terms of this Agreement shall not be construed as granting in any manner to the Consortium Members or the Trading Companies any right inconsistent with NIOC's exclusive ownership of such assets, facilities and reserves.

ARTICLE 25

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- A. Each Consortium Member shall be entitled to assign all or any of its rights and obligations under this Agreement subject to obtaining the written consent of NIOC in accordance with agreed arrangements.
- B. NIOC hereby consents to the assignment by any Consortium Member of all or any part of its rights and obligations under this Agreement to a Subsidiary, in which case such Consortium Member shall remain liable for the due performance of its obligations.

ARTICLE 26

- A. The Ministry of Finance, or such other agency as Iran may designate from time to time, shall have full and complete power and authority to execute and administer this Agreement on behalf of Iran and to take any action or give any consent on behalf of Iran which may be necessary or convenient under or in connection with this Agreement or for its better implementation. 20
- B. Iran hereby guarantees the due performance by NIOC of its obligations under this Agreement and related arrangements.

ARTICLE 27

Any failure by a party to comply with the terms of this Agreement which is attributable solely to force majeure shall not be regarded as a failure to perform its obligations. For the purposes of this Article force majeure shall include (but not be limited to) any event such as war, insurrection, civil commotion, strike, storm, tidal wave, flood, epidemic, explosion, fire, lightning or earthquake which is beyond the reasonable control of any party. 30

ARTICLE 28

- A. Any dispute arising out of this Agreement or any arrangements relating thereto shall be settled by an Arbitration Board consisting of three arbitrators. Arbitration proceedings shall be instituted by a notice in writing given by the complainant to the respondent. Each of the parties shall appoint an arbitrator and the two arbitrators before proceeding to arbitration shall appoint a third arbitrator who shall be the President of the Arbitration Board. 40
- B. If one of the parties does not appoint its arbitrator, or does not advise the other party of the appointment made by it within two months of the institution of the proceedings, the other party shall have the right to apply to the President of the International Chamber of Commerce to appoint the second arbitrator.

- C. If the two arbitrators cannot within two months from the date of the appointment of the second arbitrator agree on the person of the third arbitrator, the latter shall, if the parties do not otherwise agree, be appointed, at the request of either party, by the President of the International Chamber of Commerce.
- D. Any arbitrator so appointed by the said President under Sections B, C, and K hereof shall be an individual of international repute and experience as far as possible with respect to the fields of arbitration and petroleum agreements and shall not be in the public service of nor be closely connected with Iran or any of the countries of which any of the Consortium Members or Trading Companies is a national.
- 10 E. The arbitrators shall notify their acceptance of the nomination to both parties and to the President of the International Chamber of Commerce if they shall have been appointed by the said President within thirty days of receiving notice of their nomination. Failing such notification, it shall be assumed that they have refused the nomination and a new appointment shall be made in accordance with the same procedure.
- F. The award which shall be final and binding may be given by a majority of the Arbitration Board. The parties undertake to comply with it in good faith and either party may seek execution of the award in any court having jurisdiction
- 20 G. The place of arbitration and such matters of procedure as are not provided for in this Article shall be determined by the parties. In case of failure of the parties to reach agreement, such place and procedure shall be determined by a majority decision of the arbitrators.
- H. The parties shall extend to the Arbitration Board all facilities (including access to the petroleum operations) for obtaining any information required for the proper determination of the dispute. The absence or default of any party to an arbitration shall not prevent or hinder the arbitration procedure in any or all of its stages.
- 30 I. Pending the issue of the decision or award, the operations or activities which have given rise to the arbitration need not be discontinued. In case the decision or award recognises that the complaint was justified, provision may be made therein for such reparation as may appropriately be made in favour of the complainant.
- J. The costs of arbitration shall be awarded at the discretion of the Arbitration Board.
- K. If for any reason an arbitrator after having accepted the functions placed upon him is unable or unwilling to enter upon or complete the determination of a dispute, then the party concerned or the two arbitrators as the case may be shall
- 40 appoint a substitute arbitrator within two months, failing which either party may request the President of the International Chamber of Commerce to appoint a substitute for the said arbitrator in accordance with the regulations laid down in this Article.
- L. The arbitrators shall base their decision or award on the rights and obligations of the parties as laid down in this Agreement and arrangements relating thereto. The decision or award shall be governed by and executed in accordance with the laws of Iran.
- M. Wherever appropriate, decisions and awards hereunder shall specify a time for compliance therewith.
- 50 N. Either party may within fifteen days of the date of the communication of the decision or award to the parties, request the Arbitration Board who gave the

original decision or award to interpret the same. Such a request shall not affect the validity of the decision or award. Any such interpretation shall be given within one month of the date on which it was requested and the execution of the decision or award shall be suspended until the interpretation is given or the expiry of the said month, whichever first occurs.

- O. The provisions of this Agreement relating to arbitration shall continue in force notwithstanding the termination of this Agreement.
- P. Should the parties reach an agreement on the issue submitted to the arbitration prior to the issuance of the award by the Arbitration Board, such agreement shall be recorded in the form of an "arbitral award made by consent of the parties" and the mission of the Arbitration Board shall thus terminate. 10

ARTICLE 29

This Agreement shall be interpreted in accordance with the laws of Iran. The rights and obligations of the Parties shall be governed by and according to the provisions of this Agreement. The termination before expiry date or any alteration of this Agreement shall be subject to the mutual agreement of the Parties.

ARTICLE 30

- A. The term of this Agreement shall be twenty years from the Effective Date.
- B. This Agreement shall come into force as soon as it has been signed under hand or seal by the First and Second Parties hereto and has been ratified and duly enacted as part of the law of Iran by Act of the Majlis and Senate and assent of H.I.M. the Shahanshah Aryamehr. 20

ARTICLE 31

- A. The Consortium Agreement effective 29th October, 1954, as supplemented and amended, and the arrangements relating thereto are hereby terminated and as of the Date of Enactment are replaced by this Agreement and the arrangements relating hereto.
- B. Iran and NIOC on the one hand and the Consortium Members and the Trading Companies on the other agree that this Agreement constitutes a fair, appropriate and final settlement of all claims, demands and issues of any nature whatsoever outstanding between them as at the Date of Enactment. 30

ARTICLE 32

The Persian and English texts of this Agreement shall be of equal validity. In case of dispute which is referred to arbitration, both texts shall be laid before the Arbitration Board which shall interpret the intention of the parties from both texts.

ARTICLE 33

Any notice required or authorised to be given under this Agreement to any party shall be deemed to have been duly given when given in writing and delivered:

- (1) In the case of a notice to Iran, addressed to the Ministry of Finance or such other agency as Iran may designate from time to time under Article 26 at the principal office of the Ministry of Finance or of such other agency as the case may be. 40
- (2) In the case of NIOC, at NIOC's Head Office.

- (3) In the case of a notice to any of the Consortium Members at its Head Office address hereinafter mentioned, or at such other address as it may from time to time by written notice to Iran and NIOC designate for the purpose:

Gulf Oil Corporation,
Gulf Building,
P.O. Box 1166,
Pittsburgh,
Pennsylvania 15230, U.S.A.

Exhibit 7
Sale and
Purchase
Agreement:
Government
of Iran,
National
Iranian Oil
Company and
others.
19th July 1973
(Cont'd)

10 Mobil Oil Corporation,
150 East 42nd Street,
New York,
N.Y. 10017, U.S.A.

Exxon Corporation,
1251 Avenue of the Americas,
New York,
N.Y. 10020, U.S.A.

20 Standard Oil Company of California,
Standard Oil Building,
225 Bush Street,
San Francisco,
California 94120, U.S.A.

Texaco Inc.,
135 East 42nd Street,
New York,
N.Y. 10017, U.S.A.

The British Petroleum Company Limited,
Britannic House,
Moor Lane,
London EC2Y 9BU.

30 Shell Petroleum N.V.,
30 Carel Van Bylandtlaan,
The Hague,
Netherlands.

Compagnie Francaise Des Petroles,
5 Rue Michel Ange,
75781 Paris Cedex XVI,
France.

40 American Independent Oil Company,
50 Rockefeller Plaza,
New York,
N.Y. 10020, U.S.A.

Atlantic Richfield Company,
515 South Flower Street,
Los Angeles,
California 90071, U.S.A.

Exhibit 7
Sale and
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Government
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Iranian Oil
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Continental Oil Company,
High Ridge Park,
Stamford,
Connecticut 06904, U.S.A.

Getty Oil Company,
3810 Wilshire Boulevard,
Los Angeles,
California 90010, U.S.A.

Charter Oil Company,
208 N. Laura Street,
Jacksonville,
Florida 32202, U.S.A.

The Standard Oil Company (Ohio),
Midland Building,
Cleveland,
Ohio 44115, U.S.A.

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(4) In the case of a notice to a Trading Company, at the registered office of such Company in Iran.

IN WITNESS WHEREOF, the First and Second Parties hereto have signed these presents under hand or seal on the dates and at the places indicated below:
(Note: signatures of parties not reproduced.)

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Exhibit 38 (part)

Exhibit 38
(part)
Mining (Gove
Peninsula
Nabalco)
Agreement:
Commonwealth
of Australia
and
Plaintiff.
22nd February,
1968

Mining (Gove Peninsula Nabalco) Agreement: Commonwealth of Australia and Plaintiff

THIS AGREEMENT is made the Twenty-second day of February, One thousand nine hundred and sixty-eight, BETWEEN THE COMMONWEALTH OF AUSTRALIA (in this agreement called "the Commonwealth") of the one part and NABALCO PTY. LIMITED, a company incorporated in the State of New South Wales whose registered office is situated at Goldfields House, 1 Alfred Street, Sydney in that State, (in this agreement called "the Company") of the other part.

30

WHEREAS—

(1) deposits of bauxite are known to exist in the Gove Peninsula of the Northern Territory;

(2) The Company desires—

(a) to test the extent of the said deposits;

(b) to develop the mining property and to bring the said deposits into production;

(c) to produce bauxite and alumina within the Territory;

(d) to export alumina; and

(e) if found economically feasible, to produce aluminium within the Territory and to have the right to export the same;

40

- (3) the Company is prepared to provide and expend the large capital amount required for these and associated purposes;
- (4) the Commonwealth is satisfied that a large capital expenditure is necessary to ensure that the said bauxite deposits are efficiently and economically developed for a long period and that it is in the interests of the Commonwealth that those bauxite deposits should be developed and that the Company is technically and financially capable of so developing those deposits; and
- 10 (5) it is desirable that in consideration of the Company entering into the obligations on its part contained in this agreement, the Company should be granted the rights, titles and privileges set out in this agreement to enable the Company to develop the mining property:

Exhibit 38
(part)
Mining (Gove
Peninsula
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Commonwealth
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and
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22nd February,
1968
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NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:—

1.—(1.) In this agreement, unless the contrary intention appears—

Definitions

“Australian company” means—

- (1) a member company of the group of companies referred to in sub-clause (1.) of clause 9 of this agreement;
- 20 (2) a company which is incorporated in Australia and which is, or which the parties agree may reasonably be deemed to be, beneficially owned to the extent of seventy-five per centum (75%) of its equity capital by—
- (a) persons who are residents of Australia; or
- (b) companies each of which is beneficially owned to the extent of seventy-five per centum (75%) of its equity capital by persons who are residents of Australia; or
- (c) a combination of such persons and companies; or
- (3) a company which has, in the opinion of the Minister, whose opinion shall be binding on the Company, Australian characteristics of identification such as Australian management, Australian share-holding or the like.

30 “equity capital” means (for the purposes of the definition of “Australian company”) the share capital subscribed by shareholders in the relevant company;

“red mud” means the residue from the chemical treatment process used in the production of alumina;

“Swiss Aluminium Australia” means Swiss Aluminium Australia Pty. Limited, a company incorporated in the State of New South Wales that is a wholly owned subsidiary company of Swiss Aluminium Limited, and has its registered office at Goldfields House, 1 Alfred Street, Sydney in the said State;

40 “Swiss Aluminium Limited” means Swiss Aluminium Limited, a company incorporated in Switzerland that has its registered office at Chippis Canton of Valais and its administrative head office at Zurich 8, Feldeggstrasse 4, Switzerland.

“the Administrator” means the Administrator of the Territory appointed under the *Northern Territory (Administration) Act* 1910-1967, or the person for the time being duly appointed pursuant to that Act to act in the office of Administrator or the holder for the time being of, or the person for the time being performing the duties of, any office in substitution for the office of Administrator;

50 “the bauxite treatment plant” means the plant to be erected by the Company pursuant to sub-clause (5.) of clause 5 of this agreement;

Exhibit 38
 (part)
 Mining (Gove
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 1968
 (Cont'd)

“the Company” means Nabalco Pty. Limited and—

- (a) if this agreement is assigned, means all the permitted assigns of Nabalco Pty. Limited for the time being entitled to the benefit of this agreement; and
- (b) where the rights of the Company under this agreement to or as the holder of a lease, licence, easement or other title have been transferred, assigned or charged by the Company, includes in relation to the lease, licence, easement or other title, the person or persons for the time being entitled to, or to the exercise of, those rights;

10

“the feasibility study” means the study to be made by the Company pursuant to sub-clause (1.) of clause 5 of this agreement;

“the Minister” means the Minister of State for Territories of the Commonwealth or such other Minister of State as may for the time being be charged with the administration of the *Northern Territory (Administration) Act 1910-1967* and includes any member of the Federal Executive Council who may for the time being be acting for that Minister;

“the Ordinance” means the *Mining Ordinance 1939-1967* of the Territory;

“the perimeter areas” means the land described in the Second Schedule to this agreement;

20

“the Special Mineral Lease” means the Special Mineral Lease provided for by sub-clause (1.) of clause 4 of this agreement as varied at any time in accordance with this agreement and includes an extension or renewal of that lease;

“the Territory” means the Northern Territory of Australia; and

“this agreement” means this agreement as the same may be added to, varied or amended from time to time.

(2.) In this agreement any reference to an Act means that Act as amended from time to time or any Act in substitution for that Act.

(3.) In this agreement any reference to an Ordinance or the regulations thereunder means that Ordinance or those regulations as amended from time to time or any Ordinance or regulations in substitution for that Ordinance or those regulations.

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(4.) In this agreement, unless the contrary intention appears, words in the singular shall include the plural and words in the plural shall include the singular.

(5.) Marginal notes shall not affect the interpretation or construction of this agreement.

Operation of
 Agreement.

2.—(1.) This Agreement, other than clause 3 and sub-clause (1.) of clause 11, shall have no force or effect and shall not be binding on either party unless and until it is approved by an Ordinance of the Territory assented to by the Governor-General of Australia or the person for the time being administering the Government of the Commonwealth.

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(2.) Acts or things which have been done or carried out by or on behalf of a party to this agreement prior to the coming into force of this agreement but which were done or carried out in contemplation of this agreement and in accordance with its provisions shall, so far as is appropriate and practicable, be deemed to have been done or carried out under and for the purpose of this agreement.

Approval of
 Agreement.

3.—(1.) The Commonwealth will take the necessary action to have submitted to the Legislative Council for the Territory at the earliest practical date a Bill for an Ordinance to approve this agreement.

(2.) The Bill referred to in the last preceding sub-clause shall also contain, *inter alia*, provisions for the purpose of—

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- (a) enabling this agreement, the Special Mineral Lease and all leases, licences, easements and other titles to be granted to the Company pursuant to sub-clauses (2.) to (6.) inclusive of clause 4 of this agreement to take effect according to their terms notwithstanding anything to the contrary in, or any inconsistency with, the Ordinance or the regulations thereunder or any other Ordinance or regulations under such other Ordinance;
- (b) enabling the Commonwealth to enforce the bond referred to in clause 11 of this agreement against the Company according to its terms notwithstanding any rule of law relating to penalties and penal damages or any other rule or practice of law or equity whatsoever to the contrary;
- (c) providing that no mortgage or charge in a form commonly known as a floating charge consented to pursuant to clause 16 of this agreement by the Company or any assignee thereof over any lease, licence, easement or other title granted under or pursuant to this agreement and no transfer or assignment in exercise of any power of sale contained in such mortgage or charge shall require any approval or consent other than such consent as may be necessary under clause 16 of this agreement and no such mortgage or charge shall be rendered ineffectual as an equitable charge by the absence of any approval or consent otherwise than as required by clause 16 of this agreement or because the same is not registered under any provision of the relevant Ordinance under which the lease, licence, easement or other title is granted; and
- (d) providing that no lease, licence, easement or other title granted or assigned under or pursuant to this agreement shall be subject to or capable of partition including partition under The Partition Act, 1881, of the State of South Australia in its application to the Territory or under any order of any Court of competent jurisdiction under that Act or otherwise or be subject to the making of an order for sale under that Act.

4.—(1.) The Minister shall grant on behalf of the Commonwealth to the Company, and the Company will accept, a Special Mineral Lease in the terms set out in the First Schedule to this agreement for a term which, subject to the payment of rents and royalties therein mentioned and to there being no default by the Company in respect of which the Commonwealth has given notice under clause 18 of this agreement, shall be for a period of 42 years commencing on the date of this agreement with a right of renewal as therein provided for a further 42 years on the same terms and conditions (except the right of renewal) but subject to earlier determination upon cessation or determination of this agreement.

(2.) Notwithstanding the provisions of clause 6 of this agreement, the Minister shall grant to the Company on behalf of the Commonwealth a lease or leases of such land within the area coloured pink on the plan designated 'NABALCO/PLAN I' annexed to this agreement as is not included in the Special Mineral Lease and is reasonably required by the Company for the provision of services and for purposes ancillary to its operations under this agreement.

(3.) A lease under the last preceding sub-clause shall be granted, at the discretion of the Minister, by the variation of the Special Mineral Lease or by the grant of a Special Purposes Lease or Leases and shall be granted upon and subject to appropriate terms and conditions and, in the case of a Special Purposes Lease, for a term terminating on the termination of the Special Mineral Lease.

(4.) The Minister shall grant to the Company, upon and subject to appropriate terms and conditions, Special Purposes Leases of such land as is reasonably required

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(part)
Mining (Gove
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Commonwealth
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Special
Mineral
Lease and
Other Rights.

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(part)
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Commonwealth
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(Cont'd)

by the Company to establish a township and to dispose of red mud on the Gove Peninsula in connexion with its mining operations under this agreement.

(5.) A lease, including the variation of a lease, under sub-clause (2.), (3.) or (4.) of this clause—

(a) shall not impose on the Company obligations that are not reasonable in the circumstances of the use of the land leased and of the operations proposed to be carried out thereon;

(b) shall not contain reservations other than those that are contained in the Special Mineral Lease, except that a Special Purposes Lease may contain a reservation of minerals;

(c) shall contain provisions to the same effect as those that are contained in paragraphs (k), (l), (m), (n), (o) and (p) of clause 3 of the Special Mineral Lease, except that in a Special Purposes Lease the provision to the effect of paragraph (k) shall refer to the Special Purposes Leases Ordinance and to Special Purposes Leases.

(6.) In addition to the grant of the leases in accordance with the preceding provisions of this clause, the Commonwealth will grant or cause to be granted to the Company on appropriate tenures and upon and subject to appropriate conditions, including conditions for the payment of rent and royalties, under applicable laws in locations to be agreed upon and except when otherwise agreed, during such time as the Special Mineral Lease remains in force—

(a) reasonable rights of passage over other areas of Gove Peninsula to enable the Company to carry out its obligations under this agreement;

(b) such reasonable rights to take water, timber, stone, sand, lime, and other materials (except those that can be readily supplied on reasonable terms and conditions by the Yirrkala Mission or the Aborigines) as the Minister or the Administrator is satisfied are reasonably required to be granted to the Company for its purposes under this agreement; and

(c) the right to win and use, in such quantities as may reasonably be required by the Company for its purposes under this agreement, shellgrit, coral and other calcium-bearing minerals from such parts of the sea and estuaries in the vicinity of the land leased to the Company as from time to time may be specified by the Administrator, but on condition that any shell taken is taken in conformity with the *Pearl Fisheries Act 1952-1953* and the *Pearling and Pearl Culture Ordinance 1964*.

5.—(1.) The Company will undertake a feasibility study to obtain the necessary physical and cost data on which to proceed subsequently with the detailed design and erection of a bauxite treatment plant with a capacity of not less than 500,000 tons of alumina per annum at Gove Peninsula and at such other location or locations within the Territory as the Company may wish to consider.

(2.) The Company will complete the feasibility study by the 31st day of December, 1967, and will spend on that study not less than One million dollars (\$1,000,000).

(3.) The Company will furnish to the Minister prior to the 31st day of March, 1968, a comprehensive report on the results of the feasibility study.

(4.) The Company will, prior to the 31st day of December, 1969, complete the detailed engineering design for a bauxite treatment plant with a capacity of not less than 500,000 tons of alumina per annum to be established at Gove Peninsula or at another location within the Territory proposed by the Company and accepted by the Minister.

(5.) The Company will undertake and complete before the 31st day of December, 1971, the construction of a bauxite treatment plant of the capacity and at the

The Bauxite
Treatment
Areas.

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place referred to in the last preceding sub-clause or, in lieu thereof, of a bauxite treatment plant at that place that is in accordance with paragraph (b) of sub-clause (2.) of the next succeeding clause.

(6.) The Company will maintain the bauxite treatment plant in operable condition.

(7.) The Company will, in consultation with and to the satisfaction of the Administrator, dispose of the red mud and other effluent from the bauxite treatment plant in accordance with good mining and industrial practice.

10 6.—(1.) In addition to the operations provided for by the last preceding clause, the Company will at no cost to the Commonwealth carry out, by the 31st day of March, 1968, or such later date as is agreed upon by the Minister and the Company, a drilling, sampling and analysing programme of the perimeter areas and will make the results thereof available to the Commonwealth.

(2.) If—

- 20 (a) the results of the said drilling, sampling and analysing are such that the Minister is satisfied that the perimeter areas contain 50 million tons or less than 50 million tons of practicably extractable bauxite having a percentage of available alumina of over 44 per centum and having under five per centum of silica; and
- (b) the Company commits itself to erect, in lieu of a bauxite treatment plant of the minimum capacity provided by sub-clause (4.) of the last preceding clause, a bauxite treatment plant with a capacity of 750,000 tons of alumina per annum and designed for expansion to a capacity of one million tons of alumina per annum,

then the perimeter areas shall, subject to the next succeeding sub-clause, be included in and form part of the land demised by the Special Mineral Lease and the Schedule to that lease shall be varied accordingly.

30 (3.) If the results of the said drilling, sampling and analysing are such that the Minister is satisfied that the perimeter areas contain appreciably more than 50 million tons of practicably extractable bauxite having a percentage of available alumina of over 44 per centum and having under five per centum of silica, the Commonwealth shall have the right to reconsider the inclusion of the perimeter areas in the Special Mineral Lease and whether it shall be bound by the provisions of the last preceding sub-clause and any decision of the Commonwealth shall be notified forthwith to the Company.

(4.) In the event that by virtue of the decision of the Commonwealth under the last preceding sub-clause the perimeter areas are not included in the Special Mineral Lease, the Commonwealth will pay to the Company the proper costs incurred by the Company in carrying out the said drilling, sampling and analysing.

40 (5.) For the purposes of this clause—

“percentage of available alumina” means that percentage of alumina arrived at by subtracting the percentage figure of total silica content from the percentage figure of total alumina; and

“practicably extractable bauxite” means bauxite having a minimum thickness of six feet or a minimum thickness of four feet with a maximum overburden ratio of 1.5 of overburden to one of bauxite.

7.—(1.) Prior to the 31st day of December, 1971, or, if the Minister so approves, within a further period of twelve months after that date, the Company will—

- 50 (a) make a complete study of the economic feasibility of aluminium smelting at such location or locations within the Territory as the Company may wish to consider;

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Mining (Gove
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The Perimeter
Areas.

Aluminium
Smelter.

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- (b) furnish the Minister with a comprehensive report of that study; and
(c) forward to the Minister for discussion a firm proposal for the erection and establishment of an aluminium smelter within the Territory subject only to any conditions revealed by that study as to the supply and price of continuous power.

(2.) If aluminium smelting does not eventuate from this first proposal, the Company shall make further studies and furnish reports at such time or times as the Minister shall reasonably request in the light of any significant change having occurred in the prospects for supply and price of continuous power since the making of the previous proposal. Each such report shall be accompanied by a further proposal based on such further study for discussion with the Minister for the establishment of a smelter within the Territory subject only to any conditions revealed by such further study as to the supply and price of continuous power.

10

Reports.

8.—(1.) The Company will supply to the Minister and to the Administrator as at the last days of June and December in each year reports setting out the progress on the study referred to in sub-clause (1.) of clause 5 of this agreement and on the expenditures incurred by the Company up to the date of the completion of the bauxite treatment plant on the overall project, each report to be lodged within two months of the end of the period being reported on.

(2.) The Company will supply to the Minister such statistics of quantities of production, shipments and stocks of bauxite and alumina and of employment as are from time to time reasonably required by the Minister.

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Share holdings
in the
Company.

9.—(1.) The Company will use its best endeavours to ensure that, until the 31st day of March, 1968, and thereafter unless and until it is demonstrated by the Company to the satisfaction of the Minister in the feasibility study that the cost of alumina produced in the bauxite treatment plant will exceed the world market price of alumina (that cost for the purposes only of this clause being deemed to include a profit available for dividend distribution of seven and a half per centum (7½%) per annum on the whole of the equity capital of the Company), fifty per centum (50%) of the Company's issued shares will be held by Swiss Aluminium Australia and/or by Swiss Aluminium Limited in such proportions as Swiss Aluminium Limited may from time to time determine and the remaining fifty per centum (50%) will be held by the undermentioned group of Australian companies, either in the undermentioned proportions or in such other proportions in substitution thereof as may be mutually agreed to by members of the said group, namely—

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The Colonial Sugar Refining Co. Ltd.	27½%
Australian Mutual Provident Society	5 %
Bank of New South Wales	.....	.....	.....	2½%
Elder Smith Goldsbrough Mort Ltd.	.....	.....	.....	2½%
Mount Morgan Limited	.....	.....	.....	2½%
The Commercial Banking Company of Sydney Ltd.	.....	.....	.....	2½%
Peko-Wallsend Investments Ltd.	.....	.....	.....	3¾%
The Mutual Life and Citizens Assurance Co. Ltd.	.....	.....	.....	3¾%
				<hr/>
				50 %
				<hr/>

40

(2.) For the purposes of the last preceding sub-clause, the profit available for dividend distribution will be deemed to be the profit remaining after—

- (a) deducting all costs, charges and outgoings of and incidental to the mining of bauxite, to the production of alumina and to the sales of products,

including royalties, rents, rates, interest on loan moneys, maintenance and year-by-year replacements;

- (b) making provision for taxes and other matters for which it is proper and reasonable according to usual commercial and mining practices to make provision; and
- (c) amortising all assets over twenty years from the date of commencement of the production of alumina.

10 (3.) If as a result of it having been demonstrated by the Company to the satisfaction of the Minister in the feasibility study that the cost of alumina as defined in sub-clause (1.) of this clause read with sub-clause (2.) of this clause produced in the bauxite treatment plant will exceed the world market price of alumina an Australian company referred to in sub-clause (1.) desires, after the 31st day of March, 1968, to dispose of the whole or a part of its shares in the Company, the Company will use its best endeavours to persuade one or more of the remaining Australian companies referred to in sub-clause (1.) of this clause to acquire the shares which the first-mentioned Australian Company desires to dispose of.

20 (4.) If the Company is unsuccessful in the endeavours referred to in the last preceding sub-clause, it will confer with the Minister and will, within a reasonable time, use its best endeavours to persuade another or other suitable Australian company or companies, not being a company or companies within the aluminium industry but being a company or companies approved by Swiss Aluminium Australia, to acquire those shares, it being agreed, so far as the Company is in any position to prevent the same, that Swiss Aluminium Australia and Swiss Aluminium Limited shall not increase their total share-holding in the Company beyond fifty per centum (50%) of the equity capital unless the Company, having used its best endeavours as aforesaid, has been unable within a reasonable time to persuade another or other suitable Australian company or companies to acquire the said shares.

30 (5.) Nothing contained in sub-clauses (1.), (3.) and (4.) of this clause shall be deemed to prevent individual members of the said group of Australian companies from disposing of their shares, after the said 31st day of March, 1968, to other Australian companies, not being companies within the aluminium industry but being approved by Swiss Aluminium Australia.

10.—(1.) The Company will negotiate and enter into a contract with Swiss Aluminium Limited on terms whereby—

- (a) Swiss Aluminium Limited will contract to purchase for export firm for a period of 20 years the whole output of the bauxite treatment plant.
- (b) the price as determined under the price formula in the contract for that output will be subject to the Minister being satisfied that it is reasonable having regard to evidence to be advanced by the Company that the proposed price adjusted to a delivered basis—
 - (i) is not below the cost of production and freight; and
 - (ii) is reasonably comparable with the delivered prices for alumina that would be applicable to like quantities, quality and duration supplied under arms-length contracts from other world sources not being contracts for alumina sold or offered for sale at distressed prices or at prices resulting from dumping or subsidising.

(2.) The Company will take all practicable steps necessary to ensure that the contract is continued in force and performed subject to the force majeure provisions (if any) in such contract.

(3.) The Company will not negotiate downwards the original price specified in

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Sale of
Alumina.

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(part)
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22nd February,
1968
(Cont'd)
Bond and
Guarantee.

the contract referred to in sub-clause (1.) of this clause during the life of that contract except with the approval of the Minister.

(4.) In the absence of an agreement between the Australian companies holding shares in the Company and Swiss Aluminium Limited to the contrary, the contract referred to in sub-clause (1.) of this clause will give to the Australian companies holding shares in the Company an option at any time and from time to time on giving reasonable notice to purchase at comparable prices, terms and conditions to those applying under the said contract up to fifty per centum (50%) of the total production of alumina for their own unrestricted use or sale.

11.—(1.) On the signing of this agreement, the Company will execute and deliver to the Minister a bond substantially in accordance with the form in the Third Schedule to this agreement bind the Company in the sum of Two million dollars (\$2,000,000) as security for compliance by the Company with certain conditions of this agreement compliance with which is expressed in the said bond to make the bond void.

(2.) As soon as practicable after the date on which this agreement comes into force and in any event not later than one month after that date, the Company shall deliver to the Minister a guarantee or guarantees, in a form or forms approved by the Minister, by a guarantor or guarantors approved by the Minister guaranteeing the payment of any judgment, together with costs, obtained by the Commonwealth against the Company on the bond referred to in sub-clause (1.) of this clause and in respect of interest payable on any such judgment.

Discriminatory
Taxes, &c.

12.—(1.) The Commonwealth will use its best endeavours to ensure that no Act or Ordinance is passed that will impose, and that the Administration of the Territory and the agencies or instrumentalities of the Commonwealth and of the Territory and any local or other authority are not permitted or authorized to impose, discriminatory taxes, discriminatory rates or discriminatory charges of any nature whatsoever on or in respect of the titles, property or other assets, products, material or services used or produced by or through the operations of the Company or of any subsidiary or associated company of the Company in the conduct of business incidental to the Company's business under this agreement.

(2.) The Commonwealth will not take or permit to be taken any other discriminatory action that would deprive the Company or any subsidiary or associated company of full enjoyment of the rights granted or to be granted to the Company under this agreement.

Grants of
Mining Rights
to Other
Persons.

13.—(1.) The Commonwealth will ensure that during the currency of the Special Mineral Lease no claim, lease or other mining tenement is registered or granted under the Ordinance or otherwise by which any person other than the Company would obtain under the laws relating to mining or otherwise any rights to mine or take the natural substances (other than petroleum) within the land comprised in the Special Mineral Lease or any other lease granted pursuant to this agreement if such claim, lease or other mining tenement would unduly prejudice the Company in relation to its operations under this agreement, or under the relevant lease or would prejudicially interfere with such operations, assuming the taking by the Company of all reasonable steps to avoid the interference.

(2.) Authority under the Ordinance to occupy or mine any part of the land coloured blue on the plan designated 'NABALCO/PLAN II' annexed to this agreement shall not be granted by the Administrator where the occupation or mining would unduly prejudice the Company in its reasonable requirements in relation to its expected operations under this agreement and before any such authority is granted reasonable written notice will be given to the Company of the intention to grant the authority.

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14. The Commonwealth and the Company agree with each other that the land for the time being comprised in the Special Mineral Lease and the lands the subject of any lease, licence, easement or other title granted to the Company pursuant to this agreement shall be and remain zoned for use or otherwise protected during the currency of this agreement so that the operations of the Company hereunder may be undertaken and carried out thereon without any interference or interruption by the Commonwealth, the Administration of the Territory or any agency or instrumentality of either of them or any local or other authority of the Territory on the ground that such operations are contrary to any zoning by-law or regulation.

10 15. Without affecting the liability of the Company under this agreement, the Company shall have the right from time to time to entrust to third parties the carrying out of any portions of the operations which the Company is authorised or obliged to carry out hereunder.

16. Subject to the provisions of this clause the Company may not transfer, assign or charge the whole or any part of the rights of the Company under this agreement (including its rights to or as the holder of any lease, licence, easement or other title) or part with possession of any land the subject of any such lease, licence, easement or other title (other than to a wholly owned subsidiary or to wholly owned subsidiaries of the Company) without the consent in writing of the Minister, which consent shall not be unreasonably withheld in the case of a mortgage or charge bona fide for financing the operations of the Company under this agreement.

17.—(1.) If the Company incurs delay in the performance of any of its obligations under this agreement—

(a) from any cause arising without default or negligence on the part of and beyond the reasonable control of the Company; or

(b) without prejudice to the generality of the foregoing, by reason of fire, explosion, storm, flood, lightning, earthquake or other natural cause or accident, riot or civil commotion, strikes or lockouts, war (whether declared or not) or military or usurped power, act of government by way of restriction, embargo or prohibition arising without default or negligence on the part of the Company,

and if the Company furnishes evidence to the satisfaction of the Minister of the existence of the cause and of the fact that it was without default or negligence on the part of and beyond the reasonable control of the Company, then such obligation shall be suspended so far as it is so affected by such cause as aforesaid, but only during the continuance thereof.

(2.) Where an obligation that has been suspended under sub-clause (1.) of this clause requires the Company to undertake or complete any act, matter or thing by any date or by the end of any period, the Minister shall, by notice in writing to the Company, extend the date or the period, as the case may be, by the addition of a period equal to the period during which the Company was delayed in the performance of the obligation.

(3.) Notwithstanding any provision of this agreement the Minister may, at his discretion, at the request of the Company from time to time extend any period or date referred to in this agreement for such period or to such later date as the Minister thinks fit and the extended period or later date, when advised to the Company by notice from the Minister, shall be deemed for all purposes of this agreement to be substituted for the period or date so referred to.

18.—(1.) In the event that the Company makes default in the due performance or observance of any of the covenants or obligations in this agreement or in any lease, licence, easement or other title granted or assigned hereunder or pursuant hereto on its

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14. Zoning.
Third Parties.

Transfers, &c.

Permissible
Delays.

Determination.

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part to be performed or observed and such default shall not have been remedied within a period of one hundred and eighty (180) days after notice as provided in sub-clause (4.) of this clause is given by the Commonwealth then and in any of such events the Commonwealth may by notice to the Company determine this agreement and the rights of the Company hereunder and under any lease, licence, easement or other title granted hereunder or pursuant hereto.

(2.) If the Company surrenders the entire Special Mineral Lease as permitted under paragraph (p) of clause 3 of the Special Mineral Lease then this agreement and the rights of the Company hereunder and under any lease, licence, easement or other title granted hereunder or pursuant hereto shall thereupon determine. 10

(3.) If a default by the Company referred to in sub-clause (1.) of this clause shall not have been remedied after notice as therein provided, the Commonwealth instead of determining this agreement because of the default, may itself remedy the default or cause the same to be remedied (for which purpose the Commonwealth by agents, workmen or otherwise shall have full power to enter upon lands occupied by the Company and to make use of all plant, machinery, equipment and installations thereon) and the costs and expenses incurred by the Commonwealth in remedying or causing to be remedied such default shall be a debt payable by the Company to the Commonwealth on demand. Any action taken by the Commonwealth under this sub-clause shall not affect the operation of this clause or prejudice the rights of the Commonwealth under this clause in relation to any default other than that in respect of which the action is taken by the Commonwealth. 20

(4.) The notice to be given by the Commonwealth in terms of sub-clause (1.) of this clause shall specify the nature of the default entitling the Commonwealth to exercise the right of determination and, where appropriate or known to the Commonwealth, the party or parties responsible therefor and shall be given to the Company and to each assignee, mortgagee, chargee and disponee for the time being of the Company's said rights to or in favour of whom an assignment, mortgage, charge or disposition has been effected in terms of clause 16 of this agreement and the name and address for service of notice of whom as an assignee, mortgagee, chargee or disponee have previously been notified in writing to the Commonwealth by the Company or any such assignee, mortgagee, chargee or disponee. 30

Variation.

19. The provisions of this agreement or of any lease, licence, easement or right granted pursuant thereto may from time to time be cancelled, added to, varied or amended by agreement in writing between the parties thereto provided that the cancellation, addition, variation or amendment shall not be inconsistent with or constitute a material alteration of the essential provisions of this agreement.

Notices, &c.

20. Any notice, consent or other communication to be given to or served upon the Company under this agreement shall be deemed to have been duly given or served if it is in writing signed by or on behalf of the Minister and posted in a prepaid letter addressed to the Company at its registered office and any notice or other communication to be given to or served upon the Commonwealth or the Minister under this agreement shall be deemed to have been duly given or served if it is in writing signed on behalf of the Company and posted in a prepaid letter addressed to the Minister at his usual office or to the Secretary to the Department of Territories at Canberra. Any notice, consent or other communication sent by post shall be deemed to be given or served at the time when in due course of post it would be delivered to the address to which it is sent. 40

Applicable Law.

21. This agreement is governed by and is to be construed according to the law for the time being in force in the Territory. 50

THE SCHEDULES.

First Schedule

Clause 4.

THE NORTHERN TERRITORY OF AUSTRALIA
Mining (Gove Peninsula Nabalco Agreement) Ordinance 1968
Mining Ordinance 1939-1967
 SPECIAL MINERAL LEASE.

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Lease No.

- 10 LEASE granted on the day of
 One thousand nine hundred and sixty- in accordance with clause 4
 of an Agreement made the day of
 1968 between THE COMMONWEALTH OF AUSTRALIA (in this lease called "the
 Commonwealth") of the one part and NABALCO PTY. LIMITED, a company incor-
 porated in the State of New South Wales and having its registered office at Goldfields
 House, 1 Alfred Street, Sydney in the said State (in this lease called "the lessee") of
 the other part which Agreement was approved by the *Mining (Gove Peninsula Nabalco*
Agreement) Ordinance 1968 WHEREBY the Commonwealth DEMISES to the lessee
 20 in consideration of the rent, royalties and covenants hereinafter reserved and provided
 and on the part of the lessee to be paid and observed ALL THAT piece or parcel of
 land (in this lease called "the leased land") containing by admeasurement 13,496
 acres or thereabouts and particularly described and delineated in the Schedule to this
 lease AND ALL those mines, veins, seams, lodes and deposits of bauxite and other
 ores of aluminium, ores of calcium and ores of fluorine, together with any other
 minerals found in combination or association in the leased land with them so that the
 last-mentioned minerals must necessarily be mined in the mining of the bauxite or
 the said other ores, in or under the leased land TOGETHER WITH the rights,
 liberties, easements, advantages and appurtenances thereto belonging or appertaining
 EXCEPTING and RESERVING out of this lease—
- 30 (a) the right of the Commonwealth, its servants, officers and agents, at any
 time to enter and maintain and do work upon or in relation to the air-
 strip and any public roads for the time being subsisting over or upon the
 leased land;
- (b) the rights of ingress, egress, and regress hereinafter provided;
- (c) the right of the Commonwealth, subject to the provisions of the Agree-
 ment, to require the lessee—
- (i) to grant or consent to the granting of such easements or rights in or
 over the leased land; or
- (ii) to permit such use of the leased land,
 40 in each case as is or are reasonably necessary (taking into consideration
 the present and future use or development of the leased land by the
 lessee) in connection with the overall development or use of lands
 adjacent to the leased land,
 provided always that no such grant, consent or permission to use shall
 be required to be given by the lessee if such grant, consent or permission
 to use would—
- (A) unduly prejudice the lessee in relation to its operations under the
 Agreement or this lease or prejudicially interfere with those opera-
 tions; or

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(B) increase the lessee's commitments or prejudicially interfere with the lessee's control over the leased land or any part thereof;

TO HOLD the same UNTO THE LESSEE for the full term of forty-two years commencing on the date of this lease with the right hereinafter provided to renew the same for a further period of forty-two years for the purpose of mining on and in the leased land for bauxite and the other ores and minerals previously referred to in this lease and for all purposes necessary effectually to carry on the lessee's overall mining operations under the Agreement on or in the leased land including—

- (i) cutting and constructing thereon water-races, drains, channels, dams, pathways, roads, tramways, railways, conveyors, pipe-lines, power-lines and other engineering services to be used in connexion with that mining; 10
- (ii) quarrying stone and gravel and taking sand for the lessee's operations under the Agreement;
- (iii) erecting on the leased land buildings, installations, facilities and machinery to be used in connexion with the mining, the treatment and the export of products, including the erection of a bauxite treatment plant;
- (iv) erecting residences and other buildings and facilities on the leased land in connexion with all or any of the above purposes; and
- (v) subject to paragraph (b) of clause 1 hereof, drilling bores and wells for water, 20

but upon and subject to the Agreement and to the Ordinance except in so far as the provisions of the Ordinance are inconsistent with the Agreement YIELDING AND PAYING therefor the yearly rent hereinafter provided AND FURTHER YIELDING AND PAYING therefor royalties at the rates and in the manner hereinafter provided: AND WHEREBY IT IS WITNESSED as follows:

1. The lessee for itself and for its successors and permitted assigns covenants with the Commonwealth—

- (a) to pay, during the period of this lease, the rent and royalties reserved by the lease clear of all deductions at the respective rates and times and in the manner from time to time provided in this lease and, except in so far as is otherwise so provided, by the Ordinance and the Regulations; 30
- (b) unless authorised to do so by the Administrator under the *Control of Waters Ordinance* 1938-1965, not to bore or sink for, pump or raise water, nor to erect any dam or other facility on existing rivers or water ways for the purpose of the supply of waters;
- (c) to operate in accordance with good mining practice and, subsequent to mining operations on any part of the leased land, to take all steps necessary to restore and leave the surface of the mined area in a condition satisfactory to the Administrator so that—
 - (i) there shall be no abnormal batters or contours; 40
 - (ii) the surface soil (if any) existing prior to the mining operations shall, where possible, be preserved and subsequently spread to maximum advantage over the mined area;
 - (iii) there shall be a minimum interference with the natural drainage system except where it is found expedient to use any mined area for the storage of water;
 - (iv) there shall not arise any pollution of any drainage system that is dangerous or injurious to public health; and
 - (v) the provision of sub-paragraphs (i), (ii) and (iii) of this paragraph shall be carried out progressively and, in respect of a mined 50

- part, within two years of the cessation of mining on that mined part in order to allow of regeneration of vegetation;
- (d) not to use or work the leased land nor permit it to be used or worked except for the purposes for which it is leased;
- (e) to observe, perform and carry out the provisions of the Ordinance and the Regulations and of the *Mines Regulation Ordinance* 1939-1962 and the Regulations for the time being in force under that Ordinance so far as those provisions affect or have reference to special mineral leases granted under the Ordinance and are not inconsistent with the Agreement and/or this lease;
- 10 (f) to treat the bauxite in accordance with good industrial practice and to make the best use of the bauxite reserves;
- (g) to take competent advice in association with experts nominated by the Administrator as to what steps are reasonably possible to encourage and promote regeneration and development of vegetation on mined areas progressively;
- (h) to grant to all aboriginal residents of the Mission and to other persons specified in sub-section (3.) of section 17 of the *Social Welfare Ordinance* 1964-1967 of the Territory, the right to enter, leave and move across the leased land at will, except across such areas as the lessee may for security or safety reasons designate as restricted areas;
- 20 (i) to erect such fences or to take such other steps as may be reasonably necessary for security or safety purposes;
- (j) to permit access to any part of the leased land, not being a part or parts designated a restricted area as aforesaid, by the following persons for the performance of their duties—
- (i) members of the staff of the Mission who have first obtained the approval of the lessee; and
- (ii) officers, employees and agents of the Administration or the Commonwealth,
- 30 and not to unreasonably withhold approval sought for the purposes of sub-paragraph (i) of this paragraph;
- (k) not to interfere with or mine on any public road on the leased land unless the lessee has provided an alternative road or taxiway, as the case may be, approved by the Administrator;
- (l) not to interfere with or mine in an area constituting the airstrip unless and until the lessee has first constructed an alternative comparable airstrip on other land specified for that purpose by the Administrator and the alternative airstrip is licensed for the same purpose as the existing airstrip;
- 40 (m) to allow free public access to and along any public road and the airstrip or the alternative airstrip constructed in accordance with paragraph (l) of this clause;
- (n) for so long as the Mission is maintained at Yirrkala, to conduct its operations under this lease in such a way that it does not pollute, divert or otherwise interfere with the source of supply of water to the Mission from Yirrkala Creek unless it has first provided an alternative source of supply to the satisfaction of the Administrator;
- 50 (o) not to export bauxite from the Territory, except for purposes of testing in laboratories or pilot plants, without the prior approval of the Minister; and

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(p) to observe, perform and carry out the covenants on the part of the lessee to be observed, performed or carried out under the Agreement.

2. The Commonwealth covenants with the lessee that the Minister will at the written request of the lessee made 12 months before the expiration of the term hereby created and if there shall not at the time of the request be any existing breach or non-observance of any of the covenants or obligations on the part of the lessee in respect of which the Commonwealth has given notice under sub-clause (1.) of clause 18 of the Agreement, which has not been remedied or subsequently waived, at the expense of the lessee renew this lease for the further term of forty-two years from the expiration of the said term upon and subject to the like covenants and conditions as are contained in this lease with the exception of the present covenant for renewal. 10

3. It is mutually agreed and declared—

(a) that the rate of yearly rent payable by the lessee during each successive period of twenty-one years during the term of this lease and any extension of it shall be that rate of yearly rent that would be applicable in the case of a mineral lease of Crown land granted under the Ordinance at the commencement of that twenty-one year period;

(b) that the initial rate of royalty payable by the lessee shall be Twenty cents (20c) per ton on bauxite mined and treated in Australia, and Thirty cents (30c) per ton on bauxite mined and exported as untreated bauxite, but the royalty payable on bauxite mined and treated in Australia shall be reduced— 20

(i) to Fifteen cents (15c) per ton in any year in which the lessee's net profit (as hereinafter defined) is less than the equivalent of Twelve dollars (\$12) per ton of alumina produced but not less than Eight Dollars (\$8) per ton of alumina produced; or

(ii) to Ten cents (10c) per ton in any year in which the lessee's net profit (as hereinafter defined) is less than the equivalent of Eight dollars (\$8) per ton of alumina produced;

(c) that if the Minister is satisfied that the capital investment necessary for the establishment of a bauxite treatment plant with a capacity of 500,000 tons per annum is above One hundred million dollars (\$100,000,000), the figures of Twelve dollars (\$12) and Eight dollars (\$8) respectively referred to in sub-paragraphs (i) and (ii) of the last preceding paragraph shall be deemed to be increased in the same proportion as the new capital investment bears to One hundred million dollars (\$100,000,000); 30

(d) that for the purposes of paragraph (b) of this clause—

“the lessee's net profit” in a year shall be the profit of the lessee in the year after tax; and

“profit” shall, subject to the provisions of paragraph (e) of this clause, be the amount that is certified by the lessee's auditor to be the surplus remaining after deduction from the gross proceeds during the year from sales of bauxite and alumina produced from this lease of— 40

(i) all costs, charges, outgoings and overheads of and incidental to the mining, treatment, storage, handling, transport and sales of bauxite and alumina, including rents, rates, interest on loan moneys, maintenance and year-to-year replacements;

(ii) provisions on a basis that is consistent from year to year for replacement of assets; and 50

- (iii) other appropriate provisions on a basis that is consistent from year to year, but not including provisions for royalties and tax;
- (e) that the following provisions shall apply in relation to the calculation of the profit of the lessee referred to in the last preceding paragraph—
- (i) the system of accounts, any charges to the lessee by any related company (as defined by the Companies Ordinance) of the lessee and the provisions to be made in the calculation of the profit shall be subject to acceptance by the Administrator as being in accordance with usual commercial and mining practice and, when the system of accounts and the basis on which the provisions are to be made have been accepted for the purposes of the first royalty return, neither shall be changed except with the approval of the Administrator;
 - (ii) the Administrator shall be entitled to examine the books and records of the lessee for the purpose of verifying the calculation made on behalf of the lessee and the royalty payable in respect of the year;
 - (iii) if the Administrator is not satisfied with the calculation made on behalf of the lessee he shall make the calculation that he considers is correct and notify the lessee of the calculation he has made;
 - (iv) as soon as practicable after a notification by the Administrator, the lessee and the Administrator shall consult together in an endeavour to agree upon the calculation of the profit concerned;
 - (v) the profit of the lessee for the purposes of the calculation of royalty in respect of a year shall be the profit calculated in accordance with paragraph (d) and sub-paragraph (i) of paragraph (e) of this clause as agreed upon by the lessee and the Administrator or, if agreement is not reached within a period of three months after the notification to the lessee by the Administrator, as certified by the Auditor-General for the Commonwealth as calculated in accordance with paragraph (d) and sub-paragraph (i) of paragraph (e) of this clause;
 - (vi) the lessee shall permit the Auditor-General or an officer authorized by him to examine the books and records of the lessee for the purpose of enabling a certificate provided for by the last preceding sub-paragraph to be given;
 - (vii) a certificate by the Auditor-General as provided for by sub-paragraph (v) of this paragraph shall be accepted as a conclusive determination of the profit of the lessee in the relevant year;
- (f) that the rate of royalty may be reviewed by the Commonwealth at seven-yearly intervals computed from the 31st day of December, 1971, or from the date on which alumina is first produced in commercial quantities, whichever is the earlier, the Commonwealth having regard to such matters as the profitability of the project at Gove Peninsula and the movement in royalties generally in the Commonwealth of Australia for bauxite and other minerals since the last review, the right being reserved to the Commonwealth when reviewing royalty, having regard to such matters as aforesaid, to introduce new bases for assessment;
- (g) that the rate of royalty payable by the lessee for the seven-yearly period

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- immediately succeeding a review shall, subject to paragraph (h) of this clause, be the rate determined by the Commonwealth on the review or, if not so determined within six months after the date for the review, shall be the rate existing immediately prior to the date for the review;
- (h) that the rate of royalty payable under the preceding paragraphs of this clause during the first three seven-yearly royalty periods shall in no case be less than Ten cents (10c) or more than Forty cents (40c) per ton on bauxite mined and treated in Australia, or more than Fifty cents (50c) per ton on bauxite mined and exported as untreated bauxite;
- (i) that in relation to the payment of the royalty payable in accordance with the preceding paragraphs of this clause the following provisions shall apply—
- (i) the lessee shall within 28 days after the end of each quarter make a payment of Ten cents (10c) per ton on the tonnage input of bauxite to the bauxite treatment plant;
- (ii) the lessee shall submit to the Administrator a royalty return for each year within 28 days after receipt of the taxation assessment of the lessee by the Commissioner for Taxation for the year accompanied by the certificate of the lessee's auditor stating the net profit after tax of that year and that the provisions referred to in paragraph (d) of this clause are on a basis consistent with those of the previous year.
- (iii) any amount in addition to the total amount of the quarterly payments found to be payable after final calculation in respect of a year on the basis set out above shall be paid by the lessee within 28 days after notification to the lessee by the Administrator that the additional amount is payable;
- (j) that the lessee shall during the term of this lease pay royalty on the minerals other than bauxite mined by the lessee at the respective rates and at the respective times that would be applicable in the case of a mineral lease of the leased land provided for those minerals in the Ordinance at the time of their sale;
- (k) that the provisions of the Ordinance and of the Regulations so far as they relate to special mineral leases granted under the Ordinance and are not inconsistent with the Agreement and/or this lease shall apply to this lease as if those provisions were incorporated in this lease;
- (l) that the Commonwealth will have the right to resume any portion of the leased land for a public purpose, on payment to the lessee of compensation calculated as provided in paragraphs (m) and (n) of this clause;
- (m) that in the event of any part of the leased land being resumed by the Commonwealth under the last preceding paragraph, the lessee shall be entitled to compensation on just terms for the loss of bauxite and other minerals designated in this lease in, and improvements on or to, the land resumed and for any loss in value to the lessee of any improvements on or to the leased land (other than the resumed part) or on or to any other land the subject of a lease to the lessee or any assignee of the lessee and for any other losses necessarily incurred by the lessee or such assignee by reason of the resumption;
- (n) that for the purposes of paragraph (m) of this clause the value of bauxite and/or other minerals shall be their value as at the date of resumption, taking into account all costs which would be associated with the mining,

- transport, treatment and, if applicable, washing of those minerals;
- (o) that the lessee may, upon payment of all royalties and rent then due to the Commonwealth and having complied with the provisions of subparagraph (v) of paragraph (c) of clause 1 of this lease, surrender the whole or part of the lease; and
- (p) that this lease shall be subject to determination as provided in clause 18 of the Agreement.

