

11

In The Privy Council

Judgment and Appeal
No. **11** 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 I

(pages 1-296)

Linklaters & Paines
59-67 Gresham Street
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Solicitors for the Respondent

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IN THE PRIVY COUNCIL

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**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

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BP AUSTRALIA LIMITED
Appellant

NABALCO PTY LIMITED
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Annexure 60 of the Qatar Affidavit: General Agreement on Participation (copy signed by Qatar)	10th January 1973	
Annexure 26 to the Principal Affidavit: Letter (in Arabic): Kuwait Minister of Finance and Oil to BP	20th October 1973	
Summons	19th June 1974	
Notice of Appearance	28th June 1974	
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Transcript of Proceedings before His Honour Mr Justice Sheppard	11th October 1974	
Transcript of Proceedings before His Honour Mr Justice Sheppard	10th November 1974	
Transcript of Proceedings before His Honour Mr Justice Sheppard	21st November 1974	
Notice to Defendant to Admit Facts	11th December 1974	
Transcript of Proceedings before His Honour Mr Justice Sheppard	12th December 1974	
Notice by Defendant Disputing Facts	20th December 1974	
Notice of Motion by Plaintiff	24th December 1974	
Affidavit: R. L. Pritchard	19th February 1975	
Transcript of Proceedings before His Honour Mr Justice Sheppard	13th March 1975	
Short Minutes of Order of His Honour Mr Justice Sheppard	13th March 1975	
Plaintiff's List of Documents	23rd April 1975	
Defendant's List of Documents	17th April 1975	
Affidavit: A. W. Stevenson	24th April 1975	
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Affidavit: J. H. Herron	7th November 1975	
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Defendant's List of Documents (Third List)	17th November 1975	
Affidavit: E. F. Ainsworth	20th November 1975	
Affidavit: E. F. Ainsworth and R. W. Nicholls	20th November 1975	
Transcript of Proceedings before His Honour Mr Justice Sheppard (addresses by Counsel)	4th-17th December 1975 and 5th March 1976	
Affidavit: R. L. Pritchard	20th August 1976	
Order of His Honour Mr Justice Sheppard granting conditional leave to appeal to Her Majesty in Council	20th August 1976	
Prothonotary's Certificate of Compliance	1st November 1976	

EXHIBITS

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H.	Plaintiff's Brochure on Gove		
3.	Petroleum Concession Agreement: Shaikh of Kuwait and Kuwait Oil Company	23rd December 1934	
5.	Consortium Agreement: Government of Iran, Anglo-Iranian Oil Company and others	19th September 1954	
6.	1972 Annual Review of the Iranian Oil Operating Companies		
8.	Convention: Government of Iran and Turkish Petroleum Company	14th March 1925	
9.	Convention: Government of Iran and Basrah Petroleum Company	29th July 1938	
10.	Concession Agreement: Shaikh of Qatar and Anglo-Persian Oil Company	17th May 1935	
11.	Supplemental Agreement: Anglo-Iranian Oil Company and Petroleum Development (Qatar) Ltd	23rd April 1946	
12.	1973 Annual Review of Qatar Petroleum Company		
13.	Offshore Concession Agreement: Shaikh of Abu Dhabi and D'Arcy Exploration Company	9th March 1953	
14.	Onshore Concession Agreement: Shaikh of Abu Dhabi and Petroleum Development (Trucial Coast) Ltd	11th January 1939	
15.	1973 Annual Report of Abu Dhabi Marine Areas Ltd		
16.	1973 Annual Report of Abu Dhabi Petroleum Company		
19.	Defendant's Schedules of posted prices: BP Trading Limited	11th January 1960- 12th August 1974	
21.	British Petroleum Company Limited: 1973 Annual Report		
36.	Plaintiff's 1974 Financial Statements		
38.	Technical Assistance Agreement: Swiss Aluminium Ltd, Swiss Aluminium Australia Pty Ltd, Gove Alumina Ltd and Plaintiff	22nd January 1969	
	Service Fee Agreement: Gove Alumina Ltd and Swiss Aluminium Ltd	22nd January 1969	

No. 1
Amended Summons

No. 1
Amended
Summons
26th May 1975

THE PLAINTIFF CLAIMS:

1. A declaration that on the true construction of the fuel supply agreement dated the 11th June 1970 between the Defendant of the one part and the Plaintiff of the other part and in the events which have happened;
- 10 (a) The notice bearing date the 22nd March 1974 delivered by the Defendant to the Plaintiff, a copy of which is referred to in the affidavit of David Griffin sworn herein the 19th June 1974 is not a valid or effective exercise of the power given to the Defendant under Clause 9C(iii) of the said agreement or of any other power given to the Defendant under the said Agreement.
- (b) The delivery of the said notice by the Defendant to the Plaintiff did not result in the price of \$A54.44 per metric ton being fixed as the revised base price for supplies of Furnace Oil under the said agreement as from the 26th June 1974 or at all.
2. A declaration that the conduct of the Defendant in delivering the said notice was illegal as being in breach of the Prices Justification Act, 1973 and that the said notice was therefore invalid.
- 20 2A. (a) A declaration that the defendant by its conduct in relation to the said notice and to the supply of Furnace Oil thereafter was in breach of and repudiated the said agreement so far as it related to the supply of Furnace Oil.
- (b) A declaration that the Plaintiff is entitled to damages for the said breach of contract.
- (c) An order fixing the amount of such damages or alternatively directing an enquiry as to the amount of such damages.
- 30 2B. Alternatively to 1, 2 and 2A a declaration that the Plaintiff by its notice to the Defendant dated the 24th April 1974 terminated its obligation to purchase Furnace Oil under the said agreement as from a date three months from the giving of such notice.
3. Such further or other relief as the nature of the case may require.