4.—(1.) In this lease, unless the contrary intention appears—

“public road”, for the purposes only of paragraphs (k) and (m) of clause 1 of this lease and of this sub-clause, means—

- (a) each of the three existing formed and constructed gravel roads connecting the airstrip with Dundas Point, the airstrip with the Mission and the airstrip with the European Launcher Development Organization (ELDO) campsite respectively; and
- (b) every bitumen surface road and taxiway in the vicinity of the airstrip as identified on Road Plan C and L 464/D, a copy of which is held by the office of the Lands Branch, Darwin,

and includes an alternative road or taxiway provided in accordance with the said paragraph (k);

“the Administrator” means the Administrator of the Territory appointed under the *Northern Territory (Administration) Act 1910-1967*, or the person for the time being duly appointed pursuant to that Act to act in the office of Administrator or the holder for the time being of any office in substitution for the office of Administrator;

“the Agreement” means the agreement dated the day of 1968, between the Commonwealth and the lessee for the mining of bauxite at Gove Peninsula aforesaid and for other purposes to which the form of this lease was scheduled;

“the bauxite treatment plant” means the bauxite treatment plant that is erected pursuant to the Agreement;

“the leased land” includes public roads as defined in this sub-clause;

“the lessee” means Nabalco Pty. Limited and, if this lease is assigned, means all the assigns of Nabalco Pty. Limited for the time being entitled to the benefit of this lease;

“the Minister” means the Minister of State for Territories of the Commonwealth, or such other Minister of State for the Commonwealth as may for the time being be charged with the administration of the *Northern Territory (Administration) Act 1910-1967* or any member of the Federal Executive Council who may for the time being be acting for that Minister;

“the Mission” means the Mission establishment that is for the time being conducted at Yirrkala by the Department of Overseas Missions of the Methodist Church of Australia or by any successor of that Department or Church;

“the Ordinance” means the *Mining Ordinance 1939-1967* of the Territory;

“the Regulations” means the Regulations made under the Ordinance as those Regulations are amended from time to time; and

“the Territory” means the Northern Territory of Australia.

(2.) Any reference to an Act means that Act as amended from time to time or any Act in substitution for that Act.

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(3.) Any reference to an Ordinance means that Ordinance as amended from time to time or any Ordinance in substitution for that Ordinance.

(4.) In this lease, unless the contrary intention appears words in the singular include the plural and words in the plural include the singular.

The Schedule
(Schedules of lands not reproduced)
Third Schedule

Clause 11.

Bond.

BY THIS BOND Nabalco Pty. Limited, a company incorporated under the laws of the State of New South Wales and having its registered office at Goldfields House, 1 Alfred Street, Sydney in that State, ACKNOWLEDGES ITSELF BOUND to the Commonwealth of Australia in the sum of Two million dollars (\$2,000,000) to be paid to the said Commonwealth of Australia. 10

SEALED this _____ day of _____ 196

NOW THE ABOVE WRITTEN BOND is conditioned to be void in case the said Nabalco Pty. Limited shall observe and carry out the provisions on its part to be observed and carried out of sub-clauses (4.) and (5.) of clause 5 of the Agreement made the _____ day of _____ 1968, between the said Commonwealth of Australia and the said Nabalco Pty. Limited in relation to the mining of bauxite and the production of alumina at Gove Peninsula in the Northern Territory of Australia as those provisions may be at any time affected, varied or amended under or by virtue of clause 17 or clause 19 of the said Agreement. 20

AND IT IS HEREBY DECLARED that this Bond shall be governed by, and have effect in accordance with, the law for the time being in force in the Northern Territory of Australia.

THE COMMON SEAL of NABALCO PTY. LIMITED was hereunto affixed by authority of a resolution of the Board of Directors in the presence of—

Director
Secretary 30

IN WITNESS whereof the Minister has for and on behalf of the Commonwealth hereunto set his hand and seal and the Company has hereunto affixed its common seal the day and year first above written.

SIGNED SEALED AND DELIVERED by CHARLES EDWARD BARNES, the Minister of State for Territories of the Commonwealth of Australia, for and on behalf of the Commonwealth in the presence of— (Sgd.) C. E. Barnes L.S. 40

(Sgd.) W. L. Perry
THE COMMON SEAL of NABALCO PTY. LIMITED was hereunto affixed by the authority of a resolution of the Board of Directors in the presence of— L.S.

(Sgd.) David Griffin
(Sgd.) J. Vernon
Directors
(Sgd.) C. Joehr
Secretary 50

Exhibit 38 (part)**Supplemental Agreement: Swiss Aluminium Australia Pty. Limited, Gove Alumina Ltd., the Commonwealth of Australia and Plaintiff**

Exhibit 38
(part)
Supplemental
Agreement:
Swiss
Aluminium
Australia Pty
Limited,
Gove Alumina
Ltd, the
Commonwealth
of Australia
and Plaintiff.
30th May, 1969

THIS AGREEMENT is made the 30th day of May One thousand nine hundred and sixty-nine Between—

SWISS ALUMINIUM AUSTRALIA PTY. LIMITED, a company incorporated in the State of New South Wales whose registered office is situated at No. 1 Alfred Street, Sydney in that State, and GOVE ALUMINA LIMITED, a company incorporated under the laws of the State of New South Wales whose registered office is situated at No. 1 O'Connell Street, Sydney in that State (which two companies are in this Agreement respectively called 'Swiss Aluminium Australia' and 'Gove Alumina' and together referred to as 'the Joint Venturers') of the first part;

THE COMMONWEALTH OF AUSTRALIA (in this Agreement called 'the Commonwealth') of the second part; and

NABALCO PTY. LIMITED, a company incorporated in the State of New South Wales whose registered office is situated at Goldfields House, No. 1 Alfred Street, Sydney in that State (in this Agreement called 'Nabalco') of the third part:

WHEREAS—

- (A) by an Agreement made between the Commonwealth and Nabalco the twenty-second day of February, 1968, and approved by the Mining (Gove Peninsula Nabalco Agreement) Ordinance 1968 of the Northern Territory of Australia (in this Agreement called 'the Principal Agreement') provision was made in relation to the deposits of bauxite known to exist in the Gove Peninsula of the Territory;
- (B) by clause 16 of the Principal Agreement it is provided, among other things, that Nabalco could not transfer or assign the whole or any part of its rights under the Principal Agreement (other than to a wholly owned subsidiary or wholly owned subsidiaries of Nabalco) without the consent in writing of the Minister for the time being charged with the administration of the Northern Territory (Administration) Act 1910-1968;
- (C) Nabalco has agreed to transfer and assign the Principal Agreement and the full benefit and advantage thereof including without prejudice to the generality thereof its rights under the Principal Agreement to or as the holder of any lease, licence, easement or other title to the Joint Venturers as tenants in common in the following undivided shares, namely as to seventy equal undivided one hundredth shares thereof unto Swiss Aluminium Australia and as to thirty equal undivided one hundredth shares thereof unto Gove Alumina, and subject to the consent thereto of the Minister pursuant to clause 16 of the Principal Agreement and has requested such consent;
- (D) the whole of the issued share capital of Swiss Aluminium Australia is held by Swiss Aluminium Limited and the issued share capital of Gove Alumina is held by The Colonial Sugar Refining Company Limited, Australian Mutual Provident Society, Bank of New South Wales, Elder Smith Goldsborough Mort Ltd., The Commercial Banking Company of Sydney Ltd., Peko-Wallsend Ltd. and The Mutual Life and Citizens' Assurance Co. Ltd.;

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- (E) it is intended that Nabalco and the Joint Venturers will execute a Deed of Assignment in the terms set out in the Schedule to this Agreement;
- (F) Nabalco and the Joint Venturers have, in association with the proposed transfer and assignment, sought the agreement of the Commonwealth upon certain matters affecting the operation of the Principal Agreement;
- (G) The Minister has agreed to consent pursuant to clause 16 of the Principal Agreement to the proposed transfer and assignment in consideration of the agreements and conditions hereinafter contained and on the part of the Joint Venturers to be performed and observed and subject to the entering into of the various agreements associated with the transfer and assignment hereinafter appearing; 10
- (H) clause 19 of the Principal Agreement provides that the provisions of the Principal Agreement or of any lease, licence, easement or right granted pursuant thereto may from time to time be cancelled, added to, varied or amended by agreement in writing between the parties thereto provided that the cancellation, addition, variation or amendment shall not be inconsistent with or constitute a material alteration of the essential provisions of the Principal Agreement;
- (I) the Joint Venturers have entered into a Joint Venture Agreement dated the twenty-second day of January, 1969, (in this Agreement called 'the Joint Venture Agreement') for the progressive exercise and development of the rights of the Company under the Principal Agreement to be transferred and assigned as aforesaid but subject to the hereinbefore recited Deed of Assignment and consent: 20

NOW THIS AGREEMENT WITNESSETH as follows:

1. This Agreement shall come into force when the Deed of Assignment set out in the Schedule hereto has been executed by Nabalco and the Joint Venturers with the consent in writing of the Minister.
- 2.—(1.) Subject to the provisions of this Agreement, the Joint Venturers accept and agree to be bound by the obligations on the part of the Company under the Principal Agreement to the extent that those obligations have not at the date of the coming into force of this Agreement been discharged by or on behalf of Nabalco. 30
- (2.) The Joint Venturers shall be jointly and severally bound by the obligations accepted by them under this clause and otherwise under the provisions of this Agreement.
- 3.—(1.) The Commonwealth agrees with the Joint Venturers and Nabalco that performance by or on behalf of the Joint Venturers of the obligations of the Company under the Principal Agreement as affected by this Agreement will be accepted as performance to the relevant extent of the obligations of the Company under the Principal Agreement. 40
- (2.) The Commonwealth shall not by virtue only of the agreement on its part contained in sub-clause (1.) of this clause be taken to have released or discharged Nabalco from the performance of its obligations under the Principal Agreement.
4. Nabalco acknowledges and agrees—
 - (a) that notwithstanding the assignment of its rights under the Principal Agreement the provisions of clauses 2 and 3 of this Agreement apply in relation to its obligations thereunder; and
 - (b) that the provisions of the Principal Agreement that are applicable to Nabalco shall apply subject to the effect on those provisions of the provisions of this Agreement. 50

5.—(1.) As soon as practicable after the coming into force of this Agreement and in any event not later than one month thereafter or within such further time as the Minister may determine in accordance with sub-clause (3.) of clause 17 of the Principal Agreement the Joint Venturers shall—

- (a) execute and deliver to the Minister a joint and several bond substantially in accordance with the form in the Third Schedule to the Principal Agreement binding the Joint Venturers in the sum of Two million dollars (\$2,000,000) as security for compliance by the Joint Venturers with certain provisions of the Principal Agreement compliance with which is expressed in the said bond to make the bond void; and
- (b) deliver to the Minister a guarantee or guarantees, in a form or forms approved by the Minister, by a guarantor or guarantors approved by the Minister guaranteeing the payment of any judgment, together with costs, obtained by the Commonwealth against the Joint Venturers or either of them on the bond referred to in paragraph (a) of this sub-clause and in respect of interest payable on any such judgment.

(2.) The bond entered into by the Joint Venturers under sub-clause (1.) of this clause shall be in substitution for the bond entered into by Nabalco under clause 11 of the Principal Agreement and upon the delivery to the Minister by the Joint Venturers of the bond and the guarantee or guarantees referred to in paragraph (b) of that sub-clause the bond entered into by Nabalco shall cease to have any force or effect and, together with the guarantee relating thereto, shall be returned to Nabalco by the Commonwealth.

6.—(1.) Having regard to the results of the drilling, sampling and analysing programme of the perimeter areas carried out by the Company in accordance with sub-clause (1.) of clause 6 of the Principal Agreement and to the agreements and conditions herein contained, the Special Mineral Lease to be granted to the Joint Venturers under the Principal Agreement shall include the perimeter areas and the Schedule to the form of lease set out in the First Schedule to the Principal Agreement shall be varied accordingly.

(2.) The parties agree that, consequent on the provisions of sub-clause (1.) of this clause, the obligations of the Joint Venturers under clauses 5 and 6 of the Principal Agreement in relation to the construction of a bauxite treatment plant shall be that the Joint Venturers shall—

- (a) in accordance with sub-clause (5.) of clause 5, undertake and complete before the thirty-first day of December, 1971 or such later date as may be determined by the Minister in accordance with sub-clause (2.) or sub-clause (3.) of clause 17 of the Principal Agreement the construction at Gove Peninsula of a bauxite treatment plant with a capacity of not less than 500,000 tons of alumina per annum; and
- (b) undertake and complete such further works as will ensure that the bauxite treatment plant will, by the thirty-first day of December, 1974 or such later date as may be determined by the Minister in accordance with sub-clause (2.) or sub-clause (3.) of clause 17 of the Principal Agreement have a capacity of not less than one million tons per annum,

and the provisions of clauses 5 and 6 of the Principal Agreement shall, subject otherwise to the provisions of that Agreement, be read accordingly.

7.—(1.) Subject to the provisions of this clause 7, the shares as tenants in common in the Principal Agreement and the benefit and advantage thereof, including without prejudice to the generality thereof the right under the Principal Agreement to or as the holder of any lease, licence, easement or other title shall be respectively

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Swiss Aluminium Australia seventy equal undivided one hundredth shares and Gove Alumina thirty equal undivided one hundredth shares.

(2.) The Joint Venturers covenant and agree that except with the consent in writing of the Minister the said shares held by Gove Alumina shall not be reduced below thirty equal undivided one hundredth shares.

(3.) The consent of the Minister shall not be withheld where Swiss Aluminium Australia has demonstrated to the reasonable satisfaction of the Minister that notwithstanding reasonable endeavours over a period of six months (during which the Minister has been kept informed) Swiss Aluminium Australia has been unable to find an Australian company or Australian companies to acquire on reasonable terms the number of the said shares by which the said shares held by Gove Alumina would be reduced below thirty equal undivided one hundredth shares. 10

(4.) Gove Alumina covenants and agrees with the Commonwealth (so far as relates to its own acts and omissions and without in any way by inference or otherwise implicating Swiss Aluminium Australia) that it will exercise its best endeavours to ensure that the whole of its issued capital is at all times owned by an Australian company or Australian companies.

(5.) The parties acknowledge that if future circumstances permit a return on terms fair to all concerned to the original concept of an Australian company or Australian companies having a fifty per centum share in the rights under the Principal Agreement, the parties would seek to co-operate in bringing this about, and in this connection the fourth paragraph of the letter from Nabalco to the Minister of 30th January 1969 will be taken into consideration. 20

8.—(1.) The parties acknowledge that in conformity with sub-clause (1.) of clause 10 of the Principal Agreement Swiss Aluminium Australia and Gove Alumina have entered into contracts with Swiss Aluminium Limited for the sale of seventy per centum and thirty per centum respectively of the output of a bauxite treatment plant with a rated capacity of one million tons per annum. This acknowledgement on the part of the Commonwealth shall not be taken to prejudice the discretion of the Minister under paragraph (b) of the said sub-clause (1.) in relation to the purchase price for additional alumina arising from the increase in the rated capacity of the bauxite treatment plant beyond one million tons per annum. 30

(2.) The Minister's approval shall be required to the price or prices at which each of the Joint Venturers sells all alumina produced by the bauxite treatment plant or any extension thereof in excess of and subsequent to that referred to in sub-clause (1.) of this clause. In reaching a decision the Minister is to be satisfied that the price or prices are reasonable having regard to evidence to be advanced by the Joint Venturer concerned that the proposed price adjusted to a delivered price—

- (i) is not below the cost of production and freight; and
- (ii) is reasonably comparable with the delivered prices for alumina that would be applicable to like quantities, quality and duration supplied under arms-length contracts from other world sources, not being contracts for alumina sold or offered for sale at distressed prices or at prices resulting from dumping or subsidising. 40

9.—(1.) The Commonwealth and Swiss Aluminium Australia agree that Gove Alumina (as the Australian venturer) shall be entitled to export from Australia up to forty million dry metric tons of bauxite from the Gove deposits over the period of twenty years commencing on the date of the first commercial shipment of bauxite from the Gove deposits. This provision shall be deemed to constitute approval of the

Minister to such export under paragraph (o) of clause (1.) of the Special Mineral Lease set out in the First Schedule to the Principal Agreement.

(2.) The agreement of the Commonwealth to the export of bauxite by Gove Alumina shall be subject to approval by the Minister to the prices at which the bauxite is sold and to the annual rates at which it is shipped and shall not be taken to commit the Commonwealth in relation to the export of bauxite after the expiration of the said period of twenty years.

10 10.—(1.) The Joint Venturers acknowledge and confirm that either of them has the right pursuant to the provisions of the Joint Venture Agreement at any time and from time to time to cause the capacity of the bauxite treatment plant to be expanded in increments of 500,000 tons per annum or a multiple thereof fitting in sensibly with the general design of the then existing plant. The other of the Joint Venturers has the right to join in such an expansion of the said plant to a maximum of fifty per centum of such proposed expansion. The costs of such expansion shall be borne by the parties according to their exercised rights in such expansion and they shall in like proportion be entitled to the alumina produced from such expansion of the bauxite treatment plant.

20 (2.) An expansion of the bauxite treatment plant as aforesaid shall not proceed without the approval of the Minister unless there is participation by Gove Alumina or other Australian companies to the extent of at least 30 per centum of the proposed expansion, providing, however, that such consent shall not be withheld where Swiss Aluminium Australia has demonstrated to the reasonable satisfaction of the Minister that notwithstanding reasonable endeavours over a period of six months (during which the Minister has been kept informed) Swiss Aluminium Australia has been unable to secure the requisite Australian participation on reasonable terms.

30 11. The rights of the Joint Venturers or either of them or of any other person or persons for the time being entitled to rights of the Company under the Principal Agreement or under this Agreement in accordance with clause 16 of the Principal Agreement to transfer or assign, in whole or in part, their respective rights under the Principal Agreement or under this Agreement without the consent in writing of the Minister shall only be capable of exercise in favour of a wholly owned subsidiary or subsidiaries of the transferor or assignor concerned.

12.—(1.) Unless and until otherwise agreed between the Joint Venturers with the concurrence of the Minister, the management of the operations of the Joint Venturers under the Principal Agreement as modified by this Agreement shall be carried out on their behalf by Nabalco.

(2.) The Joint Venturers shall keep the Commonwealth informed of the arrangements from time to time made by them relating to the management and conduct of their operations as aforesaid.

40 (3.) The Joint Venturers and Nabalco shall ensure that any arrangements relating to the management and conduct of the said operations are carried out in conformity with and so as not to affect the operation of the Principal Agreement as modified by this Agreement.

13. The Principal Agreement is amended by inserting in the definition of 'the Company' in sub-clause (1.) of clause 1 after sub-paragraph (b) the following further sub-paragraph—

(c) in relation to a mortgage or charge in a form commonly known as a floating charge given by any person for the time being jointly or severally entitled to any lease, licence or other title granted under or pursuant to this agreement, includes each such person severally;

50 14. For the purposes of clause 20 of the Principal Agreement a notice, consent

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or other communication to be given to or served upon the Company shall be given to or served upon each of the Joint Venturers and any notice or other communication to be given to or served upon the Commonwealth or the Minister shall be signed on behalf of each of the Joint Venturers and the alternative address for the giving or service of the notice shall be that of the Secretary to the Department of the Interior at Canberra.

15. The form of Special Mineral Lease set out in the First Schedule to the Principal Agreement is amended as follows—

- (a) by deleting the reference to Nabalco as the lessee and inserting in its place the names and descriptions of the Joint Venturers as the assignees of the rights of Nabalco under the Principal Agreement; 10
- (b) by deleting throughout the word 'lessee' and inserting in its place the word 'Lessees' and by making any further amendments consequential thereto;
- (c) by inserting in the habendum after the phrase 'UNTO THE LESSEES' the words 'as tenants in common in the following undivided shares, namely, as to seventy equal undivided one hundredth shares unto Swiss Aluminium Australia Pty. Limited and as to thirty equal undivided one hundredth shares unto Gove Alumina Limited';
- (d) by including a provision that the obligations of the Joint Venturers thereunder shall be joint and several; 20
- (e) by making such modifications (if any) of paragraphs (b) to (j) inclusive of clause 3 as are appropriate by reason of the lessee consisting of two companies;
- (f) by amending the definition of 'the Agreement' in sub-clause (1.) of clause 4 to read as follows:
 - "the Agreement" means the agreement dated the twenty-second day of February, 1968, between the Commonwealth and Nabalco Pty. Limited as added to varied or amended from time to time by agreement between the parties thereto; 30
- (g) by deleting from sub-clause (1.) of clause 4 the definition of 'the Lessee' and inserting in its place—
 - "the Lessees" includes, if this lease or any interest therein is assigned, all the assignees of the Lessees or either of them for the time being entitled to the benefit thereof or of any interest therein;
- (h) by deleting from the definition of 'the Minister' in sub-clause (1.) of clause 4 the words 'for Territories of the Commonwealth, or such other Minister of State for the Commonwealth as may'.

16. Expressions used in this Agreement which are the same as expressions that are defined in the Principal Agreement shall, except where the contrary intention appears, have in this Agreement the same respective meanings as those expressions have in the Principal Agreement. 40

17. The parties affirm that it is their common view that the provisions of this Agreement are such that they come within the additions, variations or amendments permitted by clause 19 of the Principal Agreement and acknowledge that the expression 'this agreement' in the Principal Agreement means the Principal Agreement as the same is added to, varied or amended by this Agreement, and shall be construed as if the provisions of this Agreement were incorporated therein.

18. The Principal Agreement as added to, varied or amended from time to time shall be known as 'the Gove Agreement'. 50

**THE SCHEDULE
DEED OF ASSIGNMENT**

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THIS DEED OF ASSIGNMENT is made this _____ day of _____
One thousand nine hundred and sixty-nine BETWEEN NABALCO PTY. LIMITED
(hereinafter called "Nabalco") a company incorporated in the State of New South
Wales whose registered office in that State is situated at Goldfields House, No. 1
Alfred Street, Sydney of the one part SWISS ALUMINIUM AUSTRALIA
PTY. LIMITED (hereinafter called "Swiss Aluminium Australia") a company incor-
porated in the State of New South Wales whose registered office is situated at No. 1
10 Alfred Street, Sydney in that State and GOVE ALUMINA LIMITED (hereinafter
called "Gove Alumina") a company incorporated under the laws of the State of New
South Wales whose registered office is situated at No. 1 O'Connell Street, Sydney in
that State (Swiss Aluminium Australia and Gove Alumina being hereinafter together
called "the Assignees") of the other part

WHEREAS:

- (A) Nabalco entered into an agreement with the Commonwealth dated the
22nd February, 1968 (hereinafter called "the Agreement") which
makes provision (inter alia) for the development of deposits of bauxite
in the Gove Peninsula of the Northern Territory of Australia the erection
20 of a bauxite treatment plant the production of bauxite and alumina and
the export of alumina;
- (B) the Agreement has been approved by Ordinance No. 15 of 1968 of the
said Northern Territory and is now in force;
- (C) clause 4 of the Agreement provides for the grant of a Special Mineral
Lease and of other ancillary leases and rights in favour of "the
Company";
- (D) in terms of clause 1(1.) of the Agreement "the Company" means (in the
event of the Agreement being assigned) "all the permitted assigns of
30 Nabalco Pty. Limited for the time being entitled to the benefit" of the
Agreement;
- (E) Swiss Aluminium Australia is the wholly owned subsidiary of Swiss
Aluminium Limited a company incorporated in Switzerland and the
entire issued share capital of Gove Alumina is owned by Australian
companies;
- (F) Nabalco has with the permission of the Minister endorsed hereon prior
to the execution hereof agreed to the assignment hereinafter referred to
in Clause 1;
- (G) upon such assignment being effected the Assignees will become entitled
40 to all the benefits of the Agreement and accordingly in terms thereof to
all the rights conferred and obligations imposed on "the Company"
under and pursuant to the Agreement and otherwise as hereinafter
provided;

NOW THIS DEED WITNESSETH that in consideration of the premises and
other good and valuable consideration:

1. Nabalco hereby transfers and assigns to the Assignees the Agreement and
the full benefit and advantage thereof including without prejudice to the generality
thereof its rights under the Agreement to or as the holder of any lease licence ease-
ment or other title TO HOLD the same unto the Assignees as tenants in common in
the following undivided shares absolutely namely as to seventy equal undivided
50 one hundredth shares thereof unto Swiss Aluminium Australia and as to thirty equal
undivided one hundredth shares thereof unto Gove Alumina.

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2. Nabalco hereby covenants with the Assignees jointly and each of them severally to execute all such transfers assurances nominations and other documents and to do all such acts and things at the expense of the Assignees as the Commonwealth of Australia or Minister of State for the Interior of the Commonwealth or the Administrator of the Northern Territory may require or as the Assignees may reasonably require to perfect and give full force and effect to the assignment and transfer above expressed.

3. By reason of the transfer and assignment referred to in clause 1 hereof:

- (a) the Assignees are in terms of the Agreement read with such transfer and assignment entitled to all of the rights conferred on "the Company" by and pursuant to the Agreement including without prejudice to the generality thereof its rights under the Agreement to or as the holder of any lease licence easement or other title; and
- (b) the Assignees acknowledge their obligation to perform and hereby covenant to perform all the obligations imposed on "the Company" in terms of the Agreement and to indemnify and save harmless Nabalco from and against all liability in respect of the same.

10

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first hereinbefore mentioned.

THE COMMON SEAL OF NABALCO }
 PTY. LIMITED was hereunto affixed by }
 authority of a resolution of the Board of }
 Directors in the presence of: }
 THE COMMON SEAL OF SWISS }
 ALUMINIUM AUSTRALIA PTY. }
 LIMITED was hereunto affixed by }
 authority of a resolution of the Board of }
 Directors in the presence of: }

20

THE COMMON SEAL OF GOVE }
 ALUMINA LIMITED was hereunto }
 affixed by authority of a resolution of the }
 Board of Directors in the presence of: }

30

The within Transfer and Assignment on the terms above set forth is hereby consented to.

.....
The Minister of State for the Interior
of the Commonwealth of Australia.

IN WITNESS WHEREOF the minister for and on behalf of the Commonwealth has hereunto set his hand and seal and the Joint Venturers and Nabalco have hereunto affixed their common seals as at the day and year first above written.

40

SIGNED, SEALED AND DELIVERED }
 by the Honourable PETER JAMES }
 NIXON, the Minister of State for the }
 Interior of the Commonwealth, in the }
 presence of— }

(Signatures not reproduced.)

THE COMMON SEAL OF SWISS }
 ALUMINIUM AUSTRALIA PTY. LIM- }
 ITED was hereunto affixed by authority of }
 a resolution of the Board of Directors in }
 the presence of— }

50

THE COMMON SEAL OF GOVE
ALUMINA LIMITED was hereunto
affixed by authority of a resolution of the
Board of Directors in the presence of—
THE COMMON SEAL OF NABALCO
PTY. LIMITED was hereunto affixed by
authority of a resolution of the Board of
Directors in the presence of—

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Exhibit 38 (part)

10

**Joint Venture Agreement: Swiss Aluminium Australia
Pty. Ltd. and Gove Alumina Limited**

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Joint Venture
Agreement:
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Australia
Pty Ltd. and
Gove Alumina
Limited.
22nd January,
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This Agreement is made the Twenty second day of January one thousand nine hundred and sixty-nine between SWISS ALUMINIUM AUSTRALIA PTY. LIMITED (hereinafter called "Australaswiss") of the one part and GOVE ALUMINA LIMITED (hereinafter called "Australian") of the other part WHEREAS

20

(A) By the Gove Agreement Nabalco acquired upon the terms and conditions set forth in such agreement certain rights interests and benefits and assumed certain obligations with respect to:

- (i) the mining, production, treatment, transportation and shipment of Bauxite and Alumina, and,
- (ii) the Smelter referred to in clause 7 of the Gove Agreement.

30

(B) By Deed of even date herewith entitled "Transitional Provisions Deed" and made between Nabalco of the first part Australaswiss of the second part, Australian of the third part and certain other parties of the fourth, fifth and sixth parts, Nabalco agreed subject as therein provided to transfer and assign to Australaswiss and Australian the Gove Agreement and the full benefit and advantage thereof and also the right, title, interest, claim and demand whatsoever of Nabalco in and under the Gove Agreement to hold the same unto and to the use of Australaswiss and Australian as tenants in common in undivided shares absolutely.

(C) Australaswiss and Australian have agreed to associate themselves in the Joint Venture for the purpose of the progressive exercise and development of the Gove Rights upon and subject to the terms and conditions and to the extent set forth in this Agreement.

Now this Agreement witnesseth as follows:—

Section 1 Definitions

1.1. For the purposes of this Agreement except where the context otherwise requires:

40

- (a) "Alumina"
means alumina produced pursuant to this Agreement.
- (b) "Alumina Percentage Share"
means:
 - (i) (a) in respect of production from the Initial Bauxite Treatment Plant prior to the first Expansion of the Plant,

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- (b) in respect of what production from the Initial Bauxite Treatment Plant would have been but for curtailment pursuant to clause 2.16. hereof, and,
- (c) (after the first Expansion of the Plant) in respect of Initial Potential Production Capacity.
the percentage pertaining to the respective Participant set forth in clause 2.7. hereof, or such other percentage as may be a consequence of the option contained in clause 2.11. hereof, and,
- (ii) in respect of any Expansion Potential Production Capacity the percentage (if any) which that part of the cost of the relevant Expansion of the Plant paid or borne by the respective Participant bears to the total cost of such Expansion of the Plant. 10
- (c) "Annual Operating Programme"
means a detailed programme of operations approved in accordance with Section 9 hereof by the Board to be carried out by the Manager in any Year.
- (d) "Bauxite"
means bauxite produced from the Special Mineral Lease Area.
- (e) "Bauxite Mining Costs"
are the costs of production and delivery and means those Operating Costs which are the direct costs of 20
- (i) labour,
(ii) supervision,
(iii) maintenance,
(iv) replacements,
(v) materials, and
(vi) power and water,
for mining, crushing, transporting, to stockpile and stockpiling Bauxite. For the purposes of this definition direct costs do not include general overheads and charges for management and administration nor Operating Costs in respect of the Infrastructure even though relating to Bauxite. 30
- (f) "Bauxite Treatment Costs"
means all Operating Costs other than Bauxite Mining Costs.
- (g) "Bauxite Treatment Plant"
means the Initial Bauxite Treatment Plant and includes such plant as expanded from time to time in accordance with Section 5 hereof.
- (h) "Board"
means the board of direction established pursuant to Section 8 hereof.
- (i) "Commonwealth"
means the Commonwealth of Australia. 40
- (j) "Completion of the Project"
means that point in time as certified by the Manager when facilities and equipment are in place ready for use which facilities and equipment have an annual rated capacity for mining, crushing and treating sufficient Bauxite to produce one million tons of Alumina and in addition thereto mining and crushing two million Dry Tons of Bauxite for shipment untreated and of transporting and loading for shipment such Bauxite and Alumina.
- (k) "Construction Costs"
means all costs and/or commitments incurred or to be incurred in accordance with the terms of this Agreement for or in connection with the 50

development and construction of the Project including all costs incurred by Nabalco prior to the date hereof and all costs incurred in connection with any part of the Project prior to such part becoming operational (as the case may be) an itemised estimate of which Construction Costs is set out in the Description of the Project referred to in clause 1.1. (hh) hereof a summary of which estimated Construction Costs and the estimated years in which such Construction Costs will be incurred being set out respectively in Part I and Part II of Schedule A hereto.

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- 10 (l) "Construction Programme"
means the programme by which the stages of construction of the facilities of the Project are agreed to be completed which programme is set out in Part I of Schedule A hereto.
- (m) "Dry Ton"
in relation to Bauxite means that quantity of Bauxite which if dried at 105° Centigrade would weigh one metric ton.
- (n) "Expanding Participant"
means a Participant making a request in accordance with clause 5.1. hereof.
- 20 (o) "Expansion of the Plant"
means any expansion of the Bauxite Treatment Plant and resulting transportation and other facilities and Infrastructure in accordance with Section 5 hereof.
- (p) "Feasibility Report"
means Volumes I to VII of the Report dated 28th March 1968 prepared by Nabalco.
- (q) "Gove Agreement"
means the agreement dated the 22nd day of February 1968 between the Commonwealth and Nabalco relating to certain bauxite deposits at Gove in the Territory and for incidental and other purposes (which agreement was approved by the Mining (Gove Peninsula Nabalco Agreement) Ordinance No. 15 of 1968) as the same may be amended from time to time.
- 30 (r) "Gove Rights"
means the Gove Agreement, the rights, titles, interest, claims and demands set forth in recital (B) hereof, the Special Mineral Lease, resumption compensation entitlements and the Other Property Rights.
- (s) "Infrastructure"
means and includes all installations and facilities constructed or to be constructed by the Participants or either of them for the purposes of this Agreement other than items listed in clause 1.1. (hh) (iii) 1, 2 and 6 (i) hereof.
- 40 (t) "Initial Bauxite Treatment Plant"
means the plant referred to in clause 1.1. (hh) (iii) 2. hereof whether constructed in one or two stages.
- (u) "Joint Venture"
means the joint venture established pursuant to clause 2.1. hereof.
- (v) "Management Agreement"
means an agreement between the Participants of the one part and the Manager of the other part entered into concurrently with this Agreement as the same may be amended from time to time and includes any other agreement of management between the Participants and the Manager.
- 50

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- (w) "Manager"
means Nabalco Pty. Limited acting in its capacity as and performing any of its functions as Manager under the Management Agreement or such other Manager as may be appointed from time to time by agreement of the Participants.
- (x) "month"
means calendar month.
- (aa) "Nabalco"
means Nabalco Pty. Limited, a company incorporated in the State of New South Wales. 10
- (bb) "Operating Costs"
means all costs and charges (other than [i] Construction Costs, [ii] the costs of the construction or acquisition of any property or assets as a result of any Expansion of the Plant, and [iii] the costs of the construction or acquisition of any property or assets by virtue of the provisions of clauses 2.10., 4.4. and 4.5. hereof) incurred by the Manager in accordance with this Agreement or the Management Agreement.
- (cc) "Other Property Rights"
means any and all leases (other than the Special Mineral Lease), licences, easements or other rights granted or to be granted by the Commonwealth pursuant to clause 4 and/or 6 (except to the extent that the same may be included in the Special Mineral Lease) of the Gove Agreement and all renewals extensions and amendments thereof. 20
- (dd) "Ownership Percentage Share"
means the percentage pertaining to the respective Participant as set forth in clause 2.7. hereof or such other percentage as may be a consequence of the exercise of the option contained in clause 2.11. hereof.
- (ee) "Participant"
means Austraswiss and Australian as the case may be and their respective successors and assigns which become subject to the terms of this Agreement. 30
- (ff) "Percentage Interest"
means:—
(i) the respective Participant's Ownership Percentage Share in the property and assets specified in clause 2.7. hereof;
(ii) the respective Participant's interest (if any) in any property or assets referred to in clause 2.8(a), (b), (c) and (d) hereof; and
(iii) the respective Participant's rights to Bauxite and Alumina its other rights and its obligations all under this Agreement.
- (gg) "Port" 40
means the port and harbour at Dundas Point referred to in clause 1.1. (hh) (iii) 7 hereof.
- (hh) "Project"
means all facilities and equipment necessary or appropriate for the mining, production, treatment, transportation, shipment of Bauxite and Alumina, such facilities and equipment
(i) to have an aggregate annual capacity to produce and load for shipment two million Dry Tons of Bauxite and one million tons of Alumina,
(ii) to be constructed in accordance with the Construction Programme with such modifications thereto as subject to clause 8.6 hereof from time to time may be determined by the Board, and, 50

(iii) to include the following facilities (which shall be capable of expansion to enable the provisions of this Agreement to take effect) :

1. Mining machinery and equipment plant installations and facilities for removal of overburden and mining, handling, crushing and stockpiling of Bauxite.
2. A Bauxite Treatment Plant with a rated annual capacity of 1 million tons of Alumina including facilities for the disposal of red mud.
3. Administrative buildings, service shops, supply stores and related structures.
4. Water supply and water lines required in connection with the construction, operation and maintenance of the mine, Initial Bauxite Treatment Plant, the town, the Port and related facilities.
5. Power plant, transmission lines, power lines and other power facilities including communication facilities.
6.
 - (i) Transportation of Bauxite from the Special Mineral Lease Area to stockpile.
 - (ii) Transportation of Bauxite from stockpile to the Port or the Initial Bauxite Treatment Plant.
 - (iii) Transportation of Alumina from the Initial Bauxite Treatment Plant to the Port.
7. A port including all port facilities breakwaters, channels and facilities, if and as necessary for dredging thereof, navigation and other harbour and storage facilities related to the handling, stockpiling and loading for shipment of Alumina or Bauxite or handling other bulk or general cargoes.
8. A town at Mt. Saunders in the vicinity of the Special Mineral Lease Area including houses, schools, hospital, church, stores, recreational facilities, sewers, water-lines, and other services and installations.
9. Airport equipment and facilities, permanent and temporary surface and other roads on and in the vicinity of the Special Mineral Lease Area, the said town, the Port and the main highways.

All as set forth in the Description of the Project dated December 1968 initialled for identification and as briefly summarised for convenience in Schedule A so far as the same are included therein.

- (ii) "Project Debt Financing"
means loans and credits obtained by a Participant by borrowing from governments or governmental instrumentalities, banks, insurance companies, or other lending institutions, the public, a related company (as defined by the Companies Act of New South Wales) or any of the other shareholders of Nabalco for or towards Construction Costs or for or towards the costs of any Expansion of the Plant or any expansion of the Project.
- (jj) "Project Debt Financing Agreement"
means any document providing for Project Debt Financing.
- (kk) "Quarter"
means any quarter of a Year commencing 1st January, April, July and October.

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- (ll) "Smelter"
means the aluminium smelter referred to in clause 7 of the Gove Agreement.
- (mm) "Special Mineral Lease"
means the special mineral lease to be granted pursuant to clause 4(1) and/or clause 6 of the Gove Agreement and all renewals, extensions and amendments thereof.
- (nn) "Special Mineral Lease Area"
means the lands at any time covered by the Special Mineral Lease including any additional lands added thereto. 10
- (oo) "Subsidiary"
in relation to a Participant shall mean any corporation which shall be deemed to be a subsidiary as next hereinafter provided. A company shall be deemed to be a subsidiary of another company if
- (i) that other company
- (A) by the exercise of some power exercisable by it without the consent or concurrence of any other person can appoint or remove or prevent the appointment or removal of all or a majority of the members of the board of directors or equivalent body of the first-mentioned company; and 20
- (B) controls directly or indirectly more than half of the voting power of the first-mentioned company; and
- (C) holds more than half of the issued share capital of the first-mentioned company (excluding any part thereof which carries no right to participate beyond a specified amount in a distribution of either profits or capital) and for the purposes of this sub-paragraph (C) any shares held by a subsidiary of that other company shall be treated as held by that other company; or
- (ii) the first-mentioned company is a subsidiary of another company which is that other company's subsidiary. 30
- (pp) "Territory"
means the Northern Territory of Australia.
- (qq) "this Agreement"
means this agreement as the same may be added to, varied or amended from time to time.
- (rr) "ton"
means a metric ton.
- (ss) "Year"
means calendar year. 40
- 1.2. In this Agreement references to a person include a firm or corporation.
- 1.3. In this Agreement unless the context otherwise requires the singular includes the plural and vice versa.
- 1.4. In this Agreement references to dollars and cents are in Australian currency.
- 1.5. The sectional headings in this Agreement shall not affect the construction of this Agreement.

Section 2 Joint Venture

- 2.1. The Participants hereby associate themselves in a joint venture. The purpose of the joint venture is the progressive exercise and development of the Gove Rights and in particular: 50

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(i) The mining, production, treatment, transportation, and shipment of Bauxite and Alumina;

(ii) The carrying out of obligations as to the Smelter contained in clause 7 of the Gove Agreement.

2.2. Such exercise and development shall be carried out by the Participants in accordance with the Gove Rights and subject thereto in accordance with the terms and conditions of and to the extent set forth in this Agreement.

2.3. Unless the Participants otherwise agree in writing the Joint Venture shall be limited as aforesaid and nothing in this Agreement shall by implication or otherwise operate to extend the Joint Venture beyond the progressive exercise and development of the Gove Rights.

2.4. Unless otherwise agreed by the Participants Bauxite and Alumina shall be delivered by the Manager to or to the order of the respective Participant entitled to take and ship the same hereunder f.o.b. vessel at the Port and title shall pass on such delivery.

2.5. The property and assets to be made available by the Participants for the purpose and duration of the Joint Venture and kept available for the purpose and duration of the Joint Venture shall consist of:

- (i) the Gove Rights,
- (ii) the Project, and,
- (iii) all other property (other than Bauxite or Alumina title to which has passed in accordance with clause 2.4 hereof) hereafter developed, constructed or acquired by the Participants or either of them under or by virtue of this Agreement.

2.6. The property and assets to be made available for the purposes of the Joint Venture pursuant to clause 2.5. hereof other than:

- (i) any property or assets constructed or acquired as a result of any Expansion of the Plant, and
- (ii) any property or assets constructed or acquired by virtue of the provisions of clauses 2.10., 4.4. and 4.5.,

are and shall be owned by the Participants as tenants in common in the proportions of their respective Ownership Percentage Shares.

2.7. The respective Ownership Percentage Shares of the Participants in the property and assets to be made available for the purposes of the Joint Venture pursuant to clause 2.5. hereof (other than:—

- (i) any property or assets constructed or acquired as a result of any Expansion of the Plant, and
- (ii) any property or assets constructed or acquired by virtue of the provisions of clauses 2.10., 4.4 and 4.5. hereof)

shall be in the following percentages:—

Austraswiss	.....	.....	.....	.....	.....	.....	70 per centum
Australian	.....	.....	.....	.....	.....	.....	30 per centum

or in such other percentages as may be a consequence of the exercise of the option contained in clause 2.11. hereof and Construction Costs shall be paid in like proportions.

2.8. (a) Any property or assets constructed or acquired as a result of any Expansion of the Plant shall be owned by the Participant who paid for such Expansion of the Plant Provided However that in the case of any joint Expansion of the Plant (including any extension of the Infrastructure) the same shall be owned by the Participants as tenants in common in the pro-

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- portions in which the contribution by each to the cost thereof bears to the total cost of such Expansion of the Plant.
- (b) Any property or assets constructed or acquired by virtue of the provisions of clause 4.4 (b) or (c) hereof shall be owned by Australian.
- (c) Any property or assets constructed or acquired by virtue of the provisions of clause 4.5 hereof shall be owned by the Participants as tenants in common or separately as the case may be and if as tenants in common then in the proportion in which the contribution by each to the cost thereof bears to the total cost of such property or assets.
- (d) Any property or assets constructed acquired or effected by virtue of the provisions of clause 2.10. hereof shall be owned by the Participant making the request referred to in that clause. 10
- 2.9. Subject to clause 2.16. hereof each Participant will be entitled and obliged to take and will take delivery in kind of its Alumina Percentage Share of Alumina and separately dispose thereof.
- 2.10. To enable it more fully to enjoy any of its rights under this Agreement or to upgrade the quality (including beneficiation) of its Bauxite entitlement for shipment untreated either Participant shall be entitled to require the Manager at the cost of such Participant to construct or acquire such property or assets or effect such separate improvements as such Participant shall request Provided that no request may be made which would unduly interfere with the development, construction, maintenance or operation of the Project and/or any expansion thereof And Provided Further that if any such property or assets or improvements or utilisation thereof hinders or increases the cost of any subsequent Expansion of the Plant then the Participant owning the same will either pay such increased costs or the cost of re-locating such property assets or improvements as such last-mentioned Participant may elect. All Operating Costs occasioned by or related to such property assets or improvements or the utilisation thereof shall be borne by the Participant making such request. 20
- 2.11. Australian shall have the option at any time up to and including 7th December 1968 to increase its Ownership Percentage Share to a figure not exceeding 50 per centum and accordingly to reduce the Ownership Percentage Share of Austraswiss. Such option shall be exercisable by Australian giving notice to Austraswiss and such notice shall specify the additional Ownership Percentage Share (not exceeding 20 per centum) required by Australian. If such option is exercised Austraswiss shall sell and and Australian shall buy for cash on completion at cost to Austraswiss the percentage of the Austraswiss Ownership Percentage Share nominated by Australian in the said notice and Austraswiss and Australian shall execute such assignments and other documents and do such things as may be necessary to vest such additional Ownership Percentage Share in Australian. All costs charges and expenses (including stamp duty if any) properly incurred by Austraswiss as a result of the exercise of the option herein shall be repaid by Australian to Austraswiss on demand. 40
- 2.12. Nothing contained in this Agreement shall be construed to constitute a Participant a partner, agent or representative of any other Participant or to create any trust or mining or commercial partnership for any purpose whatsoever.
- 2.13. Each Participant shall indemnify and hold harmless the other Participant from and against any and all losses, claims, damages and liabilities arising out of any act or any assumption of any obligation or responsibility by such first-mentioned Participant or any of its directors, officers, employees or representatives done or undertaken on behalf of the other Participant without its authorisation. 50

- 2.14. Each Participant covenants and agrees with the other Participant:
- (a) to perform its obligations and commitments under the Gove Agreement, the Special Mineral Lease and the Other Property Rights and in particular but without restricting the generality of the foregoing to pay to the Commonwealth all royalties payable or to be borne by it in respect of Bauxite and/or Alumina;
 - (b) not to engage alone or in association with others in any activity in respect of the Gove Rights except as provided or authorised by this Agreement;
 - (c) to be just and faithful in all its activities and dealings with the other;
 - (d) to concur in any application for renewal of the Gove Rights; and
 - (e) not to seek to terminate this Agreement or surrender or make liable to forfeiture any of the Gove Rights nor partition nor take any action for sale in lieu of partition of any of the rights or property referred to in clause 2.5. hereof.
- 2.15. (a) Subject to the provisions of clause 12.3. hereof and to the following provisions of this clause 2.15. either Participant is free to choose its own method of financing its share in the property and assets referred to in clause 2.5. hereof.
- (b) In order to delay the disbursement of Construction Costs or the costs of any Expansion of the Plant or any expansion of the Project either or both Participants may authorise the Manager, instead of paying its or their shares of the full price for such property or assets, to acquire its or their shares of any of such property or assets by purchase agreements on a deferred payment instalment basis Provided that no such authority may be given to the Manager by one Participant only unless the other Participant (if also purchasing a share of such property or assets) has been offered an equal opportunity to acquire its share of such property or assets on the same basis and has declined such opportunity.
 - (c) No purchase agreement on a deferred payment instalment basis may be entered into by or on behalf of the Participants or either of them which gives the contractor or supplier thereunder any rights against the property or assets being so purchased or against any other property or assets referred to in clause 2.5. hereof except, but subject to sub-clause (d) below, in the enforcement of any judgment obtained by such contractor or supplier in respect of any default under such agreement.
 - (d) No purchase agreement on a deferred payment instalment basis may be entered into on behalf of a Participant where the other Participant has declined the opportunity referred to in sub-clause (b) above which gives the contractor or supplier in the event of default in the payment of any instalment under such agreement after such other Participant has paid in full its share of the property or assets the subject of such agreement any rights against such other Participant or any of its undertaking property or assets.
- 2.16. (a) After the expiration of 24 months from Completion of the Project and after the Initial Bauxite Treatment Plant has produced in any consecutive 12 months period a quantity of not less than 1 million tons of Alumina a Participant may by notice inform the other Participant that it desires to curtail production of Alumina by a stated amount but not so as to reduce the quantity of Alumina to which the other Participant would but for curtailment have been entitled. A Participant giving such notice is in this clause hereafter called "the Curtailing Participant" and the Participant

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- receiving such notice is in this clause hereafter called "the non-Curtailing Participant".
- (b) During the 90 days following the said notice the non-Curtailing Participant will from time to time and as reasonably necessary meet the Curtailing Participant and the Manager and the Participants will in a spirit of goodwill and mutual trust and understanding endeavour within the said 90 days to agree upon terms whereby the requirements of the Curtailing Participant may be met with minimum costs or disadvantage to either Participant. Any terms so agreed upon shall be reduced to writing and signed by or on behalf of each Participant and to the extent (if any) to which the same may be inconsistent with any other provision of this Agreement such terms shall prevail. 10
- (c) If the Participants shall not reach agreement within the said 90 days the Curtailing Participant shall give the non-Curtailing Participant and the Manager three months' notice showing:—
- (i) the rate of production (on a consistent basis) required by the Curtailing Participant for itself; and
 - (ii) the desired duration of the curtailment, not being for a period in excess of 3 years.
- The difference between the rate of production to which the Curtailing Participant is entitled at the commencement of the period of curtailment (as hereinafter defined) and the rate of production set out in (i) above is hereinafter called "the abandoned entitlement" and the duration as aforesaid is hereinafter called "the period of curtailment". 20
- (d) After termination of a period of curtailment the Bauxite Treatment Plant shall subject to sub-clause (h) below produce Alumina for 12 months at full capacity before the Curtailing Participant shall be entitled to request a further curtailment.
- (e) During the period of curtailment the Curtailing Participant shall pay to the Manager:— 30
- (i) the actual Operating Costs related to the Curtailing Participant's share of actual production; and
 - (ii) the amount (as certified by the Manager) by which the Operating Costs of the non-Curtailing Participant are increased by reason of such curtailment; to the intent that the Operating Costs which the non-Curtailing Participant shall be required to bear shall not be greater than they would have been if such curtailment had not taken place.
- (f) The non-Curtailing Participant at its discretion at any time and from time to time during the period of curtailment may on giving reasonable notice require the Manager to produce and itself take the whole or any part of the abandoned entitlement as is stated in such notice. 40
- (g) In any month in which the non-Curtailing Participant takes all or part of the abandoned entitlement it shall bear that part of the Operating Costs applicable to that part of the abandoned entitlement taken by the non-Curtailing Participant (having regard to the intent expressed in sub-clause [e] [ii] above) and also for each such month an additional amount equal to a proportion of 50% of the Curtailing Participant's then monthly depreciation (if any) calculated at the rate of 5% and interest (if any) relating to the Curtailing Participant's Ownership Percentage Share and the Curtailing Participant's share (if any) in any Expansion of the Plant 50

being the proportion which the part of the abandoned entitlement taken by the non-Curtailing Participant during such month bears to the Curtailing Participant's Alumina Percentage Share of Alumina. Such additional amount shall be credited by the Manager to the Curtailing Participant.

- (h) The non-Curtailing Participant shall notwithstanding a curtailment by the Curtailing Participant also be entitled to cause a curtailment of production and the provisions of this clause 2.16 (a) to (g) inclusive shall apply to such further curtailment.

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Section 3 Project

- 10 3.1. Each Participant covenants and agrees with the other Participant to develop, construct, maintain and operate the Project and any property or assets constructed or acquired as a result of any Expansion of the Plant and by virtue of the provisions of clauses 2.10., 4.4. and 4.5. hereof so as to ensure that:
- (a) the Project is completed in accordance with this Agreement,
- (b) each Participant is able to take in kind and ship its entitlement of Bauxite and/or Alumina under this Agreement,
- (c) the Bauxite Treatment Plant is in accordance with clause 4.2. (but subject to clauses 2.16. and 5.15. hereof) at all times operated at full capacity,
- 20 (d) a Participant which is a party to any contract or contracts for the sale by it of Bauxite and/or Alumina is able to meet the delivery requirements of such contracts so long as such requirements are notified to the Manager and are consistent with the provisions of this Agreement, and
- (e) subject to clause 5.4. hereof, the Alumina produced from the Bauxite Treatment Plant shall be of the floury type and shall not have less than the minimum constituents and physical properties or more than the maximum constituents and physical properties set out in the following description.

Constituents: Humidity (105°C dried)	max. 0.5%
	<i>Dry basis</i>
Al ₂ O ₃ (by difference)	min. 99.000%
SiO ₂	max. 0.020%
Fe ₂ O ₃	max. 0.030%
TiO ₂	max. 0.005%
ZnO	max. 0.020%
P ₂ O ₅	max. 0.002%
Na ₂ O (total)	max. 0.600%
Loss on Ignition (1200°C)	max. 0.300%

Physical Properties:	Bulk Density	max. 900 g/l
		min. 800 g/l
	Specific Gravity	min. 3.85 g/ml
	Angle of Repose	min. 42°
	Grain Size	max. 60% finer than 0.06 mm (—230 mesh)

40 Provided however that nothing herein contained shall be construed to mean that either Participant shall be obligated to pay any Construction Costs or Operating Costs of the other Participant or (other than in accordance with Section 5 hereof) any costs of any Expansion of the Plant or (other than in

50 accordance with clauses 2.10, 4.4. and 4.5. hereof) the costs of the construction

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or acquisition of any property or assets by virtue of the provisions of clauses 2.10., 4.4. or 4.5. hereof.

Section 4 Bauxite

- 4.1. In accordance with the provisions of this Section 4 the Participants shall have the right to take in kind and separately dispose of Bauxite.
- 4.2. Sufficient Bauxite shall at all times be produced to enable the Bauxite Treatment Plant to operate at full capacity (subject to clauses 2.16. and 5.15. hereof) and to enable the provisions of this Section 4 to be carried out.
- 4.3. (a) The Manager shall establish and maintain:—
 - (i) a stockpile or stockpiles of 240,000 tons capacity and containing not less than 120,000 tons at any time (hereinafter in this clause 4.3 called “the Plant Stockpiles”) which stockpile or stockpiles shall be drawn on exclusively for the purposes of meeting the requirements of the Bauxite Treatment Plant; 10
 - (ii) during the continuance of the rights under clause 4.4. hereof a stockpile or stockpiles of 240,000 tons capacity and containing not less than 120,000 tons at any time (hereinafter in this clause 4.3. called “the Export Stockpiles”) which shall be drawn on exclusively for the purposes of meeting the requirements of Bauxite for shipment untreated; and 20
 - (iii) subject to the priorities of the Plant Stockpiles and the Export Stockpiles, a reasonable reserve stock of Bauxite between the mine and the crusher.
- (b) In the event that as a result of a shortfall in Bauxite production both the Plant Stockpiles and the Export Stockpiles are reduced below their respective minimum actual tonnages set out above then the Manager shall allocate the available Bauxite Production between the Plant Stockpiles and the Export Stockpiles in the proportions that the requirements of Bauxite for the Bauxite Treatment Plant and the requirements of Bauxite for shipment untreated both in respect of the twelve months following such reduction bear to each other. 30
- (c) (i) Subject to sub-clause (d) below, Bauxite for supply to each of the Plant Stockpiles and Bauxite for supply to each of the Export Stockpiles shall at all times be mined without discrimination according to the same mining practices.
- (ii) At least two weeks prior to the commencement of each Quarter the Manager shall furnish to each of the Participants a mining programme stating the tonnages and quality of Bauxite which the Manager expects to produce during each month of the next ensuing Quarter and the tonnages which it is expected to supply to each of the Plant Stockpiles and Export Stockpiles. The Manager shall keep the Participants advised of any changes in any such programme. In stating the expected quality as aforesaid, the Manager shall set forth the following elements with all percentage figures being expressed on a moisture free basis: 40

Total alumina	.....	.....	.....	.....	% Al ₂ O ₃ total
Iron oxide	.....	.....	.....	.....	% Fe ₂ O ₃
Total silica	.....	.....	.....	.....	% SiO ₂ total
Silica quartz	.....	.....	.....	.....	% SiO ₂ Qz
Titanium dioxide	.....	.....	.....	.....	% TiO ₂
Loss on Ignition	.....	.....	.....	.....	% L.O.I.

- (iii) Such mining programmes shall be planned and carried out by the Manager so that at all times Bauxite contained in each of the Export Stockpiles shall be of like quality, characteristics and uniformity to Bauxite contained in the Plant Stockpiles and so that the provisions of sub-clause (d) below are complied with.
- (iv) The Manager shall furnish to each of the Participants as soon as possible a report showing the results of analysis of representative samples of Bauxite placed in each of the Plant Stockpiles and in each of the Export Stockpiles during the last preceding month, the tonnages of Bauxite placed in each of such stockpiles during such month and the Manager's assessment of the composition in each of such stockpiles on the concluding day of such month. For the purposes of the determination of quality, Bauxite for the Export Stockpiles shall be regularly sampled and analysed by the Manager as such Bauxite is laid in the Export Stockpiles in accordance with the same sampling and analysis practices and methods as are employed by the Manager for sampling and analysing Bauxite for the Plant Stockpiles. Such analysis shall set forth at least the percentages of the elements referred to in clause 4.3. (c) (ii) and if a Participant so requests and at that Participant's expense, such other elements including Alumina as monohydrate ($\text{Al}_2\text{O}_3\cdot\text{H}_2\text{O}$) as is specified in such request and as is within the capacity and capability of the laboratory at Gove so to identify and assess. Should a Participant request such other analysis not within such capacity and capability and which will require additional equipment and facilities and/or personnel the Manager will at the request and at the expense of such Participant engage such personnel and purchase such equipment and facilities as are requisite to enable the laboratory to have the capacity and capability to perform the analysis so requested. During such times as a requested other analysis is not within such capacity and capability the Manager shall furnish the Participant with a representative sample or samples to enable such Participant to obtain or make such requested other analysis.
- (v) Bauxite shall be blended in the course of stockpiling in the Export Stockpiles by the same layering procedure as is used for the Plant Stockpiles.
- (vi) No Bauxite which has not been blended and stockpiled shall, without the prior consent of Australian, be loaded for shipment untreated.
- (vii) Pending the start-up date of the Bauxite Treatment Plant the above requirements relating to Bauxite for shipment untreated shall be carried out in accordance with the practices and procedures which it is intended to use in relation to Bauxite for the Bauxite Treatment Plant or if any such practice or procedure has not yet been determined in accordance with the best mining practices or procedures.
- (d) Without prejudice to the provisions of sub-clause (c) above the Manager shall ensure that Bauxite in each of the stockpiles contains on average through the body in each such stockpile a percentage of available Alumina of not less than 44% and not more than 5% silica (total). Percentage of available Alumina means that percentage of Alumina arrived at by subtracting the percentage figure of total silica content from the percentage figure of total Alumina.

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- 4.4. (a) Australian may from time to time by giving six (6) months' notice (but not so as to take effect prior to the expiration of the notice given by the Manager under clause 6.1. hereof) to Austraswiss and to the Manager request that a quantity of Bauxite not exceeding in total in all notices forty (40) million Dry Tons and (subject as hereinafter provided) not exceeding 2.2 million Dry Tons in total in any one Year be produced for it and loaded for shipment untreated. Each such notice shall specify the appropriate quantity required and the approximate period for which it is required.
- (b) If Australian shall desire to have produced for it and loaded for shipment untreated more than 2.2 million Dry Tons of Bauxite in any one Year prior to 1991, it shall from time to time be entitled to so request on the conditions and to the extent as follows:—
- (i) The amount requested over 2.2 millions Dry Tons in any one Year shall not (except as provided in paragraph [ii] below) exceed in any respect the differences between:—
- (A) the then total capacity of each respective constituent element of the Project and any expansion thereof:—
- (1) for the production, transportation, stockpiling, reclaiming from stockpile and handling of Bauxite; and
- (2) for the loading for shipment of Bauxite and Alumina; and
- (B) the then "Utilised Capacity".
- "Utilised Capacity" in this sub-clause (b) means that part of the respective total capacity of each constituent element of the Project and any expansion thereof for the purposes referred to in (A) above which is required to be utilised for that Year or any part thereof for:—
- (I) the purpose of achieving and maintaining Initial Potential Production Capacity or Total Potential Production Capacity (as the case may be) for that Year or that part thereof (as determined pursuant to Section 5 hereof) and shipment thereof; and
- (II) the annual production and loading for shipment untreated of 2.2 million Dry Tons of Bauxite; and
- (III) the annual production and loading for shipment untreated of such quantity of Bauxite the property and assets for the production and loading of which Australian shall have provided pursuant to paragraph (ii) below.
- (ii) In the event that the quantity requested by Australian in any Year shall exceed in any respect the then capacity available under (b) (i) above the Manager shall if requested by Australian and at the cost of Australian proceed with the construction or acquisition of the necessary property or assets (including any extension of the Infrastructure) to enable such excess quantity to be produced, transported, stockpiled, reclaimed from stockpile, handled and loaded for shipment. Australian shall give to the Manager notice of any request under this paragraph (ii) twelve months prior to the date specified in such notice for the commencement of delivery of the excess quantity.
- (c) If Australian shall desire to have produced for it and loaded for shipment untreated Bauxite in Year 1991 or thereafter being the balance of the forty

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(40) million Dry Tons referred to in this clause, it shall be entitled to so request on the conditions and to the extent as follows:—

(i) the amount requested in any one Year shall not (except as provided in paragraph [ii] below) exceed the difference between:—

(A) the then total Bauxite production and total loading for shipment capacity of the Project and any expansion thereof; and

(B) that part of such total capacity then required to be utilised for the purpose of achieving Total Potential Production Capacity from the Bauxite Treatment Plant (as determined pursuant to Section 5 hereof) and shipment thereof.

(ii) in the event that the quantity requested by Australian in any Year shall exceed the then capacity available under (c) (i) above the Manager shall if requested by Australian and at the cost of Australian proceed with the construction or acquisition of the necessary property or assets (including any extension of the Infrastructure) to enable such excess quantity to be produced and loaded for shipment. Australian shall give to the Manager notice of any request under this paragraph (ii) twelve months prior to the date specified in such notice for the commencement of delivery of the excess quantity.

4.5. In the event that the Commonwealth shall permit the export of a quantity of Bauxite in excess of forty (40) million Dry Tons (hereinafter in this clause called "the Excess Quantity") up to and including 31st December 1990 or twenty (20) years from the date of the first shipment of Bauxite, whichever is the later, either Participant may subject to the rights of Australian under clause 4.4 hereof from time to time by giving twelve (12) months' notice thereof to the other and the Manager request that a quantity of Bauxite not exceeding in total its Ownership Percentage Share of the Excess Quantity be produced for it and loaded for shipment untreated. Each such notice shall specify the quantity required and the approximate period for which it is required. The Participant making such request shall provide the costs of the construction or acquisition of any property or assets, including costs for extending the Infra-structure, necessary to give effect to the provisions of this clause as and when requested by the Manager.

4.6. Except as provided in clause 4.4. (c) hereof unless the Participants shall have otherwise agreed and the Commonwealth shall have given the necessary permission neither Participant shall be entitled to have any Bauxite produced for it and loaded for shipment untreated after 31st December 1990 or 20 years from the date of the first shipment of Bauxite, whichever is the later.

4.7. Any royalty payable to the Commonwealth in respect of Bauxite mined and exported as untreated Bauxite shall be paid as and when the same is payable according to law by the Participant on whose behalf or by whose direction such Bauxite is loaded for shipment.

Section 5 Expansion of the Plant

5.1. Each Participant shall have the right at any time and from time to time during the term of this Agreement to call on the Manager to expand the Bauxite Treatment Plant pursuant to this Agreement in order to increase its capacity and to make such increased capacity available to the Expanding Participant. Each Expansion of the Plant so requested shall hereinafter be called a "Requested Expansion".

5.2. Each Requested Expansion must be in increments of 500,000 tons or a multiple

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- thereof fitting in sensibly with the general design of the then existing Bauxite Treatment Plant, and the Manager shall have the right by the issue of a certificate to reject any Requested Expansion that does not meet this criterion.
- 5.3. Each Participant shall retain the right to cause an Expansion of the Plant pursuant to the terms of this Agreement notwithstanding that any previously Requested Expansion may not then have been completed Provided that the secondly Requested Expansion shall not unreasonably interfere with or delay the completion of any prior Requested Expansion.
- 5.4. Any Expaisnon of the Plant shall be initiated by the Expanding Participant giving to the other Participant and to the Manager notice (hereinafter called "the Initiating Notice") of its desire to expand the Bauxite Treatment Plant and of the amount of annual rated capacity by which it desires to expand. The Initiating Notice shall be accompanied by a general description of the Requested Expansion and shall show the type and range of specifications of Alumina to be produced therefrom. 10
- 5.5. Within three months of receipt of an Initiating Notice pursuant to clause 5.4. hereof the other Participant (hereinafter called "the Joining Participant") shall have the right to elect by notice to the Expanding Participant and the Manager to join in the Requested Expansion to a stated extent not being more than 50 per centum thereof. 20
- 5.6. If the Joining Participant elects to join in as aforesaid the Expanding Participant shall within two months of the receipt of a notice under clause 5.5. hereof by notice to the Joining Participant and the Manager elect either to proceed with the Requested Expansion jointly with the Joining Participant in the respective percentages consequent upon the election exercised under clause 5.5. hereof (or in such other percentages as may be agreed by the Participants) or to abandon the Requested Expansion. If the Expanding Participant elects to proceed as herein provided the Requested Expansion shall be deemed to be a Joint Expansion. If the Expanding Participant elects to abandon the Requested Expansion the Joining Participant may within two months of such election by notice to the Manager elect to proceed with the Requested Expansion for its own account. 30
- 5.7. Within six months after the expiration of nine months from the date of service of an Initiating Notice (not having been withdrawn in the meantime) or three months from the date of any notice of election to proceed given under clause 5.6. hereof the Manager shall distribute to each Participant preliminary plans and a preliminary estimate of costs relating to the Requested Expansion or Joint Expansion as the case may be. Such plans and estimates will be prepared by the Manager in consultation and co-operation with the Participant or Participants concerned with the proposed expansion and the Manager shall use its best endeavours to meet the reasonable requirements of such Participant or Participants. 40
- 5.8. Unless a Participant (whether an Expanding Participant or a Joining Participant) shall within six months after delivery of the preliminary plans and estimates, have given to the other Participant and to the Manager notice that it will proceed with its Requested Expansion or the proposed Joint Expansion it shall be deemed to have irrevocably abandoned such proposal and shall not be at liberty to give a notice under clause 5.4. hereof until after the expiration of twelve months after such delivery.
- 5.9. Any Participant deemed under clause 5.8. hereof to have abandoned the previously proposed expansion shall, if the other Participant proceeds to expand, 50

pay and bear all such costs, charges and expenses as are necessarily incurred by such other Participant and the Manager in and about the adaptation or revision (if any) of the said plans and estimates.

5.10. (a) Subject to clause 5.9. hereof an Expanding Participant not proceeding with a Requested Expansion where there has been no Joining Participant shall pay and bear all costs, charges and expenses incurred by the Manager in connection therewith.

(b) If a proposed Joint Expansion is abandoned by both Participants all costs of the Manager shall be borne by the Participants in the proportions of the proposed Joint Expansion.

10 5.11. (a) If only one Participant proceeds with the Expansion of the Plant, it shall (subject to clause 5.9. hereof) pay the total cost thereof (including all costs of the construction or acquisition of any property or assets [including any extension of the Infrastructure] necessary to give effect thereto) to the Manager as and when requested by the Manager.

(b) If both Participants proceed with the Expansion of the Plant, each Participant shall pay its percentage of the total cost of the Requested Expansion (including all costs of the construction or acquisition of any property and assets [including any extension of the Infrastructure] necessary to give effect thereto) according to its percentage of the annual rated capacity of the Requested Expansion and payment shall be made to the Manager as and when requested by the Manager.

20 (c) In the case of a Joint Expansion the obligations and the rights of each Participant shall be several, as if each Participant had entered into a separate Expansion of the Plant but ownership shall be determined in accordance with clause 2.8. (a) hereof.

30 5.12. (a) At the time when the Manager commences construction of the first Expansion of the Plant the Manager shall certify what in the opinion of the Manager is then the annual quantity of Alumina capable of being produced on usual operating and maintenance schedules by the Initial Bauxite Treatment Plant. The amount so certified is in this Agreement called "Initial Potential Production Capacity".

(b) Within three months after any Expansion of the Plant first commences production the Manager shall certify what in the opinion of the Manager is then the annual quantity of Alumina capable of being produced on usual operating and maintenance schedules by the Bauxite Treatment Plant (hereinafter called "Total Potential Production Capacity").

40 (c) At the time when the Manager commences construction of a second or any subsequent Expansion of the Plant the Manager shall certify what in the opinion of the Manager is then the Total Potential Production Capacity.

(d) "Expansion Potential Production Capacity" means the annual quantity of Alumina as certified by the Manager capable of being produced on usual operating and maintenance schedules from any single Expansion of the Plant.

50 5.13. If in any Year the actual production of the Bauxite Treatment Plant is above or, except by reason of the provisions of clauses 2.16. and 5.15. hereof below the Total Potential Production Capacity, the overrun or shortfall shall be applied to Initial Potential Production Capacity and each Expansion Potential Production Capacity in the same proportion as Initial Potential Production

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Capacity and each Expansion Potential Production Capacity bear to Total Potential Production Capacity, for example:—

Initial Potential Production Capacity	.....	.....	1,000,000 t. (2/3)
Expansion Potential Production Capacity	.....	.....	500,000 t. (1/3)
Total Potential Production Capacity	.....	.....	1,500,000 t. (3/3)
Actual production of Bauxite Treatment Plant	.....	.....	1,200,000 t.
Shortfall	.....	.....	300,000 t.

Application:

Initial Potential Production Capacity	1,000,000 t.
Deduct 2/3 of Shortfall of 300,000 t.	200,000 t.
			800,000 t.

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Expansion Potential Production Capacity	500,000 t.
Deduct 1/3 of Shortfall of 300,000 t.	100,000 t.
			400,000 t.
			1,200,000 t.

and in that event the Alumina Percentage Share of the Participants for that Year shall be adjusted accordingly.

- 5.14. A Participant on whose behalf an Expansion of the Plant is carried out shall be entitled to have bauxite (other than Bauxite) treated in the Bauxite Treatment Plant. Appropriate adjustments shall be made to the respective share of Bauxite Treatment Costs payable by each of the Participants to take account of the cost of landing such bauxite and transporting it to the Bauxite Treatment Plant and the cost of treating such bauxite. 20
- 5.15. If only one Participant proceeds with an Expansion of the Plant then notwithstanding the provisions of clause 3.1. (c) hereof such Participant shall be entitled to cause such Expansion of the Plant to be operated at less than its Expansion Potential Production Capacity for a period not exceeding five (5) years or such longer period as may be agreed by the Participants. During such period such Participant shall indemnify the other Participant against any increase in Bauxite Treatment Costs over and above what such costs would otherwise have been if such Expansion of the Plant had not taken place. 30

Section 6 Shipping and Delivery Schedules

- 6.1. The Manager will give to the Participants not less than six (6) months' prior notice of its ability to commence deliveries of Bauxite for shipment untreated and a similar notice of its ability to commence deliveries of Alumina, in each notice specifying the expected date of commencement.
- 6.2. Each Participant shall give to the other Participant and to the Manager a provisional programme three (3) months before the commencement of shipments of its Bauxite and of its Alumina, stating approximate quantities for each shipment for the period from such commencement to the end of the then current Year. Thereafter, no later than the fifteenth day of September of each Year the Participants shall give to the Manager a provisional shipping programme for the following Year, stating approximate quantities of Bauxite or Alumina for each shipment. The Manager will at the same times and for the same periods prepare and submit to the Participants a provisional programme in respect of inward cargoes of materials to be discharged at the bulk terminal for the Pro- 40

ject and/or any expansion thereof (hereinafter called "inward cargoes"). Within fifteen (15) days after receipt of the programmes the Manager will determine a preliminary provisional shipping programme for the relevant period or Year (as the case may be) as nearly as possible meeting each Participant's requirements as well as its requirements for the operation of the Project and any expansion thereof.

6.3. Each Participant shall arrange its requests for delivery so as to take deliveries spread reasonably evenly throughout the Year at reasonably regular intervals and consistent with the existing stockpile or Alumina storage facilities (as the case may be) provided that either Participant shall be entitled to take additional deliveries and to add during any month further vessels to any shipping programme referred to in clause 6.4. hereof so long as such additional deliveries are consistent with the existing stockpile or Alumina storage facilities (as the case may be) and in so far as any such shipping programme shall permit of any such addition without interference with such programme. A Participant may arrange to take deliveries in combined shipments of Bauxite and Alumina. The Manager shall observe the same principles in the delivery of inward cargoes.

6.4. A firm reasonably evenly spaced shipping programme for each month shall be given by each Participant to the other Participant and the Manager forty-five (45) days prior to the commencement of each month. Each such programme shall also contain a best estimate of such Participant's shipping programme for the two (2) months next ensuing after such month. The Manager will similarly provide the Participants with such a programme for its inward cargoes in respect of each of such three (3) months. Such programmes shall specify the name (where practicable) of each vessel, the scheduled arrival date and the quantities (10% more or less) to be delivered to or discharged by each such vessel. The Participants and the Manager will use their best endeavours to adjust their respective proposed programmes in order to achieve a co-ordinated consolidated schedule for any month.

6.5. Within seven (7) days after receipt of such shipping programme from the Participants, the Manager shall finalise and furnish to each Participant a consolidated schedule for the first month covered by such programme. A Participant shall have the right to substitute at any time vessels similar in all respects to load at the same position in sequence of vessels and, unless otherwise agreed, the same quantity of Bauxite or Alumina (as the case may be).

6.6. The Participant for whom a vessel is to be loaded shall give to the Manager the following notices of the estimated time of arrival of such vessel:—

Ten	(10) days
Forty-eight	(48) hours
Twenty-four	(24) hours

specifying in the 48 hour notice actual quantity to be loaded, estimated loaded draft and if requested the hatch loading plan of such vessel. Each of the Participants and the Manager shall keep each other informed of the movements of vessels and of the actual dates of arrival and departure and of any change in the estimated dates of arrival as soon as such dates or changes are known so that so far as they are in any position to do so the Participants and the Manager can try to avoid congestion of the Port and delays in discharging or loading.

6.7. Each Participant shall ensure that vessels used to take delivery of its Bauxite and/or Alumina are suited to the loading facilities at the Port. Any extra load-

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- ing costs consequent upon non-compliance with this requirement shall be paid by the Participant concerned. Each Participant shall also ensure that all vessels' crews open and close hatches at vessels' time and expense and that all vessels provide lights aboard vessel for night work.
- 6.8. Vessels arriving within fifteen (15) days either side of the scheduled time of arrival set forth in the consolidated schedule referred to in clause 6.5. hereof are to be berthed for loading or unloading in the order of presentation to the Manager of notice of readiness. Vessels arriving within such days of the schedule time shall have priority over vessels arriving not within such days of schedule. Vessels arriving to take delivery of Bauxite and/or Alumina may present notice of readiness when in free pratique with clean holds whether in berth or not. Vessels arriving to discharge inward cargoes may present notice of readiness when in free pratique and in every respect ready to discharge whether in berth or not. Vessels shall be berthed and loading or unloading commenced and carried out whether it is daytime or nighttime (Sundays and holidays included, if it is lawful to work on such days). 10
- 6.9. The Manager shall be entitled to interrupt the consolidated schedule only where a vessel has arrived to take delivery of Alumina at the time when silos will be overfilled if such interruption is not permitted or where a vessel has arrived to unload caustic soda or bulk petroleum products at the time when supplies of the relevant material will be reduced to a critical level if such interruption is not permitted. 20
- 6.10. Any demurrage payable by a Participant as a consequence of an interruption to the berthing programme under clause 6.9. hereof shall be reimbursed to such Participant and shall be charged against Bauxite Treatment Costs.
- 6.11. Vessels taking delivery of Bauxite shall be loaded as fast as possible and in any event at not less than the average rate of twenty thousand (20,000) tons per weather working day of twenty-four (24) consecutive hours. All such vessels (except self-trimming vessels) shall be trimmed mechanically.
- 6.12. Vessels taking delivery of Alumina shall be loaded as fast as possible and in any event at not less than the average rate of thirteen thousand (13,000) tons per weather working day of twenty-four (24) consecutive hours. All such vessels (except self-trimming vessels) shall be trimmed mechanically. 30
- 6.13. The Manager shall ensure that all vessels' crews open and close hatches of vessels discharging or unloading at the bulk terminal or the general cargo terminal.

Section 7 Management and Technical Assistance

- 7.1. Contemporaneously with the execution of this Agreement the Participants shall enter into the Management Agreement with Nabalco.
- 7.2. The Project and all other operations and activities undertaken by the Participants as authorised and contemplated by the Gove Agreement excluding the Smelter will be developed and operated by the Manager for the Participants in accordance with the terms and conditions of this Agreement and the Management Agreement and subject to the Gove Agreement. 40
- 7.3. Swiss Aluminium Ltd. shall have the responsibility for and the authority to:—
- (i) design and supervise the construction of the Bauxite Treatment Plant and appurtenant facilities; and
 - (ii) provide the technical know-how and supervise the management of the Bauxite Treatment Plant and appurtenant facilities;

all in terms of the Technical Assistance Agreement between Swiss Aluminium Ltd., the Participants and the Manager.

Section 8 Board of Direction

8.1. A Board of Direction shall be established as soon as practicable after the execution of this Agreement.

8.2. (a) For the purposes of this clause 8.2. Austraswiss or Australian shall be deemed to include any company related to it to which Austraswiss or Australian (as the case may be) has sold transferred assigned or disposed of its Percentage Interest pursuant to clause 12.6. hereof.

10 (b) While Austraswiss is a Participant it shall be entitled to appoint not more than four (4) individuals to be members of the Board and Australian while it is a Participant shall be entitled to appoint not more than three (3) individuals thereto.

(c) While Austraswiss is a Participant it shall appoint the Chairman of the Board, fill any vacancy in such position and in the absence of the Chairman appoint an Acting Chairman.

20 (d) When neither Swiss Aluminium Ltd. nor any company related to Swiss Aluminium Ltd. is any longer a Participant the Participant who is from time to time entitled to take the greater tonnage of Alumina shall be entitled to appoint not more than four (4) individuals to be members of the Board, to appoint the Chairman of the Board, to fill any vacancy in such position and in the absence of the Chairman to appoint an Acting Chairman and the Participant who is from time to time entitled to take the smaller tonnage of Alumina shall be entitled to appoint not more than three (3) individuals to be members of the Board.

8.3. (a) Each Participant may at any time and from time to time remove any of its appointees and appoint another individual in his stead. Notice of any such appointment or removal shall be given to the other Participant and to the Manager.

30 (b) Each Participant may at any time have an alternate individual to act for an appointee of such Participant in the absence of such appointee from meetings of the Board. Such alternate shall be deemed a member of the Board while so acting and shall be appointed and removed as provided in paragraph (a) of this clause 8.3.

8.4. (a) The quorum for each meeting of the Board shall be two, one representing each Participant.

40 (b) If and when and so often as a meeting of the Board convened in accordance with this Agreement shall be incompetent to act on account of the lack of a quorum caused by non-attendance within one hour after the appointed time of a member representing either Participant the meeting shall be deemed to stand adjourned for seven (7) days to the same hour and place provided however that if such date be a public holiday the meeting shall stand to the same hour and place on the next working day thereafter.

(c) Within 24 hours after the adjournment of any meeting as aforesaid the Manager shall cause notice of such adjournment to be given to the Participant whose non-representation was the cause of such adjournment.

50 (d) Subject only to delivery of notice under (c) of this clause 8.4. any three (3) members of the Board attending the meeting personally or by alternate shall constitute a quorum at such adjourned meeting and shall be

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- competent to exercise thereat all powers authorities and discretions by this Agreement or otherwise conferred on the Board.
- 8.5. (a) Subject to the overriding obligations of the Participants provided for in clauses 2.14. (a) and 3.1. hereof the Board shall be empowered to make all decisions in respect of the development, construction, maintenance and operation of the Project and of all property or assets constructed or acquired as a result of any Expansion of the Plant whether joint or several and in respect of all other undertakings, activities and operations for the purpose of and in the course of the progressive exercise and development of all or any of the Gove Rights pursuant to this Agreement. 10
- (b) Each Participant shall have the power to cast the same number of votes as it is entitled to appoint individuals to be members of the Board (whether or not it has exercised such entitlement in its entirety and whether or not its appointees are present). Each Participant shall cast its votes as a block vote exercisable by the most senior member present representing such Participant. Each Participant shall advise the other Participant and the Manager of the order of seniority of its members.
- 8.6. Decisions of the Board upon the following subjects must be by unanimous vote of the Participants:—
- (a) Any fundamental change in the location of the Bauxite Treatment Plant or of the conceptional design of the Project such as:— 20
- (i) removal of the Bauxite Treatment Plant from the general area comprised in or surrounding the Gove Leases;
- (ii) abandonment of the Bayer process.
- (b) Any changes in the Project during the period of construction of the Project estimated (when taken together and off-set against each other) to involve increased expenditures of more than \$30 million or decreased expenditures of more than \$30 million Provided that no change or changes shall alter the general characteristics of the Project as outlined in the Description of the Project referred to in clause 1.1. (hh) hereof. Any increased or decreased expenditures occurring solely from escalation or de-escalation (as the case may be) shall not be a change in the Project for the purpose of this sub-clause. 30
- (c) Any contract by for or on behalf of the Participants or of the Manager within the scope of the Joint Venture with either Participant or with any related company (as defined by the Companies Act of New South Wales) of either Participant provided that neither Participant shall unreasonably refuse to vote in favour of such contract if such contract is not detrimental to it.
- (d) Any suspension or curtailment in production of Bauxite or Alumina except in the case of curtailment pursuant to clause 2.16. hereof. 40
- (e) Any proposal to the Commonwealth in respect of the construction of the Smelter as provided for in clause 7 of the Gove Agreement.
- (f) Any change of the Manager.
- (g) Any decision to take or not to take action which would place in jeopardy the Gove Agreement, the Special Mineral Lease or the Other Property Rights.
- (h) Any consent to the Manager directly or indirectly carrying on or being interested in any business or activity other than pursuant to the Management Agreement. 50

- (i) Any approval of the independent accountant or firm of accountants referred to in clause 7.2. of the Management Agreement.
- (j) Any budget for any activity other than for the development construction maintenance or operation of the Project or any expansion of the Project.
- 8.7. Decisions of the Board upon all matters other than those referred to in clause 8.6. of this Agreement shall be by majority vote.
- 8.8. All decisions of the Board shall be binding on both Participants.
- 8.9. At all meetings of the Board the member or members present shall be acting solely as the representative or representatives of the Participant which appointed him or them and shall have full power and authority to represent and bind such Participant in all matters decided by the Board.
- 10 8.10. Meetings of the Board shall be held at monthly intervals or at such other intervals as the Participants may agree. In addition the Manager may convene a meeting at any other time it deems appropriate and shall do so upon the request of either Participant. Any such request shall set forth the matter or matters to be considered at the meeting in question and when convening the requested meeting the Manager shall supply the other Participant with a copy of such request.
- 20 8.11. Meetings of the Board shall be held at such place in Australia as the Board may from time to time decide but two (2) meetings in each year may be held in Switzerland.
- 8.12. Notice of each meeting of the Board shall be given by the Manager to all members of the Board at the address of the Participant by whom such member was appointed and shall be accompanied by an agenda prepared by the Manager (provided that the agenda may be furnished by telex or cable up to but not less than ten [10] days prior to such meeting) and by such supplemental information as the Manager deems necessary or as may be requested by the Participants or either of them and as can reasonably be supplied by the Manager prior to the meeting. Except by the unanimous vote of members present at a meeting matters not included in the agenda for such meeting shall not be decided upon at such meeting.
- 30 8.13. At least fifteen (15) days' notice (or such shorter notice as may be agreed by the Participants) shall be given of each meeting of the Board Provided however that no notice of meeting shall be necessary when the Board unanimously agrees upon an agenda and to waive notice of meeting.
- 8.14. A representative of the Manager shall attend every meeting of the Board unless the Board otherwise decides in relation to a particular meeting or a particular subject matter at any meeting.
- 40 8.15. A record of decisions made at each meeting of the Board or made pursuant to clause 8.16. hereof shall be kept by such person as the Board may decide upon and copies thereof shall be distributed by him to each Participant and the Manager as soon as practicable following the meeting.
- 8.16. Any decision on any matter falling within the jurisdiction of the Board made without a meeting of the Board and evidenced by writing signed in one or more counterparts by each of the Participants or by at least two of the members of the Board appointed by each of the Participants shall be as binding and effectual as if decided at a meeting of the Board.

Section 9 Programmes and Budgets

- 50 9.1. In November of each Year or such other month as the Participants may agree the Board shall meet to consider and approve with or without amendment a

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- programme and budgets prepared by the Manager for the next ensuing Year for the development, construction, maintenance and operation of the Project or of any property or assets constructed or acquired as a result of any Expansion of the Plant (whether joint or several) and of all other undertakings, activities and operations for the purpose of and in the course of the progressive exercise and development of all or any of the Gove Rights undertaken by the Participants pursuant to this Agreement. Such programme and budgets shall include an itemised budget specifying separately the Bauxite Mining Costs and the Bauxite Treatment Costs and an itemised budget specifying the Construction Costs (both such budgets specifying the proposed over expenditure limits), itemised estimated cash requirements and expenditures and details of the Construction Programme and itemised estimates of the production of Bauxite and Alumina all on a quarterly basis for the said Year. 10
- 9.2. Such programme and budgets shall be furnished by the Manager to each Participant at least forty-five (45) days prior to each meeting of the Board held pursuant to clause 9.1. of this Agreement.
- 9.3. Such programme and budgets as approved by the Board may from time to time be revised and amended by the Board and copies thereof shall be furnished to each Participant.
- 9.4. Any annual programme and budgets as so adopted and revised shall be binding on the Manager who shall be required to carry on the development, construction, maintenance and operation of the Project or any Expansion of the Plant and of such other undertakings, activities and operations pursuant to this Agreement during such next ensuing Year in accordance with each such annual programme and budgets. 20
- 9.5. The Manager will make all disbursements as and when due for payment in accordance with the provisions of the annual programmes and budgets approved by the Board under this Section 9 in connection with the construction, development, maintenance and operation of the Project and any expansion of the Project and of such other undertakings, activities and operations pursuant to this Agreement. 30

Section 10 Costs and Expenses

- 10.1. Construction Costs and Operating Costs pursuant to this Agreement or the Management Agreement shall be calculated and recorded by the Manager in accordance with programmes, policies, procedures and instructions approved or issued by the Board.
- 10.2. All Construction Costs authorised or approved by the Board and incurred pursuant to this Agreement or the Management Agreement shall be borne by the Participants in proportion to their respective Ownership Percentage Shares and debited against moneys paid by each under clause 10.8. hereof or otherwise standing to the credit of each Participant in the books of account of the Manager except that the interest element under any purchase agreement on a deferred payment instalment basis as referred to in clause 2.15. hereof where only one Participant is so purchasing shall be borne by the Participant. 40
- 10.3. All Bauxite Mining Costs incurred in any month pursuant to this Agreement or the Management Agreement shall be borne by and debited to the Participants in the respective proportions in which Bauxite is taken under Section 4 hereof for shipment untreated and/or is under this clause 10.3. deemed to have been taken for treatment in the Bauxite Treatment Plant by the Participants in the month in question. For the purposes of calculating the quantities 50

of Bauxite deemed to have been taken by the Participants for treatment as aforesaid:—

- (i) Austraswiss shall be deemed to have taken such quantity of Bauxite as was required to produce its Alumina Percentage Share for the month in question; and
- (ii) Australian shall be deemed to have taken such quantity of Bauxite as was required to produce its Alumina Percentage Share for the month in question;

Provided that prior to the date as certified by the Manager on which the first commercial quantity of Alumina is produced from the Bauxite Treatment Plant the maximum amount of Bauxite Mining Costs which Australian shall be obliged to bear per Dry Ton of Bauxite shall not exceed 60 cents and any excess over 60 cents shall be borne as to 60% thereof by Australian and as to 40% thereof by Austraswiss.

10.4. A Participant shipping Bauxite untreated shall pay to the Manager on account of Bauxite Treatment Costs for each Dry Ton of Bauxite so shipped the total of the following:—

- (a) the direct costs of labour, supervision, maintenance, replacements, materials and power for reclaiming from stockpile and transporting by by-pass conveyor from stockpile to the point where such conveyor joins the Alumina belt conveyor to the Port; and
- (b) a sum equal to the difference on a tonnage basis between the direct costs of operating the Alumina belt conveyor to the Port, the Port and loading facilities (direct costs not including general overheads and charges for management or Operating Costs in respect of other parts of the Infrastructure even though relating to such conveyor, the Port or loading facilities) and what such direct costs would otherwise have been if no Bauxite had been loaded for shipment untreated. Such sum shall be reviewed on the above basis every three years commencing on the third anniversary of the date referred to in clause 10.3. hereof and this sum shall be certified by the Manager. The parties calculate and agree that the sum applicable in the first three years is nine (9) cents.

10.5. Australian shall pay to the Manager on account of Bauxite Treatment Costs in respect of each Dry Ton (to a total not exceeding 40,000,000 Dry Tons) of Bauxite shipped untreated by or on behalf of Australian a sum equal to twelve (12) cents for each Dry Ton of such Bauxite. Such amount as shall be due from time to time shall be paid by Australian to the Manager and shall be credited by the Manager to the Participants in accordance with their respective Ownership Percentage Shares.

10.6. Any amounts received by the Manager (other than from the Participants) from the use, enjoyment or occupation of any part of the Project or any expansion thereof will be credited by the Manager to Bauxite Treatment Costs.

10.7. Subject to clause 2.10. hereof and/or to the adjustment provided in clause 2.16 and/or clause 5.14. hereof Bauxite Treatment Costs (after first reducing the total thereof by any amount received in any month by the Manager pursuant to clause 10.4. and/or clause 10.6.) authorized or approved and incurred in such month pursuant to this Agreement or the Management Agreement shall be borne and paid for (after allowing for any amount credited to the Participants respectively under clause 10.5.) by the Participants prior to the date mentioned in clause 10.3. hereof in the proportions of their respective Owner-

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- ship Percentage Shares and thereafter in the proportions in which in such month they are entitled to take Alumina.
- 10.8. Based upon each programme and in accordance with the budgets as the same may have been approved, corrected and revised from time to time the Participants will arrange for the Manager to submit on or before the tenth day of the last month in each Quarter to each Participant a current cash estimate for the next ensuing Quarter. Such cash estimates shall be in accordance with the budgets, policies, procedures and instructions approved by the Board and shall show:—
- (a) separately the estimated cash disbursements which the Manager will be required to make during such Quarter for all undertakings, activities and operations under this Agreement for:—
 - (A) items constituting Construction Costs;
 - (B) items constituting Bauxite Mining Costs; and
 - (C) items constituting Bauxite Treatment Costs and the net amount thereof after deducting therefrom all amounts receivable;
 - (b) the extent if any to which such disbursements will be satisfied by cash on hand after allowing for a reasonable cash balance approved by the Board;
 - (c) the amounts which have been credited to the Participants in the then current Quarter; and
 - (d) the aggregate respective cash amounts which the Participants will be required to furnish to the Manager relative to such classifications and the date or dates in each month of such Quarter specified by the Manager for payment thereof.
- Upon receipt of such current cash estimate each Participant will pay to the Manager the amounts required from such Participant by the date or dates specified as aforesaid. The liability of the Manager to the Participants to account for sums paid to it by Australian in accordance with clause 10.5. hereof and paid to it by the Participants in accordance with clause 10.4. hereof or this clause 10.8. and held by the Manager for their respective accounts shall be discharged by the payment by the Manager in accordance with clause 9.5. hereof of the costs incurred by the Manager for the account of the Participants pursuant to this Agreement or the Management Agreement.
- 10.9. With the estimates referred to in clause 10.8. hereof, the Manager shall submit particulars of moneys (if any) required for the temporary financing of amounts recoverable from third parties.

Section 11 Right of Inspection and Reports

- 11.1. (a) The Participants through their duly authorised employees and representatives and the authorised representatives of any trustee for lenders participating in a Participant's Project Debt Financing at their own risk and expense shall be entitled on request to the Manager to have access at all reasonable times to all undertakings, activities and operations under this Agreement.
- (b) The authorised representatives of any person participating as a lender or underwriter in a Participant's Project Debt Financing shall be entitled at their own risk and expense on request to the Manager to have access at all reasonable times to all undertakings, activities and operations under this Agreement but only to the extent necessary to achieve the purpose of the request and then only when and where in the opinion of the

Manager no possibility of leakage of construction and/or process technology or know-how exists or is likely to arise.

- (c) All persons to whom access is required to be given under any of the Gove Rights shall be entitled to access in accordance therewith.
- (d) In addition the Manager shall permit the authorised representative of any buyer of Bauxite or Alumina at his own risk and expense to have access to areas of operation under this Agreement but only to the extent necessary to enable any such representative to be present at the weighing, sampling or assaying of Bauxite or Alumina being sold to such buyer.

10 11.2. The Manager shall be required to permit each Participant to examine and make copies of any and all records and accounts and interpretations thereof including, but not limited to, plans, maps, geological and engineering reports, cores, samples, logs and surveys and all other books and records pertaining to all undertakings, activities and operations under this Agreement, and upon the written request of either Participant to furnish copies thereof.

20 11.3. The Manager shall promptly after their preparation furnish to each Participant copies of all reports prepared by the Manager in connection with activities and operations under this Agreement and copies of all reports received by the Manager in connection therewith including all reports and other significant written communications to or from the Commonwealth or the Administration of the Territory relating to all or any of the Gove Rights and shall be caused to furnish to each Participant a monthly and annual report of all operations conducted by the Manager and of the Bauxite and Alumina produced and the disposition thereof.

30 11.4. All construction and/or process technology or know-how shall be used for the exclusive purpose of implementing the provisions of this Agreement and shall be confidential. Each Participant shall take or cause to be taken such reasonable precautions as may be necessary to prevent the disclosure thereof to any person, firm or corporation not previously approved by the other Participant provided that where any such approval is given the Participant shall impose upon the person so authorised the obligation to take such reasonable precautions as may be necessary to prevent the disclosure thereof to third persons.

Section 12 Assignments and Encumbrances

12.1. (a) Except as permitted in this Section 12 neither Participant shall without the prior consent of the other Participant sell, assign, transfer, mortgage, pledge, charge, encumber, sub-lease or otherwise dispose of or create or suffer to exist a lien, charge or encumbrance over, or trust in respect of, the whole or any part of its Percentage Interest.

40 (b) Neither Participant shall attempt or purport to sell, assign, transfer, mortgage, pledge, charge, encumber, sub-lease or otherwise dispose of or create a lien or other charge or encumbrance over, or a trust in respect of, the whole or any part of the other Participant's Percentage Interest nor shall either Participant knowingly do or permit or cause to be done anything which could or might create or result in the creation of a charge, encumbrance or lien over, or trust in respect of, the whole or any part of the Percentage Interest of the other Participant.

50 12.2. The prohibition contained in clause 12.1. (a) hereof shall not apply to any lien or encumbrance on the respective Percentage Interests of both Participants or on the Percentage Interest of one Participant where such lien or encumbrance is on any property or assets which have been constructed or

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acquired pursuant to this Agreement solely by such Participant arising in the ordinary course of business by operation of law or statute and with respect to which the indebtedness (if any) secured by any such lien or encumbrance is being contested or litigated in good faith.

12.3. (a) In this Agreement:—

(i) the expression "Chargee" means any person to whom a Participant shall give a mortgage or charge permitted by this clause 12.3. and shall include any receiver or receiver and manager appointed under such mortgage or charge or any person claiming through or under such mortgagee or chargee or receiver or receiver and manager;

(ii) the expression "Chargor" means a Participant giving a mortgage or charge permitted by this clause 12.3.

(b) Either Participant may mortgage or charge in whole but not in part its Percentage Interest for the benefit of any lenders for Project Debt Financing if the rights of the Chargee in the exercise or enforcing (in consequence of any default on the part of the Chargor or of any other event causing such mortgage or charge to become enforceable) of any power of sale or other power of enforcement conferred by such instrument on the Chargee by relevant Australian Law shall be subject to the following provisions:—

(i) Any power of sale shall be exercised only in accordance with clause 12.7. and subject to clause 12.8. hereof and for this purpose the references in clause 12.7. hereof to the Selling Participant shall be deemed to be references to such Chargee and the words "at any time after the Completion of the Project in the case of Austraswiss and at any time after the fifteenth anniversary of the first shipment of Bauxite untreated in the case of Australian" shall be deemed to be deleted from such clause 12.7.

(ii) Where more than one half of the amount for the time being secured under a mortgage or charge is owed directly or indirectly by the Chargor to one or more related companies (as defined by the Companies Act of New South Wales) of such Chargor the Chargee shall not be entitled to exercise any power of sale conferred on such Chargee by the instrument creating such mortgage or charge or otherwise unless the Chargee of the other Participant is entitled to, and has determined to, exercise the power of sale conferred on such second-mentioned Chargee.

(c) Any such mortgage or charge shall be limited to a floating charge in a form which at the time of its creation is generally recognised in New South Wales as a floating charge and may contain such provisions (reflecting a dealing at arms length) as such Chargee may require in relation to the varying circumstances in which the security created by such mortgage or charge may become enforceable and in relation to the exercise and enforcement (subject to sub-clause [b] above) of the powers and authorities conferred upon such Chargee in consequence of default.

(d) The document or documents creating such mortgage or charge shall expressly provide that such Chargee in the exercise or enforcing (in consequence of any default of the Chargor or of any other event causing the security of such mortgage or charge to become enforceable) of any power of sale or other power of enforcement of its security conferred upon such Chargee shall be subject to the terms and conditions of this clause 12.3.

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(e) Before executing any mortgage or charge permitted by this clause 12.3. such Chargor shall give at least twenty-eight (28) days notice of its intention so to do to the other Participant and to all Chargees of such other Participant of whom such Chargor has been given notice pursuant to clause 19.3. hereof and shall attach to such notice a copy of the proposed charging document or documents.

(f) In the event that the other Participant does not give notice to such Chargor prior to the expiration of the period of time as aforesaid that it considers such charging document or documents do not comply with the terms and conditions set forth in this clause 12.3. such charge shall be deemed to comply with such terms and conditions.

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12.4. Neither Participant shall without the prior consent of the other Participant partition, waive, release, surrender or forfeit or permit to be partitioned, waived, released, surrendered or forfeited the whole or any part of its interest in the Gove Rights, seek to terminate this Agreement, or make or attempt to make any application to any Court or otherwise to have the joint property or any part thereof partitioned or vested in a trustee for sale.

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12.5. For the purpose of better securing the repayment to a Participant of any money which may become due and repayable to such Participant by a Defaulting Participant pursuant to clause 13.1. hereof, the Participants will on the request of either of them enter into a deed in substantially the form and to the effect of the form of deed set out in Schedule C to this Agreement and shall duly register the same in such States and Territories of the Commonwealth or elsewhere as may be required by law to perfect the security thereby given.

12.6. After the Completion of the Project either Participant may, subject to the provisions of clause 12.8. (a) hereof and of clause 16 of the Gove Agreement, sell, assign, transfer or dispose of the whole but not a part of its Percentage Interest to a Subsidiary or to a company of which it is a Subsidiary or to a Subsidiary of such last mentioned company.

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12.7. Either Participant (hereinafter in this clause 12.7. and in clause 12.8. hereof called "the Selling Participant") may subject to the provisions of clause 12.8. hereof at any time after Completion of the Project in the case of Austraswiss and at any time after the 15th anniversary of the first shipment of Bauxite untreated in the case of Australian sell, assign, transfer or dispose of the whole of its Percentage Interest in pursuance of a bona fide offer from any person (hereinafter in this clause 12.7. called "the Offeror") which offer the Selling Participant is willing to accept Provided However no sale shall be made pursuant to any such offer unless:—

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(a) It is an offer to purchase for cash (and not for a consideration other than cash);

(b) it is an offer to purchase the whole but not part of the Percentage Interest of the Selling Participant; and

(c) all such consents to such intended sale as are necessary under the Gove Rights have been obtained;

and Provided Further that the following provisions shall apply in respect of any such offer and its acceptance:—

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(i) The Selling Participant shall for identification sign and deliver a complete copy of such offer to the other Participant (in this clause 12.7. and clause 12.8. hereof called "the Continuing Participant") and where the offer is made on behalf of another party the name and address of such other party.

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- (ii) Delivery by the Selling Participant to the Continuing Participant of the complete copy of the said offer shall constitute an offer by the Selling Participant to sell its Percentage Interest to the Continuing Participant or to a person or persons nominated by it at the price and on the terms and conditions set out in the complete copy offer Provided that if the Selling Participant is Australian or a company related to it to which Australian has sold, assigned, transferred or disposed of its Percentage Interest pursuant to clause 12.6. hereof the offer shall constitute an offer to sell its Percentage Interest to the Continuing Participant or to a person or persons nominated by it at the price and on the terms and conditions set out in the complete copy offer less a deduction determined in accordance with the formula 10

D = W x Z where:

D = The aforesaid deduction;

W = The percentage (expressed as a fraction) equivalent to the then Ownership Percentage Share of Austraswiss;

Z = The aggregate of—

- (i) the then value of all then existing contracts of the Selling Participant for the sale of Bauxite entered into in exercise of rights to take Bauxite conferred under clause 4.4. hereof; and 20
- (ii) the then value of any then continuing rights under the said clause 4.4. to take Bauxite not the subject of contracts included in (i) above.

In the absence of agreement between the Participants as to such value the same shall be determined by arbitration pursuant to Section 15 hereof.

- (iii) The offer in (ii) hereof shall remain open for acceptance by the Continuing Participant (or by any person or persons nominated by it) at any time within six months after delivery of the said copy Provided that if the offer is accepted by any person or persons nominated by the Continuing Participant the acceptance by such person or persons shall be of no effect unless it is accompanied by an unconditional guarantee of due completion duly executed by the Continuing Participant. 30

- (iv) If the Continuing Participant (or a person or persons nominated by it) does not accept the said offer or if accepted the necessary ministerial consent and/or approvals (if any) to the completion of such sale are not given within such period of six months the offer shall be deemed rejected; and

- (v) If such offer is rejected or is deemed rejected then the Selling Participant may complete the sale to the Offeror (but only at the price and upon the terms and conditions stated in the complete copy offer delivered as aforesaid to the Continuing Participant) and only within a period of six months after the date on which such offer is rejected or is deemed rejected (as the case may be). 40

- 12.8. (a) A sale, transfer, assignment or disposal of the Percentage Interest of either Participant pursuant to clause 12.6. or 12.7. hereof to any purchaser, assignee or transferee (hereinafter in clause 12.8. called "the purchaser") shall be effective only when the seller, transferor or assignor has discharged or made adequate provision for discharge of all its overdue financial liabilities to date under this Agreement and the Management Agreement and shall have procured from the purchaser the due execution of and has 50

delivered to the Continuing Participant without cost to it an Assumption Deed in or substantially in the form of Schedule B to this Agreement.