No. 2
Affidavit: D. Griffin

No. 2
Affidavit:
D. Griffin
19th June 1974

ON the nineteenth day of June 1974

I, DAVID GRIFFIN, of 7 Mildura Street, Killara, Company Director, say on oath:

1.—I am the Chairman of Directors of Nabalco Pty. Limited the abovenamed Plaintiff.

No. 2
Affidavit:
D. Griffin
19th June 1974
(Cont'd)

2.—The Plaintiff was incorporated on the 2nd day of April 1964 in the State of New South Wales and its principal business is the management of the mining of bauxite and its treatment to alumina at Gove in the Northern Territory.

3.—The Defendant is a company incorporated in the State of Victoria and it carries on the business of a supplier of oil and petroleum products.

4.—By an agreement in writing bearing date the 11th June 1970 made between the Defendant (therein called “the seller”) of the one part and the Plaintiff (therein called “the buyer”) of the other part the Defendant agreed to supply Super Motor Spirit, Diesoleum and Furnace Oil to the Plaintiff at Gove upon certain terms and conditions. A copy of the said agreement is annexed to this my Affidavit and marked “A”. 10

5.—Substantial completion (as referred to in Clause 1 of the said agreement) of the storage tanks and other facilities took place on or about March 1971 and the first delivery of Furnace Oil by the Defendant to the Plaintiff under the said agreement took place on the 5th May 1971. Since the latter date the Defendant has been and still is supplying, inter alia, Furnace Oil to the Plaintiff under the terms of the said agreement. The total quantity of furnace Oil so supplied to the date of this my Affidavit is approximately 515,000 metric tons; and the average rate of supply is approximately 27,000 metric tons per month.

6.—I respectfully refer to Clause 8 of the said agreement and say that the buyer’s 20 actual and estimated usage has enabled and would enable deliveries by the seller in quantities of more than 25,400 metric tons per delivery.

7.—Furnace Oil is now being delivered under the said agreement at a price of \$A13.99 per metric ton, the “base price” per metric ton of \$A9.42 per metric ton having been adjusted pursuant to Clause 9(B).

8.—On or about the 22nd March 1974 the Plaintiff received from the Defendant a Notice, a copy of which is annexed hereto and marked “B”.

SWORN by the Deponent at Sydney before me—

D. GRIFFIN
KEITH ROSS J.P.

No. 3
Supply Agreement
Defendant and
Plaintiff:
11th June 1970
(Annexure A to
Affidavit of
D. Griffin)

No. 3
Supply Agreement: Defendant and Plaintiff
(Annexure A to Affidavit of D. Griffin)

30

AGREEMENT made the Eleventh day of June 1970 BETWEEN BP AUSTRALIA LIMITED whose registered office is at 1 Albert Road, Melbourne (Hereinafter called “the Seller”) of the one part AND NABALCO PTY. LIMITED whose registered office is at 1 Alfred Street Sydney (hereinafter called “the Buyer”) of the other part WHEREBY IT IS AGREED as follows:

Definitions

For the purposes of the Agreement:

M.R. Tankship — M.R. Tankship shall be deemed to be one which has a cargo carrying capacity of between 25,400 and 45,720 metric tons.

G.P. Tankship — G.P. Tankship shall be deemed to be one which has a cargo carrying capacity of between 15,240 and 25,399 metric tons.

Super Motor Spirit)
Diesoleum)
Furnace Oil)

No. 3
Supply Agreement
Defendant and
Plaintiff:
11th June 1970
(Annexure A to
Affidavit of
D. Griffin)
(Cont'd)

10 These are the products specifications of which are set forth in Schedule 2 to 4 inclusive herewith.

Metric Ton — one metric ton shall be deemed to equal 0.9342 of a Long Ton.

Term

1. THIS Agreement shall commence upon the substantial completion of the storage tanks and other facilities referred to in clause 3(a) hereof and shall continue until the expiration of ten years from the date of the first delivery hereunder of furnace oil into the Buyer's said storage tanks.