- (b) Upon the execution and delivery as provided in paragraph (a) of this clause 12.8. by the purchaser of the said Assumption Deed the purchaser shall without any further agreement or act on the part of the Continuing Participant being necessary be and become a Participant in the place of the Selling Participant whose Percentage Interest has been so sold, transferred, assigned or disposed of and the latter shall be relieved and discharged from all further performance of or liability under any of the terms, conditions, restrictions, covenants and obligations contained or implied in or under this Agreement or in or under the Management Agreement arising after such execution and delivery and shall no longer thereafter be a party hereto or thereto.
- (c) The Continuing Participant shall if requested by and at the expense of the purchaser and the purchaser shall if requested by the Continuing Participant do, execute, acknowledge and deliver at the expense of the purchaser all such further acts, deeds, assignments, deeds of covenant, and assurances in relation to this Agreement, the Management Agreement, the Gove Agreement, the Special Mineral Lease and the Other Property Rights as will perfect the sale, transfer, assignment or disposal to or the assumption of obligations thereunder by the purchaser.

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Section 13 Remedies

13.1. If a Participant (hereinafter in this clause 13.1. called "the Defaulting Participant") shall fail to perform any of its monetary obligations, commitments or agreements under any of the Gove Rights, this Agreement or the Management Agreement and such failure shall continue for a period of thirty (30) days after notice thereof from the other Participant (hereinafter in this clause 13.1. called "the non-Defaulting Participant") to the Defaulting Participant, the non-Defaulting Participant shall have the right to pay on behalf of the Defaulting Participant any and all moneys the subject of such failure. All moneys so paid by the non-Defaulting Participant shall be repaid on demand by the Defaulting Participant to the Non-Defaulting Participant and until repayment all moneys so paid shall carry interest at the rate of fifteen per cent (15%) per annum calculated on daily balances as from the date of payment by the non-Defaulting Participant.

- 13.2. (i) If either Participant shall fail to perform any of its obligations, commitments or agreements under any of the Gove Rights, the Management Agreement or this Agreement prior to Completion of the Project and such failure shall continue for a period of six (6) months after notice thereof to the Defaulting Participant or, in the event of a dispute under the Gove Rights, the Management Agreement or this Agreement as to the existence of such failure, for a period of six (6) months after a final determination not subject to appeal by a court of competent jurisdiction that such failure does exist; or
- (ii) If prior to Completion of the Project either Participant shall voluntarily or involuntarily become the subject of bona fide proceedings under any bankruptcy or insolvency law, or other law or procedure for the relief of financially distressed debtors, be unable, or admit in writing its inability, to pay its debts as they mature, or have a liquidator, official manager or receiver appointed of all or any of its assets or in the event of a dispute

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as to the occurrence of any such event upon the final determination not subject to appeal by a court of competent jurisdiction, then in either such event, unless the provisions of clause 13.3. hereof apply, the non-Defaulting Participant shall have the right at any time, if not itself in default, within six (6) months after the period specified in sub-clause (i) above, or after any of the events specified in sub-clause (ii) above, as the case may be, upon 90 days' notice to the Defaulting Participant to acquire the Percentage Interest of the Defaulting Participant upon the following terms and conditions:—

- (a) the non-Defaulting Participant shall pay all amounts due and unpaid and discharge all liabilities then due for discharge and fulfil all obligations (reflecting dealings at arms length) then outstanding and due for fulfilment by the Defaulting Participant under any of the Gove Rights, any of its Project Debt Financing Agreements, this Agreement and/or the Management Agreement; 10
- (b) the non-Defaulting Participant shall at or prior to the time of acquisition agree in writing to hold the Defaulting Participant harmless from all liability (reflecting dealings at arms length) under the Gove Rights, its Project Debt Financing Agreements, this Agreement and the Management Agreement and shall at or prior to the time of acquisition assume liability to the creditors of the Defaulting Participant and agree with such creditors to perform all of the obligations and liabilities (reflecting dealings at arms length) of the Defaulting Participant not performed or discharged by the Defaulting Participant prior to the time of acquisition of each of the Gove Rights, its Project Debt Financing Agreements and contracts of the Defaulting Participant for the sale of Bauxite and/or Alumina, this Agreement and the Management Agreement and shall secure the release of the Defaulting Participant executed by all parties in interest under the above agreements other than this Agreement and itself release the Defaulting Participant from any and all such obligations, commitments and agreements under this Agreement and the Management Agreement; 20 30
- (c) the non-Defaulting Participant shall undertake in writing with the Defaulting Participant to pay to the Defaulting Participant the value on a going concern basis that the Defaulting Participant's Percentage Interest had at the time of acquisition (having regard to the liabilities referred to in paragraph [b] above) deducting from the said value the amounts referred to in paragraph (a) above. The amount of such payment, calculated as aforesaid, shall be agreed upon by the parties or in the absence of such agreement be as subsequently fixed by arbitration hereunder. Payment shall be made by the non-Defaulting Participant within ninety (90) days after the time of acquisition or in the event of such value being fixed by arbitration within ninety (90) days after the decision by the arbitrators, whichever is later; 40
- (d) the non-Defaulting Participant shall be deemed to have acquired the Defaulting Participant's Percentage Interest and any contracts of the Defaulting Participant reflecting dealings at arms length for the sale of Bauxite and/or Alumina at the time of acquisition and the Defaulting Participant shall execute and deliver all documents and agreements necessary to vest in the non-Defaulting Participant such Percentage Interest and such contracts and for such purposes each Participant appoints 50

the other Participant and its Chairman, Managing Director, General Manager, Manager and Secretary for the time being jointly and severally to be its attorney in its name and on its behalf to sign and do all assurances, deeds, instruments, acts and things whatsoever which such Participant ought to sign and do under the provisions of this paragraph (d).

Provided that if at any time prior to the time of acquisition the Defaulting Participant shall cure the failure, default or insolvency as a result of which the non-Defaulting Participant had become entitled to acquire the Percentage Interest and contracts of the Defaulting Participant as set out above, which cure shall include repayment of any amounts paid by the non-Defaulting Participant under paragraph (a) or paragraph (b) above with interest thereon at the rate of fifteen per cent (15%) per annum from the respective dates of payments thereof, then the right of acquisition resulting from such failure default or insolvency shall immediately terminate.

13.3. A For the purposes of this sub-clause 13.3. "Project Commitment" means the whole or any part of a Participant's Ownership Percentage Share of Construction Costs which such Participant is obliged to bear and pay for pursuant to this Agreement. If, until Completion of the Project, a Participant (hereinafter called "the Defaulting Participant") is, as a result of any of the causes enumerated in paragraph 13.3. B hereof, unable to pay any Project Commitment and such inability shall continue for a period of six (6) months as defined in clause 13.2. hereof and the other Participant is not in default in payment of any Project Commitment then:—

- (a) The Participants shall without delay agree on what is then the amount properly to be estimated to be the total Construction Costs up to Completion of the Project (excluding the interest element under any purchase agreement on a deferred payment instalment basis as referred to in clause 2.15. hereof where only one Participant is so purchasing) and should the Participants fail to so agree the amount shall be fixed by arbitration pursuant to Section 15 hereof.
- (b) The Participants shall also agree on the amount which the Defaulting Participant has paid to date as Construction Costs (excluding any interest element under any purchase agreement on a deferred payment instalment basis as referred to in clause 2.15. hereof where the Defaulting Participant only is so purchasing) and should the Participants fail to so agree the amount shall be fixed by arbitration pursuant to Section 15 hereof.
- (c) The percentage corresponding to the proportion which the amount agreed or fixed under sub-clause (b) of this clause 13.3. bears to the amount agreed or fixed under sub-clause (a) of this clause 13.3. (adjusted subsequently to accord with sub-clause [h] hereof) is for the purpose of this clause 13.3. deemed to be the Initial Percentage Interest of the Defaulting Participant in the property and assets referred to in clause 2.7. hereof and is in this clause 13.3. called "the Defaulting Participant's Initial Percentage Interest".
- (d) The difference between the Defaulting Participant's Ownership Percentage Share as at the date hereof and the Defaulting Participant's Initial Percentage Interest is in this clause 13.3. called "the Defaulting Participant's Outstanding Percentage Interest".
- (e) Within twelve (12) months from the expiration of the period of six (6) months as defined in clause 13.2. hereof (but only while failure to pay Project Commitment continues) the non-Defaulting Participant may, at

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its option, by notice to the Defaulting Participant elect to do one or more of the following:—

- (i) to acquire the whole of the Defaulting Participant's Outstanding Percentage Interest and assume and indemnify the Defaulting Participant against the Defaulting Participant's obligations and commitments incurred or to be incurred in respect of its Project Commitment;
 - (ii) to acquire part of the Defaulting Participant's Outstanding Percentage Interest and assume and indemnify the Defaulting Participant against a part of the Defaulting Participant's obligations and commitments incurred or to be incurred in respect of its Project Commitment corresponding to the part of the Defaulting Participant's Outstanding Percentage Interest so elected to be acquired and to vest the balance of the Defaulting Participant's Outstanding Percentage Interest in a third party as next hereafter mentioned; 10
 - (iii) to vest the whole of the Defaulting Participant's Outstanding Percentage Interest or the part thereof not acquired pursuant to sub-clause (e) (ii) of this clause 13.3. in a third party but only upon and subject to such third party and the non-Defaulting Participant assuming and indemnifying the Defaulting Participant against the whole (or part corresponding to the part of the Defaulting Participant's Outstanding Percentage Interest to be vested in it) of the Defaulting Participant's obligations and commitments incurred or to be incurred in respect of its Project Commitment. 20
- (f) On such selection being exercised the Defaulting Participant shall be deemed to be no longer in default in payment of any Project Commitment in respect of which the obligation to pay matured on or after the date on which the Defaulting Participant was, through its inability to pay any Project Commitment, in default under this Agreement and as from such date under no further obligation to contribute towards its Project Commitment. 30
- (g) The Defaulting Participant shall assign to the non-Defaulting Participant and/or to the third party in which the Defaulting Participant's Outstanding Percentage Interest is vested the Defaulting Participant's Outstanding Percentage Interest so acquired or vested and hereby appoints the other Participant the Attorney of the Defaulting Participant for the purposes of the assignment thereof.
- (h) Six months after the date of Completion of the Project the actual total Construction Costs shall be ascertained and based thereon the Defaulting Participant's Initial Percentage Interest and Defaulting Participant's Outstanding Percentage Interest shall be redetermined by agreement or arbitration as aforesaid based on the actual Construction Costs and the respective proportions thereof contributed by the non-Defaulting Participant the Defaulting Participant and its successors respectively. 40
- (i) On the election provided for in sub-clause (e) above being exercised and during each month of the period from the start-up of the 500,000 ton Bauxite Treatment Plant to the start-up of the 1,000,000 ton Bauxite Treatment Plant the Alumina Percentage Shares shall be agreed (or fixed by arbitration) so as to be in proportion to the Construction Costs actually contributed and spent up to the first day of the respective month. 50
- (j) After such election has been exercised and implemented:—

- 10 (i) the Alumina Percentage Share of a Participant shall be such percentage pertaining to the respective Participant as is a consequence of the exercise and implementation of the election;
- (ii) the Ownership Percentage Share of a Participant shall be such percentage pertaining to the respective Participant as is a consequence of the exercise and implementation of the election;
- (iii) clause 2.7. shall be read as though the words "or as may be a consequence of the exercise and implementation of the election contained in clause 13.3. hereof" had been inserted therein after the words "clause 2.11. hereof";
- (iv) references in this Agreement to "either Participant" shall be read as references to "any Participant";
- (v) references in this Agreement to "the other Participant" shall be read as references to "each of the other Participants";
- (vi) references in this Agreement to "both Participants" shall be read as references to "all Participants";
- (vii) the words in clause 5.5. hereof "50 per centum thereof" shall be read as "a percentage thereof equal to its Ownership Percentage Share hereunder";
- 20 (viii) the Participants shall make such further amendments to clause 12.7. hereof as will give the Continuing Participant's rights of first refusal in the proportion that their respective Ownership Percentage Shares bear to the total of their Ownership Percentage Shares;
- (k) No exercise of the election shall be implemented unless and until
- (i) the non-Defaulting Participant and/or the third party in which is to be vested the whole or any part of the Defaulting Participant's Outstanding Percentage Interest has discharged or made adequate provision for discharge of all financial liabilities of the Defaulting Participant under this Agreement and the Management Agreement which matured on or after the date referred to in sub-clause (f) of this clause 13.3.;
- 30 (ii) the non-Defaulting Participant and/or the third party in which is to be vested the whole or any part of the Defaulting Participant's Outstanding Percentage Interest shall have entered into an indemnity to give effect to the provisions in sub-clause (e) hereof, and
- (iii) the third party (if any) shall have executed in duplicate and delivered to the non-Defaulting Participant and the Defaulting Participant an Assumption Deed to the effect (mutatis mutandis) of the form in Schedule B to this Agreement and shall (if applicable) have expressly granted to the Defaulting Participant the option provided for in sub-clause (l) hereof.
- 40 (l) (a) At any time prior to the expiration of six months after cessation of the cause as a consequence of which the default occurred which enabled the exercise of the election and implementation thereof or within five years from the date of such election as aforesaid (whichever is the earlier) the Defaulting Participant shall have the option to purchase from the non-Defaulting Participant and/or the third party (being a company which was at the date of acquisition related to the non-Defaulting Participant) which acquired any part of the Defaulting Participant's Outstanding Percentage Interest that part so acquired at a cash price equal to the greater of
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- (i) the value thereof on a going concern basis which value shall take into account the contracts for the sale of Alumina referred to in paragraph (c) of this sub-clause (1) hereof to the extent to which they relate to the Defaulting Participant's Outstanding Percentage Interest or
 - (ii) the total cost thereof to the non-Defaulting Participant or the third party as aforesaid (as the case may be) plus a sum equal to a 9% per annum return after tax on equity invested therein during each of the years during which the non-Defaulting Participant or the third party (as the case may be) held the said Defaulting Participant's Outstanding Percentage Interest less any dividends received on such equity during such years. 10
- (b) The price referred to in sub-paragraph (1) (a) hereof shall be agreed upon by the parties or in the absence of agreement determined by arbitration pursuant to Section 15 hereof. Such price so agreed or determined as aforesaid shall be payable to the non-Defaulting Participant or the third party (as the case may be) within 90 days of the date of agreement or determination of such price.
- (c) If at the time of reacquisition of such Defaulting Participant's Outstanding Percentage Interest the non-Defaulting Participant or the third party (as the case may be) has contracts for the sale of Alumina then current such non-Defaulting Participant or third party (as the case may be) may either 20
- (i) require as a condition of such acquisition that the Defaulting Participant enter into a contract or contracts with the non-Defaulting Participant or the third party (as the case may be) for the supply to such of sufficient Alumina to enable fulfilment by such non-Defaulting Participant or third party (as the case may be) of its or their contracts starting with the contract which will soonest expire and so on to the contract which will expire last or 30
 - (ii) require the Defaulting Participant to take over by assignment such part of the obligations of the Seller under such contracts as relates to the Defaulting Participant's Outstanding Percentage Interest so acquired.

In the event that the first condition applies to the reacquisition as aforesaid the price and terms of such contract or contracts to be entered into between the Defaulting Participant and the non-Defaulting Participant or third party (as the case may be) will be the same as are applicable to the contract or contracts which are to be fulfilled as aforesaid. 40

13.3. B The causes referred to in 13.3. A are war whether declared or not or military or usurped power or economic blockade involving in any such case Switzerland or Australia or any prohibition imposed by the Government or any governmental agency of the Swiss Confederation or the Commonwealth of Australia.

13.4. So long as default under clause 13.2. hereof continues the Defaulting Participant shall have no power to cast any votes at meetings of the Board except in matters of decision under clause 8.6. hereof but the provisions of Section 8 shall otherwise apply. Following the exercise and implementation of the election (as 50

hereinbefore provided) by the non-Defaulting Participant Section 8 is deemed to be amended as follows:—

(i) Clause 8.2. is deleted and the following substituted—

8.2. (a) The Participant for the time being entitled to take the greater or greatest tonnage of Alumina shall appoint the Chairman of the Board, fill any vacancy in such position and in the absence of the Chairman appoint an acting Chairman.

(b) Each Participant shall be entitled to appoint not more than three (3) individuals to be members of the Board.

10 (ii) Clause 8.4. is amended by deleting sub-paragraph

(a) therefrom and substituting:

“(a) The quorum for each meeting of the Board shall be two, one representing each of two of the Participants”

(iii) Clause 8.5. is amended by deleting sub-paragraph

(b) therefrom and substituting:

“(b) Each Participant shall have (subject to clause 13.4.) the power to cast the same number of votes as is equal to its Ownership Percentage Share. Each Participant shall cast its votes as a block vote exercisable by the most senior member present representing such Participant. Each Participant shall advise the other Participants and the Manager of the order of seniority of its members.”

20
30
13.5. No remedy conferred by this Section 13 upon a Participant is intended to be exclusive of any other remedy, but every such remedy shall be cumulative and shall be in addition to every other remedy conferred in this Agreement or now or hereafter existing in law or in equity. No delay or omission of a Participant to exercise any right or remedy hereunder shall impair any such right or remedy or be construed to be a waiver of any default hereunder or an acquiescence therein; and every such right and remedy may be exercised from time to time and as often as may be deemed expedient by that Participant except where some right or remedy has to be exercised within a stated period.

Section 14 Force Majeure

40 14.1. If either Participant is rendered unable wholly or in part by Force Majeure to carry out any obligation other than to make a monetary payment under this Agreement such Participant shall give to the other Participant prompt notice of such Force Majeure with reasonably full particulars thereof and in so far as known the probable extent to which it will be unable to perform or be delayed in performing such obligation whereupon such obligation of the Participant giving the notice shall be suspended so far as it is affected by such Force Majeure during but no longer than the continuance thereof. The Participant giving the notice shall use all possible diligence to remove such Force Majeure as quickly as possible.

14.2. The requirement that any Force Majeure shall be remedied with all possible diligence shall not require the settlement of strikes, lockouts or other labour difficulties of major consequence to any one Participant on terms contrary to its wishes.

50 14.3. The term “Force Majeure” as employed in this Agreement shall mean fire, explosion, storm, flood, lightning, earthquake or other natural cause or accident, riot or civil commotion, strikes or lockouts, war, whether declared or not, or military or usurped power, act of Government by way of restriction, embargo or prohibition arising without default or negligence on the part of a Participant,

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insurrection, unavailability of equipment or transport and other cause whether of the kind specifically enumerated above or otherwise which is not reasonably within the control of a Participant claiming Force Majeure.

- 14.4. Any reduction in production of Alumina caused by Force Majeure shall be borne by the Participants in the respective proportions in which they are from time to time during such period of Force Majeure entitled to take Alumina.

Section 15 Arbitration

- 15.1. Any dispute or difference between the Participants arising out of or in connection with the provisions of clauses 1.1. (e), 1.1. (j), 1.1. (k), 1.1. (bb), 1.1. (hh), 2.10., 2.16., 4.3., 4.4. (b), 4.4. (c), 4.5., 5.2., 5.3., 5.7., 5.9., 5.10., 5.11. (a), 5.11. (b), 5.12. (a), (b) & (c), 5.13., 5.14., 5.15., 10.3., 10.4., 10.8., 12.7 (ii) and Section 6 or under the provisions of any clause expressly made subject to arbitration under this Agreement as to the rights or liabilities of either Participant under any of the said provisions of this Agreement shall in default of agreement between the Participants (so far as by law allowed) be referred to and settled by arbitration under the Rules of Conciliation and Arbitration of the International Chamber of Commerce. The Board of Arbitration shall be composed of three arbitrators. Each Participant shall choose an arbitrator and the third shall be chosen by the two so chosen. If either Participant fails to choose an arbitrator within thirty days after notice of commencement of arbitration or if the two arbitrators fail to choose a third arbitrator within thirty days after their appointment the Court of Arbitration of the International Chamber of Commerce shall upon the request of either Participant appoint the arbitrator or arbitrators to complete the Board. The Participants shall agree on the place of arbitration at the time arbitration proceedings are commenced and if the Participants fail to so agree within thirty days the place of arbitration shall be London, England. 10
- 15.2. Where in any of the cases referred to in clause 15.1. hereof the Manager is empowered or required to give a certificate or make a determination or decision any such certificate determination or decision so given may be disputed by either Participant and in such event such dispute shall be deemed to be a dispute between the Participants and accordingly arbitrable in accordance with the provisions of clause 15.1. 20
- 15.3. The arbitration award shall be final and binding upon the Participants and where the dispute is in relation to any certificate determination or decision of the Manager the decision of such arbitrators shall be substituted for the disputed matter contained in such certificate determination or decision and the same shall take and have effect as so altered. 30

Section 16 Currency

- 16.1. Costs and expenses shall be invoiced to each Participant by the Manager in Australian currency. Each Participant shall have the right at its option to make payments in either foreign or Australian currency provided that if payment is made in foreign currency payment shall be made at the prevailing official Reserve Bank of Australia buying rate of exchange as of the date of payment and the currency in which payment is made must be freely available for use by the Manager and not blocked or restricted in a manner which prevents its use to settle obligations in the normal course of business. All costs of conversion of currency shall be borne by the Participant making the payment. 40

- 16.2. When and so often as the Manager is obliged to make a payment exceeding \$100,000 in currency other than Australian Dollars it shall inform each Participant and either Participant may elect to make such payment out of such other currency as is then legally available to it and to receive credit for the equivalent Australian Dollars at the prevailing Bank of New South Wales buying rate of exchange in Sydney.

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Section 17 Term and Termination

- 10 17.1. Unless otherwise agreed by the Participants this Agreement subject to clause 17.2. hereof shall continue in force until the termination of the Gove Agreement notwithstanding any sale or other disposition of a Participant's Percentage Interest hereunder or the liquidation of a Participant.
- 17.2. Australian may at any time prior to the expiration of seven days after the 31st May 1969 terminate this Agreement by giving notice of termination to Austraswiss if by 31st May 1969:—
- (a) Australian shall have notified Austraswiss in writing that Australian has been unable to make arrangements satisfactory to itself for the procurement of the finance required by it to meet its Ownership Percentage Share of Construction Costs or,
- 20 (b) The Minister has not approved the sales prices and annual shipment rates in respect of the export by Australian of Bauxite, or
- (c) The Minister under the Gove Agreement has not approved the assignment of the Gove Rights by Nabalco to the Participants as tenants in common.

Section 18 Inurement

- 18.1. Subject to the provisions hereof this Agreement shall be binding upon and inure to the benefit of the Participants and their respective permitted successors and assigns.

Section 19 Notices

- 30 19.1. All notices, consents, requests and other documents authorised or required to be given by or pursuant to this Agreement shall unless otherwise in this Agreement specifically provided be given in writing and either personally served on a responsible officer of the Participant or of the Manager or mailed air mail postage prepaid or sent by telegram, telex or cable addressed as follows:—
- Austraswiss — Swiss Aluminium Australia Pty. Limited,
Goldfields House,
1 Alfred Street,
Sydney, N.S.W. 2000
Cable Address: Austraswiss Sydney.
- Australian — Gove Alumina Limited,
1 O'Connell Street,
40 Sydney, N.S.W. 2000
Cable Address: Sugar Sydney.
- Any notice to be given to the Manager shall be given to its address for the time being current under the Management Agreement.
- 19.2. Notices, consents, requests and other documents shall be deemed served or given (if mailed to an overseas destination) on the eighth day after the date of mailing by prepaid air mail and (if mailed to a domestic destination) on the third day after the date of mailing prepaid. Notices, consents or requests sent by telegram, telex or cable shall be deemed served or given on the day after

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they are despatched. Each Participant may change its address for receipt of notices, consents, requests and other documents at any time by giving notice thereof to the other Participant and to the Manager. Any notice, consent or request given hereunder may be signed on behalf of any Participant by a duly authorised representative of that Participant.

- 19.3. If either Participant charges to any person its Percentage Interest as permitted by clause 12.3. hereof and gives notice to the other Participant requesting that this clause 19.3. be applicable the other Participant agrees that it will mail to such person (or to the trustee or agent therefor) at the address specified in such notice copies of any notices of the type specified in such request which it may give from time to time to the requesting Participant pursuant to the terms of this Agreement. Delay or failure in mailing such copy of any notice shall not affect the validity of the notice.

10

Section 20 Further Assurances

- 20.1. Each Participant will so execute, acknowledge and deliver all and every such further acts, deeds, assignments, charges, covenants and assurances as shall reasonably be required for the purposes and intentions of this Agreement and the Management Agreement.

Section 21 Governing Law

- 21.1. This Agreement shall be governed by and be construed in accordance with the laws for the time being of New South Wales or the Territory if the latter is appropriate to the matter involved.

20

Section 22 Commencement

- 22.1. This Agreement shall come into effect on the Twenty second day of January, 1969.

THE COMMON SEAL of SWISS ALUMINIUM AUSTRALIA PTY. LIMITED was hereunto affixed by order of the Board of Directors in the presence of:—

J. Baillie

Secretary

Seal
David Griffin
Director

30

The COMMON SEAL of GOVE ALUMINA was hereunto affixed pursuant to a resolution of the Board of Directors.

Seal
J. Vernon
Director
P. Lovell
Secretary

SCHEDULE A TO JOINT VENTURE AGREEMENT PART I

THE PROJECT:

*Itemised Estimate
of Construction Costs*
(\$A 000's)

40

Organisation and General Services:

The completion of a Feasibility Study to obtain the necessary physical and cost data on which to proceed with the detailed design and erection of the Initial Bauxite Treatment Plant at Gove in the Northern Territory of Australia, including erection of camp and equipment adjacent to Gove Airstrip, prospecting, engineering surveys, management and administration. Incl. Catering & Camp Services. Purchase of fixed assets outside Gove

	including real estate, office equipment, vehicles and household furniture and equipment.	
	The erection of a construction camp at Wallaby Beach to accommodate construction workers including site preparation, provision of power, water, field hospital and amenities.	
	Provision of temporary facilities for prospecting and site management and temporary utilities and other temporary facilities. Project management, design and contracts (Sydney), site management for construction, general site services during	
10	construction, preparation of plant operating including start-up and company administration. Insurance and Unrecovered Freight charges.	48,211
	<i>Bauxite Mine:</i>	
	The erection of office buildings and amenities, mine preparation equipment, drilling and blasting equipment, ore loading and haulage equipment, crusher, garage and workshops capable of mining and crushing 2.7 millions tons of bauxite per annum to	
	Carried Forward:	48,211
20		<i>Itemised Estimate of Construction Costs (\$A 000's)</i>
	Brought Forward:	48,211
	be supplied to the Initial Bauxite Treatment Plant plus 2.3 million tons of bauxite per annum for export shipment on former Special Mineral Lease No. 1, including all necessary power, water and maintenance facilities.	5,379
	<i>Bauxite Transport:</i>	
30	The erection of an overland transport system in the form of a belt conveyor commencing at the Crushing Station and thence proceeding a distance of approximately 12 miles by the most suitable route to the stockpile area adjacent to the eastern boundary of the Initial Bauxite Treatment Plant at Dundas Point including all necessary power, water and maintenance facilities. Stacking and reclaiming equipment for Bauxite for export shipment designed for a capacity of 2,000 tons per hour. By-pass belt conveyor from surge bunker to Alumina silos for Bauxite export.	10,534
	<i>Water Supply:</i>	
40	Establishment of bores for water in the area south east of the Airstrip including major 18" pipeline capable of supplying a peak of 6.1 million gallons per day, distribution lines and fittings, pumps and motors, storages, aeration equipment, production bores, headers, electrical supply.	3,003
	<i>Power Plant:</i>	
	A complete Power Plant located within the Bauxite Treatment Plant capable of supplying approximately 55 MW.	
	A Diesel Power Station, engines, alternators and auxiliaries of approximately 10 MW.	

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Distribution of electrical energy including switchgear in power station and sub-stations, HV cabling, LV cabling, transformers, sub-stations and sundries.

Carried Forward: 19,826
86,953

*Itemised Estimate
of Construction Costs*
(\$A 000's)
86,953

Brought Forward:

Initial Bauxite Treatment Plant:

The erection at Dundas Point of the Initial Bauxite Treatment Plant in two stages: First Stage having a rated capacity of 500,000 tons of Alumina per annum and Second Stage having a rated capacity of additional 500,000 tons of Alumina per annum. The Initial Bauxite Treatment Plant to include site preparation, bauxite conveyor from plant stockpile to mill, bauxite grinding, pressure digestion, sand separation and disposal, desilication, separation, washing and disposal of red mud, causticising, flocculant preparation, security filtration and filter aid preparation, heat exchangers, precipitation, hydrate filtration, evaporation, decomposition, calcination, conveying systems, lime burning and milk of lime preparation, control rooms, fresh and cooling water, power, steam and compressed air distribution, central cleaning plant, pipe structures and pipe work, mechanical, boiler and electrical workshops, drainage, sewerage, mobile equipment and sundry miscellaneous items. 10
20

93,331

Harbour and Terminal Systems:

Site preparation for harbour area. Erection of general cargo terminal on the eastern side of Dundas Point and bulk terminal on the western side of Dundas Point. A conveyor system from the Alumina Silos on Dundas Point to the ship loader on the bulk terminal, having a capacity of 2,000 tons per hour and capable of conveying both Alumina and Bauxite. A travelling-type ship loader located on the bulk terminal capable of loading ships with a capacity of 60,000 tons at a rate of 2,000 tons per hour including all necessary sampling equipment and an overall integrated control system. 30

Carried Forward: 180,284

*Itemised Estimate
of Construction Costs*
(\$A 000's)

Brought Forward:

180,284

40

The erection of alumina silos and reclaiming system, tank farm for oil, tank farm for caustic soda, petrol and diesel storage and general warehouses, Pipe Line system from terminals to tank farms and to the Initial Bauxite Treatment Plant. The provision of utilities in the harbour area, including water distribution and fire protection, electrical installations and sundries.

Provision of navigation aids and marine craft.

29,749

Town:

Improvement of existing Melville Bay Road, establishment of V.H.F. radio link from Darwin or Katherine to Gove including tie lines outside town, telephone exchange in town, distribution and broadcasting.

Utilities for the town to be erected in and about the eastern slopes of Mt. Saunders including site preparation, roads, sewerage, oval, part golf course and town centre park, storm water drainage and water reticulation. The erection of senior staff and wage earners' housing, family flats and sundries.

10 Public buildings including hospital, primary school, light aircraft hangar, police station and courthouse, Northern Territory Administration offices, post office, infant health and dental clinic, pre-school, chilled water supply and sundries.

Maintenance equipment for public sector. Community Buildings (private) including worship centre, bus shelter and office, town centre social club, cinema, shopping mall, hotel/motel, laundry, buses, central bulk store, chilled water supply part and sundries. Bachelor housing, single women's hostel, laundry block and sundries.

20 Bachelor club house, swimming pool, sports and recreation centre and sundries.

Carried Forward: 210,033

*Itemised Estimate
of Construction Costs
(\$A 000's)*

Brought Forward: 210,033

Electrical power supplied to town including H.V. transmission lines, Ripple Control System, distribution lines and sub-stations.

30 Housing for Government employees. 36,558

Total Basic Cost plus Contingencies 246,591

Add Escalation 17,204

263,795

Deduct Commonwealth Contribution 6,628

Total Construction Cost: 257,167

Add Working Capital 10,920

Total 268,087

40 The Construction Cost is calculated on the basis that the date appearing in Section 22 of the Joint Venture Agreement is a date in the month of January 1969.

SCHEDULE A

TO JOINT VENTURE AGREEMENT

CONSTRUCTION PROGRAMME—PART I

I Completion of Mine, belt conveyor from Mine to Dundas Point and Dundas Point to Bulk Terminal in Melville Bay and other facilities so that Bauxite may be loaded on ships at the rate of 2,200,000 Dry Tons per annum.

1st July 1971

II Completion of construction and start-up of Bauxite Treatment Plant to 500,000 tons per annum stage.

1st November 1972

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JOINT VENTURE AGREEMENT—CONSTRUCTION PROGRAMME—PART II
OVERALL SUMMARY OF CASH REQUIREMENTS
 (Calculated on the basis that the date appearing in Section 22 is a date in the month of January 1969)
 (Thousands of Australian Dollars)

	up to 31.12.68	1969	1970	1971	1972	1973	1974	TOTAL
Bauxite Mine	1,112	1,134	4,799	1,022	740	359	142	9,308
Bauxite Transport	257	3,636	8,080	391	308	616	178	13,466
Water Supply	74	1,032	1,558	112	483	563	51	3,873
Power Plant	488	2,791	5,783	7,725	3,018	4,536	1,542	25,883
Bauxite Treatment Plant	2,417	8,004	29,256	34,022	15,318	28,717	7,709	125,443
Harbour & Terminal Systems	732	6,099	14,413	8,535	3,173	3,492	2,086	38,530
Town	893	5,859	18,321	5,332	1,806	6,213	2,240	40,664
Sub Total:	5,973	28,555	82,210	57,139	24,846	44,496	13,948	257,167
Working Capital	—	—	175	534	5,990	111	4,110	10,920
TOTAL	5,973	28,555	82,385	57,673	30,836	44,607	18,058	268,087

WORKING CAPITAL

INVENTORIES	TONS	\$A/T	VALUE (in thousand Australian Dollars)					Total
			Required in 1970	Required in 1971	Required in 1972	Required in 1973	Required in 1974	
Bauxite Mine	—	—	—	150	60	—	30	240
Bauxite Treatment Plant								
Bauxite	125,000	1.50	—	—	188	—	—	188
Calcined Alumina (dead stock only)	15,000	29.00	—	—	370	—	145	515
Alumina Hydrate	35,500	24.00	—	—	432	—	528	960
Caustic Soda (100% NaOH)	10,000	46.00	—	—	230	—	230	460
Fuel Oil	40,000	12.36	—	—	247	—	247	494
Limestone	7,000	5.00	—	—	35	—	—	35
Consumable Stores	—	—	—	—	128	34	30	192
Transport & Terminal Systems								
Harbour	—	—	175	—	—	—	—	175
Belt	—	—	—	210	—	—	—	210
Town	—	—	—	119	—	65	—	184
Miscellaneous	—	—	—	55	—	12	—	67
Spare Parts & Consumable Stores	—	—	—	—	2,200	—	1,600	3,800
First Plant Charge	—	—	—	—	2,100	—	1,300	3,400
		TOTAL	175	534	5,990	111	4,110	10,920

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Note: 1) Cash and Bank Balances are assumed to be covered by current Liabilities.

2) Stocks of Alumina and Bauxite awaiting shipment are to be included in Working Capital of Participants.

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III Completion of construction and start-up of Second Stage of Bauxite Treatment Plant (i.e. Initial Bauxite Treatment Plant).

1st November 1974.

SCHEDULE B

THIS ASSUMPTION DEED made the

day of

One thousand

BETWEEN (Here insert the name of the new Participant)

a company incorporated in

(hereinafter called "the New Participant")

and (Here insert the name of the continuing Participant)

(hereinafter called "the Continuing Participant")

10

WHEREAS

A. By a Joint Venture Agreement dated the Twenty second day of January One thousand nine hundred and sixty-nine (hereinafter as the same may have heretofore at any time and from time to time been amended by the parties thereto called "the Joint Venture Agreement") Swiss Aluminium Australia Pty. Limited (Australaswiss) a company incorporated in New South Wales and Gove Alumina Limited (Australian) a company incorporated in New South Wales associated themselves in a joint venture for the purpose (inter alia) of the mining, transporting, treating and loading for shipment of certain Bauxite and Alumina.

20

B. The New Participant wishes to acquire the whole of the Percentage Interest under the Joint Venture Agreement of (here insert the name of the Participant whose Percentage Interest is to be sold, assigned, transferred or disposed of to the New Participant) (hereinafter called "the Old Participant") and by the terms of clause 12.8 of the Joint Venture Agreement such acquisition will be effective only when the New Participant shall have executed and delivered to the Continuing Participant referred to in the said clause 12.8. an assumption deed substantially in the form of this Deed.

NOW THIS DEED WITNESSETH as follows:

1. For the purposes of this Deed the terms which are defined in clause 1.1. of the Joint Venture Agreement shall have the same meanings when used in this Deed.

30

2. The New Participant hereby and as from the date hereof becomes a Participant with the Continuing Participant in the Joint Venture established under and by virtue of the Joint Venture Agreement and covenants with the Continuing Participant that it will henceforth observe, carry out, perform and fulfil all terms, conditions, restrictions, covenants and obligations on the part of the Old Participant contained or implied in or under the Joint Venture Agreement and the Management Agreement and that it shall be bound by the Joint Venture Agreement and the Management Agreement as from the execution hereof as fully and effectively as it would have been bound had it instead of the Old Participant executed each of the same as an original party thereto.

40

3. For the purposes of Section 19 of the Joint Venture Agreement the address of the New Participant to which all notices, consents, requests and other documents authorised or required to be given by or pursuant to the Joint Venture Agreement shall be as follows:

(Here insert the address of the New Participant)

4. This Agreement shall be governed by and be construed in accordance with the laws for the time being of New South Wales or the Territory if the latter is appropriate to the matter involved.

IN WITNESS WHEREOF the parties hereto have duly executed this Deed the day and year first hereinbefore written.

50

(Attestation of New Participant)
 (Attestation of Continuing Participant)
 SCHEDULE C

THIS DEED is made the _____ day of _____
 One thousand nine hundred and _____ BETWEEN
 SWISS ALUMINIUM AUSTRALIA PTY. LIMITED of the one part and GOVE
 ALUMINA LIMITED of the other part (such parties being hereinafter collectively
 called the "Participants" and individually "Participant")
 WHEREAS

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- 10 A. By a Joint Venture Agreement dated the Twenty second day of January One
 thousand nine hundred and sixty-nine the Participants have associated themselves
 in a joint venture for the purpose of (inter alia) the mining production treatment
 and shipment of certain bauxite and alumina;
 B. By the terms of the said Joint Venture Agreement certain payments may be made
 from time to time by one Participant on behalf of the other Participant;
 C. It is a further term of the said Joint Venture Agreement that the Participants shall
 on the request of either of them enter into this deed for the purpose of securing
 the repayment of any moneys which may have been paid by a Participant on behalf
 of the other Participant together with interest thereon.

20 NOW THIS DEED WITNESSETH as follows:

1. In this Deed the following terms except where the context otherwise requires shall
 have the following meanings:
- (a) "Defaulting Participant"
 means a Participant who is in default in the payment of any Unpaid Sum
 payable by such Participant;
 - (b) "Joint Venture Agreement"
 means the agreement referred to in Recital A above as the same may be
 amended in writing from time to time;
 - (c) "Sales Contract"
 means any contract for the sale of Subject Minerals;
 - (d) "Subject Minerals"
 means Bauxite and/or Alumina produced pursuant to the Joint Venture
 Agreement;
 - (e) "this Deed"
 means this deed as the same may be amended from time to time;
 - (f) "Unpaid Sum" means any sum now or hereafter to become due from either
 Participant to the other Participant pursuant to clause 13.1. of the Joint
 Venture Agreement.

30 In this Deed unless the context otherwise requires the singular includes the plural
 and vice versa.

- 40 2. With respect to each Unpaid Sum of a defaulting Participant the other Participant
 shall have the right to take and sell any of such defaulting Participant's Subject
 Minerals and apply the proceeds thereof to the payment of such Unpaid Sum Pro-
 vided However that any such Subject Minerals so taken shall be disposed of
 firstly to meet such defaulting Participant's obligations under its Sales Contracts
 then in existence.
- 50 3. For the purpose of securing the rights of each of the Participants with respect to
 the payment by a defaulting Participant of Unpaid Sums each Participant hereby
 charges its Subject Minerals and the proceeds of sale of any thereof in favour of
 the other Participant to secure the payment of any Unpaid Sum to the intent that
 such charge shall be a first floating charge in priority to any or all other mortgages

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- charges or other encumbrances given entered into or incurred by such Participant and each Participant hereby covenants with the other Participant that any such other mortgage charge or other encumbrance which may be given or entered into by it shall acknowledge the priority of and be subject to the charge in favour of the other Participant hereby created and shall contain a provision that any such other mortgage, charge or other encumbrance is thereby postponed to the rights of the other Participant.
4. Each Participant does hereby irrevocably constitute and appoint the other Participant its true and lawful attorney with full and irrevocable power and authority in the place and stead of such first-mentioned Participant or in the name of such other Participant or otherwise from time to time in such other Participant's discretion for the purposes of carrying out the terms of the charge created by this Deed to take any and all action and to execute any and all instruments which may be necessary to accomplish the purpose of such charge and without limiting the generality of the foregoing each Participant hereby gives the other Participant the power and right on behalf of such firstmentioned Participant in the event of such firstmentioned Participant being a Defaulting Participant without notice to or assent by such Defaulting Participant to ask, demand, collect, receive and give acquittances and receipts for any and all moneys due or to become due to such Defaulting Participant under any of the Sales Contracts of such Defaulting Participant and in the name of such Defaulting Participant or in the name of such other Participant or otherwise to take possession of and endorse and collect any cheques, drafts, notes, trade acceptances or other instruments for the payment of money received on account of any of the Sales Contracts of such Defaulting Participant and to file any claim and to take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by such other Participant for the purpose of collecting any and all such moneys whenever payable under any of the provisions of any of the Sales Contracts of such Defaulting Participant.
5. Each of the Participants shall forthwith duly register this Deed in such States and Territories of the Commonwealth of Australia or elsewhere as may be required by law to perfect the security hereby given.
6. This Deed shall be governed by and construed in accordance with the laws for the time being of New South Wales or the Territory if the latter are appropriate to the matter involved.

IN WITNESS WHEREOF the parties hereto have duly executed this Deed the day and year first hereinbefore written.

THE COMMON SEAL of SWISS ALUMINIUM AUSTRALIA PTY. LIMITED was hereunto affixed by the authority of a resolution of the Board of Directors in the presence of

THE COMMON SEAL of GOVE ALUMINA LIMITED was hereunto affixed pursuant to a resolution of the Board of Directors.

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Exhibit 31**Management Agreement: Swiss Aluminium Australia Pty. Ltd., Gove Alumina Ltd. and Plaintiff**

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Australia Pty
Ltd
Gove Alumina
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THIS AGREEMENT is made the Twenty second day of January One thousand nine hundred and sixty-nine BETWEEN SWISS ALUMINIUM AUSTRALIA PTY. LIMITED a Company incorporated in the State of New South Wales and GOVE ALUMINA LIMITED a Company incorporated in the said State of New South Wales (hereinafter called "the Participants") of the one part AND NABALCO PTY. LIMITED a Company incorporated in the said State of New South Wales (hereinafter called "the Manager") of the other part WHEREAS:

- 10 A. By a Joint Venture Agreement (hereinafter as the same may be amended from time to time called "the Joint Venture Agreement") executed contemporaneously with this Agreement the Participants have associated themselves in a joint venture for the purpose of the progressive exercise and development of the Gove Rights upon and subject to the terms and conditions set forth in the Joint Venture Agreement; and
- B. The Participants have agreed to appoint the Manager as the manager under the Joint Venture Agreement on the terms and conditions hereinafter appearing; NOW THIS AGREEMENT WITNESSETH as follows:

20 *Section 1 Definitions*

- 1.1. For the purpose of this Agreement words and terms which are defined in the Joint Venture Agreement shall have the same meanings when used in this Agreement.
- 1.2. For the purposes of this Agreement the term "Operations" means the planning, designing, development, construction, maintenance and operation of the Project and all other undertakings, activities and operations engaged in by the Participants under the terms of the Joint Venture Agreement including all Expansions of the Plant but excluding the Smelter.

Section 2 Engagement, Powers and Responsibilities of the Manager

- 30 2.1. Subject to and in accordance with the terms and provisions of the Joint Venture Agreement the Gove Agreement and this Agreement and in accordance with such instructions as it may receive from time to time from the Board the Manager is hereby engaged by the Participants to manage, supervise, control and conduct on behalf of the Participants all Operations in order to ensure that the Project is completed in accordance with the Joint Venture Agreement and to enable the Participants to exercise their respective rights under the Joint Venture Agreement to take Bauxite and/or Alumina and to ensure (subject to the provisions of Section 6 of the Joint Venture Agreement) that a Participant which is a party to any contract or contracts for the sale by a Participant of Bauxite and/or Alumina is able to meet the delivery requirements of such contracts so long as such requirements are notified to the Manager and are consistent with the provisions of the Joint Venture Agreement and Alumina accords with the description set out in clause 3.1. (e) of the Joint Venture Agreement and shall do all such things as are necessary to that end and without restricting the generality of the foregoing the Manager may either itself or through such independent contractors as it shall engage undertake in connection with Operations the following activities:
- 40

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- (1) the construction of the Port, town, roads, communications and other facilities;
- (2) the mining, production, crushing, screening, treating, transportation, handling, storage, stockpiling and loading for shipment and delivery of Bauxite for shipment untreated and the transportation, handling, storage, and loading for shipment and delivery of Alumina to or for the account of each Participant;
- (3) the supervision and control of such independent contractors as it may have engaged;
- (4) the custody, maintenance, operation and protection of the property and assets of the Participants the subject of Operations; 10
- (5) the engagement of such competent experts, advisors, superintendents and engineers and labour as contractors to or employees of the Manager;
- (6) the acquiring of materials, supplies, machinery, equipment and services;
- (7) the procuring from outside experts and consultants of special engineering, design, legal, accounting, insurance and other professional services;
- (8) if requested by a Participant and in accordance with such Participant's directions the weighing, sampling and assaying of Bauxite and Alumina at the Port and the giving of the appropriate certificates to the purchasers thereof from such Participant; 20
- (9) the co-ordinating of shipping schedules and, subject to the request and direction (if any) of either Participant, the preparation and furnishing to purchasers of Bauxite and/or Alumina from such Participant of invoices commercial and other documents and statements.
- (10) Subject to the next succeeding paragraph the preparing and filing of any report or return required by law or by the Special Mineral Lease (other than royalty returns), the Gove Agreement or the Other Property Rights to be filed by the Participants or by either of them;
- (11) the making of such studies and the preparing of such reports relating to aluminium smelting in the Territory as are required by clause 7 of the Gove Agreement but not, unless authorised by the Participants, the furnishing of such reports otherwise than to the Board; 30
- (12) the performing on behalf of the Participants of other obligations under the Gove Agreement or of any other activity ancillary thereto all as authorised by the Participants;
- (13) the securing and maintaining of adequate and reasonable insurance including the covering of risks of personal injury to or death of employees or others, risk of fire, public risk and fidelity guarantee and as to other risks as directed by the Board and the adjusting of losses and claims pertaining to or arising out of such insurance but excluding business interruption insurance and other similar types of insurance, provided that such parts of the Project (whether completed or in the course of construction) shall be insured for such value and against such risks as are decided by the Board and, at the request and expense of either Participant the securing and maintaining of such further or additional insurance as such Participant may request; 40
- (14) the complying with all laws applicable to Operations including particularly laws relating to workers' compensation and safety requirements;
- (15) the proper disbursing on behalf of the Participants of all funds provided by the Participants to carry out Operations including without limiting the generality of the foregoing the paying of all sums payable by the Manager 50

- with respect to all services and supplies, materials, equipment and other property necessary or appropriate in connection with Operations;
- (16) the paying on behalf of each Participant of:
- (a) lease rentals and other charges (except royalties) payable under the Gove Agreement, the Special Mineral Lease or the Other Property Rights; and
 - (b) rates and taxes other than taxes imposed upon or measured by income payable in connection with Operations.
- (17) the taking of such action in an emergency affecting the safety of life or of Operations or the property and assets of the Participants the subject of Operations as the Manager may deem necessary or advisable to prevent loss injury or damage and the taking of reasonable precautions in connection with Operations for the safety of employees whether of the Manager, the Participants, or of any contractor to either, of invitees and the public; and
- (18) the doing or refraining from doing of all other acts and things as may be necessary or advisable for efficient and economic Operations;
- And during the continuance of its engagement hereunder the Manager is and will at all times in accordance with this Agreement and the Joint Venture Agreement remain entitled to possession of the Project and of all property and assets constructed or acquired by the Participants or either of them as a result of any expansion of the Project.
- 2.2. Subject to clause 2.3. hereof the Manager shall perform all of its obligations hereunder and conduct all Operations in a good, workmanlike and commercially reasonable manner and in accordance with the most suitable engineering and mining methods and practices.
- 2.3. The Manager shall be subject to the general supervision of the Board and shall carry out the directions and decisions of the Board given or made in accordance with the Joint Venture Agreement.
- 2.4. The Manager shall not except with the prior decision of the Board knowingly enter into any contract or series of related contracts for the supply of goods or services with a company related to the Manager or with a Participant or with a company related to a Participant. For the purposes of this clause 2.4. a company shall be related to the Manager or a Participant if it is related to it within the meaning of sub-section (5) of Section 6 of the Companies Act of New South Wales.
- 2.5. The Manager shall in regard to procuring material, equipment and services act in accordance with such procurement and purchasing procedures, if any, as have been agreed by the Board. The Manager will obtain the prior approval of the Board before entering into any contract in excess of \$1 million.
- 2.6. The Manager shall refer to the Board any major labour dispute or litigation or matters potentially leading thereto.
- 2.7. During the term of this Agreement the Manager shall not except with the prior decision of the Board directly or indirectly carry on or be interested in any business or activity other than as set out in clause 2.1. hereof.
- 2.8. The Manager hereby accepts such engagement on the terms and subject to the conditions contained in this Agreement.

Section 3 Meetings of the Board

- 3.1. The Manager will arrange meetings of the Board in accordance with Section 8 of the Joint Venture Agreement and the Manager may convene such other

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- meetings of the Board at such times as it deems appropriate and shall do so upon the request of either Participant.
- 3.2. The Manager shall give at least fifteen days' notice or such shorter notice as may be agreed by the Participants of each meeting of the Board to all members of the Board and such notice shall be accompanied by an agenda prepared by the Manager (provided that the agenda may be furnished by telex or cable up to not less than ten (10) days prior to such meeting) and by such supplemental information as the Manager deems necessary or as may be requested by the Participants or either of them and as can reasonably be supplied by the Manager prior to the meeting. 10
- 3.3. Unless otherwise directed by the Board a representative of the Manager will attend all meetings of the Board.
- 3.4. The Manager shall be entitled to a copy of the record of the decisions made at each meeting of the Board as soon as practicable following each such meeting.

Section 4 Programmes, Budgets, Estimates, Payments, Disbursements and Financial Obligations of the Participants

- 4.1. The Manager shall prepare and submit to the Board in accordance with Section 9 of the Joint Venture Agreement programmes (including long range programmes and planning) budgets and estimates provided for in the Joint Venture Agreement and such other programmes, budgets and estimates as may be directed by the Board. 20
- 4.2. At least forty-five (45) days prior to each meeting of the Board held pursuant to clause 9.1. of the Joint Venture Agreement the Manager shall furnish each Participant with a proposed programme and proposed budgets for Operations during the next ensuing Year. Such programme and budgets shall include on a quarterly basis:
- (a) an itemised budget specifying separately Bauxite Mining Costs and Bauxite Treatment Costs and proposed over expenditure limits therefor;
 - (b) an itemised budget specifying Construction Costs and proposed over expenditure limits therefor; 30
 - (c) itemised estimated cash requirements and expenditures;
 - (d) details of the Construction Programme; and
 - (e) itemised estimates of production of Bauxite and Alumina.
- 4.3. Such programme and budgets as approved and from time to time amended or revised by the Board shall be binding on the Manager who shall carry on Operations during the period covered thereby in accordance therewith, so far as funds made available permit.
- 4.4. The Manager will make all disbursements in connection with Operations during the next ensuing Year in accordance with such programme and budgets as so approved and from time to time amended or revised. 40
- 4.5. (a) Based upon such programme and in accordance with such budgets as so approved and from time to time amended or revised the Manager shall submit on or before the tenth day of the last month in each Quarter to each Participant a current cash estimate for the next ensuing Quarter. Such cash estimates shall be in accordance with the budgets, policies, procedures and instructions approved by the Board and shall show:
- (i) separately the estimated cash disbursements which the Manager will be required to make for Operations during each month of such Quarter for (A) items constituting Construction Costs; (B) items constituting Bauxite Mining Costs; and (C) items constituting 50

- 10 Bauxite Treatment Costs and the net amount thereof after deducting therefrom all amounts received and receivable in the then current Quarter;
- (ii) the extent if any to which such disbursements will be satisfied by cash on hand after allowing for a reasonable cash balance approved by the Board;
- (iii) the amounts which have been credited to the Participants in the then current Quarter under clause 10.5. of the Joint Venture Agreement; and
- 20 (iv) the aggregate cash amounts which the Participants will be required to furnish to the Manager relative to such classifications and the date or dates in each month of such Quarter specified by the Manager for payment thereof.
- (b) Upon receipt of such current cash estimate each Participant will furnish to the Manager the amounts required from such Participant by the date or dates during the next ensuing Quarter specified by the Manager for payment thereof. The liability of the Manager to the Participants to account for sums received by it from or on behalf of the Participants or either of them shall be discharged by the payment by the Manager in accordance with clause 4.4. hereof of the costs of Operations incurred by the Manager for the account of the Participants pursuant to the Joint Venture Agreement and this Agreement or other agreement between the parties.

Section 5 Records and Accounts; Rights of Inspection

- 30 5.1. (a) The Manager shall submit for approval and adoption by the Participants proposals for a cost record and procedures manual which shall set out its chart of accounts and procedures and instructions for maintenance of the records which are required to meet the reporting, accounting and tax return requirements of each of the Participants in respect of Operations (such manual as approved and adopted by the Participants being hereinafter called the "Cost Record and Procedures Manual").
- (b) The Cost Record and Procedures Manual shall take into account at least the following cost centres:
- 40 (i) mining;
- (ii) crushing plant;
- (iii) transportation from mine to Bauxite stockpile;
- (iv) transportation from Bauxite stockpile to the Port;
- (v) the Bauxite Treatment Plant;
- (vi) transportation from the Bauxite Treatment Plant to the Port;
- (vii) Bauxite stockpile facilities for shipment untreated;
- (viii) Bauxite stockpile facilities for the Bauxite Treatment Plant;
- (ix) Alumina storage facilities;
- (x) Port facilities;
- (xi) town and related facilities;
- (xii) service operations.
- (c) The Cost Record and Procedures Manual shall provide at least for the separate identification and recording of:
- (i) Construction Costs;
- (ii) Bauxite Mining Costs;
- (iii) Bauxite Treatment Costs;

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- (iv) Costs incurred in construction, development and operation in respect of any activity (other than the Project) engaged in under the Joint Venture Agreement and managed under this Agreement.
 - (v) Costs recoverable from third parties.
 - (d) The Manager shall subject to paragraph (b) of this clause 5.1. from time to time make such amendments in the Cost Record and Procedures Manual as are agreed by the Participants. The Manager shall provide each Participant with a copy of the Cost Record and Procedures Manual and of each amendment thereto.
 - (e) In the event of any conflict between the procedures or instructions of the Cost Record and Procedures Manual and this Agreement or the Joint Venture Agreement the provisions of this Agreement or the Joint Venture Agreement (as the case may be) shall prevail. 10
- 5.2. The Manager shall keep or cause to be kept full, true and accurate records and accounts of Operations and of the Manager's performance of its duties under this Agreement and of all transactions on behalf of the Participants or of either of them in connection therewith and of the costs and expenses thereof including but without limiting the generality of the foregoing, records and accounts in accordance with the Cost Records and Procedures Manual in respect of: 20
- (a) Each sum received by the Manager from each Participant and the date of receipt thereof;
 - (b) each sum received by the Manager on behalf of each Participant and the date of receipt and the source thereof;
 - (c) each sum expended or disbursed by the Manager on behalf of each Participant and the date and purpose thereof;
 - (d) the acquisition of materials, equipment, supplies and other property by the Manager on behalf of each Participant and the date and costs of acquisition and description thereof;
 - (e) inventories of materials, equipment, supplies and other property (other than Bauxite and Alumina, title to which has passed to either of the Participants) owned by each Participant jointly or severally; 30
 - (f) the sale, abandonment or other disposition by the Manager of any such materials, equipment, supplies or other property (other than Bauxite and Alumina) owned by the Participants jointly or severally;
 - (g) the production and processing of Bauxite and Alumina (by size, grade and chemical composition) and analyses made of the same;
 - (h) the unit costs of Bauxite and Alumina;
 - (i) inventories of Bauxite and Alumina; and
 - (j) each shipment of Bauxite and/or Alumina, the date thereof and the name of the Participant on whose behalf made. 40
- 5.3. The Manager shall keep or cause to be kept such other records and accounts as either Participant may require provided that the cost and expense of doing so shall be borne by such Participant.
- 5.4. The Manager shall permit each Participant to inspect and copy and if requested shall furnish copies of such records and accounts as provided in clause 11.2. of the Joint Venture Agreement and shall if so requested by a Participant furnish it with statements compiled from such records and accounts.
- 5.5. The Manager shall permit each Participant and other persons to have access to Operations as and to the extent provided in clause 11.1. of the Joint Venture Agreement. 50

Section 6 Shipping and Delivery Schedules

6.1. The Manager shall co-ordinate shipping schedules and arrange deliveries of Bauxite and/or Alumina in accordance with Section 6 of the Joint Venture Agreement.

Section 7 Reports

7.1. The Manager shall promptly after their preparation furnish to each Participant copies of all reports prepared by the Manager in connection with Operations and copies of all reports received by the Manager in connection therewith including all reports and other significant written communications to or from the Commonwealth or the Administration of the Territory relating to all or any of the Gove Rights.

7.2. In addition to the reports referred to in clause 7.1. hereof the Manager shall furnish to each Participant the following reports in a form which shall be provided for in the Cost Record and Procedures Manual:

(a) As soon as practicable after the thirty first day of December in each year and not later than ninety (90) days after such date and as soon as practicable after the thirty first day of March in each year and not later than forty five (45) days after such date a statement audited by an independent accountant or firm of accountants of recognised standing in the Commonwealth of Australia approved by the Board reflecting the results (on a month-by-month basis) for the twelve calendar months preceding such dates, of all transactions on behalf of the Participants in connection with Operations as disclosed by the records and accounts kept or caused to be kept by the Manager pursuant to clause 5.2. hereof and reflecting all property and assets of the Participants and all outstanding but unpaid commitments in respect of Construction Costs the subject of Operations as of the end of such respective twelve months period together with:

- (i) a report of such accountant or accountants that the said statement fairly presents the Operations conducted by the Manager during such respective twelve months period and each such month and as to the accuracy and correctness of such statement as to property and assets (including the inventory of Bauxite and Alumina taken by the Manager as of the end of such respective twelve months period) and the extent to which such accountant or accountants has or have conducted a spot or sample check of such property and assets; and
- (ii) a report of such accountant or accountants stating whether in examining the said records and accounts they have obtained any knowledge of any default by the Manager in the fulfilment of the terms covenants provisions or conditions of this Agreement and if so the particulars of each such default; and

(b) Within thirty (30) days after the close of each month of each Year an unaudited statement or statements of the Manager reflecting in reasonable detail but in summary form:

- (i) the records and accounts for such month kept or caused to be kept by the Manager pursuant to clause 5.2. hereof; and
- (ii) such other information as may be contained in the records or accounts kept or caused to be kept by the Manager pursuant to this Agreement or as may be within the knowledge of the Manager concerning Operations as either Participant may request. The additional costs (if any) involved in the preparation of any statement

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requested by either Participant pursuant to this sub-paragraph (ii) shall (unless otherwise approved by the Board) be borne exclusively by such Participant.

- 7.3. In addition to the reports referred to in clause 7.1. of this Agreement the Manager shall furnish the following additional reports;
- (a) On or before the last day of each month to each Participant a progress report summarising Operations during the preceding month as compared with Operations for such month as forecast in the programme and budgets; and
 - (b) not less than ninety (90) days prior to the estimated start-up date of the Initial Bauxite Treatment Plant and from time to time thereafter as may be required but not less often than once each Year following such start-up date to each Participant a statement (i) setting forth its recommendations for the long-range development of the Project and for the progressive exercise and development of the Gove Rights including the Smelter and (ii) describing any material changes proposed by the Manager in the design or construction of the Project or of any other Operations. 10

Section 8 Inventories and Disposal of Surplus Materials Equipment and Property

- 8.1. At the end of each month and each Year the Manager shall take an inventory of Bauxite and Alumina in process and in stockpiles identifying the products (by size, grade and chemical composition) and materials in each segment of such inventory by measuring the quantities in each segment at the end of March and December in each Year by actual physical inspection and by means appropriate in the circumstances at the end of each month other than March and December. 20
- 8.2. The Manager shall devise and carry out programmes for the routine taking of physical inventories of the property and assets owned by the Participants the subject of Operations other than the Inventory of Bauxite and Alumina in process (including all materials in process) and stockpiles. The periodicity of such physical inventories shall be prescribed in the Cost Record and Procedures Manual. 30
- 8.3. The Manager shall upon reasonable notice given by either Participant to do so and at the expense of such Participant take such inventories in addition to those provided for in clauses 8.1. and 8.2. hereof as such Participant may specify in such notice.
- 8.4. Each participant shall have the right to have a representative present when any inventory is taken.
- 8.5. Any materials and/or equipment owned by the Participants or either of them in connection with Operations may be classified as surplus by the Manager when deemed by it to be no longer needed in Operations by giving notice thereof to each of the Participants in the case of jointly owned materials and/or equipment and to the Participant owning such materials and/or equipment where they are not jointly owned. Such surplus materials and equipment shall be sold and disposed of by the Manager Provided However that if the aggregate fair value estimated by the Manager of any surplus materials and equipment to be disposed of hereunder at any one time exceeds One hundred thousand dollars (\$100 000) no sale thereof shall be made by the Manager without prior approval of each of the Participants in the case of jointly owned materials and/or equipment and of the Participant owning such materials and/or equipment where they are not jointly owned. Proceeds collected by the Manager from the sale of any jointly owned surplus materials and/or equipment shall be 40 50

divided between the Participants in accordance with their respective ownership rights in such materials and/or equipment.

Section 9 Chargeable Costs

9.1. The Manager shall charge the Participants with all costs, expenses and liabilities of the Manager hereafter incurred and actually paid or accrued in connection with Operations or pursuant to the programmes and budgets approved by the Board or otherwise authorised by the Board in accordance with the Joint Venture Agreement and this Agreement.

10 9.2. The Manager shall not charge the Participants as Construction Costs or Operating Costs with costs or expenses recoverable from third parties but the Participants may make moneys available to the Manager on their behalf for the temporary financing of such costs and expenses.

Section 10 Term

10.1. The term of the engagement of the Manager hereunder is for a period of ten (10) years from the date of this Agreement and shall continue thereafter unless and until cancelled at the end of such period or thereafter by the Manager or by the Participants by not less than one year's notice of cancellation.

20 10.2. Notwithstanding clause 10.1 of this Agreement, this Agreement shall terminate without notice simultaneously with the termination of the Joint Venture Agreement for any reason whatsoever.

10.3. Upon termination of the engagement of the Manager or of this Agreement the Manager shall relinquish to the Participants or as they shall direct all property and assets of the Participants the subject of Operations and all books and records kept pursuant to this Agreement and the Participants shall assume, and indemnify the Manager against, all then outstanding obligations or liabilities of the Manager incurred pursuant to this Agreement.

30 10.4. Unless this Agreement is terminated as provided in clause 10.2. of this Agreement or by mutual agreement of the Manager and the Participants, upon the cancellation of the engagement of the Manager the Participants shall continue to be bound by this Agreement and the Participants shall promptly engage another person as Manager.

Section 11 Indemnification and Authority

11.1. The Manager shall not be responsible for any loss or damage suffered or done by or against either Participant in the course of the discharge of its duties hereunder.

11.2. The Manager shall not have authority to act for or to assume any obligation or liability on behalf of the Participants or either of them except such authority as is conferred on the Manager by this Agreement or by the Joint Venture Agreement or by the Board pursuant to the Joint Venture Agreement.

40 11.3. Each Participant shall indemnify and hold the Manager harmless from and against any and all losses claims damages and liabilities arising out of any act or any assumption of any obligation by the Manager done or undertaken on behalf of such Participants pursuant to this Agreement.

11.4. The Manager covenants and agrees with each of the Participants that without the prior written consent of each Participant it will not incur, assume or permit to exist any indebtedness of the Manager for borrowed money or contingently or otherwise guarantee, endorse, discount or sell with recourse, or otherwise become or remain liable with respect to (directly or indirectly) any indebtedness, obligation or liability of any person except as permitted by this Agreement.

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Section 12 Notices

- 12.1. All notices, consents, requests and other documents authorised or required to be given by or pursuant to this Agreement shall be given in writing and either personally served on a responsible officer of the party to whom it is given or mailed airmail postage prepaid or sent by telegram, telex or cable addressed as follows:—
- | | | |
|-------------|---|----|
| Austraswiss | Swiss Aluminium Australia Pty. Ltd.,
Gold Fields House,
1 Alfred Street,
Sydney,
New South Wales.
Cable Address: Austraswiss, Sydney | 10 |
| Australian | Gove Alumina Limited,
1 O'Connell Street,
Sydney,
New South Wales.
Cable Address: Sugar, Sydney | |
| Manager | Nabalco Pty. Limited,
Gold Fields House,
1 Alfred Street,
Sydney,
New South Wales.
Cable Address: Alusyd, Sydney | 20 |
- 12.2. Notices consents requests and other documents shall be deemed served or given (if mailed to an overseas destination) on the eighth day after the date of mailing or (if mailed to a domestic destination) on the third day after the date of mailing. Notices consents or requests sent by telegram, telex or cable shall be deemed served or given on the day after they are despatched. A Participant or the Manager may change its address for receipt of notices, consents, requests and other documents at any time by giving written notice thereof to the other parties hereto. Any notice, consent or request given hereunder may be signed on behalf of any party by any duly authorised representative of that party.

Section 13 Encumbrances

- 13.1. The Manager shall not have any ownership title or interest in any property real and personal held, developed, constructed or acquired by or on behalf of the Participants or either of them under or pursuant to this Agreement or the Joint Venture Agreement or in any moneys paid pursuant to clause 4.5. hereof or pursuant to clause 10.4. or 10.5. of the Joint Venture Agreement or in any money collected by the Manager for the Participants or either of them from sources other than the Participants themselves except as the agent and representative hereunder of the Participants.
- 13.2. Except as permitted by the Joint Venture Agreement or this Agreement, the Manager shall not mortgage, pledge, charge, encumber, sub-lease or otherwise dispose of or create any lien over or trust in respect of (or purport or attempt to do any of the same) the Gove Agreement, the Joint Venture Agreement, the Special Mineral Lease, the Other Property Rights, the Project or any other real or personal property or money whatsoever in which any Participant has an interest or lease any property or acquire or contract to acquire any property for the Participants under any conditional sales agreement or other title retention agreement or any property which is subject to any lien, charge or

encumbrance (other than any charge permitted by the Joint Venture Agreement) at the time of acquisition thereof and the Manager shall take prompt action to remove any lien, charge or encumbrance (other than those permitted as aforesaid) arising or existing by operation of law on or over any of such rights or property of the Participants.

Section 14 Assignment

14.1. This Agreement shall be binding upon the parties hereto and their respective successors and assigns provided however that the Manager may not (a) assign its rights and interests or delegate the whole of or, except as authorised expressly or impliedly by this Agreement or the Joint Venture Agreement, delegate any part of its obligations or duties under this Agreement without the prior consent of the Participants or (b) merge with or into or consolidate with any other person.

14.2. A Participant shall assign its rights and obligations in to and under this Agreement to the person to whom it sells, assigns, transfers or disposes of its Percentage Interest.

Section 15 Force Majeure

15.1. If the Manager is rendered unable wholly or in part by force majeure to carry out any obligations under this Agreement it shall give each Participant prompt notice of such force majeure with reasonably full particulars thereof and in so far as known the probable extent to which it will be unable to perform or be delayed in performing such obligation whereupon such obligation of the Manager shall be suspended so far as it is affected by such force majeure during but not longer than the continuance thereof. The Manager shall use all possible diligence to remove such force majeure as quickly as possible.

15.2. Except where directed by the Board the requirements that any force majeure shall be remedied with all possible diligence shall not require settlement of strikes, lockouts or other labour difficulty by the Manager on terms contrary to the Board's wishes.

15.3. The term "force majeure" as employed in this Agreement shall mean fire, explosion, storm, flood, lightning, earthquake or other natural cause or accident, riot or civil commotion, strikes or lockouts, war whether declared or not, or military or usurped power, act of Government by way of restriction, embargo or prohibition arising without default or negligence on the part of the Manager, insurrection, unavailability of equipment or transport and other cause whether of the kind specifically enumerated above or otherwise which is not reasonably within the control of the Manager.

Section 16 Default

16.1. Notwithstanding Section 10 of this Agreement if the Board has determined that the Manager has committed a substantial breach or act of default under this Agreement and such breach or act of default is not remedied within thirty (30) days after the Board has given notice thereof to the Manager the engagement of the Manager shall at the expiration of the said thirty (30) days terminate and such termination shall be without prejudice to the rights of the Participants in respect of any breach or act of default committed prior to such termination.

Section 17 Governing Law

17.1. This Agreement shall be governed by and construed in accordance with the laws for the time being of the State of New South Wales.

Exhibit 31
Management
Agreement:
Swiss
Aluminium
Australia Pty
Ltd
Gove Alumina
Ltd and
Plaintiff.
22nd January,
1969
(Cont'd)

Exhibit 31
Management
Agreement:
Swiss
Aluminium
Australia Pty
Ltd
Gove Alumina
Ltd and
Plaintiff.
22nd January,
1969
(Cont'd)

Section 18 Commencement

18.1. This Agreement shall come into effect on the Twenty second day of January, 1969.

IN WITNESS WHEREOF the parties hereto have executed this Agreement the day and year first abovementioned.

THE COMMON SEAL of SWISS ALUMINIUM AUSTRALIA PTY. LIMITED was hereunto affixed by order of the Board of Directors in the presence of:—

J. Baillie

Secretary

Seal
David Griffin
Director

10

THE COMMON SEAL of GOVE ALUMINA LIMITED was hereunto affixed pursuant to a resolution of the Board of Directors.

Seal
J. Vernon
Director
P. Lovell
Secretary

THE COMMON SEAL of NABALCO PTY. LIMITED was hereunto affixed by order of the Board of Directors in the presence of:—

Seal
David Griffin
B. N. Kelman
Directors

C. Joehr

Secretary

20

Exhibit 37
(part)
Bauxite Sales
Agreement:
Gove Alumina
Ltd.
and Swiss
Aluminium
Ltd.
22nd January,
1969

Exhibit 37 (part)

Bauxite Sales Agreement: Gove Alumina Ltd. and Swiss Aluminium Ltd.

THIS AGREEMENT is made the Twenty second day of January, One thousand nine hundred and sixty-nine BETWEEN GOVE ALUMINA LIMITED a company incorporated in New South Wales Commonwealth of Australia (hereinafter called "the Seller") of the one part AND SWISS ALUMINIUM LIMITED a company incorporated in Switzerland (hereinafter called "the Buyer") of the other part

WHEREAS

A. The Seller and Swiss Aluminium Australia Pty. Limited (hereinafter called "Austraswiss") have entered into an agreement contemporaneously with this Agreement (hereinafter as the same may be amended from time to time called "the Joint Venture Agreement") for the purpose of the development of certain bauxite deposits in the Territory and among other things the production of bauxite therefrom the Seller having the right to take in kind and separately dispose of certain annual tonnages of Bauxite.

B. The Seller has agreed to sell and the Buyer has agreed to purchase Bauxite on the terms and conditions hereinafter set forth

NOW THIS AGREEMENT WITNESSETH as follows:

Section 1 Definitions

1.1. Insofar as they are not otherwise defined in this Agreement, words and terms

30

40

which are defined in the Joint Venture Agreement shall have the same meanings when used in this Agreement.

- 1.2. For the purposes of this Agreement except where the context otherwise requires:

“First Start-Up Date”

means the date as certified by the Manager on which the first commercial quantity of Alumina is produced from the Bauxite Treatment Plant.

“Second Start-Up Date”

- 10 means the date as certified by the Manager on which the first commercial quantity of Alumina is produced from the Bauxite Treatment Plant when it is at the stage of having an annual rated capacity of 1,000,000 tons of Alumina.

- 1.3. For the purposes of this Agreement except where the context otherwise requires: “Production Date”

means the date specified by the Manager pursuant to clause 6.1. of the Joint Venture Agreement as the date on which the Manager is able to commence deliveries of Bauxite.

- 1.4. For the purpose of this Agreement the term thereof shall be considered as comprising 21 consecutive contract periods as follows:

- 20 (i) one contract period commencing on the Production Date and ending on the 31st day of December next thereafter,
 (ii) nineteen contract periods each of one year next consecutively ensuing after the first contract period, and
 (iii) one final contract period commencing on the 1st day of January of the twenty-first contract period and ending on the day immediately preceding the twentieth anniversary of the Production Date.

- 1.5. All amounts expressed in this Agreement are in Australian currency.

Section 2 Quantity

- 2.1. The Seller shall sell and the Buyer shall purchase fourteen million (14,000,000) Dry Tons of Bauxite.
 30 2.2. Bauxite sold under this Agreement may be used in Europe or may be used in the United States of America if shipped there via Gulf or East Coast ports but may not be used elsewhere.

Section 3 Deliveries

- 3.1. The Seller shall deliver and the Buyer shall take delivery during each of the second to the twentieth contract periods inclusive of 700,000 Dry Tons of Bauxite.
 3.2. In the first and twenty-first contract periods the quantities which the Seller shall deliver and the Buyer shall take delivery of shall be computed pro rata temporis on the basis of 700,000 Dry Tons annually.
 40 3.3. Deliveries of the 14 million Dry Tons of Bauxite under this Agreement shall be made and taken reasonably evenly throughout the entire term of this Agreement and in accordance with Section 7 hereof. The Seller shall not be obliged to deliver more than 1,500,000 Dry Tons in any two consecutive contract periods of twelve months each and the Buyer shall not be entitled to take delivery of less than 1,300,000 Dry Tons in any two consecutive contract periods of twelve months each. In respect of the first and the last contract periods the said maximum and minimum tonnages will be adjusted accordingly, provided however that the Seller shall have delivered and the Buyer shall have taken delivery of 14,000,000 Dry Tons by the end of the 21st contract period.

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Section 4 Size and Quality

- 4.1. Bauxite sold hereunder shall be delivered crushed to such a particle size that 95% thereof passes through a one inch (1 in.) screen.
- 4.2. Bauxite sold hereunder shall be taken from the Export Stockpiles referred to in clause 4.3. of the Joint Venture Agreement and shall be of such quality as is from time to time therein.
- 4.3. Bauxite will be delivered tel quel without undergoing a drying process.

Section 5 Delivery Property and Risk

- 5.1. Bauxite purchased by the Buyer pursuant to this Agreement shall be delivered by the Seller to the Buyer f.o.b. vessel mechanically trimmed the Port. Property and all risk with respect to Bauxite f.o.b. shall pass to the Buyer when such Bauxite is on board. 10
- 5.2. At the request of the Buyer the Seller shall deliver such Bauxite c.i.f. non-Australian port according to instructions given by the Buyer, provided however that if delivery is made hereunder c.i.f. as aforesaid the Seller shall not be at any greater risk than it would have been had delivery been made f.o.b. and the Seller shall not be liable to pay any costs, charges or expenses other than would have been payable by the Seller had delivery been made f.o.b., nor shall the Seller be liable for any failure to comply with the Buyer's instructions which are contrary to any of the principles expressed in this clause or for any other reasonable failure to comply with the Buyer's instructions as aforesaid and the Buyer shall indemnify the Seller against all costs, charges and expenses incurred by the Seller and against all actions, claims and demands made against the Seller as a result of such delivery being made otherwise than f.o.b. Any payment required by such indemnity shall be paid promptly by the Buyer to the Seller on demand. 20

Section 6 Employment of Vessels

- 6.1. The Buyer shall be responsible for providing at the Port and without cost to the Seller sufficient vessels to carry Bauxite to be delivered by the Seller under this Agreement. 30
- 6.2. Ships shall be suitable to enter, leave and berth at the Port and shall be suited to the loading facilities at the Port. Any extra loading costs consequent upon non-compliance with this requirement shall be paid by the Buyer to the Seller on demand.

Section 7 Shipping Arrangements and Schedules

- 7.1. Each shipping programme referred to in clauses 7.2. and 7.3. hereof shall provide for the delivery of Bauxite so as to take deliveries spread reasonably evenly throughout the Year at reasonably regular intervals and consistent with the existing Bauxite export stockpile and storage facilities. The Buyer may arrange to take deliveries in combined shipments of Bauxite and Alumina. 40
- 7.2. The Buyer shall submit to the Seller for the Seller's approval not less than four months prior to the Production Date and thereafter not later than the first day of September of each Year a provisional shipping programme for the next ensuing contract period stating approximate quantities of Bauxite for each shipment during such contract period. The Seller shall approve each such schedule or advise by telex or cable to the Buyer changes which the Seller requires within twenty (20) days after the latest date under this Agreement for receipt by the Seller of such programme.
- 7.3. The Buyer shall submit to the Seller for the Seller's approval fifty (50) days

prior to the commencement of each month a firm reasonably evenly spaced shipping programme for such month. Each such programme shall also contain a best estimate of the Buyer's shipping programme for the two (2) months next ensuing after such month. Such programmes shall specify the name (where practicable) of each vessel, the scheduled arrival date and the quantities (10% more or less at the Buyer's option) to be delivered to each such vessel. Within twelve (12) days after each such submission day the Seller shall approve such programme for the first month thereof or advise by telex or cable to the Buyer changes which the Seller requires.

- 10 7.4. The Buyer shall have the right to substitute at any time vessels similar in all respects to load at the same position in sequence of vessels and, unless otherwise agreed, the same quantity of Bauxite.
- 7.5. The Buyer shall give to the Seller the following notices of the estimated time of arrival of each vessel:
- Ten (10) days
 - Forty-eight (48) hours
 - Twenty-four (24) hours
- specifying in the 48 hour notice the actual quantity to be loaded the estimated loaded draft and if requested by the Seller the hatch loading plan of such vessel.
- 20

Section 8 Loading of Bauxite

- 8.1. The Seller shall at its expense and risk load and trim (by mechanical trimmer) Bauxite on board vessels furnished or arranged by the Buyer in accordance with clause 6.1. hereof at the Port.
- 8.2. The Buyer shall arrange that the vessel's crew open and close hatches at vessel's expense and that the vessel work at all times required by the Seller and provide lights aboard vessel for night work and the Seller shall not be responsible for any crew overtime expense.
- 30 8.3. The Buyer acknowledges that all vessels arriving at Gove (whether to take delivery of Bauxite and/or Alumina or to discharge inward cargoes) within fifteen (15) days either side of the scheduled time of arrival set forth in the consolidated schedule referred to in clause 6.5. of the Joint Venture Agreement are to be berthed for loading or unloading (as the case may be) in the order of presentation to the Manager of notice of readiness and that vessels arriving within such days of the scheduled time shall have priority over vessels arriving not within such days of schedule.
- 8.4. Vessels arriving to take delivery of Bauxite for the Buyer may present notice of readiness when in free pratique with clean holds and in all respects ready to load whether in berth or not.
- 40 8.5. A vessel shall vacate its loading berth as soon as loading is completed weather and tides permitting. Any loss or liability incurred by the Seller as a result of the vessel's failure promptly to vacate loading berth resulting from delays in berthing other vessels shall be paid to the Seller by the Buyer.
- 8.6. Vessels shall be loaded as fast as possible and in any event at not less than the average rate of 20,000 tons per weather working day of 24 consecutive hours. If a vessel loads Alumina and Bauxite or vice versa pursuant to clause 7.1. hereof, loading operations for the first commodity to be loaded must be completed before commencing loading of the second commodity. A reasonable time shall be allowed for the change from one commodity to the other.

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Section 9 Weight and Moisture Determination

- 9.1. The wet weight of each shipment of Bauxite shall be determined at the Port by draft survey by a licensed marine surveyor appointed by the Seller. The Buyer will be entitled to be present at the weighing by a representative appointed by the Buyer at his own risk and expense.
- 9.2. The Seller shall take a representative sample of Bauxite being loaded in respect of each shipment off the Bauxite conveyor as near as possible to the point of discharge onto vessel. Such sample shall be divided into three equal parts and packed into air-tight containers. One such part shall be delivered to the Buyer's representative at the Port, one part shall be the Seller's loading port sample and one part shall be retained by the Seller for umpire assay if required. 10
- 9.3. The Seller shall make a determination of the weight on a dry basis by deducting from the wet weight free moisture loss which free moisture loss shall be determined from the Seller's loading port sample referred to in clause 9.2. hereof by the method referred to in clause 9.6. hereof. The Seller shall at its expense issue a certificate of weight on a wet tonnage and dry tonnage basis for Bauxite loaded aboard each vessel.
- 9.4. The weight on a dry basis thus determined shall be the basis for the Seller's invoices.
- 9.5. In the event of a dispute by the Buyer within 21 days of the determination on a dry basis as aforesaid an independent qualified umpire acceptable to Buyer and Seller shall be appointed to make such a determination in respect of the umpire sample. The umpire's determination shall be final and any necessary adjustment occasioned thereby shall be paid by the Seller to the Buyer or the Buyer to the Seller (as the case may be) within 21 days of the umpire's determination. 20
- 9.6. Free moisture loss determination shall be carried out in accordance with methods consistent with recognised international standards agreed by the parties. In the event that the parties shall fail to agree upon such methods the same shall be determined by arbitration in accordance with clause 12.1. hereof. 30

Section 10 Price

- 10.1. The Base Price per Dry Ton f.o.b. vessel Gove mechanically trimmed which Buyer shall pay for Bauxite delivered in any contract period shall be \$Y. Such Base Price shall be the provisional price for the first contract period. The provisional price for the second contract period shall be the actual price for the first contract period as determined in accordance with clause 10.2. hereof. The provisional price for the third contract period shall be the actual price for the second contract period as determined in accordance with clause 10.2. hereof. The provisional price for the fourth contract period shall be the actual price for the third contract period, and so on for each succeeding contract period. 40
- 10.2. The actual price per Dry Ton payable in respect of deliveries made during each contract period shall be determined by adding to the Base Price per Dry Ton of \$Y the amount, if any, by which the total per Dry Ton of
- (a) Bauxite Mining Costs borne by the Seller
 - (b) Amounts payable pursuant to clauses 10.4. (a) and (b) of the Joint Venture Agreement, and
 - (c) royalties payable to the Commonwealth under the Special Mineral Lease in respect of that contract period for Bauxite shipped hereunder exceeds the appropriate base cost per Dry Ton for such contract period, such appropriate 50

base cost per Dry Ton being determined from the following Schedule (see example 2 at end of this clause 10.2.).

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<i>Period</i>	<i>Base Cost</i> (dollars)
From start of Bauxite shipments under this Agreement to and including the day before the First Start-Up Date	x1
From First Start-Up Date up to and including the day before the Second Start-Up Date	x2
From the Second Start-Up Date to termination of this Agreement	x3

10 Provided that for the contract periods in which the First Start-Up Date and Second Start-Up Date occur the base cost per Dry Ton for any such contract period shall be computed by taking the weighted average of the appropriate base costs per Dry Ton shown above which would apply during such contract period, such weighting to be done on a tonnage shipped basis (see example 1 at end of this clause 10.2.).

20 Provided further that no decrease in the total per Dry Ton of Bauxite Mining Costs, amounts payable pursuant to clauses 10.4. (a) and (b) of the Joint Venture Agreement and royalties payable to the Commonwealth under the Special Mineral Lease in respect of that contract period for Bauxite shipped hereunder shall operate to reduce the price below \$y per Dry Ton (see example 2 at the end of this clause 10.2.).

Example 1

Assume Bauxite shipments under this Agreement commenced on 1st July 1971. Assume that the First Start-Up Date occurs on 1st November 1972. For the contract period commencing on 1st January 1972 and ending on 31st December 1972 the base costs per Dry Ton which would apply during such contract period would be:

30 From 1st January to 30th October (say 600,000 tons):	x1 per Dry Ton
From 1st November to 31st December (say 100,000 tons):	x2 per Dry Ton

The base cost per Dry Ton for the whole contract period is calculated as

$$\frac{\$ (x1 \times 600,000) + \$ (x2 \times 100,000)}{700,000}$$

= \$ BC per Dry Ton (to nearest cent)

40 The total per Dry Ton of (a), (b) and (c) in Clause 10.2 in respect of that period between 1st January 1972 and 31st December 1972 would be compared with \$ BC per Dry Ton and if higher than \$ BC the excess would be added to the Base Price of \$y per Dry Ton.

Example 2

I Suppose the Second Start-Up Date occurs on 1st November 1974. Assume that in the contract period between 1st January 1975 and 31st December 1975 the total per Dry Ton of (a), (b) and (c) in clause 10.2 is \$TC. This is \$“a” per Dry Ton in excess of the base cost of \$x3. Therefore the actual price to be paid for the contract period would be \$y + \$“a” = \$AP per Dry Ton.

II Now assume that in the next contract period (ending 31st December 1976) the total per Dry Ton of (a), (b) and (c) in clause 10.2. is \$TC. This is

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only "b" above the base cost of \$x3. Therefore the actual price to be paid for the contract period would be $\$y + \$\text{"b"} = \$AP$ per Dry Ton.

III Now assume in the next contract period (ending 31st December 1977) the total per Dry Ton of (a), (b) and (c) in clause 10.2. is \$TC. This is below the base cost of \$x3, and therefore the price would be \$y because this is the minimum under the second proviso.

- 10.3. If (other than for reasons of force majeure) in any contract period the Buyer does not take delivery of any quantity of Bauxite which it is obligated under this Agreement to purchase in such contract period and which was or would but for such failure to take delivery have been available for delivery, it shall nevertheless pay to the Seller such amount as it would have had to pay if it had taken delivery of such quantity calculated in accordance with this Agreement. Such payments shall be made within thirty days of the end of such contract period and shall bear interest at the rate of seven per centum per annum calculated from thirty days after the date on which the Buyer should have taken delivery. If in any contract period the Buyer for reasons of force majeure does not take delivery of any quantity of Bauxite which it is obligated under this Agreement to purchase and which was or would but for such failure to take delivery have been available for delivery in such contract period the Buyer shall not be liable to pay for such Bauxite. 10

Section 11 Payment

- 11.1. Invoices will be issued for each shipment of Bauxite under this Agreement based on the weight determination provided for in clause 9.3. and the Base Price in respect of the first contract period and the provisional prices in respect of the other contract periods as provided in this Agreement in dollars after completion of loading at Gove and dry weight determination by the Seller. Payment shall be made in dollars by Buyer to the Seller within thirty (30) days after date of shipment irrespective of whether such shipment is f.o.b. or c.i.f. and even if such shipment is wholly or partly lost.
- 11.2. As soon as practicable after the expiration of each contract period the Seller shall furnish to the Buyer a statement signed by the Seller's auditors showing 30
- (a) the provisional price per Dry Ton which the Buyer has paid to the Seller for that contract period and
 - (b) the actual price per Dry Ton which it is calculated the Buyer should have paid to the Seller in accordance with the provisions of clause 10.2. of this Agreement.
- Provided that the Seller shall permit the Buyer's auditors at all reasonable times to inspect and take copies of and extracts from any books accounts or other records kept by or on behalf of the Seller appropriate to verify the accuracy and completeness of the statements referred to in this clause. 40
- 11.3. Within 30 days of the giving of the statement referred to in clause 11.2. hereof the Buyer will pay to the Seller or the Seller will pay to the Buyer, as the case may be, the difference (if any) between the amount paid by the Buyer for the relevant contract period and the amount which it should have paid as shown in such statement.

Section 12 Arbitration

- 12.1. Any dispute or difference between the Seller and the Buyer arising out of or in connection with this Agreement or any amendment variation or addition thereto or as to the construction thereof or as to the rights or liabilities of the

10 Seller and the Buyer thereunder shall be referred to and settled by arbitration under the Rules of Conciliation and Arbitration of the International Chamber of Commerce. The Board of Arbitration shall be composed of three arbitrators and the Seller and the Buyer shall each choose an arbitrator and the third shall be chosen by the two so chosen. If either the Seller or the Buyer fails to choose an arbitrator within thirty days after notice of commencement of arbitration or if the two arbitrators fail to choose a third arbitrator within thirty days after their appointment the Court of Arbitration of the International Chamber of Commerce shall upon the request of either the Seller or the Buyer appoint the arbitrator or arbitrators to complete the Board. The Seller and the Buyer shall agree on the place of arbitration at the time arbitration proceedings are commenced and if such parties fail to so agree within thirty days the place of arbitration shall be London England. The arbitration award shall be final and binding upon the Seller and the Buyer and judgment thereon may be entered in any court having jurisdiction.

Section 13 Force Majeure

- 20 13.1. If the Seller or the Buyer is rendered unable wholly or in part by force majeure to carry out any obligation under this Agreement other than the obligation to make money payments such party shall give to the other prompt notice of such force majeure with reasonably full particulars thereof and insofar as known the probable extent to which it will be unable to perform or be delayed in performing such obligation hereunder whereupon such obligation of the party giving the notice shall be suspended so far as it is affected by such force majeure during but no longer than the continuance thereof. Such party so affected by force majeure shall use all possible diligence to remove such force majeure as quickly as possible.
- 30 13.2. The requirement that any force majeure shall be remedied with all possible diligence shall not require the settlement of strikes lockouts or other labour difficulties of major consequence to either party on terms contrary to its wishes.
- 30 13.3. The term "force majeure" as employed in this Agreement shall mean fire, explosion, storm, flood, lightning, earthquake or other natural cause or accident, riot or civil commotion, strikes or lockouts, war whether declared or not, or military or usurped power, act of Government by way of restriction embargo or prohibition arising without default or negligence on the part of the party claiming force majeure, insurrection, unavailability of equipment or transport and other cause whether of the kind specifically enumerated above or otherwise which is not reasonably within the control of the party claiming force majeure.
- 40 13.4. In the event that by reason of force majeure (i) the Seller is unable to deliver the total of Bauxite required to be delivered by it hereunder or (ii) the Buyer is unable to take delivery of the total of Bauxite required to be taken by it hereunder, then in each case the term of this Agreement shall be extended by such time as is necessary (having regard to the annual rate specified in clause 3.1. hereof) to complete the obligations hereunder of both parties.

Section 14 Notices

- 14.1. All notices consents requests and other documents authorised or required to be given by or pursuant to this Agreement shall be given in writing and either personally served on a responsible officer of the party to whom it is given or mailed airmail postage prepaid or sent by telegram telex or cable addressed as follows:

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Seller — Gove Alumina Limited
1 O'Connell Street
Sydney, N.S.W. 2000
Cable Address: Sugar, Sydney

Buyer — Swiss Aluminium Limited
P.O. Box
8034 Zurich, Switzerland
Cable Address: Aluminium, Zurich

- 14.2. Notices, consents, requests and other documents shall be deemed served or given (if mailed to an overseas destination) on the eighth day after the date of mailing by prepaid air mail or (if mailed to a domestic destination) on the third day after the date of mailing prepaid. Notices consents or requests sent by telegram telex or cable shall be deemed served or given on the day after they are despatched. Either the Seller or the Buyer may change its address for receipt of notices consents requests and other documents at any time by giving notice thereof to the other party. Any notice, consent or request given hereunder may be signed on behalf of either party by a duly authorised representative of that party. 10

Section 15 Determination

- 15.1. In the event of the termination of the Joint Venture Agreement for any reason whatsoever the Seller or the Buyer may upon thirty (30) days notice to the other terminate this Agreement. 20

Section 16 Assignment

- 16.1. The Seller may assign the whole or any part of its rights under this Agreement including any moneys due or to become due to the Seller under this Agreement to any person to whom the Seller has charged its Percentage Interest in accordance with the provisions of clause 12.3. of the Joint Venture Agreement and may assign any moneys due or to become due to the Seller under this Agreement to the beneficiaries or any Trustee therefor of any such charge.
- 16.2. Either party may perform any of its obligations hereunder through a company related to it (as defined by the Companies Act of New South Wales) but such performance shall not relieve such party of any of its obligations hereunder. 30

Section 17 Waiver

- 17.1. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. Neither party shall be deemed to have waived any right, power or privilege under this Agreement or any provision thereof unless such waiver shall be in writing.

Section 18 Entire Agreement

- 18.1. This Agreement shall constitute the entire agreement between the parties hereto with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings with respect thereto. 40

Section 19 Law of Contract

- 19.1. (a) This Agreement shall be governed by and be construed in accordance with the laws for the time being of New South Wales and each party hereby submits to the jurisdiction of and to be bound by decisions of the courts of New South Wales and any courts competent to hear appeals therefrom.
- (b) Nothing contained herein shall be deemed to constitute a consent to juris-

diction or service of process in any action or proceeding by or on behalf of anyone other than a party hereto or an admission that the Buyer is carrying on business in Australia or is generally subject to the jurisdiction of any court of the Commonwealth of Australia or State or Territory thereof or the jurisdiction of any court in Australia.

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Section 20 Commencement

20.1. This Agreement shall have force and effect as from the Twenty second day of January 1969.

10 IN WITNESS WHEREOF the parties hereto have executed this Agreement the day and year first abovementioned.
THE COMMON SEAL of GOVE ALUMINA LIMITED was hereunto affixed pursuant to a resolution of the Board of Directors.

Seal
J. Vernon
Director
P. Lovell
Secretary

20 DULY EXECUTED by SWISS ALUMINIUM LIMITED by its duly authorized signatories whose signatures are subscribed hereto at Zurich in the presence of:—

Emanuel R. Meyer
Paul H. Müller

W. Hämmerli

Exhibit 74

**Deed of Assignment: Plaintiff, Swiss Aluminium
Australia Pty. Limited and Gove
Alumina Limited**

Exhibit 74
Deed of
Assignment:
Plaintiff,
Swiss
Aluminium
Australia Pty
Limited and
Gove Alumina
Limited.
30th May, 1969

30 THIS DEED OF ASSIGNMENT is made this thirtieth day of May One thousand nine hundred and sixty nine BETWEEN NABALCO PTY. LIMITED (hereinafter called "Nabalco") a company incorporated in the State of New South Wales whose registered office in that State is situated at Goldfields House, No. 1 Alfred Street, Sydney of the one part SWISS ALUMINIUM AUSTRALIA PTY. LIMITED (hereinafter called "Swiss Aluminium Australia") a company incorporated in the State of New South Wales whose registered office is situated at No. 1 Alfred Street, Sydney in that State and GOVE ALUMINA LIMITED (hereinafter called "Gove Alumina") a company incorporated under the laws of the State of New

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South Wales whose registered office is situated at No. 1 O'Connell Street, Sydney in that State (Swiss Aluminium Australia and Gove Alumina being hereinafter together called "the Assignees") of the other part

WHEREAS:

- (A) Nabalco entered into an agreement with the Commonwealth dated the 22nd February 1968 (hereinafter called "the Agreement") which makes provision (inter alia) for the development of deposits of bauxite in the Gove Peninsula of the Northern Territory of Australia the erection of a bauxite treatment plant the production of bauxite and alumina and the export of alumina;
- (B) the Agreement has been approved by Ordinance No. 15 of 1968 of the said Northern Territory and is now in force; 10
- (C) clause 4 of the Agreement provides for the grant of a Special Mineral Lease and of other ancillary leases and rights in favour of "the Company";
- (D) in terms of clause 1 (1) of the Agreement "the Company" means (in the event of the Agreement being assigned) "all the permitted assigns of Nabalco Pty. Limited for the time being entitled to the benefit" of the Agreement;
- (E) Swiss Aluminium Australia is the wholly owned subsidiary of Swiss Aluminium Limited a company incorporated in Switzerland and the entire issued share capital of Gove Alumina is owned by Australian companies;
- (F) Nabalco has with the permission of the Minister endorsed hereon prior to the execution hereof agreed to the assignment hereinafter referred to in Clause 1; 20
- (G) upon such assignment being effected the Assignees will become entitled to all the benefits of the Agreement and accordingly in terms thereof to all the rights conferred and obligations imposed on "the Company" under and pursuant to the Agreement and otherwise as hereinafter provided;

NOW THIS DEED WITNESSETH that in consideration of the premises and other good and valuable consideration:

1. Nabalco hereby transfers and assigns to the Assignees the Agreement and the full benefit and advantage thereof including without prejudice to the generality thereof its rights under the Agreement to or as the holder of any lease licence easement or other title TO HOLD the same unto the Assignees as tenants in common in the following undivided shares absolutely namely as to seventy equal undivided one hundredth shares thereof unto Swiss Aluminium Australia and as to thirty equal undivided one hundredth shares thereof unto Gove Alumina. 30

2. Nabalco hereby covenants with the Assignees jointly and each of them severally to execute all such transfers assurances nominations and other documents and to do all such acts and things at the expense of the Assignees as the Commonwealth of Australia the Minister of State for the Interior of the Commonwealth or the Administrator of the Northern Territory may require or as the Assignees may reasonably require to perfect and give full force and effect to the assignment and transfer above expressed. 40

3. By reason of the transfer and assignment referred to in clause 1 hereof;
- (a) the Assignees are in terms of the Agreement read with such transfer and assignment entitled to all of the rights conferred on "the Company" by and pursuant to the Agreement including without prejudice to the generality thereof its rights under the Agreement to or as the holder of any lease licence easement or other title; and
 - (b) the Assignees acknowledge their obligation to perform and hereby covenant to perform all the obligations imposed on "the Company" in terms of the Agreement and to indemnify and save harmless Nabalco from and against all liability in respect of the same. 50

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first hereinbefore mentioned.

THE COMMON SEAL of NABALCO PTY. LIMITED was hereunto affixed by authority of a resolution of the Board of Directors in the presence of:

THE COMMON SEAL of SWISS ALUMINIUM AUSTRALIA PTY. LIMITED was hereunto affixed by authority of a resolution of the Board of Directors in the presence of:

THE COMMON SEAL of GOVE ALUMINA LIMITED was hereunto affixed by authority of a resolution of the Board of Directors in the presence of:

The within Transfer and Assignment on the terms above set forth is hereby consented to.

(signatures not reproduced)

Peter Nixon

The Minister of State for the Interior of
the Commonwealth of Australia

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Exhibit 37 (part)

**Alumina Sales Agreement: Swiss Aluminium Australia
Pty. Ltd. and Swiss Aluminium Limited**

THIS AGREEMENT is made the 14th day of October one thousand nine hundred and sixty-nine BETWEEN SWISS ALUMINIUM AUSTRALIA PTY. LIMITED a company incorporated in New South Wales Commonwealth of Australia (hereinafter called "the Seller") of the one part AND SWISS ALUMINIUM LIMITED a company incorporated in Switzerland (hereinafter called "the Buyer") of the other part
WHEREAS

- 30 A. The Seller and Gove Alumina Limited (hereinafter called "G. A.") have entered into an agreement dated 22nd January 1969 (hereinafter as the same may be amended from time to time called "the Joint Venture Agreement") for the purpose of the development of certain bauxite deposits in the Territory and among other things the production of Alumina therefrom the Seller having the right to take in kind and separately dispose of its Alumina Percentage Share of Alumina.

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B. The Seller has agreed to sell and the Buyer has agreed to purchase Alumina on the terms and conditions hereinafter set forth

NOW THIS AGREEMENT WITNESSETH as follows:

Section 1 Definitions

- 1.1. In so far as they are not otherwise defined in this Agreement, words and terms which are defined in the Joint Venture Agreement shall have the same meanings when used in this Agreement.
- 1.2. For the purposes of this Agreement except where the context otherwise requires: "First Start-Up Date" means the date as certified by the Manager on which the first commercial quantity of Alumina is produced from the Bauxite Treatment Plant. 10
"Second Start-Up Date" means the date as certified by the Manager on which the first commercial quantity of Alumina is produced from the Bauxite Treatment Plant when it is at the stage of having an annual rated capacity of 1,000,000 Tons of Alumina.
"Ton" means a metric ton.
- 1.3. For the purpose of this Agreement the term thereof shall be considered as comprising 21 consecutive contract periods as follows:— 20
(i) one contract period commencing on the First Start-Up Date and ending on the 31st day of December next thereafter,
(ii) nineteen contract periods each of one year next consecutively ensuing after the first contract period, and
(iii) one final contract period commencing on the 1st day of January of the twenty-first contract period and ending on the day immediately preceding the twentieth anniversary of the First Start-Up Date.
- 1.4. All amounts expressed in this Agreement are in Australian currency.

Section 2 Quantity

- 2.1. (a) The Seller shall sell and the Buyer shall purchase for a term commencing on the First Start-Up Date and ending on the day immediately preceding the twentieth anniversary of the First Start-Up Date: 30
(i) the Seller's 70% Alumina Percentage Share of the production of the Initial Bauxite Treatment Plant prior to the first Expansion of the Plant or of what such production would have been but for curtailment (if any) by G. A. pursuant to clause 2.16. of the Joint Venture Agreement and
(ii) after the first Expansion of the Plant the Seller's 70% Alumina Percentage Share of Initial Potential Production Capacity, adjusted in case of an overrun or shortfall in production according to clause 5.13. of the Joint Venture Agreement.
- (b) During the term of this Agreement the Seller shall not exercise its right to curtail production of Alumina pursuant to clause 2.16. of the Joint Venture Agreement in respect of Alumina being sold under this Agreement without the consent of the Buyer. 40

Section 3 Quality

- 3.1. The Seller shall use its best endeavours to ensure that the Alumina sold and purchased hereunder shall be of the same quality as the grade of Alumina produced regularly by the Initial Bauxite Treatment Plant according to best industrial standards and shall be of the flourey type.

The typical contents of impurities and physical characteristics are expected to be as follows:

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CONSTITUENTS	Humidity (105°C dried)	max. 0.5%
		Dry basis
	Al ₂ O ₃ (by difference)	min. 99.000%
	SiO ₂	max. 0.020%
	Fe ₂ O ₃	max. 0.030%
	TiO ₂	max. 0.005%
	ZnO	max. 0.020%
	P ₂ O ₅	max. 0.002%
	Na ₂ O (total)	max. 0.800%
	Loss on Ignition (1200° C)	min. 0.300%

PHYSICAL PROPERTIES:

20

Bulk Density	max. 900 g/l
	min. 800 g/l
Specific Gravity	min. 3.85 g/ml
Angle of Repose	min. 42°
Grain Size	max. 60% finer
	than 0.06 mm
	(—230 mesh)

Any discrepancies are not to be considered as a cause of rejection of a cargo or as a breach of any condition expressed or implied of this Agreement.

Section 4 Price

4.1. The Price per Ton of Alumina to be sold and purchased under this Agreement in any contract period shall be subject to Section 5 hereof. \$X per ton f.o.b. Gove.

Section 5 Escalation

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5.1. "Price per Ton Escalated" wherever used in this Agreement means an amount per Ton arrived at by adding to or subtracting from \$x per Ton f.o.b. Gove the various amounts—if any—by which the following amounts per Ton namely

	FOR THE CONTRACT PERIODS	\$
ending 31st December, 1972		Y1
1973		Y2
1974		Y3
1975 and 1976		Y4
1977–1986 (inclusive)		Y5

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For any contract period thereafter

are exceeded by or exceed (as the respective case may be) for the particular contract period the cost for that contract period, such cost being the total of (i), (ii) and (iii) below divided by the number of Tons of Alumina shipped by the Seller in that contract period.

- (i) that portion of the Bauxite Mining Costs as relates to Bauxite deemed to have been taken by the Seller under clause 10.3 (i) of the Joint Venture Agreement chargeable to the Seller under the Joint Venture Agreement in that contract period.
- (ii) Bauxite Treatment Costs chargeable to the Seller under the Joint Venture Agreement in that contract period.
- (iii) Royalty payments by the Seller for Bauxite mined and treated in the Bauxite Treatment Plant.

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Section 6 Payment of Provisional Price and Adjustments

- 6.1. Invoices will be issued for each shipment of Alumina under this Agreement based on weights and the Price per Ton Escalated calculated as hereinafter in dollars after completion of loading at Gove. Payment in dollars shall be made by the Buyer to the Seller within sixty (60) days after date of invoice irrespective of whether such shipment is f.o.b. or c.i.f. and even if such shipment is wholly or partly lost.
Prior to the first contract period the Seller and the Buyer will agree on what is the estimated "Price per Ton Escalated" for such first contract period.
- 6.2. (a) The Seller shall furnish to the Buyer as soon as practicable after the expiration of each contract period a statement signed by the Seller showing 10
 (i) the calculation made to arrive at the Price per Ton Escalated in respect of the preceding contract period, and
 (ii) the Price per Ton Escalated which the Buyer has paid to the Seller in that Contract period.
- (b) The Buyer shall pay to the Seller or the Seller shall pay to the Buyer (as the case may require) within 30 days of the giving of the statement referred to in clause 6.2. (a) hereof in respect of each shipment in the contract period to which the said statement refers or in the event of a dispute as to the correctness of the amount shown in such statement 20
 within 30 days after the amount payable has been determined by arbitration hereunder the difference between the amounts shown in paragraphs (i) and (ii) of clause 6.2. (a) hereof multiplied by the numbers of Tons of Alumina in the respective shipment.
- (c) The Price per Ton Escalated as shown in the statement referred to in 6.2. (a) (i) shall be the provisional price for the contract period immediately following the contract period the subject of such statement.
- 6.3. Alumina delivered pursuant to this Agreement shall be produced from the Bauxite Treatment Plant and no adjustments in price shall be made on account of any changes from time to time in chemical grade or any other composition. Any statutory or other warranty condition description or representation express or implied as to the state quality or fitness of the Alumina the subject of this Agreement is hereby expressly negated. 30
- 6.4. If in any contract period the Buyer (other than for reasons of force majeure) does not take delivery of any quantity of Alumina which it is obligated under this Agreement to purchase and which was or would but for such failure to take delivery have been available for delivery in such contract period, it shall nevertheless pay to the Seller such amount as it would have had to pay if it had taken delivery of such quantity calculated in accordance with this Agreement. Such payment shall be made within the period specified in clause 6.2. (b) hereof. If 40
 in any contract period the Buyer for reasons of force majeure does not take delivery of any quantity of Alumina which it is obligated under this Agreement to purchase and which was or would but for such failure to take delivery have been available for delivery in such contract period the Buyer shall not be liable to pay for such Alumina.

Section 7 Delivery Property and Risk

- 7.1. Alumina purchased by the Buyer pursuant to this Agreement shall be delivered by the Seller to the Buyer f.o.b. vessel mechanically trimmed the Port. Property and all risks with respect to Alumina f.o.b. shall pass to the Buyer when such Alumina is on board. 50

- 10 7.2. At the request of the Buyer the Seller shall deliver such Alumina c.i.f. non-Australian port according to instructions given by the Buyer, provided however that if delivery is made hereunder c.i.f. as aforesaid the Seller shall not be at any greater risk than it would have been had delivery been made f.o.b. and the Seller shall not be liable to pay any costs, charges or expenses other than would have been payable by the Seller had delivery been made f.o.b., nor shall the Seller be liable for any failure to comply with the Buyer's instructions which are contrary to any of the principles expressed in this clause or for any other reasonable failure to comply with the Buyer's instructions as aforesaid and the Buyer shall indemnify the Seller against all costs, charges and expenses incurred by the Seller and against all actions, claims and demands made against the Seller as a result of such delivery being made otherwise than f.o.b. Any payment required by such indemnity shall be paid promptly by the Buyer to the Seller on demand.

Section 8 Employment of Vessels

- 8.1. The Buyer shall be responsible for providing at the Port and without cost to the Seller sufficient vessels to carry Alumina to be delivered by the Seller under this Agreement.
- 20 8.2. Ships shall be suitable to enter, leave and berth at the Port and shall be suited to the loading facilities at the Port. Any extra loading costs consequent upon non-compliance with this requirement shall be paid by the Buyer to the Seller on demand.

Section 9 Shipping Arrangements and Schedules

- 9.1. Each shipping programme referred to in clauses 9.2. and 9.3. hereof shall provide for the delivery of Alumina so as to take deliveries spread reasonably evenly throughout the Year at reasonably regular intervals and consistent with the existing Alumina stockpile and storage facilities. The Buyer may arrange to take deliveries in combined shipments of Alumina and Bauxite.
- 30 9.2. The Buyer shall submit to the Seller for the Seller's approval not less than four months prior to the First Start-Up Date and thereafter not later than the first day of September of each Year a provisional shipping programme for the next ensuing contract period stating approximate quantities of Alumina for each shipment during such contract period. The Seller shall approve each such schedule or advise by telex or cable to the Buyer changes which the Seller requires within twenty (20) days after the latest date under this Agreement for receipt by the Seller of such programme.
- 40 9.3. The Buyer shall submit to the Seller for the Seller's approval fifty (50) days prior to the commencement of each month a firm reasonably evenly spaced shipping programme for such month. Each such programme shall also contain a best estimate of the Buyer's shipping programme for the two (2) months next ensuing after such month. Such programmes shall specify the name (where practicable) of each vessel, the scheduled arrival date and the quantities (10% more or less at the Buyer's option) to be delivered to each such vessel. Within twelve (12) days after each such submission day the Seller shall approve such programme for the first month thereof or advise by telex or cable to the Buyer changes which the Seller requires.
- 9.4. The Buyer shall have the right to substitute at any time vessels similar in all respects to load at the same position in sequence of vessels and, unless otherwise agreed, the same quantity of Alumina.

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- 9.5. The Buyer shall give to the Seller the following notices of the estimated time of arrival of each vessel:
Ten (10) days
Forty-eight (48) hours
Twenty-four (24) hours
specifying in the 48-hour notice the actual quantity to be loaded the estimated loaded draft and if requested by the Seller the hatch loading plan of such vessel.

Section 10 Loading of Alumina

- 10.1. The Seller shall at its expense and risk load and trim (by mechanical trimmer) Alumina on board vessels furnished or arranged by the Buyer in accordance with clause 8.1. hereof at the Port. 10
- 10.2. The Buyer shall arrange that the vessel's crew open and close hatches at vessel's expense and that the vessel work at all times required by the Seller and provide lights aboard vessel for night work and the Seller shall not be responsible for any crew overtime expense.
- 10.3. The Buyer acknowledges that all vessels arriving at Gove (whether to take delivery of Bauxite and/or Alumina or to discharge inward cargoes) within fifteen (15) days either side of the scheduled time of arrival set forth in the consolidated schedule referred to in clause 6.5. of the Joint Venture Agreement are to be berthed for loading or unloading (as the case may be) in the order of presentation to the Manager of notice of readiness and that vessels arriving within such days of scheduled time shall have priority over vessels arriving not within such days of schedule. 20
- 10.4. Vessels arriving to take delivery of Alumina for the Buyer may present notice of readiness when in free pratique with clean holds and in all respects ready to load whether in berth or not.
- 10.5. A vessel shall vacate its loading berth as soon as loading is completed weather and tides permitting. Any loss or liability incurred by the Seller as a result of vessel's failure promptly to vacate loading berth resulting from delays in berthing other vessels shall be paid to the Seller by the Buyer. 30
- 10.6. The weight of each shipment of Alumina shall be determined at the Port by draft survey by a licensed marine surveyor appointed by the Seller and such weight shall be the basis of all invoices. The Buyer will be entitled to be present at the weighing by a representative appointed by the Buyer at his own risk and expense.
- 10.7. Vessels shall be loaded as fast as possible and in any event at not less than the average rate of 13,000 Tons per weather working day of 24 consecutive hours. If a vessel loads Alumina and Bauxite or vice versa pursuant to clause 9.1. hereof, loading operations for the first commodity to be loaded must be completed before commencing loading of the second commodity. A reasonable time shall be allowed for the change from one commodity to the other. 40

Section 11 Arbitration

- 11.1. Any dispute or difference between the Seller and the Buyer arising out of or in connection with this Agreement or any amendment variation or addition thereto or as to the construction thereof or as to the rights or liabilities of the Seller and the Buyer thereunder shall be referred to and settled by arbitration under the Rules of Conciliation and Arbitration of the International Chamber of Commerce. The Board of Arbitration shall be composed of three arbitrators and the Seller and the Buyer shall each choose an arbitrator and the third shall be chosen by the two so chosen. If either the Seller or the Buyer fails to choose 50

an arbitrator within thirty days after notice of commencement of arbitration or if the two arbitrators fail to choose a third arbitrator within thirty days after their appointment the Court of Arbitration of the International Chamber of Commerce shall upon the request of either the Seller or the Buyer appoint the arbitrator or arbitrators to complete the Board. The Seller and the Buyer shall agree on the place of arbitration at the time arbitration proceedings are commenced and if such parties fail to so agree within thirty days the place of arbitration shall be London, England. The arbitration award shall be final and binding upon the Seller and the Buyer and judgment thereon may be entered in any court having jurisdiction.

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Section 12 Force Majeure

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12.1. If the Seller or the Buyer is rendered unable wholly or in part by force majeure to carry out any obligation under this Agreement other than the obligation to make money payments such party shall give to the other prompt notice of such force majeure with reasonably full particulars thereof and in so far as known the probable extent to which it will be unable to perform or be delayed in performing such obligation hereunder whereupon such obligation of the party giving the notice shall be suspended so far as it is affected by such force majeure during but no longer than the continuance thereof. Such party so affected by force majeure shall use all possible diligence to remove such force majeure as quickly as possible.

12.2. The requirement that any force majeure shall be remedied with all possible diligence shall not require the settlement of strikes, lockouts or other labour difficulties of major consequence to either party on terms contrary to its wishes.

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12.3. The term "force majeure" as employed in this Agreement shall mean fire, explosion, storm, flood, lightning, earthquake or other natural cause or accident, riot or civil commotion, strikes or lockouts, war whether declared or not, or military or usurped power, act of Government by way of restriction embargo or prohibition arising without default or negligence on the part of the party claiming force majeure, insurrection, unavailability of equipment or transport and other cause whether of the kind specifically enumerated above or otherwise which is not reasonably within the control of the party claiming force majeure.

Section 13 Notices

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13.1. All notices consents requests and other documents authorised or required to be given by or pursuant to this Agreement shall be given in writing and either personally served on a responsible officer of the party to whom it is given or mailed airmail postage prepaid or sent by telegram, telex or cable addressed as follows:

Seller: Swiss Aluminium Australia Pty. Limited

1 Alfred Street,

Sydney, New South Wales, 2000

Cable Address: Austraswiss, Sydney

Buyer: Swiss Aluminium Limited,

P.O. Box,

8034 Zurich, Switzerland

Cable Address: Aluminium, Zurich

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13.2. Notices consents requests and other documents shall be deemed served or given (if mailed to an overseas destination) on the eighth day after the date of mailing by prepaid airmail or (if mailed to a domestic destination) on the third day after the date of mailing prepaid. Notices consents or requests sent by telegram, telex or cable shall be deemed served or given on the day after they are

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despatched. Either the Seller or the Buyer may change its address for receipt of notices consents requests and other documents at any time by giving notice thereof to the other party. Any notice, consent or request given hereunder may be signed on behalf of either party by a duly authorised representative of that party.

Section 14 Determination

14.1. In the event of the termination of the Joint Venture Agreement for any reason whatsoever the Seller or the Buyer may upon thirty (30) days notice to the other terminate this Agreement.

Section 15 Assignment

15.1. The Seller may assign the whole or any part of its rights under this Agreement including any moneys due or to become due to the Seller under this Agreement to any person to whom the Seller has charged its Percentage Interest in accordance with the provisions of clause 12.3. of the Joint Venture Agreement and may assign any moneys due or to become due to the Seller under this Agreement to the beneficiaries or any Trustee therefor of any such charge.

15.2. Either party may perform any of its obligations hereunder through a company related to it (as defined by the Companies Act of New South Wales) but such performance shall not relieve such party of any of its obligations hereunder.

Section 16 Law of Contract

16.1. (a) This Agreement shall be governed by and be construed in accordance with the laws for the time being of New South Wales and each party hereby submits to the jurisdiction of and to be bound by decisions of the courts of New South Wales and any courts competent to hear appeals therefrom.

(b) Nothing contained herein shall be deemed to constitute a consent to jurisdiction or service of process in any action or proceeding by or on behalf of anyone other than a party hereto or an admission that the Buyer is carrying on business in Australia or is generally subject to the jurisdiction of any court of the Commonwealth of Australia or State or Territory thereof or the jurisdiction of any court in Australia.

Section 17 Commencement

17.1. This Agreement shall have force and effect as from the 14th day of October 1969.

IN WITNESS WHEREOF the parties hereto have executed this Agreement the day and year first above mentioned

THE COMMON SEAL of SWISS ALUMINIUM AUSTRALIA PTY. LIMITED was hereunto affixed pursuant to a resolution of the Board of Directors.

DULY EXECUTED by SWISS ALUMINIUM LIMITED by its duly authorized signatories whose signatures are subscribed hereto at Zurich in the presence of:

(signatures not reproduced)

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Exhibit 37 (part)**Alumina Sales Agreement: Gove Alumina Ltd. and
Swiss Aluminium Ltd.**

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(part)
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THIS AGREEMENT is made the Twenty second day of January, one thousand nine hundred and sixty-nine BETWEEN GOVE ALUMINA LIMITED a company incorporated in New South Wales, Commonwealth of Australia (hereinafter called "the Seller") of the one part AND SWISS ALUMINIUM LIMITED a company incorporated in Switzerland (hereinafter called "the Buyer") of the other part
WHEREAS

- 10 A. The Seller and Swiss Aluminium Australia Pty. Limited (hereinafter called "Australwiss") have entered into an agreement contemporaneously with this Agreement (hereinafter as the same may be amended from time to time called "the Joint Venture Agreement") for the purpose of the development of certain bauxite deposits in the Territory and among other things the production of Alumina therefrom the Seller having the right to take in kind and separately dispose of its Alumina Percentage Share of Alumina.
- B. The Seller has agreed to sell and the Buyer has agreed to purchase Alumina on the terms and conditions hereinafter set forth

NOW THIS AGREEMENT WITNESSETH as follows:

20 *Section 1 Definitions*

- 1.1. In so far as they are not otherwise defined in this Agreement, words and terms which are defined in the Joint Venture Agreement shall have the same meanings when used in this Agreement.
- 1.2. For the purposes of this Agreement except where the context otherwise requires: "First Start-Up Date" means the date as certified by the Manager on which the first commercial quantity of Alumina is produced from the Bauxite Treatment Plant.
- 30 "Second Start-Up Date" means the date as certified by the Manager on which the first commercial quantity of Alumina is produced from the Bauxite Treatment Plant when it is at the stage of having an annual rated capacity of 1,000,000 Tons of Alumina.
- "Ton" means a metric ton.
- 1.3. For the purpose of this Agreement the term thereof shall be considered as comprising 21 consecutive contract periods as follows:—
- (i) one contract period commencing on the First Start-Up Date and ending on the 31st day of December next thereafter,
- (ii) nineteen contract periods each of one year next consecutively ensuing after the first contract period, and
- 40 (iii) one final contract period commencing on the 1st day of January of the twenty-first contract period and ending on the day immediately preceding the twentieth anniversary of the First Start-Up Date.
- 1.4. All amounts expressed in this Agreement are in Australian currency.
- 1.5. The attached Schedule A containing certain illustrations of the application of the price provisions hereof is to be looked on as a part of this Agreement.

Section 2 Quantity

- 2.1. (a) Subject to clause 2.2. hereof the Seller shall sell and the Buyer shall purchase for a term commencing on the First Start-Up Date and ending on

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the day immediately preceding the twentieth anniversary of the First Start-Up Date:

- (i) the Seller's 30% Alumina Percentage Share of the production of the Initial Bauxite Treatment Plant prior to the first Expansion of the Plant or of what such production would have been but for curtailment (if any) by Austraswiss pursuant to clause 2.16. of the Joint Venture Agreement and
 - (ii) after the first Expansion of the Plant the Seller's 30% Alumina Percentage Share of Initial Potential Production Capacity, adjusted in case of an overrun or shortfall in production according to clause 5.13. of the Joint Venture Agreement. 10
- (b) During the term of this Agreement the Seller shall not exercise its right to curtail production of Alumina pursuant to clause 2.16. of the Joint Venture Agreement in respect of Alumina being sold under this Agreement.
- 2.2. The Seller may from time to time by giving notice to the Buyer irrevocably reduce the annual quantity of Alumina which the Seller is obligated to sell and the Buyer is obligated to purchase under this Agreement in accordance with the following provisions:—
- (a) the annual quantity which may be specified in any notice shall be 25,000 Tons or a multiple thereof, 20
 - (b) the period of notice which shall be required before such reduction shall take effect shall be twelve months for an annual quantity of up to 50,000 Tons of Alumina and proportionately more notice shall be required if the quantity specified in such notice is more than 50,000 Tons,
 - (c) no notice may be given until the reduction specified in any previous notice shall have taken effect, and
 - (d) recognizing the difficulty which the Buyer may have as a result of reductions under this clause 2.2. the Seller shall, before giving any notice which would at its expiration have the effect of reducing the quantity of Alumina annually to be sold and purchased hereunder below 100,000 Tons, notify the Buyer that it is contemplating giving such a notice and the parties will thereupon meet in good faith and with goodwill to confer on the period of notice which the Seller should consider giving the Buyer in respect of all or any part of such annual quantity of 100,000 Tons of Alumina. 30
- 2.3. If
- (i) the Seller pursuant to clause 2.2. hereof reduces the annual quantity of Alumina to be sold to the Buyer under this Agreement, and
 - (ii) the production of the Bauxite Treatment Plant is curtailed in any contract period as a result of the Seller's failure to take delivery (pursuant to clause 2.9. of the Joint Venture Agreement) of all or any part of the annual quantity of Alumina the subject of all notices under clause 2.2. hereof or as a result of the Seller having given a notice of curtailment pursuant to clause 2.16. (c) of the Joint Venture Agreement in respect of all or any part of such annual quantity, 40
- the Seller and the Buyer shall agree (within two months after the end of each contract period in which production of the Bauxite Treatment Plant is curtailed for either of the aforesaid reasons) in respect of each such contract period what the price per Ton would have been in that contract period under this Agreement if such curtailment had not taken place and in default of agreement the same shall be determined by arbitration. The price per Ton as so 50
- agreed or determined shall thereupon become the price per Ton for that con-

tract period. The provisions of clause 9.3. (b) hereof as to the period of payment of any adjustment between the Seller and the Buyer and as to payment of interest shall apply after such price per Ton shall have been so agreed or determined.

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Section 3 Quality

3.1. The Seller shall use its best endeavours to ensure that the Alumina sold and purchased hereunder shall be of the same quality as the grade of Alumina produced regularly by the Initial Bauxite Treatment Plant according to best industrial standards and shall be of the floury type.

10 The typical contents of impurities and physical characteristics are expected to be as follows:

CONSTITUENTS	Humidity (105° C dried)	.....	max. 0.5%
			Dry basis
	Al ₂ O ₃ (by difference)	.....	min. 99.000%
	SiO ₂	.....	max. 0.020%
	Fe ₂ O ₃	.....	max. 0.030%
	TiO ₂	.....	max. 0.005%
	ZnO	.....	max. 0.020%
	P ₂ O ₅	.....	max. 0.002%
	Na ₂ O (total)	.....	max. 0.600%
	Loss on Ignition (1200° C)	.....	max. 0.300%
PHYSICAL PROPERTIES:			
	Bulk Density	.....	max. 900 g/l min. 800 g/l
	Specific Gravity	.....	min. 3.85 g/ml
	Angle of Repose	.....	min. 42°
	Grain Size	.....	max. 60% finer than 0.06 mm (—230 mesh)

30 Any discrepancies are not to be considered as a cause of rejection of a cargo or as a breach of any condition expressed or implied of this Agreement.

Section 4 Price (for the first eleven contract periods)

4.1. The price per Ton of Alumina to be sold and purchased under this Agreement in any contract period up to and including the eleventh contract period shall be whichever is the greater in that contract period of
(i) Escalated Base Price per Ton, and
(ii) Actual Cost per Ton.

Section 5 Escalated Base Price per Ton

40 5.1. "Escalated Base Price per Ton" wherever used in this Agreement means an amount per Ton arrived at by adding to or subtracting from \$X per Ton f.o.b. Gove (hereinafter called the "Base Price per Ton") the various amounts given in clauses 5.2., 5.3. and 5.4. hereof. The difference referred to in clause 5.2. hereof is arrived at by comparison with the amounts set out in the following schedule:

FOR THE CONTRACT PERIODS				\$
ending 31st December	1972	Y 1
	1973	Y 2
	1974	Y 3

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1975 and					
1976	Y 4
1977-1986					
(inclusive)	Y 5
For any contract period thereafter	Y 6

5.2. The difference which is to be included in the amounts to be added or subtracted in accordance with clause 5.1. hereof is the difference between the amount in the schedule in clause 5.1. hereof for the particular contract period and the cost for that contract period, such cost being the total of (i), (ii) and (iii) below divided by the number of Tons of Alumina shipped by the Seller in that contract period. The difference is added if the cost calculated from (i), (ii) and (iii) below is greater than the relevant amount in the schedule and subtracted if it is less than such amount. 10

- (i) That portion of the Bauxite Mining Costs as relates to Bauxite deemed to have been taken by the Seller under clause 10.3. (ii) of the Joint Venture Agreement chargeable to the Seller under the Joint Venture Agreement in that contract period.
- (ii) Bauxite Treatment Costs chargeable to the Seller under the Joint Venture Agreement in that contract period.
- (iii) Royalty payments by the Seller for Bauxite mined and treated in the Bauxite Treatment Plant. 20

(see Example 1)

Provided that in the event of any Expansion or Expansions of the Plant (as the case may be) the Seller and the Buyer shall agree (within two months after the end of each contract period hereafter referred to) in respect of the contract period in which the first Expansion of the Plant is completed and in respect of each contract period thereafter the total of what items (i), (ii) and (iii) referred to in this clause 5.2. would have been in that contract period if such Expansion or Expansions of the Plant (as the case may be) had not taken place and in default of agreement the same shall be determined by arbitration hereunder. Such total (as so agreed or determined) shall in respect of the relevant contract period be substituted for the total referred to in this clause 5.2. and such total shall be divided by the number of Tons of Alumina represented by the Seller's 30% Alumina Percentage Share of Initial Potential Production Capacity (adjusted in case of an overrun or shortfall in production according to clause 5.13. of the Joint Venture Agreement) in substitution for the number of Tons of Alumina shipped by the Seller in that contract period. 30

5.3. Included in the amounts to be added in accordance with clause 5.1. hereof are 12.7 cents per Ton for each \$1,000,000 (and pro rata for part of \$1,000,000) —if any—by which as a result of any change or changes in the Project not being a change in the Project approved by the Seller under the Joint Venture Agreement the total of I and II below exceeds \$267,167,000 on the first anniversary of the Second Start-Up Date: 40

- I Construction Costs borne and paid for by the Seller and Austraswiss
- II Construction Costs (excluding any interest element) to be borne in respect of any property or assets being acquired by the Seller or Austraswiss or both under purchase agreements on a deferred payment instalment basis pursuant to clause 2.15. (b) of the Joint Venture Agreement to the extent not included in I above

with a retrospective adjustment in respect of each Ton of Alumina sold and purchased under this Agreement prior to the date when the amount of such total 50

is known Provided that any amount of excess over \$267,167,000 solely attributable to escalation over and above that estimated in the Description of the Project referred to in clause 1.1. (hh) of the Joint Venture Agreement in respect of that part of the Project which has not been so changed shall be ignored when calculating the amount of such excess.

(See Example 2)

- 5.4. Included in the amounts to be subtracted in accordance with clause 5.1. hereof are 3.55 cents per Ton for each \$1,000,000 (and pro rata for part of \$1,000,000)—if any—by which the total on the first anniversary of the Second Start-Up Date of I and II of clause 5.3. hereof is less than \$248,000,000 with a retrospective adjustment as aforesaid.

(See Example 3)

Section 6 Actual Cost per Ton

- 6.1. "Actual Cost per Ton" wherever used in this Agreement means in respect of any contract period the aggregate of the following divided by the number of Tons of Alumina shipped by the Seller in that contract period:

- (i) that portion of Bauxite Mining Costs as relates to Bauxite deemed to have been taken by the Seller under clause 10.3. (ii) of the Joint Venture Agreement chargeable to the Seller under the Joint Venture Agreement in that contract period,
 - (ii) Bauxite Treatment Costs chargeable to the Seller under the Joint Venture Agreement in that contract period,
 - (iii) royalty payments by the Seller for Bauxite mined and treated in the Bauxite Treatment Plant,
 - (iv) costs of the Seller in respect of the servicing of any financial assistance to the Participants or to the Seller from the Commonwealth or the Territory or any agency of either of them and not included in any item referred to in paragraph (v) or (vi) below,
 - (v) one twentieth (if a contract period is a full twelve months and proportionately for any contract period of less than twelve months) of the cumulative aggregate sum to the end of that contract period of
 - (A) (i) Construction Costs borne and paid for by the Seller, and
 - (ii) all amounts paid (including deductions under or pursuant to the Income Tax Assessment Act) under clause 2.01 of an agreement between the Seller and the Buyer called Service Fee Agreement,
 - (B) the Construction Costs (excluding any interest element) to be borne by the Seller in respect of any property or assets being acquired under purchase agreements on a deferred payment instalment basis pursuant to clause 2.15. (b) of the Joint Venture Agreement (hereinafter in this Section 6 called a "Deferred Payment Agreement") to the extent not included in (A) above,
 - (C) all interest paid or payable by the Seller
 - (i) prior to the First Start-Up Date on loan moneys, and
 - (ii) during the period from the First Start-Up Date to the Second Start-Up Date on loan moneys received during that period for Construction Costs,
- all for the purposes of the Joint Venture and including interest on moneys permitted to remain owing by the Seller under any Deferred Payment Agreement less all interest paid or payable to

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- the Seller in respect of any time prior to the First Start-Up Date (see Example 4) on any moneys advanced by way of loan by the Seller or permitted to remain owing to the Seller. Interest in (i) and (ii) above shall include any element of interest forming part of any payment under any Deferred Payment Agreement, and
- (D) all other reasonable costs, charges and expenses borne or paid by the Seller for the purpose of the Joint Venture prior to the Second Start-Up Date, and
- (vi) interest paid by the Seller in that contract period on any moneys advanced by way of loan to the Seller for the purposes of the Joint Venture or permitted to remain owing by the Seller under any Deferred Payment Agreement 10
- Provided that no amount in respect of interest shall be included under this paragraph (vi) which has been included in paragraph (v) above, and
- Provided further that, if (but only if) on the first anniversary of the Second Start-up Date the total amount of all moneys then owing by the Seller in respect of advances by way of loan to the Seller for the purposes of the Joint Venture and of all moneys then owing (excluding any interest element) by the Seller under Deferred Payment Agreements exceeds sixty per centum (60%) of the then total of the items set out in paragraph (v) (A), (B), (C) and (D) above and is in fact x% of such total, then the interest entering into the calculation of Actual Cost per Ton shall be modified as follows: 20
- where I "c" = Interest capitalised in contract periods under sub-clause (v) (C) (ii) above.
- I "a" = Actual interest under this sub-clause (vi) (i.e. not capitalised under sub-clause (v) (C) (ii) above) in respect of the interval from the First Start-Up Date to 31st December of the Year in which the Second Start-Up Date occurs—called contract periods "a" for convenience. 30
- I "b" = Actual interest under this sub-clause (vi) during the contract period (calendar year) following the contract period in which the Second Start-Up Date occurs—called contract period "b" for convenience.
- Then each of the above amounts I "c", I "a" and I "b" of interest must be multiplied by $\frac{60}{x}$ to arrive at the interest amounts to be allowed in calculating a modified Actual Cost per Ton.
- Such modified Actual Cost per Ton for each Ton shipped during periods "a" and "b" must be calculated as soon as possible and then become the Actual Cost per Ton. 40
- A retrospective adjustment will be made where necessary in respect of each such Ton having regard to clause 4.1. hereof, such adjustment bearing interest at the rate of 7% per annum for a period from 30 days after shipment to date of payment. (See Examples 5 and 6)
- Provided further that in any contract period after contract period "b" the amount of interest paid by the Seller on moneys borrowed for the purposes of the Joint Venture (including interest under Deferred Payment Agreements) may be included in this sub-clause (vi) up to a figure not exceeding an amount calculated as follows: 50
- where "A" = 60% of the total of the amounts under (A), (B), (C) and

(D) of sub-clause (v) hereof on the first anniversary of the Second Start-Up Date.

Reduce "A" by $\frac{1}{15}$ th for each contract period after contract period "b", the amount so obtained being "B" for the contract period.

The allowed maximum interest on any contract period is $7\frac{3}{4}\%$ of "B" for that contract period. (See Examples 7 and 8)

6.2. For the purposes of calculating "Actual Cost per Ton" in clause 6.1. hereof

- (i) moneys subscribed for non-cumulative redeemable preference shares issued by the Seller to raise moneys for the purposes of the Joint Venture and redeemable over a period not exceeding the period of redemption of moneys advanced by way of loan to the Seller for the purposes of the Joint Venture shall be deemed to be moneys advanced by way of loan to the Seller for the purposes of the Joint Venture;
- (ii) dividends paid on the above described redeemable preference shares at a rate not exceeding seven and three quarters per centum per annum shall be deemed to be interest paid by the Seller;
- (iii) during the interval commencing on the First Start-Up Date and ending on the Thirty-first day of December of the Year in which the Second Start-Up Date occurs the Actual Cost per Ton for any contract period in such interval shall mean the total cost in all contract periods falling within such interval of items (i) to (vi) inclusive of clause 6.1. hereof divided by the number of Tons of Alumina shipped by the Seller in such interval.

Section 7 Price (after the eleventh contract period)

7.1. The price per Ton of Alumina to be sold and purchased under this Agreement in any contract period after the eleventh contract period shall be whichever is the greater in the contract period of

- (i) Escalated Base Price per Ton, and
- (ii) Actual Cost per Ton

less an amount equal to one tenth of the total Cost Price Differentials (as hereinafter defined) in respect of the first eleven contract periods divided by the number of Tons of Alumina sold and purchased under this Agreement in that contract period (see Example 10). "Cost Price Differential" means a sum equal to the amount of the excess (if any) of the Actual Cost per Ton in a contract period over Escalated Base Price per Ton in that contract period multiplied by the number of Tons of Alumina sold and purchased under this Agreement in that contract period. (See Example 9)

7.2. If there is a Cost Price Differential in respect of any contract period after the eleventh contract period the price per Ton of Alumina shall be further reduced for such contract period and for each subsequent contract period by an amount equal to

- (i) a fraction of such Cost Price Differential, the numerator of which is one and the denominator of which is the number of contract periods remaining under this Agreement (including the contract period in which such Cost Price Differential occurs), divided by
- (ii) the number of Tons of Alumina sold and purchased under this Agreement in the contract period in which such Cost Price Differential occurred or the respective subsequent contract period (as the case may be).

(See Example 11)

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- 7.3. The total amount of the reductions under clauses 7.1. and 7.2. hereof shall not exceed nor be less than the total of Cost Price Differentials.
- 7.4. If the Seller exercises its rights under clause 2.2. hereof so as to reduce the annual quantity of Alumina to be sold and purchased under this Agreement below 100,000 Tons, the Seller will on such reduction in annual quantity taking effect pay to the Buyer a sum equal to the total of Cost Price Differentials which have arisen prior to that date less the then total amount of all reductions in price by reason of such Cost Price Differentials.

Section 8 Estimation of Price

- 8.1. The Seller and the Buyer shall establish by agreement three months prior to the commencement of each contract period a genuine pre-estimate of the then anticipated price per Ton of Alumina to be sold and purchased under this Agreement having regard in the case of each contract period to the principles expressed in Sections 4, 5, 6 and 7 hereof and any adjustments which may be required by any of such Sections, and where applicable to the principles expressed in clause 8.2. hereof. If the Seller and the Buyer fail to so agree as to such provisional price prior to such three months, the same shall be determined by arbitration pursuant to Section 14 hereof. 10
- 8.2. In respect of the interval between the First Start-Up Date and the 31st day of December of the Year in which the Second Start-Up Date occurs, the provisional price per Ton shall be established (by agreement or arbitration as aforesaid) prior to the first contract period as follows:— 20
- (i) the Seller and the Buyer will agree on the estimated duration of such interval, and
 - (ii) the Seller and the Buyer will agree on the estimated average Actual Cost per Ton during such interval in accordance with Section 6 hereof.
- The Seller and the Buyer will three months prior to the commencement of each contract period of such interval review their estimate and shall agree as to the recalculation as regards the ensuing contract period of the provisional price per Ton in accordance with variations from time to time in the items set forth in Section 6 hereof and estimated costs and expenses for the period then estimated as the interval or if it appears that pursuant to Section 4 hereof the Escalated Base Price per Ton would be payable in respect of such contract period they shall agree as to the recalculation as regards such contract period of the provisional price per Ton in accordance with their genuine pre-estimate of the Escalated Base Price per Ton in respect of such contract period and if they fail to so agree the provisional price per Ton for the same shall be determined by arbitration pursuant to Section 14 hereof. (See Example 12) 30

Section 9 Payment of Provisional Price and Adjustments

- 9.1. Invoices will be issued for each shipment of Alumina under this Agreement based on weights and the provisional price per Ton as provided in this Agreement in dollars after completion of loading at Gove. Payment in dollars shall be made by the Buyer to the Seller within thirty (30) days after date of shipment irrespective of whether such shipment is f.o.b. or c.i.f. and even if such shipment is wholly or partly lost. 40
- 9.2. (a) The Seller shall furnish to the Buyer as soon as practicable after the expiration of the contract period in which the Second Start-Up Date occurs a statement signed by the Seller's Auditors showing:
- (i) the total of items (i) to (vi) inclusive set out in clause 6.1. hereof

during the interval commencing with the First Start-Up Date and ending on the 31st day of December of the Year in which the Second Start-Up Date occurs,

- (ii) the total of items (i), (ii) and (iii) set out in clause 6.1. hereof in respect of each contract period during such interval,
- (iii) the amount which has been paid by the Buyer to the Seller in respect of shipments under this Agreement during such interval,
- (iv) the number of Tons of Alumina shipped by the Seller in each contract period of such interval, and
- (v) the number of Tons of Alumina shipped by the Seller under this Agreement in each contract period of such interval.

(b) The Seller shall furnish to the Buyer as soon as practicable after the expiration of each contract period after the contract period in which the Second Start-Up Date occurs a statement signed by the Seller's Auditors showing the calculation made to arrive at the Escalated Base Price per Ton and the Actual Cost per Ton respectively and (where applicable) the calculation made to arrive at the amount of any increase or reduction in the Base Price per Ton and the price per Ton by virtue of the provisions of Section 5 or 7 hereof in respect of that contract period and also showing:

- (i) the price per Ton which the Buyer has paid to the Seller in that contract period, and
- (ii) the price per Ton which it is so calculated the Buyer should have paid to the Seller in accordance with the provisions of this Agreement.

(c) The Seller will permit the Buyer's Auditors at all reasonable times to inspect and take copies of and extracts from any books accounts or other records kept by or on behalf of the Seller appropriate to verify the accuracy and completeness of the statements referred to in sub-clauses (a) and (b) above.

9.3. (a) The Buyer shall pay to the Seller or the Seller shall pay to the Buyer (as the case may require) within 30 days of the giving of the statement referred to in clause 9.2. (a) hereof in respect of each shipment in the interval in question or in the event of a dispute as to the correctness of the amount shown in such statement within 30 days after the amount payable has been determined by arbitration hereunder the difference between the amount paid by the Buyer for the respective shipment and whichever is the greater of:

- (i) Escalated Base Price per Ton in respect of the contract period in which the respective shipment was made, and
- (ii) the amount obtained by dividing the amount shown in paragraph (i) of clause 9.2. (a) hereof by the number shown in paragraph (iv) of clause 9.2. (a) hereof

multiplied by the number of Tons of Alumina in the respective shipment together with interest on such difference at the rate of seven per centum (7%) per annum calculated from thirty days after the date of the respective shipment to the date of payment (both dates inclusive). (See Example 13)

(b) The Buyer shall pay to the Seller or the Seller shall pay to the Buyer (as the case may require) within 30 days of the giving of the statement referred to in clause 9.2. (b) hereof in respect of each shipment in the

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contract period to which the said statement refers or in the event of a dispute as to the correctness of the amount shown in such statement within 30 days after the amount payable has been determined by arbitration hereunder the difference between the amounts shown in paragraphs (i) and (ii) of clause 9.2. (b) hereof multiplied by the number of Tons of Alumina in the respective shipment together with interest on the result (obtained by multiplying such difference as aforesaid) at the rate of seven per centum (7%) per annum calculated from thirty days after the date of the respective shipment to the date of payment (both dates inclusive).
(See Example 14)

- 9.4. Alumina delivered pursuant to this Agreement shall be produced from the Bauxite Treatment Plant and no adjustments in price shall be made on account of any changes from time to time in chemical grade or any other composition. Any statutory or other warranty condition description or representation expressed or implied as to the state quality or fitness of the Alumina the subject of this Agreement is hereby expressly negated. 10
- 9.5. If in any contract period the Buyer (other than for reasons of force majeure) does not take delivery of any quantity of Alumina which it is obligated under this Agreement to purchase and which was or would but for such failure to take delivery have been available for delivery in such contract period, it shall nevertheless pay to the Seller such amount as it would have had to pay if it had taken delivery of such quantity calculated in accordance with this Agreement. Such payment shall be made within the period specified in clause 9.3. hereof and shall bear interest as provided in clause 9.3. hereof from thirty days after the date on which the Buyer should have taken delivery. 20
- If in any contract period the Buyer for reasons of force majeure does not take delivery of any quantity of Alumina which it is obligated under this Agreement to purchase and which was or would but for such failure to take delivery have been available for delivery in such contract period the Buyer shall not be liable to pay for such Alumina. 30

Section 10 Delivery Property and Risk

- 10.1. Alumina purchased by the Buyer pursuant to this Agreement shall be delivered by the Seller to the Buyer f.o.b. vessel mechanically trimmed the Port. Property and all risks with respect to Alumina f.o.b. shall pass to the Buyer when such Alumina is on board.
- 10.2. At the request of the Buyer the Seller shall deliver such Alumina c.i.f. non-Australian port according to instructions given by the Buyer, provided however that if delivery is made hereunder c.i.f. as aforesaid the Seller shall not be at any greater risk than it would have been had delivery been made f.o.b. and the Seller shall not be liable to pay any costs, charges or expenses other than would have been payable by the Seller had delivery been made f.o.b., nor shall the Seller be liable for any failure to comply with the Buyer's instructions which are contrary to any of the principles expressed in this clause or for any other reasonable failure to comply with the Buyer's instructions as aforesaid and the Buyer shall indemnify the Seller against all costs, charges and expenses incurred by the Seller and against all actions, claims and demands made against the Seller as a result of such delivery being made otherwise than f.o.b. Any payment required by such indemnity shall be paid promptly by the Buyer to the Seller on demand. 40

Section 11 Employment of Vessels

- 11.1. The Buyer shall be responsible for providing at the Port and without cost to the Seller sufficient vessels to carry Alumina to be delivered by the Seller under this Agreement.
- 11.2. Ships shall be suitable to enter, leave and berth at the Port and shall be suited to the loading facilities at the Port. Any extra loading costs consequent upon non-compliance with this requirement shall be paid by the Buyer to the Seller on demand.

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Section 12 Shipping Arrangements and Schedules

- 10 12.1. Each shipping programme referred to in clauses 12.2. and 12.3. hereof shall provide for the delivery of Alumina so as to take deliveries spread reasonably evenly throughout the Year at reasonably regular intervals and consistent with the existing Alumina stockpile and storage facilities. The Buyer may arrange to take deliveries in combined shipments of Alumina and Bauxite.
- 12.2. The Buyer shall submit to the Seller for the Seller's approval not less than four months prior to the First Start-Up Date and thereafter not later than the first day of September of each Year a provisional shipping programme for the next ensuing contract period stating approximate quantities of Alumina for each shipment during such contract period. The Seller shall approve each such schedule or advise by telex or cable to the Buyer changes which the Seller requires within twenty (20) days after the latest date under this Agreement for receipt by the Seller of such programme.
- 20 12.3. The Buyer shall submit to the Seller for the Seller's approval fifty (50) days prior to the commencement of each month a firm reasonably evenly spaced shipping programme for such month. Each such programme shall also contain a best estimate of the Buyer's shipping programme for the two (2) months next ensuing after such month. Such programmes shall specify the name (where practicable) of each vessel, the scheduled arrival date and the quantities (10% more or less at the Buyers option) to be delivered to each such vessel. Within twelve (12) days after each such submission day the Seller shall approve such programme for the first month thereof or advise by telex or cable to the Buyer changes which the Seller requires.
- 30 12.4. The Buyer shall have the right to substitute at any time vessels similar in all respects to load at the same position in sequence of vessels and, unless otherwise agreed, the same quantity of Alumina.
- 12.5. The Buyer shall give to the Seller the following notices of the estimated time of arrival of each vessel:
Ten (10) days
Forty-eight (48) hours
40 Twenty-four (24) hours
specifying in the 48-hour notice the actual quantity to be loaded the estimated loaded draft and if requested by the Seller the hatch loading plan of such vessel.

Section 13 Loading of Alumina

- 13.1. The Seller shall at its expense and risk load and trim (by mechanical trimmer) Alumina on board vessels furnished or arranged by the Buyer in accordance with clause 11.1. hereof at the Port.
- 13.2. The Buyer shall arrange that the vessels crew open and close hatches at vessel's expense and that the vessel work at all times required by the Seller and provide

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- lights aboard vessel for night work and the Seller shall not be responsible for any crew overtime expense.
- 13.3. The Buyer acknowledges that all vessels arriving at Gove (whether to take delivery of Bauxite and/or Alumina or to discharge inward cargoes) within fifteen (15) days either side of the scheduled time of arrival set forth in the consolidated schedule referred to in clause 6.5. of the Joint Venture Agreement are to be berthed for loading or unloading (as the case may be) in the order of presentation to the Manager of notice of readiness and that vessels arriving within such days of scheduled time shall have priority over vessels arriving not within such days of schedule. 10
- 13.4. Vessels arriving to take delivery of Alumina for the Buyer may present notice of readiness when in free pratique with clean holds and in all respects ready to load whether in berth or not.
- 13.5. A vessel shall vacate its loading berth as soon as loading is completed weather and tides permitting. Any loss or liability incurred by the Seller as a result of vessel's failure promptly to vacate loading berth resulting from delays in berthing other vessels shall be paid to the Seller by the Buyer.
- 13.6. The weight of each shipment of Alumina shall be determined at the Port by draft survey by a licensed marine surveyor appointed by the Seller and such weight shall be the basis of all invoices. The Buyer will be entitled to be present at the weighing by a representative appointed by the Buyer at his own risk and expense. 20
- 13.7. Vessels shall be loaded as fast as possible and in any event at not less than the average rate of 13,000 Tons per weather working day of 24 consecutive hours. If a vessel loads Alumina and Bauxite or vice versa pursuant to clause 12.1. hereof, loading operations for the first commodity to be loaded must be completed before commencing loading of the second commodity. A reasonable time shall be allowed for the change from one commodity to the other.

Section 14 Arbitration

- 14.1. Any dispute or difference between the Seller and the Buyer arising out of or in connection with this Agreement or any amendment variation or addition thereto or as to the construction thereof or as to the rights or liabilities of the Seller and the Buyer thereunder shall be referred to and settled by arbitration under the Rules of Conciliation and Arbitration of the International Chamber of Commerce. The Board of Arbitration shall be composed of three arbitrators and the Seller and the Buyer shall each choose an arbitrator and the third shall be chosen by the two so chosen. If either the Seller or the Buyer fails to choose an arbitrator within thirty days after notice of commencement of arbitration or if the two arbitrators fail to choose a third arbitrator within thirty days after their appointment the Court of Arbitration of the International Chamber of Commerce shall upon the request of either the Seller or the Buyer appoint the arbitrator or arbitrators to complete the Board. The Seller and the Buyer shall agree on the place of arbitration at the time arbitration proceedings are commenced and if such parties fail to so agree within thirty days the place of arbitration shall be London England. The arbitration award shall be final and binding upon the Seller and the Buyer and judgment thereon may be entered in any court having jurisdiction. 30 40

Section 15 Force Majeure

- 15.1. If the Seller or the Buyer is rendered unable wholly or in part by force majeure to carry out any obligation under this Agreement other than the obligation to 50

make money payments such party shall give to the other prompt notice of such force majeure with reasonably full particulars thereof and in so far as known the probable extent to which it will be unable to perform or be delayed in performing such obligation hereunder whereupon such obligation of the party giving the notice shall be suspended so far as it is affected by such force majeure during but no longer than the continuance thereof. Such party so affected by force majeure shall use all possible diligence to remove such force majeure as quickly as possible.

10 15.2. The requirement that any force majeure shall be remedied with all possible diligence shall not require the settlement of strikes, lockouts or other labour difficulties of major consequence to either party on terms contrary to its wishes.

15.3. The term "force majeure" as employed in this Agreement shall mean fire, explosion, storm, flood, lightning, earthquake or other natural cause or accident, riot or civil commotion, strikes or lockouts, war whether declared or not, or military or usurped power, act of Government by way of restriction embargo or prohibition arising without default or negligence on the part of the party claiming force majeure, insurrection, unavailability of equipment or transport and other cause whether of the kind specifically enumerated above or otherwise which is not reasonably within the control of the party claiming force majeure.

20 *Section 16 Notices*

16.1. All notices consents requests and other documents authorised or required to be given by or pursuant to this Agreement shall be given in writing and either personally served on a responsible officer of the party to whom it is given or mailed airmail postage prepaid or sent by telegram, telex or cable addressed as follows:

Seller: Gove Alumina Limited,
i O'Connell Street,
Sydney, New South Wales, 2000.

Cable Address: Sugar, Sydney

30 Buyer: Swiss Aluminium Limited,
P.O. Box,
8034, Zurich, Switzerland.

Cable Address: Aluminium, Zurich

40 16.2. Notices consents requests and other documents shall be deemed served or given (if mailed to an overseas destination) on the eighth day after the date of mailing by prepaid airmail or (if mailed to a domestic destination) on the third day after the date of mailing prepaid. Notices consents or requests sent by telegram, telex or cable shall be deemed served or given on the day after they are despatched. Either the Seller or the Buyer may change its address for receipt of notices consents requests and other documents at any time by giving notice thereof to the other party. Any notice, consent or request given hereunder may be signed on behalf of either party by a duly authorised representative of that party.

Section 17 Determination

17.1. In the event of the termination of the Joint Venture Agreement for any reason whatsoever the Seller or the Buyer may upon thirty (30) days notice to the other terminate this Agreement.

Section 18 Assignment

18.1. The Seller may assign the whole or any part of its rights under this Agreement including any moneys due or to become due to the Seller under this Agreement

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to any person to whom the Seller has charged its Percentage Interest in accordance with the provisions of clause 12.3. of the Joint Venture Agreement and may assign any moneys due or to become due to the Seller under this Agreement to the beneficiaries or any Trustee therefor of any such charge.

- 18.2. Either party may perform any of its obligations hereunder through a company related to it (as defined by the Companies Act of New South Wales) but such performance shall not relieve such party of any of its obligations hereunder.

Section 19 Waiver

- 19.1. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. Neither party shall be deemed to have waived any right, power or privilege under this Agreement or any provision thereof unless such waiver shall be in writing. 10

Section 20 Entire Agreement

- 20.1. This Agreement shall constitute the entire agreement between the parties hereto with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings with respect thereto.

Section 21 Law of Contract

- 21.1. This Agreement shall be governed by and be construed in accordance with the laws for the time being of New South Wales and each party hereby submits to the jurisdiction of and to be bound by decisions of the courts of New South Wales and any courts competent to hear appeals therefrom. 20
- 21.2. Nothing contained herein shall be deemed to constitute a consent to jurisdiction or service of process in any action or proceeding by or on behalf of anyone other than a party hereto or an admission that the Buyer is carrying on business in Australia or is generally subject to the jurisdiction of any court of the Commonwealth of Australia or State or Territory thereof or the jurisdiction of any court in Australia.

Section 22 Commencement

- 22.1. This Agreement shall have force and effect as from the Twenty second day of January, 1969. 30

IN WITNESS WHEREOF the parties hereto have executed this Agreement the day and year first above mentioned

THE COMMON SEAL of GOVE ALUMINA LIMITED was hereunto affixed pursuant to a resolution of the Board of Directors.

Seal
J. Vernon
Director
K. O. Brown
Director

DULY EXECUTED by SWISS ALUMINIUM LIMITED by its duly authorised signatories whose signatures are subscribed hereto at Zurich in the presence of:

Emanuel R. Meyer
Paul H. Müller

40

W. Hämmerli

SCHEDULE A

The figures set out in this Schedule are for illustrative purposes and are not to be taken as any admission by the Seller or the Buyer that the figures will be the same in reality.

*Examples**Example 1* Clause 5.2.

I. Assume that in the contract period ending 31st December 1977 the total payable by the Seller of

- (i) Bauxite Mining Costs referable to Alumina,
- (ii) Bauxite Treatment Costs, and
- (iii) Royalties on Bauxite referable to Alumina

amounted to \$8,444,400 and the total number of Tons of Alumina shipped by the Seller was 310,000 then the amount per Ton would be

$$10 \quad \frac{\$8,444,400}{310,000} = \$27.24 \text{ per Ton.}$$

Because \$27.24 is greater than Y 5 (the relevant figure for the contract period), the difference, i.e. the difference is added to \$X and the Escalated Base Price per Ton for that contract period would be the difference + \$X.

II. But suppose that the total of (i), (ii) and (iii) above was \$7,297,400 and assuming that the same tonnage of Alumina, i.e. 310,000 was shipped by the Seller, then the amount per Ton of (i), (ii) and (iii) would be \$23.54. Because \$23.54 is less than \$Y5 the difference, i.e. the difference is subtracted from \$X and the Escalated Base Price per Ton for that contract period would be \$X — the difference.

Example 2 Clause 5.3.

I. Assume that total Construction Costs (including the cost price—other than the interest element—of property or assets acquired on a deferred payment instalment basis) amount to \$268.8 million, i.e. in excess of \$267.167 million, but there has been no change in the Project and the whole of such excess comes, in fact, from an underestimate of the effects of escalation, then no increase in the price per Ton of Alumina would take place.

II. But assume that total Construction Costs (including the cost price as aforesaid) amount to \$280.4 million and there has been a change in the Project not approved by the Seller under the Joint Venture Agreement. Assume also that of the \$280.4 million, \$2.4 million is attributable to an underestimate of the effects of escalation of the unchanged part of the Project, then such \$2.4 million would first be deducted from the \$280.4 million = \$278.0 million. The increase as a result of the change would be \$278.0 million—\$267.167 million = \$10.833 million. The Base Price per Ton for each contract period (including retrospectively) would be increased by 10.833×12.7 cents = \$1.38 (to the nearest two decimal places).

Example 3 Clause 5.4.

40 Assume that the total Construction Costs (including the cost price—other than the interest element—of property or assets being acquired on a deferred payment instalment basis) on the first anniversary of the Second Start-Up Date amount to \$236.2 million, i.e. a total saving of \$11.8 million. Then the Base Price would be reduced by 11.8×3.55 cents = 41.89 cents per Ton.

Example 4 Clause 6.1. (v) (C) (i)

Suppose interest for the period prior to the First Start-Up Date is \$6,000,000 made up of \$5,000,000 in respect of loans and \$1,000,000 in respect of Deferred Payment

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Agreements, and interest received or receivable is \$500,000, then the amount to be included under clause 6.1. (v) (C) (i) would be \$5,500,000.

Example 5 Clause 6.1. (vi) Proviso re 60% loan limit.

Suppose that in respect of the contract periods in the interval commencing on the First Start-Up Date and ending on the 31st December of the Year of the Second Start-Up Date (contract periods "a") the total of interest charges previously included in calculating Actual Cost per Ton (including $\frac{1}{20}$ th of interest capitalised under clause 6.1 (v) (C) (ii) but not including $\frac{1}{20}$ th of interest capitalised in respect of the period prior to First Start-Up Date) is \$5,000,000. Then:

I. Suppose that on the first anniversary of the Second Start-Up Date the total of the amounts under clause 6.1. (v) (A) to (D) is \$100,000,000 and the sum of loans outstanding at that date, including amounts owing (excluding interest) in respect of Deferred Payment Agreements is \$55,000,000. Because \$55,000,000 is less than 60% of \$100,000,000 there would be no modification of the amount of interest included in Actual Cost per Ton for prior contract periods. 10

II. But suppose that on the first anniversary of the Second Start-Up Date the total of the amounts under clause 6.1. (v) (A) to (D) is \$100,000,000 and the sum of loans outstanding at that date including amounts owing (excluding interest) in respect of Deferred Payment Agreements is \$63,000,000. Because \$63,000,000 equals 63% of \$100,000,000 actual interest would be modified as follows: 20

In respect of the contract periods in the interval commencing on the First Start-Up Date and ending on 31st December of the Year of the Second Start-Up Date, the amount which should have been included in Actual Cost per Ton for those contract periods is calculated as:

$$\$5,000,000 \text{ (actual interest previously included)} \times \frac{60}{63} = \$4,761,905.$$

The amount by which Actual Cost per Ton would be reduced is \$5,000,000 — \$4,761,905 = \$238,095 divided by the total Tons of Alumina shipped by the Seller in those contract periods (say 500,000 Tons) i.e.

$$\frac{\$238,095}{500,000} = \$0.476 \text{ per Ton} \quad 30$$

Any necessary retrospective adjustment having regard to clause 4.1. would carry interest at the rate of 7% p.a.

Example 6 Clause 6.1. (vi) Proviso re 60% loan limit

Suppose that in respect of the contract period in which the first anniversary of the Second Start-Up Date occurs (contract period "b"), the amount of actual interest paid is \$3,000,000 including interest under Deferred Payment Agreements.

I. If the circumstances as set out in I of Example 5 apply, no modification would be made to Actual Cost per Ton.

II. If however, the circumstances as set out in II of Example 5 apply, actual interest would be modified as follows: 40

$$\$3,000,000 \times \frac{60}{63} = \$2,857,143$$

and Actual Cost per Ton would be reduced by:

$$\$3,000,000 - \$2,857,143 = \$142,857$$

which, if there are 310,000 Tons shipped in the period would be:

$$\frac{\$142,857}{310,000} = \$0.46 \text{ per Ton (to nearest cent).}$$

The reduced Actual Cost per Ton would then be compared with Escalated Base Price per Ton to determine which is payable. 50

Example 7 Clause 6.1. (vi)

- I. Suppose that on the first anniversary of the Second Start-Up Date the total of the amounts under clause 6.1. (v) (A) to (D) is \$100,000,000, and suppose that interest paid in the contract period following such first anniversary is \$2,750,000. The allowed maximum interest for that contract period would be calculated as follows:

$$\begin{array}{rcl} 60\% \text{ of } \$100,000,000 & \dots & = \$60,000,000 \\ \$60,000,000 - \frac{1}{15} \text{ of } \$60,000,000 & \dots & = \$56,000,000 \\ 7\frac{3}{4}\% \text{ of } \$56,000,000 & \dots & = \$ 4,340,000 \end{array}$$

10 The actual interest \$2,750,000 being less than \$4,340,000 would be allowed and no modification to Actual Cost per Ton would be required.

- II. But suppose that interest paid is \$5,000,000. Actual Cost per Ton would be reduced by:

$$\frac{\$5,000,000 - \$4,340,000}{\text{Number of Tons shipped in that contract period}} = \$660,000$$

Number of Tons shipped in that contract period

The reduced Actual Cost per Ton would then be compared with Escalated Base Price per Ton to determine which is payable.

Example 8 Clause 6.1. (vi)

- 20 I. Suppose that in the fourth contract period succeeding the contract period in which the first anniversary of the Second Start-Up Date occurs the amount of interest paid is \$2,500,000.

Then the allowed maximum interest for that contract period would be calculated as follows:

$$\begin{array}{rcl} 60\% \text{ of } \$100,000,000 & & = \$60,000,000 \\ \text{(total assumed as per Example 7)} & \dots & \\ \$60,000,000 - \frac{4}{15} \text{ of } \$60,000,000 & \dots & = \$44,000,000 \\ 7\frac{3}{4}\% \text{ of } \$44,000,000 & \dots & = \$ 3,410,000 \end{array}$$

No modification would be required to Actual Cost per Ton as \$3,410,000 is greater than \$2,500,000.

- 30 II. But suppose that the amount of interest paid is \$4,200,000 which exceeds \$3,410,000 then Actual Cost per Ton would be reduced by

$$\frac{\$4,200,000 - \$3,410,000}{\text{Number of Tons shipped in that contract period}} = \$790,000$$

Number of Tons shipped in that contract period

The reduced Actual Cost per Ton would then be compared with Escalated Base Price per Ton to determine which is payable.

Example 9 Clause 7.1.

40 Assume that, in the contract period ending 31st December 1975 the Actual Cost per Ton is \$A, the Escalated Base Price per Ton is \$B and the number of Tons of Alumina sold under this Agreement is 230,000, then the Cost Price Differential for that contract period would be

$$\$ (A - B) \times 230,000$$

Example 10 Clause 7.1.

Assume that the total of Cost Price Differentials for the first eleven contract periods amounts to \$8,430,000, that in the twelfth contract period the number of Tons of Alumina sold under this Agreement is 310,000, that Escalated Base Price per Ton is \$A and that such \$A is greater than Actual Cost per Ton.

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The amount payable per Ton of Alumina in that contract period would be

$$\begin{aligned} & \$A - \frac{\$843,000 \left(\frac{1}{10}\text{th of total Cost Price Differentials}\right)}{310,000 \text{ (number of Tons sold)}} \\ & = \$A - \$2.72 = \$B \text{ payable per Ton.} \end{aligned}$$

Example 11 Clause 7.2.

Assume that the total Cost Price Differentials for the first eleven contract periods amount to \$8,430,000 as in Example 10 and assume that there are no Cost Price Differentials for contract periods twelve to sixteen inclusive. Now assume that in the seventeenth contract period total production of Alumina falls to 500,000 tons, that Actual Cost per Ton is \$A and Escalated Base Price per Ton is \$B and that the number of Tons of Alumina sold under this Agreement is 150,000. The Cost Price Differential in respect of that contract period would therefore be

$$\$ (A - B) \times 150,000 = 900,000$$

The amount payable per Ton in that contract period would be \$A (Actual Cost per Ton) initially reduced by \$2.72 (see Example 10) to \$C and then further reduced as follows:

$$\begin{aligned} & \frac{\$900,000 \text{ divided by } 5 \text{ (that and the remaining contract periods)}}{150,000 \text{ (number of Tons sold)}} \\ & \$C - \frac{\$900,000 \text{ divided by } 5 \text{ (that and the remaining contract periods)}}{150,000 \text{ (number of Tons sold)}} \\ & = \$C - \$1.20 = \$D \text{ payable per Ton.} \end{aligned}$$

Example 12 Clause 8.2.

I. Assume that the First Start-Up Date will be 1st June 1972 and that it is estimated that the Second Start-Up Date will occur on 1st August 1974. Assume also that the Seller and the Buyer estimate that the total of items (i) to (vi) inclusive in clause 6.1. will for the interval between 1st June 1972 to 31st December 1974 amount to (A)\$ and that the total number of Tons of Alumina which will be sold under this Agreement in that interval will be (B) the estimated Actual Cost per Ton for the contract period commencing 1st June 1972 and ending on 31st December 1972 and for subsequent contract periods of such interval would be

$$(A) \$ \frac{\text{(total estimated cost to the Seller)}}{\text{(total estimated tonnage under this Agreement)}}$$

$$\begin{aligned} & (B) \frac{\text{(total estimated tonnage under this Agreement)}}{\text{(total estimated tonnage under this Agreement)}} \\ & = \$C \end{aligned}$$

\$C would then be compared with the estimated Escalated Base Price per Ton for the contract period in question to determine which is payable.

II. Then assume that prior to the commencement of the second contract period the parties estimate that the total of items (i) to (vi) referred to above for the interval will in fact be \$D instead of \$A but that the interval and tonnage will remain the same, the estimated Actual Cost per Ton for the second and last contract periods of the interval would be

$$\begin{aligned} & \$D - \frac{(\$C \times 70,000)}{\text{(actual tonnage sold in the first contract period)}} \\ & \frac{\$D - (\$C \times 70,000)}{\text{(actual tonnage sold in the first contract period)}} \end{aligned}$$

$$(B) - \frac{\$D - (\$C \times 70,000)}{\text{(actual tonnage sold in the first contract period)}} - 70,000 \text{ (actual tonnage sold in the first contract period)}$$

$$\begin{aligned} & \frac{\$D - (\$C \times 70,000)}{\text{(actual tonnage sold in the first contract period)}} \\ & = \$E \text{ (B) - } 70,000 \end{aligned}$$

\$E would then be compared with the estimated Escalated Base Price per Ton for the contract period in question to determine which is payable.

III. But then assume that prior to the commencement of the third contract period the parties estimate that the Second Start-Up Date will not occur until 1st April 1975, i.e. one further contract period from 1st January 1975 to 31st December 1975, and accordingly their estimate of items (i) to (vi) referred to above for that further period will have to be taken into account. Assume also that they estimate that the total cost of items (i) to (vi) for the whole interval will now be \$F and that the total tonnage for that interval will now be (G) and the total remaining tonnage will be (H) then the estimated Actual Cost per Ton for the third and last contract periods of the interval would be

$$\frac{\$F - \$C \times 70,000}{(H) \quad (\text{total remaining tonnage})} - \$E \times 150,000$$

(actual tonnage sold in the first contract period) — (actual tonnage sold in the second contract period)

= \$W

\$W would then be compared with the estimated Escalated Base Price per Ton for the contract period in question to determine which is payable.

Example 13 Clause 9.3. (a)

Assume that the total of items (i) to (vi) inclusive in clause 6.1. during the interval from the First Start-Up Date to the 31st December of the Year in which the Second Start-Up Date occurs amounts to \$Q and that the actual tonnage sold under this Agreement during such interval is T the Actual Cost per Ton during such interval would be

$$\frac{\$Q}{T} = \$G$$

I. Assume that the estimated Actual Cost per Ton paid in the first contract period was \$C i.e. less than \$G Assume also that in the first contract period there were 7 equal shipments of 10,000 tons each on the first day of each month commencing with 1st June. The Buyer would pay the Seller in respect of the first shipment in the contract period $(\$G - \$C) \times 10,000 = \$V$ plus 7% p.a. on \$V from 30 days after 1st June to the date of payment (both dates inclusive) in respect of the second shipment \$V plus 7% p.a. on \$V from 30 days after 1st July to the date of payment (both dates inclusive) and so on for each subsequent shipment in the first contract period.

II. But assume that in the second contract period because of an overestimate (see Example 12.11) the estimated Actual Cost per Ton was \$D, i.e. greater than \$G Assume also the same equal shipments of 10,000 Tons on the first day of each month of the second contract period the Seller would pay the Buyer in respect of the first shipment in the contract period $(\$D - \$G) \times 10,000 = \$L$ plus 7% p.a. on \$L from 30 days after 1st January to the date of payment (both dates inclusive), in respect of the second shipment \$L plus 7% p.a. on \$L from 30 days after 1st February to the date of payment (both dates inclusive), and so on for each subsequent shipment in the second contract period. Now assume that in the last contract period of the interval ending on the 31st December of the year in which the Second Start-Up Date occurs, the Escalated Base Price per Ton was \$K, i.e. greater than \$G if \$C were paid in that contract period (see Example 12.1) because the parties had not revised their estimate and had not realised that the Escalated Base Price per Ton would be higher than either \$C or \$G then the Buyer would pay to the Seller in respect of each shipment \$K — \$C multiplied by the number of Tons in each shipment together with

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interest at the rate of 7% p.a. from 30 days after the date of shipment to the date of payment (both dates inclusive).

Example 14 Clause 9.3.(b)

Assume that in respect of a contract period after the contract period in which the Second Start-Up Date occurs the estimated price per Ton arrived at under clause 8.1. is \$P. Assume also that the Actual Cost per Ton for that period is \$M and the Escalated Base Price per Ton is \$N. The Buyer would pay to the Seller in respect of each shipment (assume 15 shipments of 20,000 Tons in each shipment)
 $\$N - P \times 20,000 = \R plus interest on such \$R at the rate of 7% p.a. from 30 days after the date of each such shipment to the date of payment (both dates inclusive).

10

Exhibit 35 (part)

Exhibit 35
(part)
Loan
Agreement:
Swiss
Aluminium
Australia
Pty Ltd and
Defendant
11th June, 1970

**Loan Agreement: Swiss Aluminium Australia Pty. Ltd.
and Defendant**

THIS DEED made the Eleventh day of June One thousand nine hundred and seventy BETWEEN SWISS ALUMINIUM AUSTRALIA PTY. LIMITED a company incorporated in the State of New South Wales (hereinafter called "Swiss") of the one part AND BP AUSTRALIA LIMITED a company incorporated in the State of Victoria (hereinafter called "the Company") of the other part WHEREAS:

- (A.) Nabalco Pty. Limited a company incorporated in the State of New South Wales (hereinafter called "Nabalco") is Manager of the Gove Joint Venture for and on behalf of Swiss and Gove Alumina Limited as Joint Ventures. 20
- (B.) By Agreement dated eleventh day of June 1970 made between the Company of the one part and Nabalco of the other part (hereinafter called "the Supply Agreement") the Company agreed to supply and deliver at Gove to Nabalco and Nabalco agreed to purchase from the Company its requirements at Gove of Furnace Oil, Super Motor Spirit and Diesoleum and so to do for a period of ten (10) years from the date upon which the Company makes the first delivery of Furnace Oil to Nabalco at Nabalco's request.
- (C.) The Company's tender to supply as aforesaid included inter alia an offer to lend to Swiss the sum of Two Million One Hundred Thousand Dollars (\$2,100,000) (which sum or so much of which as is from time to time outstanding is hereinafter called "the Principal Sum") and so to do on the terms and conditions hereinafter set out. 30

(D.) Swiss has accepted the said offer.

NOW IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:—

1. The Company will lend to Swiss the Principal Sum and will advance the same by three (3) instalments each of Seven Hundred Thousand Dollars (\$700,000) payable on the last days of June 1970, July 1970 and January 1971 respectively.
2. Swiss will repay the Company in Sydney free of exchange the Principal Sum by

thirty six (36) quarterly instalments each of Fifty eight thousand three hundred and thirty three dollars and thirty three cents (\$58,333.33), the first whereof to be paid on the last day of March 1973 and thereafter on the last days of the months of June, September, December and March in each and every year until the Principal Sum shall be fully repaid and satisfied PROVIDED HOWEVER that Swiss shall have the right to repay the Company on any of the aforesaid instalment days, in addition to the instalment then payable, any amount being a multiple of One Thousand Dollars (\$1,000) and interest on any such additional repayment shall be calculated only to the date thereof.

10 3. Swiss will pay the Company interest on the Principal Sum at the maximum rate from time to time charged by Bank of New South Wales in Sydney to its customers in respect of advances on current account. The said interest shall be deemed to accrue daily and commencing on the last day of December 1972 shall be payable on the last days of the months of March, June, September and December in each and every year until the Principal Sum shall be fully paid and satisfied.

4. If—

- 20 (i) Swiss fails to pay any moneys due and payable hereunder within fourteen (14) days after the date fixed for payment, or
(ii) Swiss goes into liquidation for purposes other than reconstruction or amalgamation or calls a meeting of creditors or makes or attempts to make any composition with or arrangement for the benefit of creditors, or
(iii) Notice is received by Swiss from the Company that the Supply Agreement has been terminated for any reason.

then and in any such case the Principal Sum with interest accrued but unpaid thereon shall at the option of the Company be and become due and payable within thirty days from the date thereof.

30 5. Any notice hereunder to be given or served by either party shall be sufficiently executed if signed on behalf of that party by any Director, its General Manager, Secretary or Solicitors and shall be deemed to have been validly given if posted at any post office in a prepaid letter addressed to the other party at its then registered office. Any notice so sent by post shall be taken to be given at the time when in the ordinary course of posting it would have been delivered to the address to which it was so posted.

IN WITNESS WHEREOF these presents have been executed on the day and in the year hereinbefore written.

THE COMMON SEAL of SWISS ALUMINIUM AUSTRALIA PTY. LIMITED was hereunto affixed by authority of the Board of Directors in the presence of:

(signatures not reproduced)

40 THE COMMON SEAL of BP AUSTRALIA LIMITED was hereunto affixed by authority of the Board of Directors in the presence of:

Exhibit 55
Deed of
Lease-Service
Station:
Swiss
Aluminium
Australia Pty
Limited
Gove Alumina
Ltd and
Defendant.
20th October,
1972

Exhibit 55

**Deed of Lease-Service Station: Swiss Aluminium
Australia Pty. Limited, Gove Alumina Ltd.
and Defendant**

THIS DEED made the 20th day of October One thousand nine hundred and seventy-two BETWEEN SWISS ALUMINIUM AUSTRALIA PTY. LIMITED a Company duly registered in the State of New South Wales having its registered office at 1 Alfred Street, Sydney, New South Wales, and GOVE ALUMINA LIMITED a Company duly registered in the State of New South Wales having its registered office at 1 O'Connell Street, Sydney, New South Wales (hereinafter called "the Lessors") AND BP AUSTRALIA LIMITED a Company duly incorporated in the State of Victoria and registered as a foreign company in the State of South Australian and having its registered office in the latter State at 30 Flinders Street, Adelaide (hereinafter called "the Lessee")

10

WHEREAS:

- A. The Lessors as joint venturers are engaged in the construction at Gove Peninsula Arnhem Land in the Northern Territory of the Commonwealth of Australia and the waters of Melville Bay and the waters adjacent thereto, of plant and facilities for the mining, production, treatment, transportation and shipment of bauxite and alumina and the construction of associated infrastructure.
- B. Pursuant to a Management Agreement bearing date the Twenty-second day of January, 1969 made between the Lessors and Nabalco Pty. Limited a Company incorporated in the State of New South Wales having its registered office at 1 Alfred Street, Sydney, New South Wales (hereinafter called "Nabalco") the Lessors appointed Nabalco to manage, supervise, control and conduct on behalf of the Lessors all operations including inter alia the construction of the Port, Town, roads communications and other facilities.
- C. Pursuant to the Mining (Gove Peninsula Nabalco Agreement) Ordinance, 1968 and the Special Purposes Ordinance 1953-1968 the Commonwealth of Australia granted to the Lessors Special Purposes Lease No. 214 in respect of all that piece or parcel of land in the Northern Territory of Australia containing an area of 1620 acres or thereabouts being Northern Territory Portion 1192 for the special purpose of establishing operating and maintaining a township in connection with the mining treatment and shipping operations of the Lessors for a term commencing on the Twenty-second day of January, 1970 and expiring on the expiration of the term of forty-two years of the Special Mineral Lease to be granted to the Lessors pursuant to an Agreement made the Twenty-second day of February, 1968 between the Commonwealth of Australia and Nabalco set out in the Schedule to the Mining (Gove Peninsula Nabalco Agreement) Ordinance, 1968.
- D. Pursuant to an Agreement bearing date the Thirtieth day of May, 1969 Nabalco assigned to the Lessors all benefits and advantages acquired by it pursuant to the said Agreement dated the Twenty-second day of February, 1968 and without limiting the generality thereof Nabalco's rights to or as the holder of any lease licence or other title.
- E. The said Special Purposes Lease No. 214 provided that it is a condition of the said Lease that if all Special Mineral Leases granted pursuant to the said Agreement bearing date the Twenty-second day of February, 1968 including

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any renewals thereof or leases (including any renewals thereof) that the Administrator certified to be substituted or associated Special Mineral Leases should terminate whether by expiry surrender forfeiture or for any other reason and none of them shall have been renewed then the said Special Purposes Lease No. 214 or any renewal thereof should thereupon also terminate.

- F. The said Special Purposes Lease provides that the Lessors (the Lessee thereunder) shall have a right of renewal for a further period of forty-two (42) years or such other period or periods necessary to ensure that the said Lease remains current during the currency of associated Special Mineral Leases granted pursuant to the said Agreement bearing date the Twenty-second day of February, 1968.
- G. Pursuant to the said Special Purposes Lease No. 214 the Lessors have the right to grant sub-leases in accordance with the provisions of the said Special Purposes Leases Ordinances 1953-1968 subject to the approval of the Administrator.
- H. The Lessors have agreed to lease to the Lessee the demised premises on the terms and conditions and for the consideration hereinafter appearing.

NOW THIS DEED WITNESSETH that the Lessors do in consideration of a premium of \$8,750.00 paid by the Lessee to the Lessors before the execution hereof hereby lease to the Lessee subject to the approval of the Administrator the land TO BE HELD by the Lessee as tenant for a term expiring one day before the expiration or sooner determination of the term of the said Special Purposes Lease No. 214 at an annual rental calculated and payable in the manner hereinafter provided SUBJECT to the following covenants conditions and restrictions namely:—

ARTICLE I:

DEFINITIONS

In the interpretation of this Deed except to the extent that such interpretation shall be excluded by or be repugnant to the context the following words and expressions whenever appearing shall have the following meanings:—

- 1 (a) LESSORS. "Lessors" means and includes the Lessors and shall extend to and include their respective successors and assigns.
- (b) LESSEE. "Lessee" means and includes the Lessee and shall extend to and include its successors and permitted assigns.
- (c) PERSON. Words importing persons shall include corporations and vice versa.
- (d) PLURALS AND GENDERS. The singular shall include the plural and vice versa and words importing the masculine or neuter gender shall include every gender.
- (e) STATUTES AND REGULATIONS. Reference to statutes regulations ordinances or by-laws shall be deemed to extend to all statutes regulations ordinances or by-laws amending consolidating or replacing the same.
- (f) THE LAND. Being part of the land comprised in Volume 75 Folio 36 of the Northern Territory Register Book of Crown Leases and being Lot 13 on approved Survey Plan S72/016 deposited in the office of the Registrar General, Darwin, Northern Territory.
- (g) DEMISED PREMISES. "The demised premises" means the works and other improvements more particularly described in plan annexed hereto and marked "A" together with all appurtenances therein and together with all modifications extensions or alterations thereto from time to time made.
- (h) ADMINISTRATOR. "The Administrator" means the Administrator of the Northern Territory appointed under the Northern Territory (Administration) Act 1910-1968 or the person for the time being duly appointed pursuant to that Act to act in the office of Administrator or the holder for the time being

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of, or the person for the time being performing the duties of, any office in substitution for the office of Administrator.

- (i) NABALCO. "Nabalco" means Nabalco Pty. Limited, Gold Fields House, 1 Alfred Street, Sydney, New South Wales.

ARTICLE II:

INTERPRETATION

- 2(a) **SEVERABILITY.** If any term covenant or condition of these presents or the application thereof to any person or circumstances shall be or become invalid or unenforceable the remaining terms covenants and conditions shall not be affected thereby and each covenant and condition of these presents shall be valid and enforceable to the fullest extent permitted by law. 10
- (b) **JOINT COVENANTS.** Any covenant or agreement on the part of two or more persons shall be deemed to bind them jointly and severally.
- (c) **OBLIGATIONS CONSTRUED AS COVENANTS.** The respective covenants and obligations of the parties hereto as set out herein whether positive or negative shall be construed as if each such obligation or covenant is a separate and independent covenant made by one party in favour of the other party.
- (d) **HEADINGS.** Headings and sub-headings are included for the sake of ease of reference and none of the terms covenants and conditions or restrictions herein appearing are to be construed or interpreted by reference to such headings or sub-headings. 20

ARTICLE III:

RENT AND OPERATING COSTS

- 3(a) **ANNUAL RENTAL.** The Lessee covenants with the Lessors that the Lessee will during each year of the term hereof and any extension or renewal hereof pay to Nabalco without demand from Nabalco and without any deduction whatsoever the annual rental and any increase thereof arrived at in accordance with the provisions of clause 6 of the First Schedule hereto.
- (b) **OPERATING COSTS.** In addition to the annual rental to be paid as aforesaid, the Lessee covenants with the Lessors to pay the yearly operating costs in accordance with the terms of the First Schedule hereto. 30
- (c) **MANNER OF PAYMENT.** Unless and until the Lessors shall otherwise direct the Lessee in writing the Lessee shall pay all rent to the credit of such account at such bank and branch thereof as is from time to time nominated by Nabalco in writing.

ARTICLE IV:

DAMAGE OR DESTRUCTION OF DEMISED PREMISES

- 4(a) In case of the total or partial destruction of or damage to the demised premises by reason of any cause whatsoever the Lessee shall within a reasonable period thereafter reinstate or repair the demised premises at its own expense to their original condition. 40

ARTICLE V:

LIGHT AND POWER

- 5(a) **SOURCE OF LIGHT AND POWER.** All light and power used in the demised premises shall be furnished by means of electrical current supplied from the Lessors or other town bulk supply and the Lessee shall not use any form of light or power other than electrical current so supplied through meters PROVIDED HOWEVER that this covenant shall not prevent the use of auxiliary power or

lighting (other than an exposed flame) during any period of power failure or power restrictions.

- (b) **SUPPLY OF POWER.** The Lessors shall supply to the Lessee until electricity supply is taken over by a supply authority and within the limits of the availability thereof and within the forecast peak and other forecast requirements of the Lessee all reasonable requirements of electrical current necessary to the proper use of the demised premises.
- (c) **CHARGES FOR ELECTRICITY.** The price to be charged for electricity shall be the price from time to time charged to other commercial premises in the town area at Gove and Nabalco shall render accounts therefor to the Lessee quarterly and such accounts shall be payable to Nabalco within fourteen days of delivery of such accounts PROVIDED HOWEVER that in the event of the said term being determined whether by expiry or other means Nabalco shall be entitled to render an account up to the date of termination and the amount shown to be owing by the Lessee shall be paid to Nabalco forthwith after the rendering of such account.

ARTICLE VI:

OTHER CHARGES AGAINST LESSEE

- 6(a) **COST OF LEASE.** The Lessee shall pay the usual and proper costs of the Lessors' Solicitor of and incidental to the preparation execution stamping and registration of this Lease and the cost of the plans annexed hereto upon demand by the Lessors.
- (b) **COST OF RE-ENTRY AND CONSENTS.** The Lessee shall pay to the Lessors all costs charges and expenses (including legal costs as between Solicitor and client and costs and fees payable to the Lessors' architect) which may be incurred by the Lessors in relation to or in consequence of any breach of covenant by the Lessee whether proceedings for re-entry or forfeiture are taken by the Lessors or not and the Lessee shall further pay all costs and expenses incurred by the Lessors in relation to the granting of any consent by the Lessors or the administrator.
- (c) **LEGAL FEES.** If the Lessors shall without fault on their part be made a party to any litigation commenced by or against the Lessee (other than litigation between the Lessors and the Lessee) and arising directly or indirectly out of the Lessee's occupancy of the demised premises the Lessee shall pay to the Lessors on demand by the Lessors all legal fees and disbursements (as between Solicitor and client) incurred by the Lessors in connection therewith.

ARTICLE VII:

USE OF DEMISED PREMISES

- 7(a) **PERMITTED USE.** The Lessee will not use or permit to be used the demised premises or any part thereof for any purpose other than for use as a motor vehicle service station and will not permit or suffer the use of the same or any part thereof for any illegal or unlawful use.
- (b) **OPERATION OF SERVICE STATION.** The Lessee covenants with the Lessors that in the use of the demised premises as aforesaid it will—
- (i) Provide and maintain a service to customers of the said service station which is equal to the highest standards commonly accepted by persons carrying on the business of service station proprietors in the Commonwealth of Australia.
- (ii) Provide to such persons who are willing to pay for the same
- (a) BP Super Motor Spirit at a price which is not higher than the

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- Lessee's wholesale price per gallon at Nhulunbuy for the time being for sales of that product to resellers plus a margin of ten cents which margin shall be variable at the same time and by the same amount as any variation of the reseller's margin per gallon recommended from time to time by the Darwin Resellers Association for retail sales at Darwin of super grade motor spirit
- (b) automotive lubricants, motor vehicle spare parts, motor vehicle servicing and services ancillary thereto at prices not higher than prices charged by proprietors of motor vehicle service stations of the same standard in the City of Darwin in the said Territory unless consent in writing is otherwise obtained from the Lessors. 10
 - (iii) Provide and maintain within the service station equipment fittings and fixtures equal to the equipment fittings and fixtures of a service station of the standards aforesaid.
 - (iv) Without limiting the generality of Article 9 hereof, keep and maintain the demised premises and the gardens and grounds, driveways fences and entrances thereof in good and substantial repair order and condition and in accordance with the aforesaid standard of service.
 - (v) Keep open the said service station for business during the hours of not less than 7 a.m. to 6 p.m. on Mondays to Fridays inclusive; from 7 a.m. to 2 p.m. on Saturdays; and 9 a.m. to Noon on Sundays with exception of days on which the Lessee is by law prohibited from keeping the said service station open. 20
- (c) **ANNOYING OR INJURIOUS CONDUCT.** The Lessee will not at any time during the continuance of this Lease use exercise or carry on or permit to be used exercised or carried on in or upon the demised premises or the land or any part thereof any noxious noisome or offensive act trade business occupation or calling or do or omit or permit or suffer to be done or omitted any act matter or thing whatsoever in upon or about the demised premises or the land or any part thereof which is or shall or may be or grow to the annoyance nuisance grievance damage or disturbance of the Lessors or of other lessees tenants or occupiers of the demised premises or persons otherwise lawfully therein or occupiers or owners of any adjacent premises providing always that the carrying on upon the said land of the usual activities of a service station Proprietor should not be deemed a breach of this condition. 30

ARTICLE VIII:

ANCILLARY USE OF DEMISED PREMISES

- 8(a) **ERECTION OF SIGNS.** The Lessee will not without the prior approval in writing of the Lessors paint erect display affix or exhibit on or to or visible from the exterior of the demised premises any sign lights embellishments advertisements name or notice. 40
- (b) **LOUDSPEAKERS ETC.** The Lessee will not without the consent in writing of the Lessors erect or place upon within or without the demised premises any loudspeakers screens or similar devices or equipment likely to be heard or seen from outside the demised premises.
- (c) **USE OF APPURTENANCES.** The Lessee shall not use or permit to be used the appurtenances contained in or about the demised premises for any purpose other than those for which they were constructed and shall not place or permit to be placed therein any sweepings rubbish rags or other deleterious substances. 50

- 10 (d) **DRAINS AND WASTES.** The Lessee shall keep and maintain the waste pipes drains and conduits contained in or about the demised premises in a clean clear and free flowing condition and shall at its own expense employ tradesmen to clear any blockings which may occur therein within the external boundaries of the demised premises. Any blockages which may occur in such waste pipes drains and conduits between the external boundaries of the demised premises and the point of entry thereof into the trunk drain shall be cleared by the Lessors and the Lessee shall pay the cost thereof to the Lessors upon demand unless such blockage shall have been caused by some defect or breakage in such waste pipes drains or conduits and without neglect or default on the part of the Lessee.
- (e) **CLEANING OF DEMISED PREMISES.** The Lessee shall keep the demised premises and the land in a thorough state of cleanliness and shall not allow any accumulation of useless property or rubbish therein and shall at its own expense arrange for the cleaning at regular intervals of the demised premises and of the land.
- (f) **RODENTS AND VERMIN.** The Lessee shall at its own cost and expense keep the demised premises and the land free and clear of rodents termite cockroaches and other vermin.
- 20 (g) **NOTICE OF DAMAGE.** The Lessee shall advise Nabalco promptly in writ- of any damage sustained to the demised premises or any part thereof or of the defective operation of any of the appurtenances therein.
- (h) **HEAVY INSTALLATIONS.** The Lessee will not bring upon the demised premises any heavy machinery or other plant or equipment unless reasonably necessary or proper for the conduct of the Lessee's use of the demised premises as herein provided and in no event shall any such machinery plant or equipment be of such nature or size as to cause or in the opinion of the Lessors be likely to cause any structural or other damage to the floors or walls or any other parts of the demised premises. Before bringing any such equipment upon the demised premises the Lessee shall inform the Lessors of the Lessee's intention so to do and the Lessors may direct the routing instal-
30 lation and location of all such machinery plant and equipment and the Lessee shall observe and comply with all such directions.

ARTICLE IX:**MAINTENANCE AND REPAIRS OF DEMISED PREMISES**

- 40 9(a) **INSPECTION BY LESSORS.** The Lessors and their agents may at all reasonable times upon giving to the Lessee reasonable notice (except in case of emergency when no notice shall be required) enter upon the demised premises and view the state of repair thereof and may serve upon the Lessee a notice in writing of any defect for the repair of which the Lessee may be responsible hereunder requiring the Lessee within a reasonable time to repair the same and in default of the Lessee so doing it shall be lawful for the Lessors their servants and agents from time to time to enter and execute the required repairs as if it were the Lessee and for that purpose the Lessors their architects contractors workmen and agents may enter upon the whole or any part of the demised premises and there remain for the purpose of doing erecting or effecting any such thing AND any expense and costs of carrying out such work shall forthwith be payable by the Lessee to the Lessors.
- 50 (b) **REPAIR OF PREMISES DURING LEASE.** The Lessee will during the whole of the said term and otherwise so long as the Lessee may remain in

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- possession or occupation when where and so often as is necessary maintain repair and keep the exterior and interior of the demised premises in good and substantial repair working order and condition (having regard to their condition at the commencement of the Lease) and including all machinery plant and equipment light fittings and other fixtures and things thereto belonging or which at any time during the term or possession or occupation as aforesaid shall be erected therein or thereon or be part thereof.
- (c) **PAINTING.** Without affecting the generality of this Article 9 the Lessee will so often as the Lessors may reasonably require but at intervals of not less than three years during the term hereof or any renewal or extension hereof and in the last year of the term or any renewal thereof paint with materials in and to standards reasonably required by the Lessors all parts of the interior and exterior of the demised premises which have or ought to have been painted. 10
- (d) **RUBBISH.** The Lessee shall cause the demised premises and the land to be kept clean and free from dirt and rubbish and particularly shall store and keep all waste trash and garbage in proper receptacles and arrange for the regular removal thereof from the demised premises to such proper receptacles therefor as are provided by the Lessors.
- (e) **MAINTENANCE.** The Lessee shall keep and maintain clean and in good order repair and condition all fittings plant furnishings and equipment of the Lessee. 20
- (f) **REPLACEMENT OF FITTINGS AND EQUIPMENT.** The Lessee shall promptly and at its own expense repair or replace all broken plate glass in the demised premises and from time to time immediately repair or replace all broken glass with glass of the same or similar colour and quality and all damaged or broken heating lighting electrical equipment and plumbing installed on the demised premises PROVIDED THAT no repairs to heating lighting electrical equipment and plumbing shall be carried out by the Lessee until the Lessee has obtained approval therefor from the relevant statutory authority or in default of the presence of such authority at Gove Peninsula aforesaid from Nabalco or its duly authorised representative at Gove Peninsula. 30
- (g) **COMPLIANCE WITH ORDINANCES.** The Lessee will from time to time forthwith comply with all statutes ordinances proclamations orders or regulations present or future affecting or relating to the use of the demised premises and the land and with all requirements which may be made or notices or orders which may be given by any governmental semi-governmental city municipal health licensing civic industrial or any other authority having jurisdiction or authority over or in respect of the demised premises or the land or the user thereof and will keep the Lessors indemnified in respect of all such matters in this paragraph referred to. In the event of the Lessee receiving any such notice or order the Lessee shall forthwith inform Nabalco of the receipt and particulars thereof. If any work is required to be carried out to the demised premises by reason of any such notice or order the Lessors if they so require shall carry out such work and the Lessee shall forthwith pay to the Lessors all costs and expenses associated therewith PROVIDED ALWAYS that in exercising such rights the Lessors shall not interfere with the Lessee in its use and occupation of the demised premises or the land more than is reasonably necessary. 40
- (h) **LESSEE TO GIVE NOTICES.** The Lessee will give to the Lessors prompt notice in writing of any accident to or defect or want of repair in any services to or fittings in the demised premises and of any circumstances likely to be or

cause any danger risk or hazard to the demised premises or to the premises or any person therein.

- 10 (i) **DISPOSAL OF WASTE MATTER.** The Lessee will take adequate measures to control the disposal of solid and liquid waste matter on and from the leased land to ensure that no avoidable unsightliness, bad odour or hazard is caused by such waste matter and that it is not deposited and does not spread to land areas adjacent to the leased land.
- (j) **REMOVAL OF WASTE MATTER.** The Lessee will take steps immediately to remove or otherwise deal adequately with any solid or liquid matter goods or materials which are spread from the leased land to any land adjacent to the leased land or deposited on such adjacent land by the Lessee.
- (k) **CONTROL OF POLLUTION OF ATMOSPHERE.** The Lessee will take adequate measures to avoid as far as practicable pollution of the atmosphere which may cause a health hazard discomfort or annoyance to the occupants of the leased land or the surrounding areas.

ARTICLE X:

ALTERATIONS

- 20 10(a) **ALTERATIONS.** The Lessee will not without the previous consent in writing of the Lessors make any alterations or additions in or to the demised premises or any part thereof but if such consent is granted shall observe and comply with all reasonable requirements of the Lessors and public authorities.
- (b) **INSTALLATION OF EQUIPMENT.** Without affecting the generality of Article 10(a) hereof, the Lessee particularly will not without such consent install any water gas or electrical fixtures equipment or appliances or any apparatus for illuminating air-conditioning heating cooling or ventilating the demised premises nor mark paint or drill or in any way deface any walls ceilings partitions floors wood or other part of such premises.

ARTICLE XI:

LESSORS' LIABILITIES AND INDEMNITIES

- 30 11(a) **ASSUMPTION OF RISK BY LESSEE.** The Lessee agrees to occupy and use the demised premises at the risk of the Lessee and the Lessors shall not in any circumstances be liable to the Lessee for any damage to the fixtures fittings equipment or other goods whatsoever of the Lessee contained in or about the demised premises occasioned by water heat fire electricity vermin explosion bursting pipes or by the entry of water from any source whatsoever or by the defective operation of the air-conditioning plant or of any fire equipment nor for any loss of profits resulting therefrom and notwithstanding that the same may occur by reason of any defect in the construction of the demised premises or any part thereof or of any of the appurtenances therein or by reason of any such damage arising from any act or omission by any contractor of the Lessors or by any member of the public.
- 40 (b) **INTERRUPTION OF SERVICES.** Notwithstanding any implications or rule of law to the contrary the lessors shall not in any circumstances be liable to the Lessee for any loss or damage suffered by the Lessee for any malfunction failure to function or interruption of or to the water or electricity or sewerage services the air-conditioning plant fire equipment or any of the appurtenances contained in the demised premises or for the blockage of any sewers waste drains gutters downpipes or stormwater drains from any cause whatsoever.
- (c) **CONDITION PRECEDENT.** Notwithstanding anything herein contained or

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any implication or rule of law to the contrary the Lessors shall not be liable for any damage or loss the Lessee may suffer by reason of the neglect or omission of the Lessors to do any act or thing to or in respect of the demised premises and which (as between the Lessors and the Lessee) the Lessors might be legally liable to do unless the Lessee shall have given to the Lessors notice in writing of such act or omission and the Lessors have without reasonable cause failed within a reasonable time thereafter to take proper steps to rectify such act or omission.

- (d) **INDEMNITIES.** The Lessee shall indemnify and does hereby indemnify the Lessors from and against all actions claims demands losses damages costs and expenses which the Lessors may sustain or incur or for which the Lessors may become liable whether during or after the term hereof and any renewal thereof in respect of or arising from:
- (i) *Breach of Obligations.* Loss damage or injury from any cause whatsoever to property or persons within or without the demised premises occasioned or contributed to by the neglect or default of the Lessee or any servant agent or other person claiming through or under the Lessee to observe or perform any of the covenants conditions regulations and restrictions on the part of the Lessee hereunder whether positive or negative express or implied **PROVIDED THAT** this sub-clause shall not apply to any neglect or default of any servant or agent of the Lessee or any person claiming through or under the Lessee not arising out of or in the course of their employment as such servant or agent. 20
 - (ii) *Misuse.* The negligent use misuse waste or abuse by the Lessee or any servant agent or any other person claiming through or under the Lessee of water or electricity or other services and facilities to the demised premises.
 - (iii) *Escape of Harmful Agent.* The overflow leakage or escape of water (including rainwater) fire gas electricity or any other harmful agent whatsoever in or from the demised premises caused or contributed to by any act or omission on the part of the Lessee its servants agents or other persons as aforesaid. 30
 - (iv) *Failure to Notify.* The failure of the Lessee to notify the Lessors of any defect in any of the air-conditioning plant fire equipment or appurtenances in the demised premises.
 - (v) *Use of Demised Premises.* Loss damage or injury from any cause whatsoever to property or persons caused or contributed to by the use of the demised premises by the Lessee or any servant or other person aforesaid.
 - (vi) *Damage to Adjoining Property.* The Lessors making good any breakage defect or damage to adjoining property or to any adjoining premises or any facilities or appurtenance thereof occasioned by want of care misuse or abuse on the part of the Lessee or the Lessee's servants agents contractors or sub-contractors sub-tenants or other persons claiming through or under the Lessee while such classes of persons are acting in the course of their employment with the Lessee or in the conduct of the business carried on upon the said land or otherwise occasioned by any breach or default of the Lessee hereunder or under any rules or regulations of the Lessors made pursuant hereto. 40

ARTICLE XII:

HEADLEASE AND OTHER INTERESTS

12(a) **POWER OF ENTRY.** The Lessee will at all times during the term hereof

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and any renewal permit any person having any estate or interest in the demised premises superior to or concurrent with the Lessors' interest to exercise the Lessors' powers to enter and view the land and the demised premises and to carry out repairs renovations maintenance and other work thereon and otherwise to exercise or perform their lawful rights or obligations in regard thereto.

10 (b) **BENEFIT OF LESSEE'S COVENANTS.** In the event of a person other than the Lessors becoming entitled to receive the rents hereby reserved either by operation of law or otherwise the Lessee agrees that such person shall have the benefit of all covenants and agreements on the part of the Lessee hereunder and the Lessee at the cost of the Lessors will enter into such covenant with such other person in that regard as the Lessors may reasonably require.

(c) **LESSORS TO OBSERVE OBLIGATIONS.** The Lessors will duly and punctually observe the perform all obligations on their part to any person having any such estate or interest in the demised premises as aforesaid.

20 (d) **ACCESS TO LAND.** Where the demised premises or the land are those to which the public usually has access, the Lessee will grant to all Aboriginal residents of the Yirrkala Mission and to other persons specified in sub-section 3 of section 17 of the Social Welfare Ordinance 1964-1967 of the Northern Territory the right to enter, leave and move across the leased land at will provided that entry to the land or the demised premises where the same are not those to which the public usually has access shall be only with the express approval of the Lessee which approval shall not unreasonably be withheld. In granting or refusing such approval the Lessee shall be entitled to have regard inter alia to security or safety factors.

ARTICLE XIII:

ASSIGNMENTS SUB-LEASES

30 13(a) **RESTRICTIONS ON ASSIGNMENT.** The Lessee shall not assign this lease without the previous consent in writing of the Lessors first had and obtained provided that such consent shall not be unreasonably withheld in any case where the following conditions shall be satisfied:

- 40 (i) The proposed assignee shall be in the opinion of the Lessors a respectable solvent and financially responsible person, the onus of proving which things to the satisfaction of the Lessors shall be upon the Lessee;
- (ii) The Lessee shall, if required so to do by the Lessors, pay any legal fees incurred by the Lessors and other costs and expenses of the Lessors in connection with the investigation of the proposed assignee and otherwise relating to the proposed assignment;
- (iii) The proposed assignee shall agree to use the demised premises for the purpose approved by the Lessors such approval to be given by the Lessors at their sole and absolute discretion;
- (iv) The proposed assignee shall by deed covenant with the Lessors in the form required by the Lessors that he will use the demised premises for the purposes approved by the Lessors as aforesaid and that he will not use the same for any other purpose and that he will duly perform and keep the covenants and agreements on the Lessee's part herein contained and pay to the Lessors their costs and disbursements of and incidental to the giving of their consent and the consent of the Administrator.

50 (v) Approval of the Administrator of the Northern Territory must be

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obtained by the Lessee prior to the giving of consent by the Lessors hereunder.

- (b) **RESTRICTION ON SUB-LETTING.** The Lessee shall not sub-let or in any manner whatsoever part with possession of the demised premises or any part thereof (other than to a wholly owned subsidiary of the Lessee with the approval of the Administrator) without the consent in writing of the Lessors first had and obtained provided that such consent shall not be arbitrarily or unreasonably refused or withheld in any case where the proposed sub-lease shall satisfy the conditions set out in Clause 13(a) of this Article.
- (c) **PRIVITY OF CONTRACT.** The consent of the Lessors to any such assignment or underlease shall not release the Lessee from any of its obligations hereunder arising from privity of contract. 10

ARTICLE XIV:

LESSOR'S TITLE

14. **QUIET ENJOYMENT.** The Lessors warrant that the Lessee paying the rent hereby reserved and observing and performing all the several covenants conditions and stipulations on the part of the Lessee herein contained shall and may peaceably and quietly hold and enjoy the demised premises for the term hereby granted without any interruption or disturbance from or by the Lessors or any person or persons lawfully claiming by through or under the Lessors. 20

ARTICLE XV:

DEFAULT OF LESSEE

- 15(a) **LESSORS MAY RECTIFY.** If the Lessee shall fail to pay any money or charges as required hereunder to any person other than the Lessors or if the Lessee shall fail to perform any affirmative covenant on the part of the Lessee hereunder the Lessors may at their option as the agent of the Lessee make any such payment or do all such acts and things and incur such expenses as may be necessary to perform such covenants and the full amount of any payments made or of the costs and expense entailed shall constitute a liquidated debt due and owing by the Lessee to the Lessors and shall be payable by the Lessee to the Lessors on demand by the Lessors. 30
- (b) **INTEREST ON OVERDUE PAYMENTS.** If the Lessee shall fail to pay to the Lessors any moneys other than rent which are payable by the Lessee to the Lessors in terms hereof within seven days from the due date for the payment thereof the Lessee shall pay to the Lessors interest thereon or on so much thereof as shall remain unpaid from the due date or dates until the same shall be actually paid and also upon any judgment which the Lessors may obtain against the Lessee from the date of any such judgment until the same shall be satisfied at the rate of one per centum thereof for each month or part of a month during which any such payment shall be overdue or any such judgment unsatisfied. 40
- (c) **SEPARATE SUITS.** The Lessors may without prejudice to any other remedy sue the Lessee for any moneys which may from time to time become due and owing by the Lessee to the Lessors hereunder and in particular the Lessors may sue for any instalment of rent or operating costs as and when the same become due and neither commencing a suit nor the entering of judgment therein nor the taking of possession by the Lessors of the demised premises prior to the expiration hereof shall bar the lessors from bringing a separate or subsequent suit or suits for the balance of any rental operating costs or other moneys due to the Lessors hereunder.

(d) **DEFINITION OF DEFAULT.** In any of the following circumstances, namely:

(i) *Rent in arrears.* If the rent hereby reserved or any part thereof shall be unpaid and in arrears for the space of fourteen days after the same shall have become due whether any formal or other demand therefor shall have been made or not; or

(ii) *Failure to pay moneys.* If any moneys payable by the Lessee to the Lessors hereunder on demand shall not have been paid within fourteen days of the making of demand therefor or if any other moneys payable by the Lessee to the Lessors shall not have been paid by the due date therefor; or

(iii) *Failure to effect repairs.* If the Lessee shall not have effected the repairs required by any notice given in terms of Article IX of this Lease within the time therein prescribed; or

(iv) *Breach of covenants.* If the Lessee shall fail to observe perform or fulfil any of the other terms covenants conditions and restrictions herein contained on the part of the Lessee (whether positive or negative) or shall fail to observe any rules made hereunder for a period of one month from the date of notice from the Lessors to the Lessee clearly specifying the nature of the breach, or

(v) *Liquidation of Company.* If the Lessee being a Company an order is made or a resolution is effectively passed for the winding up of the Lessee (except for the purpose of reconstruction or amalgamation with the written consent of the Lessors which consent shall not be unreasonably withheld) or if a receiver or official manager be appointed or if the Lessee goes into liquidation or makes an assignment for the benefit of or enters into an arrangement or composition with its creditors or stops payment or is unable to pay its debts within the meaning of the Companies Act, 1961, or if execution is levied against the Lessee and not discharged within thirty days, or

(vi) *Execution against Lease.* If the interest of the Lessee under this Lease is attached or taken in execution under any legal process, then in any one or more of such events the Lessee shall be deemed to have made default.

(e) **NON-WAIVER.** The waiver by the Lessors of any default of the Lessee or any breach by the Lessee of any of the terms covenants conditions and restrictions hereof shall not in any circumstances be construed or operate as a licence to the Lessee to repeat or continue any such default or breach nor shall any such waiver be construed to operate as a waiver of any subsequent default or breach whether of the like nature or not.

(f) **FORFEITURE OF LEASE.** If the Lessee shall have made default as aforesaid the Lessors may at their option:

(i) *Determination by re-entry.* Without any prior demand or notice re-enter into and take possession of the demised premises or any part thereof in the name of the whole (by force if necessary) and eject the Lessee and all other persons therefrom and repossess and enjoy the same as of its first and former estate therein and thereupon this Lease shall be absolutely determined; or

(ii) *Determination by notice.* By notice in writing to the Lessee determine this Lease and from the date of giving such notice this Lease shall be absolutely determined; or

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- (iii) *Conversion to monthly tenancy.* By notice in writing to the Lessee elect to convert the said term into a tenancy from month to month in which event the Lease shall be determined as from the giving of such notice and thereafter the Lessee shall hold the demised premises from the Lessors as tenant from month to month at a monthly rental equal to one-twelfth of the annual rental payable hereunder at the date of giving such notice (such rental being payable monthly in advance) but otherwise on the terms and conditions of this Lease so far as they can be applied to a monthly tenancy.
- (g) **REMOVAL OF LESSEE'S FIXTURES.** The Lessors may upon re-entry as aforesaid remove from the demised premises any furniture furnishings equipment and other fittings trade or tenants fixtures of the Lessee and store the same in a public warehouse or elsewhere at the cost of and for the account of the Lessee without being deemed guilty of conversion or becoming liable for any loss or damage occasioned thereby. 10
- (h) **TENDER AFTER DETERMINATION.** Any moneys tendered by the Lessee after the determination of this Lease in either of the modes aforesaid may be and (in the absence of any express election of the Lessors) shall be accepted and applied firstly on account of any rental and other moneys accrued due hereunder but unpaid at the date of determination and secondly on account of the Lessors' costs of re-entry as aforesaid. 20
- (i) **HOLDING OVER.** If the Lessee shall with the consent of the Lessors remain in occupation of the demised premises after the expiration or sooner determination of the term hereof the Lessee shall (in the absence of any express agreement to the contrary) be deemed to hold over the demised premises as tenant from month to month at a monthly rental equal to one-twelfth of the annual rental payable hereunder at the date of expiration of the said term (such rental being payable monthly in advance) but otherwise on the terms and conditions of this Lease so far as they can be applied to a monthly tenancy. 30

ARTICLE XVI:

DETERMINATION OF TERM

- 16(a) **LESSEE TO YIELD UP.** The Lessee shall at the expiration or sooner determination of this Lease peaceably surrender and yield up unto the Lessors the demised premises and every part thereof in good and substantial repair and condition in all respects.
- (b) **LESSEE'S RIGHT TO REMOVE FITTINGS AND FIXTURES.** Provided the Lessee shall have duly paid the rent hereby reserved and duly observed and performed and fulfilled all the covenants terms and conditions on its part to be observed performed and fulfilled hereunder the Lessee may during the last twenty-eight days of the term hereof remove from the demised premises all furniture furnishings equipment and other trade and tenants fittings and fixtures of the Lessee provided that such removal can be effected without causing any substantial damage to the demised premises and provided further that the Lessee shall make good any damage whatsoever caused to the demised premises by such removal. 40

ARTICLE XVII:

POWER OF ATTORNEY

- 17. **LESSORS' ATTORNEY OF LESSEE.** The Lessee doth hereby irrevocably

nominate constitute and appoint the Lessors and each of their attorneys and their respective substitutes and the assigns of the Lessors to be jointly and each of them severally the true and lawful attorney and attorneys of the Lessee (including any successor) to execute on behalf of and in the name of and as the act and deed of the Lessee a surrender of this Lease and to do all such things and sign all such documents as may be necessary to effect registration thereof or to do such other things or acts which under the Lessees covenants ought to be done by the Lessee and to record this power of attorney and procure to be done any act matter or thing which may be requisite or proper for giving full effect thereto according to the law or usage for the time being in force in the Northern Territory PROVIDED ALWAYS that such power shall not be exercised unless and until this Lease shall have been determined by the Lessors in accordance with the powers of the Lessors in that behalf herein contained or implied sufficient proof whereof shall be the Statutory Declaration of any officer of the Lessors or of Nabalco AND all and whatsoever such attorney or attorneys shall lawfully do or purport to do or cause to be done by virtue of the appointment by this clause provided is by this clause and deed ratified and confirmed.

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ARTICLE XVIII:

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REGULATIONS

- 18(a) RULES AND REGULATIONS. The Lessee will at all times cause the rules and regulations set out in the Second Schedule hereto, to be prominently and clearly displayed in the demised premises. The Lessee will at all times observe and comply with, and shall ensure that its employees shall observe and comply with the said rules and regulations.
- (b) AMENDMENT OF RULES AND REGULATIONS. The Lessors shall have the right at any time and from time to time to delete, vary, amend or add to the said rules and regulations provided that the Lessors shall not act unreasonably in this regard and shall only require such rules and regulations as are necessary for the good order, safety and welfare of any part of the Gove area or its inhabitants.

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ARTICLE XIX:

GENERAL PROVISIONS

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- 19(a) RENEWAL. If the Lessors exercise their right to renew the said Special Lease No. 214 or are granted any lease or leases in extension thereof the Lessors shall if so requested by the Lessee and at the expense of the Lessee effect such extensions of this Lease and will give the Lessee uninterrupted enjoyment of the demised premises on the same conditions as are provided by this Lease until the 31st December, 2050 or until one day before the Lessors cease to hold a Lease over the land upon which the demised premises are constructed whichever is the earlier.
- (b) NO RELATIONSHIP OF PARTNERSHIP ETC. Nothing contained herein shall be deemed or construed by the parties hereto nor by any third party as creating the relationship of partnership or of principal and agent or of joint venture between the parties hereto it being understood and agreed that neither the method of computation of rent nor any other provisions contained herein nor any acts of the parties hereto shall be deemed to create any relationship between the parties hereto other than the relationship of Lessor and Lessee upon the terms and conditions only as provided in this Lease.

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- (c) **NO COVENANTS OR TERMS OTHER THAN COMPRISED IN LEASE.** The covenants provisions terms and agreements contained herein cover and comprise the whole of the agreement between the parties relating to the lease of the demised premises and the parties expressly agree and declare that no further or other covenants agreement provisions or terms whether in respect of the demised premises or otherwise shall be deemed to be implied herein whether by statute or otherwise or to arise between the parties by way of collateral or other agreement by reason of any promise representation warranty or undertaking given or made by either party to the other on or prior to the execution hereof and the existence of any such implication of collateral or other agreement is hereby negated. 10
- (d) **COMPENSATION TO LESSEE.** If this Lease is terminated prior to the expiration of the term hereby reserved by reason of the termination of the said Special Purposes Lease No. 214 the Lessors shall—
- (i) Pay to the Lessee the sum of \$8,750.00 paid by the Lessee to the Lessors as premium for the grant of this Lease as aforesaid less such proportion of that money as the number of years (counting any unexpired part of the year as a full year) of the Lessee's occupancy bears to forty-two years (42).
- (ii) If called upon so to do by the Lessee the Lessors shall on the Lessee's behalf take such action against the Lessors under the said Special Purposes Lease No. 214 for payment of compensation for the loss of use by the Lessee of the demised premises as may be available PROVIDED THAT the Lessee shall pay to the Lessors all of the costs of such action and FURTHER PROVIDED THAT nothing contained or implied in this clause shall impose any liability on the Lessors to pay such compensation to the Lessee other than such moneys if any as are received by the Lessors as a result of action taken as aforesaid. 20
- (e) **NOTICES.** Without prejudice to any other means of giving notice any notice required to be served hereunder shall be sufficiently served on the Lessee if served personally or forwarded to the Lessee by prepaid post to its registered office in the state of South Australia. 30
- (f) **NOTICES BY NABALCO.** The Lessee agrees that any communications or notice required or permitted to be given by the Lessors to the Lessee which is given by Nabalco shall be deemed to have been given by the Lessors and that the Lessee will in relation thereto act as if the communication or notice had been given by the Lessors.
- (g) **NOTICES AND PAYMENTS TO NABALCO.** The Lessors agree that any communication notice or payment required to be given or made under this Lease by the Lessee to the Lessors shall until otherwise directed in writing by the Lessors if given or made to Nabalco at the address stated in sub-clause 1(i) hereof be deemed to have been given or made to the Lessors. 40
- (h) **NO WARRANTIES AS TO SUITABILITY OF DEMISED PREMISES** for INTENDED USE. Any warranties given or implied herein or given or implied by the Lessors or by persons on behalf of the Lessors as to the suitability of the premises for operation as a service station or as to possible present or future profitability thereof or as to the class and number of people expected as present or future customers of the service station are hereby expressly negated.
- (i) **NO EXCLUSIVE RIGHTS.** Nothing herein contained or implied shall give to the Lessee the right to operate a service station exclusively in the area of 50

the Gove Peninsula or elsewhere or to sell those products normally sold from a service station exclusively in the said area.

IN WITNESS WHEREOF the parties hereto have hereunto affixed their seals the day and year first hereinbefore written.

**THE FIRST SCHEDULE
PAYMENT OF RENT, OUTGOINGS ETC.**

1. The annual rental shall be one dollar \$1.00 per annum.
2. The Lessee shall pay to the Lessors within four weeks of receiving notice in writing from the Lessors of the same becoming due the yearly operating costs of the demised premises.
- 10 3. For purposes of this Agreement the term "operating costs" means the total cost of all outgoings and expenses of the Lessors (other than the rent paid by the Lessors under any head lease) now or hereafter properly and reasonably assessed charged or chargeable paid or payable or otherwise incurred upon or in respect of the demised premises and the land or upon the Lessors in relation thereto or in the conduct management and maintenance of the demised premises and the land and to the use and occupation of the same as a motor vehicle service station together with but without limiting the generality of the foregoing.
 - 20 (i) All rates charges assessments duties impositions and fees of any public municipal or government body authority or department.
 - (ii) Until such time as the land and the demised premises become subject to the rates and other charges of a public municipal or Government body authority or department all charges of a municipal nature including charges for road making or repair street cleaning lighting drainage fire fighting town amenities or other town services charged or levied by the Lessors or Nabalco or the Nhulunbuy Corporation Limited for the time being notwithstanding that the same may not be for the direct benefit or purpose of the demised premises.
 - 30 (iii) All charges for water gas oil electricity light power fuel telephone sewerage garbage collection pest control air conditioning and other services or requirements furnished or supplied to the demised premises for the general benefit or purpose of the demised premises.
 - (iv) All costs including running costs repairs and maintenance of fire fighting equipment including sprinklers.
4. The operating costs of the demised premises shall be computed for every period of one year or less as the case may be expiring on the thirty-first day of December in each year during the term and in respect of all periods of less than one year all items of an annual or other periodic nature comprising such operating expenses shall be apportioned in respect of time as necessary.
- 40 5. As soon as practicable after the thirty-first day of December in each year the Lessors will furnish to the Lessee a statement giving reasonable details of the operating costs of the demised premises for the preceding period and indicating the amount of the Lessee's proportion as abovementioned. Except in the case of manifest error notified by either party to the other within fourteen days of the service of such statement on the Lessee such statement shall be prima facie evidence as to the matters stated therein.
6. If during the continuance of this Lease, the rent payable by the Lessors under any Head Lease is increased the annual rent payable hereunder shall be increased

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as from the same date as the Head Lease Rent is increased pro-rata to the amount of such increase in the proportion which the land bears to the whole of the land comprised in the Head Lease.

**THE SECOND SCHEDULE
RULES AND REGULATIONS**

- 1. The land and the demised premises may only be used for the sale of automotive fuels, lubricants, accessories and parts, and the carrying out of routine servicing of motor vehicles such as oiling, greasing and cleaning, and of running repairs. In particular the Lessee will not carry on or permit to be carried on upon the said land or in the demised premises panel beating or major repairs.
- 2. The Lessee shall not cause or permit to be caused congestion on roads adjacent to the demised premises.

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The abovenamed BP AUSTRALIA LIMITED hereby accepts this sub-lease of the above described premises to be held by it as sub-lease subject to the covenants restrictions and reservations above set forth.

DATED this 20th day of October, 1972.

The Common Seal of B.P. AUSTRALIA LIMITED was hereunto affixed by authority of the Board in the presence of:

.....	
Secretary	Director	20
The Common Seal of SWISS ALUMINIUM AUSTRALIA PTY. LIMITED was hereunto affixed by authority of the Directors in the presence of:		

.....	
Secretary	Director	30
The Common Seal of GOVE ALUMINA LIMITED was hereunto affixed pursuant to a resolution of the Board of Directors and in the presence of:		

.....	
Secretary	Director	30
(Signatures not reproduced)		

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Exhibit 54

**Lease Agreement-Harbour Area: Plaintiff and
Defendant**

THIS AGREEMENT made the 1st day of November One thousand nine hundred and seventy-four BETWEEN NABALCO PTY. LIMITED a company incorporated in the State of New South Wales and having its registered office at 1 Alfred Street Sydney in the said State (hereinafter called "Nabalco") of the one part AND BP AUSTRALIA LIMITED a company duly incorporated in the State of Victoria and

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having its registered office at 1 Albert Road Melbourne in the State of Victoria (hereinafter called "BP") of the other part

WHEREAS

A. SWISS ALUMINIUM AUSTRALIA LIMITED and GOVE ALUMINA LIMITED (companies incorporated in the State of New South Wales and together hereinafter called "the Joint Venturers") are engaged at Gove Peninsula Arnhem Land in the Northern Territory of the Commonwealth of Australia in the development and progressive mining of the Gove bauxite deposits

10 B. Pursuant to a Management Agreement bearing date the 22nd day of January, 1969 between the Joint Venturers and Nabalco the Joint Venturers appointed Nabalco to manage supervise control and conduct on behalf of the Joint Venturers all operations incidental to the development of the said deposits

C. Pursuant to the Agreement set out in the Schedule to the Mining (Gove Peninsula Nabalco Agreement) Ordinance 1968 the Commonwealth of Australia granted to Nabalco in accordance with the provisions of the Mining Ordinance 1939-1967 a Special Mineral Lease

20 D. Pursuant to an agreement bearing date the 30th day of May 1969 Nabalco assigned to the Joint Venturers all benefits and advantages acquired by it pursuant to the said Agreement dated the 22nd day of February 1968 and without limiting the generality thereof Nabalco's rights to or as the holder of any lease, licence or other title granted pursuant to the said Agreement

E. In pursuance of agreements reached between the parties hereto BP has erected certain installations on the land

F. Nabalco has agreed to permit BP as Licensee to occupy the land and to operate the installations erected thereon upon and subject to the several terms, covenants and conditions of this licence

G. Nabalco as duly appointed agent and manager for the Joint Venturers is in possession of the land and entitled to grant the Licence hereinafter contained

NOW THIS AGREEMENT WITNESSETH—

30 SECTION I:

DEFINITIONS

1.1 *The land* means the land tinted pink on the plan annexed hereto and marked "A" and shall include the area tinted blue and described as "Fuel Line Easement".

1.2 *The installations* means the tanks, fuel and water pipelines and other matters and things shown on or referred to in the Plan annexed hereto and marked "B" and shall include the 8 inch pipe and the 10 inch hydrant line indicated thereon and any other tank, pipeline or other thing from time to time brought onto the land by BP.

40 1.3 *The Agency Agreement* means the agreement entered into between Nabalco and BP on the 1st day of November 1974 and entitled "Air BP Agency Agreement".

SECTION II:

LICENCE

2.1 Nabalco hereby grants and BP hereby accepts a licence to occupy the land until this Agreement shall have been determined in accordance with the provisions hereof and to so occupy for the specific and limited purpose of the operation and maintenance of the installations.

2.2 BP acknowledges and declares that it shall not use the installations other than for the receipt storage and conveyance of aviation fuel and lubricants intended

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for use in the refuelling of and the lubricating of aircraft at Gove Airport or for purposes associated therewith.

- 2.3 This Agreement is personal to BP and shall not be assigned nor shall BP by any means put any other person in occupation or possession of the land or the installations except with the express written consent of Nabalco.

SECTION III:

ERECTION OF INSTALLATIONS

- 3.1 BP warrants and it is a condition of this Agreement that it has erected on the land the installations in accordance with the said Plans and in accordance with the requirements, if any, of the Administration of the Northern Territory of Australia or of the Lessor under the Special Mineral Lease referred to in Recital C hereof or of any other statutory body having jurisdiction in the matter. 10

SECTION IV:

LICENCE FEE AND OTHER CHARGES

- 4.1 BP agrees to pay to Nabalco a Licence Fee of \$76.50 per month monthly in advance. In the event that this Agreement shall not have been previously determined the said Licence fee shall be reduced to \$1.00 per annum (if demanded) as and from the 31st day of May 1982. The said fee shall be paid to Nabalco at its office at Gove or such other place as Nabalco may in writing direct. 20
- 4.2 In addition to the Licence Fee BP shall pay to Nabalco on demand in respect of all electricity or water or other power supplied to the installations at the request of BP the price from time to time charged by Nabalco for the supply thereof to commercial premises in the township of Nhulunbuy, Gove. For the purposes of any necessary adjustment such charges shall be deemed to accrue evenly from day to day according to the accounting period.

SECTION V:

TERMINATION OF AGREEMENT

- 5.1 Whenever the Licence Fee or the other charges payable by BP hereunder shall be in arrear for thirty days whether legally demanded or not or whenever there shall be a breach of any of the terms covenants or conditions herein contained (or in the case of any such breach which is capable of remedy by BP if BP shall fail to remedy the same within thirty days of notice in writing from Nabalco to BP clearly specifying the nature of the breach) or if for whatever reason the Agency Agreement is terminated then in such cases or any of them Nabalco shall be entitled by notice in writing to BP (and in the case of termination of the Agency Agreement, BP shall be entitled by notice in writing to Nabalco) to terminate this Agreement and the licence granted hereunder. 30
- 5.2 On termination hereof BP shall, unless agreement shall have been reached between Nabalco and BP in writing to the contrary, forthwith proceed at its own cost to dismantle and remove from the land the installations and shall do all such things as may be necessary to restore the land to its condition prior to the commencement of the erection of the installations thereon. 40
- 5.3 In the event that, within six months of the date of termination hereof, BP shall not have discharged its obligations under this Section Nabalco shall itself be entitled to carry out the performance of such obligations and the cost of so doing shall be paid by BP to Nabalco on demand being made in writing therefor.

5.4 Termination of this Agreement in exercise of any right herein shall be without prejudice to Nabalco's rights under this Section or to the rights of either party against the other whether in respect of any antecedent breach or otherwise in respect of anything done or omitted to be done hereunder.

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SECTION VI:

DAMAGE OR DESTRUCTION OF INSTALLATIONS

- 6.1 In the event that the installations are, by whatever cause or for whatever reason, wholly or partially damaged or destroyed BP shall be entitled to terminate this Agreement by notice in writing to Nabalco.
- 10 6.2 In the event that within three months of the date of damage or destruction aforesaid BP shall not give notice in writing to Nabalco that—
- (a) It does not intend to give the notice referred to in Section 6.1 hereof, and
- (b) It intends to commence rebuilding or reinstatement of the installations Nabalco shall be entitled to terminate this Agreement by notice in writing to BP.
- 6.3 In the event that BP shall, within the said period of three months, give the notice referred to in Section 6.2 hereof it shall from the date of the notice commence to rebuild or reinstate the installations and shall with due diligence complete such rebuilding or reinstatement at its own cost.
- 20 6.4 In the event that the rebuilding or reinstatement aforesaid shall not have been completed within nine months of the date of any notice given under Section 6.2 hereof Nabalco shall be entitled to determine this Agreement by notice in writing to BP.

SECTION VII:

INDEMNITY

- BP shall indemnify and does hereby indemnify Nabalco and the Joint Venturers from and against all actions, claims, demands, losses, damages, costs and expenses which Nabalco or the Joint Venturers may sustain or incur or for which Nabalco or the Joint Venturers may become liable whether during or after the term of this Agreement in respect of or arising from—
- 30 7.1 Any injury, loss or damage incurred or sustained in or about the land or the installations by any servant workman employee invitee or visitor of BP or by any other person.
- 7.2 The overflow leakage or escape of fuel, fire or any other harmful agent whatsoever in or from the installations or the Land.
- 7.3 Loss, damage or injury from any cause whatsoever to property or persons caused or contributed to by the use of the installations or the land by BP or any servant, agent, workman, employee, invitee or visitor of BP.
- 40 7.4 Loss, damage or injury from any cause whatsoever to property or persons within or without the land or the installations occasioned or contributed to by the neglect or default of BP or any servant agent or other person claiming through or under it to observe or perform any of the covenants, conditions, regulations and restrictions on the part of BP hereunder whether positive or negative express or implied.
- 7.5 Loss, damage or injury to premises or any facilities or appurtenances thereof adjoining the land occasioned by the act, neglect or default of BP or its servants agents or other persons claiming through or under it.
- Nothing contained in or implied by this Section 7 shall operate to limit or destroy any liability which Nabalco or the joint venturers may bear to BP in respect of any

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act or omission on the part of Nabalco in carrying out its obligations under the Agency Agreement.

SECTION VIII:

COVENANTS BY BP

- 8.1 BP shall not use the installations or the land for any purpose other than the operation of the installations and the receipt and storage in the installation and distribution therefrom of aviation fuel and lubricants intended for use in the refuelling and lubrication of aircraft at Gove Airport.
- 8.2 BP will during the whole of the term of this Agreement when, where and so often as is necessary maintain, repair and keep the exterior and interior of the installations in good and substantial repair, working order and condition and including all machinery, plant and equipment, light fittings and other fixtures and things thereto belonging or which at any time during the term of this Agreement shall be erected therein or thereon or be part thereof. 10
- 8.3 BP shall keep the land in a thorough state of cleanliness and shall not allow any accumulation of useless property or rubbish thereon.
- 8.4 BP shall so often as Nabalco may reasonably require but at intervals of not less than five years during the term of this Agreement paint in BP's standard colours for bulk storage tanks and associated equipment with materials and to standards reasonably required by Nabalco all parts of the interior and exterior of the installations which have or ought to have been painted. 20
- 8.5 BP will from time to time forthwith comply with all statutes, ordinances, proclamations, orders or regulations present or future affecting or relating to the use of the installations and the land and with all requirements which may be made or notices or orders which may be given by any governmental, semi-governmental, city, municipal, health, licensing, civic, industrial or any other authority having jurisdiction or authority over or in respect of the installations or the land or the user thereof and will keep Nabalco indemnified in respect of all such matters in this paragraph referred to.
- 8.6 BP will give to Nabalco prompt notice in writing of any notice or order referred to in the last preceding sub-paragraph served upon BP and (save as provided in Section IX hereof) of any accident to or defect or want of repair in the installations or in any services to or fittings in the installations and of any circumstances likely to be or cause any danger, risk or hazard to the installations or the land or adjoining land or adjoining premises or to any person on the land or adjacent premises or adjacent areas of land. 30
- 8.7 Nabalco or its agents shall at all times during the continuance of this Agreement be entitled to enter upon the land or the installations and view the state of repair thereof and BP further covenants with Nabalco that it will permit delegates of the Administration of the Northern Territory or officials of the Government of the Commonwealth of Australia at any time to enter the land or the installations and to inspect the same reasonable notice having been given to BP of such entry and inspection. 40
- 8.8 BP shall at all times during the continuance of this Agreement take all precautions necessary against explosion or outbreak of fire on or about the land or the installations and shall ensure that aviation fuel stored in the installations shall not escape from the installations on to the land or adjoining areas.

SECTION IX:

COVENANT BY NABALCO

- 9.1 Nabalco will give to BP prompt notice in writing of any notice or order referred to in sub-paragraph 8.5 hereof which may be served upon or given to Nabalco 50

and of any circumstances which become known to Nabalco in the adjoining land or adjoining premises occupied or leased by Nabalco or the Joint Venturers likely to be or cause any danger risk or hazard to the installations or the land.

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SECTION X:

NOTICES

10.1 All notices, consents, requests or other documents authorised or required to be given by or pursuant to this Agreement shall be given in writing either personally served on a responsible officer of the party to whom it is given or mailed postage prepaid or sent by telegram, telex or cable in the case of BP to its registered office in South Australia and in the case of Nabalco to its registered office aforesaid. Notices consents or requests sent by telegram, telex or cable shall be deemed served or given on the day after they are despatched. Any notice, consent or request given hereunder may be signed on behalf of the party giving it by any duly authorised representative of that party.

SECTION XI:

11.1 This Agreement shall be governed by and construed in accordance with the Laws for the time being of the State of New South Wales.

SECTION XII:

12.1 Nabalco declares and BP acknowledges that Nabalco enters into this Agreement as manager Gove Joint Venture for and on behalf of the Joint Venturers and accordingly in any action or claim hereunder for loss or damage Nabalco shall be entitled to recover loss or damage suffered by the Joint Venturers or either of them to the same extent as would be the case if the Joint Venturers were parties hereto and plaintiffs in lieu of Nabalco.

IN WITNESS whereof the parties hereto have executed these presents on the day and in the year first hereinbefore mentioned.

THE COMMON SEAL of NABALCO
PTY. LIMITED was hereunto affixed in
the presence of:

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{ Eddy Notter,
Secretary

David Griffin,
Director

THE COMMON SEAL of BP AUS-
TRALIA LIMITED was hereunto affixed
by authority of the Board of Directors and
in the presence of:

{ J. H. Rowland,
Secretary

A. W. Gorrie,
Director

Exhibit 56**Air Agency Agreement: Defendant and Plaintiff**

Exhibit 56
Air Agency
Agreement:
Defendant and
Plaintiff.
1st November,
1974

AN AGREEMENT made the 1st day of November 1974 BETWEEN BP AUSTRALIA LIMITED of 1 Albert Road Melbourne in the State of Victoria (hereinafter called "the Company") of the one part and NABALCO PTY. LIMITED of 1 Alfred Street Sydney Cove in the State of New South Wales (hereinafter called "the Agent") of the other part WHEREBY IT IS AGREED as follows:

1. The Agent agrees to be the Agent of the Company at Gove Airfield (hereinafter called "the area") for the sale of the Company's products and goods in and about the servicing of aircraft with aviation fuel and lubricants. 10

2. In fulfilment of this Agreement in accordance with Clause 1 the Agent shall:

(a) Carry out at the times specified the several duties listed in the First Schedule hereto in the manner specified in such of the Company's Manuals as have been provided to the Agent by the Company (and marked by each of the parties hereto for the purposes of identification). The Agent shall carry out such further duties as shall from time to time be agreed between the parties in writing. In the event of such an agreement the said First Schedule and/or the said Manuals shall be deemed to be amended to the extent of such agreement.

(b) Use its best endeavours to increase the sale of the Company's aviation fuels and lubricants in the area. 20

(c) Promptly take delivery at the Gove Port wharf on behalf of the Company of all products goods equipment and other articles sent to the Agent by the Company for the purposes of this Agreement and in the case of fuel delivered in bulk convey such fuel by pipeline to the Company's Gove Port storage tank and by road tanker from the Gove Port storage tank to the Gove Airfield storage tank and in the case of packed products convey such products to the accommodation provided by the Company for such packed products.

(d) (i) Account to the Company for all returnable drums or other packages delivered to the Agent by the Company in good condition and loaned to customers by the Agent on behalf of the Company and use its best endeavours to expedite the return of such drums and packages and receive them when empty from the said customers and deliver them to rail ship or carrier (as the case may require) consigned according to the Company's instructions PROVIDED THAT should the Agent be unable to produce reasonable evidence of such delivery the Agent shall be liable for payment at the then current deposit rate as fixed by the Company for such drums containers or other packages. 30

(ii) When required by the Company to obtain from customers served by the Agent a cash deposit in respect of a drum or other container loaned to that customer obtain such deposit on or before delivery of the drum or container to the customer and in the event of the Agent failing so to do in any case the Agent shall pay the amount of such deposit or deposits to the Company upon demand. 40

(e) At least once in each week carefully examine all the Company's packed products and goods held by the Agent and in the event of any drum or smaller container showing signs of leakage transfer the contents to a

sound container or containers which when filled to proper capacity shall be securely sealed. The Agent shall ensure that all containers to which any of the Company's products have been transferred by the Agent are correctly branded as to contents. All leaking containers so emptied shall be placed aside for the Company's inspection and as soon as may be practicable after detection of a leaking container the Agent shall send advice thereof to the Company's Darwin Installation.

- 10
- (f) Carry on business as the Company's agent as aforesaid during normal trading hours current in the area and also when reasonably necessary outside such normal hours for the purpose of supplying fuel and/or lubricants to aircraft for such parties as the Company may from time to time nominate to the Agent provided always that the Agent shall not supply aviation fuel or lubricants to any other party outside normal hours unless that party shall in addition to the price of the products delivered pay to the Agent by way of reimbursement to the Company such charges as may be payable hereunder by the Company to the Agent in respect of fuel and/or lubricant supplied to that party outside normal hours.
- 20
- (g) Subject to the provisions of sub-clauses (f) and (k) of this clause supply on request by the pilot or other responsible officer in charge of the fuelling of an aircraft such quantities of aviation fuel and lubricants as may be required.
- (h) In the supply of aviation fuel or lubricants to any aircraft use only the equipment supplied for the purpose by the Company and subject to the provisions hereof strictly comply with all instructions from time to time issued by the Company in regard to the servicing of such equipment and the fuelling of and supply of lubricants to aircraft.
- 30
- (i) If the Company shall notify the Agent in writing of a proposal to amend the Agent's duties referred to in sub-clause 2(a) hereof and the Agent shall consider that it is unable or unqualified to carry out such amended duties it will forthwith so notify the Company and unless the Company shall consent to the Agent carrying on its former duties hereunder the Agent will forthwith cease to deliver hereunder fuel or lubricants on behalf of the Company in which event either party may by notice in writing to the other terminate this Agreement. The Company may likewise terminate this Agreement if the Agent or its employees shall fail to carry out the duties for the time being of the Agent under this Agreement.
- 40
- (j) Save as provided in sub-clause (f) of this clause sell the products of the Company to purchasers other than those nominated by the Company for the purposes of the said sub-clause (f) at the Posted Airfield Prices for the area notified by the Company to the Agent from time to time.
- (k) Unless otherwise authorised by the Company in writing supply products for cash only. If the Agent shall supply the Company's products other than for cash without the authority in writing of the Company the Agent shall make payment therefor if the Company shall not receive such payment within ninety days of the date of delivery of those products PROVIDED THAT the production of a valid BP Carnet (or a valid Carnet of any other Company nominated in writing by the Company to the Agent from time to time) by a purchaser shall be sufficient authority for the supply to that purchaser of the Company's products on credit.
- 50
- (l) Obtain from each purchaser supplied by the Agent with the Company's products the Company's Aviation Invoice and Release Note (and/or

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such other form as the Company may from time to time direct) signed by that purchaser. In the event of failure by the Agent so to do or in the event of any dispute concerning the quantity delivered by the Agent to a purchaser the Agent shall accept all responsibility for the payment of the whole or such part of the purchase price of the products not received by the Company within ninety days of the date of delivery of those products to the customer and shall make payment therefore to the Company on demand.

- (m) Keep proper accounts and records relating to this Agreement and allow the Company at all reasonable times to inspect and check such accounts and records and the Company's products then in the custody of the Agent and promptly supply to the Company such information relative to this Agreement as may from time to time be reasonably required. 10
- (n) Promptly render to the Company on the printed forms supplied for the purpose all returns which the Company may from time to time reasonably require (and without affecting the generality of the foregoing including returns relating to the discharge of the Company's products from tank ships and the measurement of such products into and from the Company's storage tanks herein mentioned) and be responsible for and promptly account for all monies received by the Agent on behalf of the Company and immediately on receipt of such monies remit the same to the Company or pay them into the Company's Account with a Bank nominated by the Company. 20
- (o) Refrain during the continuance of this Agreement from exhibiting advertising signs for or acting within the area as agent for the distribution or sale of any products similar in type or class to those supplied by the Company hereunder or likely to be competitive therewith.
3. The Company shall
- (a) Supply to the Agent for the purposes of this Agreement JET A-1 aviation fuel in bulk and aviation gasoline and aviation lubricants in drums or other containers at times suitable to the Company. The Company shall use its best endeavours to ensure that the Agent holds sufficient quantities of the said products for the purposes of this Agreement but the Company shall not be obliged to supply as aforesaid when prevented by circumstances beyond its reasonable control. 30
- (b) Provide and install the vehicles, storage tanks and equipment specified in the second Schedule hereto for the storage transportation and delivery of the Company's products into aircraft tanks subject to the terms and conditions set out in the Third Schedule hereto.
4. IT IS HEREBY MUTUALLY AGREED that 40
- (a) Subject to the provisions of this sub-clause the Company shall re-imburse the Agent for all direct costs charges and disbursements together with the cost of labour incurred by the Agent in carrying out its obligations under Clause 2 hereof.
- (i) For the purpose of determining the aforesaid cost of labour the Agent shall charge the Company in respect of each employee engaged in carrying out its aforesaid obligations an hourly rate in respect of each hour (and pro rata for any period less than an hour) during which the said employee is so engaged. The said hourly rate shall comprise the wages and other emoluments payable by the Agent to each such employee under the Award or 50

Industrial Agreement then applying to that employee at Gove plus an amount equal to 42% of that part of the said wages and emoluments of each employee attributable to the period during which that employee is engaged as aforesaid to cover the overhead costs incurred by the Agent in the employment of each such employee. The Agent may adjust such percentage from time to time provided that the Agent can reasonably demonstrate to the Company that variations in such overhead costs that have occurred justify such adjustment. The Company acknowledges that at the date hereof the said hourly rate is \$6.50.

- 10
- (ii) On the date of commencement of this Agreement and on each anniversary of such date the Company shall estimate the quantity of products likely to be delivered by the Agent at Gove Airport on behalf of the Company during the ensuing year (hereinafter called "the estimated throughput") and the Agent and the Company jointly shall prepare a detailed estimate of the costs payable by the Company to the Agent (exclusive of commission payable under sub-clause 4(b) hereof) of carrying out the Agent's obligations hereunder for that year having regard to the hours likely to be worked in handling the estimated throughput, the hourly rate then applying and all other likely costs charges and disbursements (which detailed costs are hereinafter called the "budget").
- 20
- (iii) If at any time during any such year it shall appear to either the Company or the Agent that the budget requires to be reassessed by reason of substantial variations in the estimated throughput or in the hourly rate or other costs charges and disbursements the Company and the Agent jointly shall prepare a revised budget for that year to take account of such variations.
- 30
- (iv) The Agent shall at all times use its best endeavours to ensure that all costs and charges incurred by the Agent in carrying out its obligations under this Agreement are no higher than are reasonably necessary.
- 40
- (v) The Agent shall submit and the Company shall pay to the Agent monthly all proper claims for reimbursement of costs and charges incurred by the Agent in carrying out its obligations under this Agreement and the Agent shall submit to the Company with each such claim a statement detailing the hours worked by its employees while engaged in fulfilling the Agent's obligations as aforesaid, and the hourly rate referred to in sub-clause (i) of this clause together with receipted invoices (or certified copies thereof) relating to services and goods provided and/or obtained by the Agent for the purpose of fulfilling such obligations.
- 50
- (b) In addition to re-imbursing the Agent in respect of the costs charges and disbursements referred to in sub-clause (a) of this clause the Company shall pay to the Agent commission at the rate of 3.0 cents for every gallon of the Company's products delivered by the Agent pursuant to this Agreement subject to the due performance and observance of the terms and conditions hereof. Such commission shall be calculated and credited to the Agent's account monthly.
- (c) The said commission shall inter alia serve to reimburse the Agent for all costs incurred by the Agent in the use of the Agent's wharf at Gove Port,

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for the receipt of the Company's products supplied both in bulk and in containers, in the use of the Agent's pipelines at Gove Port for the conveyance of such products supplied in bulk and in providing personnel for the unloading from ships of products supplied both in bulk and in containers, and such costs shall not be taken into account for the purposes of the preparation of a budget under the provisions of sub-clause 4(a) hereof.

- (d) The said rate of commission may be reviewed and amended from time to time by mutual agreement between the parties hereto.
- (e) If the Agent enters into any agreement with its creditors or goes or is put into liquidation this Agreement may at the option of the Company be forthwith terminated (without prejudice to any of the Company's or the Agents then existing rights) or if the Agent commits any breach of any other term or condition of this Agreement or commits any act which is prejudicial to the Company's interests the Company may without prejudice to any other right it may have terminate this Agreement by seven days' notice in writing to the Agent. Save as herein otherwise provided this Agreement shall continue until terminated by sixty days' notice in writing given by either party to the other. 10
- (f) The Agent shall not have any right or authority to bind the Company in any way except as expressly authorised by the Company in writing. 20

5. The Agent declares and the Company acknowledges that the Agent enters into this Agreement as Manager, Gove Joint Venture, for and on behalf of Swiss Aluminium Australia Pty. Ltd. and Gove Alumina Ltd. as joint venturers and accordingly in any action or claim hereunder for loss or damage the Agent shall be entitled to recover loss or damage suffered by the said joint venturers or either of them to the same extent as would be the case if the joint venturers were parties hereto and plaintiffs in lieu of the Agent. Likewise in any action for loss or damage which may be taken against the Agent by the Company the joint venturers will be liable as if they were parties hereto and defendants in lieu of the Agent. 30

- 6. (a) Should any dispute arise relating to the performance of this Agreement the law to be applied shall be the law of the State of New South Wales.
- (b) Except to the extent that such interpretation shall be excluded by or be repugnant to the contract, words importing the singular or plural number shall be deemed to include the plural or singular number respectively.

IN WITNESS whereof this Agreement has been signed by or on behalf of the Company and the Agent.

THE COMMON SEAL of BP AUSTRALIA LIMITED was hereunto affixed in the presence of:
THE COMMON SEAL of NABALCO PTY. LIMITED was hereunto affixed in the presence of:

A. W. Gorrie,
Director
J. H. Lowland,
Secretary
David Griffin,
Director

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Eddy Notter,
Secretary

THE FIRST SCHEDULE

GENERAL

- 1. Reference to "the Harbour Storage Facilities" in this Schedule shall mean the bulk storage tank and associated facilities and pipeline receiving aviation fuel from

Nabalco's wharf pipeline situated on land over which a restricted licence has been granted to BP by Nabalco.

2. Reference to "the Airport Facilities" shall mean the bulk storage tanks and associated facilities for storing and handling aviation fuel at the Gove Airport situated on land over which a restricted licence has been granted to BP by Nabalco.
3. The said facilities are referred to collectively in this Schedule as "the facilities".

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BP FUNCTIONS

4. BP has provided Nabalco with detailed instructions for the operation of the Harbour Storage Facilities and the Airport Facilities. These instructions are contained in a document entitled—Operating Manual for Air BP Facilities at Gove Port and Gove Airfield (hereinafter in the Schedule called "the Manual").
5. The obligations described in this Schedule under the heading "Nabalco Functions" are subject to the following obligations being observed by BP
 - (a) BP warrants that it has constructed the facilities to conform with its quality control, operating and safety requirements for the storage and handling of aviation products.
 - (b) BP shall train Nabalco's staff in the operation of the facilities according to its published manual.
 - (c) BP shall provide instructions and technical advice that may be required by Nabalco for the efficient and safe operation of the facilities.
 - (d) BP shall regularly inspect Nabalco's operation of the aviation fuel facilities as Nabalco will be acting as BP's agent and will be servicing aircraft under Certificate of Approval No. 494 issued to BP Australia Limited by the Director General of Civil Aviation.
 - (e) BP shall issue instructions to Nabalco for the maintenance of facilities and regularly supervise the work carried out.

NABALCO FUNCTIONS

6. Nabalco's duties in and about the operation of the facilities are—

Jet A-1

- (a) to arrange the discharge of Jet A-1 from tankships to the 1500 ton shore tank;
- (b) maintain control over the storage tank, associated facilities and product stored;
- (c) to arrange the transfer of Jet A-1 from the bulk storage tank to the airport in vehicles provided by BP for the purpose;
- (d) to arrange as required for the Jet A-1 transported to the airport to be delivered to the Jet A-1 airport storage facility and to aircraft;

Avgas 80—Avgas 100

- (e) to arrange for the unloading of drums of aviation gasoline from ships, their storage on the wharf if required, and their transportation to the airfield and their proper storage at the airfield;
- (f) the decanting of aviation gasoline into the BP storage and dispensing facilities;
- (g) to arrange as required the operation of the aviation gasoline facilities to fuel aircraft;

General

- (h) to arrange for routine servicing of the facilities to maintain product quality according to BP's published schedules and record that the work has been done;

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- (j) to arrange for the maintenance of the facilities according to the work schedules issued by BP.

JOB BREAKDOWN

- 7. Job Breakdowns are attached to more fully describe the functions carried out by Nabalco. These job breakdowns, of necessity, are brief and reference must be made to the Manual for fuller and more detailed operating procedures governing the use of these facilities.

JOB BREAKDOWN

A. TANKSHIP DISCHARGE

Refer Sections E8, E9 and E10 of the Manual.

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Comment: Jet A-1 will be forwarded to Gove on tankships which are scheduled to deliver other petroleum products to Nabalco, Gove. Nabalco's established procedures for discharge of tankships shall apply but supplemented by:

Item No.	Procedure	Manual Section Reference	
1.	Discharge of Jet A-1 must not commence until the BP Representative has tested the product in the ship's tanks and has authorised Nabalco to unload the product.	E.9.4.1	
2.	The discharge of Jet A-1 may only follow another white product—i.e. motor spirit or diesoleum.	E.9.4.2	20
3.	The outlet valve of the Jet A-1 tank must be closed before discharge commences.	E.10.1	
4.	Wharf line valves shall be correctly set to ensure proper discharge from ship to the Jet A-1 tank and to ensure no flow back of product from Nabalco's tanks to contaminate the Jet A-1 storage.	E.9.4.2 E.10.1	
5.	When practical divert the water from the wharf pipeline to another storage tank and take the minimum of water in the Jet A-1 tank (seek advice from BP Representative if necessary).	E.10.2	30
6.	Instruct the ship to restrict the pumping rate from the ship to about 83 tons per hour for the first hour of pumping to limit the generation of static electricity after which time the maximum rate should be implemented.	E.9.4.2	
7.	Personnel should not be allowed on top of the shore tank for the first 1½ hours of discharge—dips for the progress log of the discharge should commence at the 2 hour period.	E.9.4.2	
8.	When clearing product from the wharf line after completion of the discharge of product, instruct the ship to pump water at 83 tons per hour.	Appendix 5 F.5 and F.6	40
9.	Restrict the amount of water received into the Jet A-1 tank if this is practical (see 5, above).	E.10.2	

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Item No.	Procedure	Manual Section Reference
10.	At the completion of the discharge close and lock the Jet A-1 tank inlet valve.	E.10.3
11.	Isolate the tank inlet pipeline from Nabalco's wharf pipeline using the facility provided.	E.10.3
12.	Dewater the Jet A-1 tank as soon as it is practical to do so.	E.10.4

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JOB BREAKDOWN

B. OPERATION OF HARBOUR STORAGE FACILITY.

Refer Sections E and F of the Manual.

Item No.	Procedure	Manual Section Reference
1.	After completion of the tankship discharge an outturn statement must be completed.	Section F.3.2
2.	Arrangements must be made in conjunction with BP to pay customs duty on product received.	F.3.1
3.	Maintain records of product transfers to the airport.	F.2 E.10.9
4.	After tankship discharge is completed allow tank to settle for at least two hours and then sample the tank as directed by BP representative, pack samples as instructed by BP to conform with IATA Regulations for transportation of petroleum products by air and forward the samples to the BP laboratory nominated by BP.	E.6 E.10.3
5.	Dewater the tank daily after tankship discharge until only trace showings of water are found; thence at twice weekly intervals.	E.10.5
6.	After BP authorises Nabalco to release the product for use open tank outlet valve and checktank and all pipeline low point drains and filter drains for water.	E.10.7
7.	Maintain water check and coalescer filter check records.	E.10.8
8.	Pay particular attention to sump samples from coalescer filter and vehicle tank sumps after the first vehicle is loaded following a tankship discharge in case water has gained access to outlet pipeline.	E.10.8

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B (Cont'd)

Item No.	Procedure	Manual Section Reference
9.	Use static wires at all times when loading vehicles so that static electricity that may be generated by the flow of product is run to earth.	E.11.2
10.	Keep dip and sampling hatches on the tank closed except when in use to prevent loss of vapour and ingress of dirt/water.	E.10.10
11.	Carry out servicing and maintenance in accordance with Schedules provided by BP.	E.4 E.5.5 E.5.6

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JOB BREAKDOWN

C. LOADING OF BRIDGER/FUELLERS AT HARBOUR STORAGE.

Refer Section E of the Manual.

Item No.	Procedure	Manual Section Reference
1.	Draw samples from sumps of vehicle tanks and check by chemical means provided by BP to ensure vehicle tanks do not contain water or sediment.	E.11.1
2.	Connect static leads.	E.11.2
3.	Connect filling hoses.	
4.	Do not hang items (e.g. thermometer or similar item) in tanks during the filling period.	E.11.3
5.	Slow fill for first 50 gallons then fill as fast as facilities provide.	E.11.4
6.	Do not over-fill tanks. Safe fill levels are indicated by marks on dip sticks or by indicator plates.	E.11.5
7.	After filling, disconnect filling hoses and static lead and draw a sample of 1-2 litres from each compartment of vehicle tank and check it for: (a) free water (b) suspended water (c) solids contamination (d) discolouration.	E.11.6 E.4 & E.5
8.	If checks made in 7. are satisfactory, complete the Transfer of Stock (Form 4801) and Release Note (Form 36701) covering the load of product on transfer to the airport.	

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Item No.	Procedure	Manual Section Reference
9.	Tank inlets and outlets must also be sealed for the movement of product to the airport.	
10.	Trained staff must be employed in checking the vehicle before and after loading and for the signing for product quality checks on the Release Note.	

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JOB BREAKDOWN

D. RECEIPT AND STORAGE OF DRUMMED AND PACKED STOCKS.

Refer Sections E12 of the Manual and Sections B. G. O. of Appendix 9.

Item No.	Procedure	Manual Section Reference
1.	On receipt of product the following checks shall be made:— (a) Check the Release Note to ensure that: (i) it is correctly compiled (ii) the product name and grade noted on the form agrees with the drum and/or package markings (iii) the batch number agrees with those marked on the drums/packages. (b) Check drums/packages: (i) for evident signs of contamination during transport (ii) product identification agrees with that on Release Note (iii) seals and package markings are intact.	E.12 Appendix 9 Sections and B.G./O.
2.	If above checks are satisfactory: (a) Drums must be stored: (i) on their sides on dunnage with bungs on a horizontal plane (ii) in a manner to permit first drum of all stocks received to be the first out. The age of stock can be ascertained from the filling date marked on the container. (iii) Packages must be stored under cover in the storage area provided with enclosures uppermost and bottom row on timber grills to avoid corrosion.	

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JOB BREAKDOWN

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E. AIRPORT OPERATIONS.

Refer Appendix 9 (Abridged Aviation Manual).

Comment: Aviation fuels are relatively stable chemically and therefore all procedures are primarily aimed at achieving the following objectives:
 (a) Preventing the mixture of two grades of fuel.
 (b) Ensuring that the fuels are kept dry and clean.
 (c) Ensuring the correct grade of fuel is delivered to aircraft.
 (d) Aircraft are not damaged during the fuelling operation.

Objective (a): This is achieved by providing fully segregated storage and fuel delivery systems for each grade of fuel and the procedural checking of colour of fuels, colour coding of pipelines and containers so that men operating the system are not likely to decant fuel into incorrect storage systems. 10

Objective (b): Visual checks of samples drawn into glass jars is the normal method of achieving this objective. Millipore particulate matter samples are drawn periodically downstream of filters in Jet A-1 systems to prove the system.

Objective (c): The officer in charge of the aircraft under the terms of DCA's Air Navigation Orders is primarily responsible for ensuring that the aircraft is loaded with the correct grade of fuel. Nevertheless fuelling attendants must ensure that they obtain clear directions on the grade of fuel required and that they do in fact deliver this grade. 20

Objective (d): The main requirements of this objective are:
 1. Keep fuelling equipment at least ten feet clear of the aircraft.
 2. Use static wires to dissipate static electricity charges.
 3. Where variable pressure control equipment is used limit the controlling pressure to 50 p.s.i. maximum.
 4. Exercise care if ladders are used, if hoses need to be taken onto the wing of the aircraft.
 5. Avoid spillage of fuel.
 6. Observe fire precautions. 30

To achieve the above objectives it is essential to use only staff who have been trained to observe and carry out laid down procedures.

The main functions of airport operations are listed below together with relevant sections of the Abridged Aviation Manual.

Item No.	Procedure	Appendix (Abridged Aviation Manual)	
1.	Decanting bridgers/fuellers to airport Jet A-1 storage tank.	Section B	40
2.	Decanting aviation gasolines from drums to airport storage of fuelling unit.	Sections B G H	

E (Cont'd)

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Item No.	Procedure	Appendix (Abridged Aviation Manual)
10	3. Care of fuelling facilities. (a) Bulk storages. (b) Depot facilities—pumps, pipes, fillers etc. (c) Fuelling vehicles and trailers. (d) Hydrant systems.	Section C Section D Section E
	4. Fuelling of aircraft.	Section I J K
	5. Servicing and maintenance of equipment.	Section L
	6. Safety Procedures.	Section H
	7. Documentation requirements.	Section P
	8. Handling of lubricants.	Section O
	9. Accident Action.	Section N

THE SECOND SCHEDULE

- 20 1. BP Bulk Jet A-1 Terminal Facility
- (a) Bulk Tank GVA1—1,500 ton capacity with associated valves and fittings
 - (b) Filter—Fram, Model VFCS1059 S/N 47217/B
 - (c) Relaxation Chamber—Weldrite Model PF100
 - (d) Meter—Wayne Smith—Model S50 S/N 128476 with Veeder Root Counter
 - (e) Vehicle Loading Arm—3"
 - (f) Pump—Thompson 3"-4" BGL S/N 72SA1061 with 7.5 HP Crompton Parkinson electric motor and starter
 - (g) Associated pipelines, valves and fittings
 - (h) Fire extinguishers—2 × 20 lb. dry chemical
- 30 2. BP Airport Depot
- (a) Bulk Tank GVA2—300 ton capacity with associated valves and fittings
 - (b) Filter—Fram, Model VFCS1059 S/N 47217/A
 - (c) Filter—Relumit, Model LB301CR with air eliminator
 - (d) Relaxation Chamber—Rheem Australia
 - (e) Vehicle Loading Gantry
 - (f) Pump—Thompson 3"-4" BGL S/N 72SA0162 with 7.5 HP Crompton Parkinson electric motor and starter
 - (g) Electric Switchboard with 45 amp. main switch fuse ways and isolating switches in weatherproof metal cabinet
 - (h) Associated pipelines, valves and fittings
 - (i) Floodlight—Morlite—Type FP1160
 - (j) Office—prefabricated construction, 16' × 10' including toilet, shower, handbasin, air conditioning unit, water cooler, desk, chair and single bed
- 40

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- (k) Equipment shed—steel framed, galvanised iron, 18' × 20' with concrete floor, full width lift-up door
- (l) Bulk tank, semi-buried, 7,000 gallon capacity with associated valves and fittings and dispensing cabinet
- (m) Pump—2" Epex complete with 5 HP flameproof electric motor
- 3. 1 × 300 gallon meter proving tank
- 4. Fire Fighting Equipment
 - (a) 3 × 20 lb. dry chemical fire extinguishers
 - (b) 1 × 25 lb. dry chemical fire extinguishers
 - (c) 3 × 50 ft 2½" fire hose with Q/A adaptors 10
 - (d) 3 × ¼" fire hose nozzle
 - (e) 3 × 2½" hydrant points with Q/A adaptors
 - (f) 3 fire hose cabinets
- 5. BP Fuelling/Bridging Vehicles
 - (a) One Bedford "Ord" Registered No. 83092 AF2868 together with discharge hose
 - (b) One Bedford "Ord" Registered No. 83093 AF2835 together with discharge hose
- 6. BP Fuelling Dispensers 20
 - (a) One "Swan" Dispenser AT2538 complete with hoses, meter and filter
- 7. BP Fuelling Trailers
 - (a) One "Hunter" Mk I AT2246 complete with hoses, meter and filter
 - (b) One "Hunter" Mk II AT2521 complete with hoses, meter and filter
- 8. Testing Equipment (held at Airport)
 - (a) Sampling cage and chain
 - (b) Dip tape
- 9. Testing Equipment (held at Nabalco laboratory) 30
 - (a) Distillation apparatus
 - (b) Abel Flash-Point apparatus
 - (c) Hydrometer 0.75-0.80 and jars
 - (d) Water re-action cylinder
 - (e) Millipore monitoring equipment
 - (f) Dip tape
 - (g) Sample bottles and labels
 - (h) IP standard methods and ASTM tables
 - (i) Flushing case thermometer

THE THIRD SCHEDULE

- (a) In this Schedule the word "Plant" shall mean the vehicles and other equipment referred to in sub-clause 3(b) of the within Agreement and shall include substitutions for and alterations to such vehicles and other equipment. 40
- (b) Subject to the provisions of the Licence Agreements entered into between the Company and the Agent on the _____ day of _____ 197 as those provisions apply to the Plant described under paragraphs 1 and 2 of the Second Schedule the Plant shall at all times be and remain the property of the

Company and the Agent shall not part with the Plant or any part thereof nor suffer the same to go out of its possession and no alterations additions attachments or adjustments shall be made to the Plant without the consent in writing of the Company.

- 10 (c) The Company shall be at liberty to place its name plate or any mark or number or notice on the Plant or any part thereof and shall alone decide what advertising or other matter or information (if any) is to be displayed on the same and any painting required to be done upon or in connection with the Plant shall be carried out by the Company or by arrangement at the Company's expense.
- (d) The provision by the Company of the Plant is upon the express condition that the Plant will be used by the Agent exclusively in connection with the storage or delivery in the Company's business of petroleum products marketed and dealt in by the Company and on no account will the Agent use the Plant for the storage or delivery of or otherwise in connection with any products other than those marketed or dealt in by the Company.

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It is noted that the Defendant objected to the inclusion in the Record of Defendant's Exhibits Numbers 4, 7, 17 and 18. These were included at the insistence of the Plaintiff.