Products

20 2. SUBJECT to the terms and conditions hereof the Buyer will purchase from the Seller and the Seller will supply and deliver to the Buyer the Buyer's requirements of Super Motor Spirit, Diesoleum and Furnace Oil together with such other petroleum products as the Buyer may from time to time request the Seller to supply. PROVIDED HOWEVER that if at any time the Buyer shall have a requirement for any other petroleum product or products then the Buyer shall notify the Seller at its office at Adelaide of such requirement it being the intention of the parties hereto, that so long as the Seller is able and willing to sell to the Buyer its requirements of such other petroleum products the Buyer will purchase such requirements from the Seller provided that the petroleum product or products so offered by the Seller to the Buyer shall have a Trade Brand, specification and price acceptable to the Buyer.

Provision
of equipment
by
buyer 30

3. (a) The Buyer shall at its own expense construct at Gove and maintain in good order and repair bulk storage tanks, tankship discharging facilities and associated equipment as detailed in Schedule 1 hereto.
(b) The Buyer shall provide at Gove for the use of the Seller free of charge a suitable berth for tankships up to 40,000 D.W.T. and shall at its own expense provide sufficient personnel to comply with all usual and reasonable on-shore procedures laid down from time to time by the Seller to be observed during the discharge of tankships and to dip the bulk storage tanks as provided in Clause 6 hereof.
(c) Notwithstanding sub-clause (a) of this clause the Buyer undertakes that it will at its own expense construct at Gove and maintain in good order and repair such additional storage tank or tanks for furnace oil as will for the time being be sufficient to store 35,000 long tons plus three weeks normal usage of furnace oil by the Buyer at that time. If the Buyer shall default in performing its obligations under this sub-clause and arising therefrom the Seller shall be unable to deliver to the Buyer cargoes of furnace oil of 30,000 long tons and at the same time perform its

40

No. 3
 Supply Agreement:
 Defendant and
 Plaintiff:
 11th June 1970
 (Annexure A to
 Affidavit of
 D. Griffin)
 (Cont'd)
 Delivery
 to
 buyer

obligations under sub-clause 5(b) hereof then all additional costs incurred by the Seller as a result of such default shall be reimbursed to the Seller by the Buyer upon demand therefor.

4. (a) Delivery of Super Motor Spirit, Diesoleum and Furnace Oil shall be made in bulk ex tankships into the Buyer's ships discharge hose at Gove.
 (b) Delivery of all other petroleum products shall be in packages free on wharf Gove.
 (c) The Seller will ensure that the discharge temperature of Furnace Oil from Tankships is not less than 125 degrees Fahrenheit.
5. (a) The Buyer shall give to the Seller at its office at Adelaide 10
 (i) notice in writing at fortnightly intervals of its stock holding of Super Motor Spirit, Diesoleum and Furnace Oil.
 (ii) notice in writing on or before the first day of each month of its estimated usage of those products for that month and each of the following three months.
 (iii) two months' notice in writing of each delivery of any other petroleum product required by the Buyer to be delivered hereunder.
 (b) (i) Subject to the Buyer's current port facilities and port usage from time to time the Seller will arrange its tankship programme to enable it to replenish the Buyer's stocks of Super Motor Spirit, Diesoleum and Furnace Oil so that the Buyer's stocks of Super Motor Spirit, Diesoleum and/or Furnace Oil do not fall below fourteen days' estimated usage as in Clause 5(a)(ii) hereof. 20
 (ii) The Seller will notify the Buyer each month of its shipping programme for the ensuing month and of its then anticipated programme for each of the next succeeding two months and the Seller will use its best endeavours to meet the Buyer's reasonable requirements for avoidance of port congestion at Gove and if advised by the Buyer of probable congestion will use its best 30 endeavours to rearrange such programme.

Risk and
 Measurement

6. THE property in each delivery of Super Motor Spirit, Diesoleum and/or Furnace Oil hereunder shall be deemed to be transferred from the Seller to the Buyer when the product passes the Tankship's permanent hose connection at the port of discharge when connected to the Buyer's flexible hose at Gove and thereafter the same shall be at the risk of the Buyer. Measurement of the quantity delivered shall be by the recognised Petroleum Industry bulk shore tank dip method at the time of each delivery and shall take into account any product which may be in the wharfline before and after such delivery. In the event of loss of any product through failure or partial failure of the wharfline the quantity to be paid for shall be that determined on the tankship's ullage 40 measurements.

The Seller shall be entitled to be represented at any such measuring if it so desires.

Such measurements shall be recorded by the Buyer on forms to be supplied by the Seller to the Buyer for the purpose and as soon as may be practicable after each tankship delivery a duly completed form or forms shall be sent by the Buyer to the Seller at its office at Adelaide.

Product Specifications

7. THE quality of the Super Motor Spirit, Diesoleum and Furnace Oil to be delivered hereunder shall not be inferior to the relative specification set out in Schedules 2, 3 and 4 hereto.

Price

8. SUBJECT to the other provisions hereof the base prices to be paid by the Buyer to the Seller shall be:

BP Super Motor Spirit	\$A 31.32 per metric ton
BP Diesoleum	\$A 18.31 per metric ton
BP Furnace Oil	\$A 9.42 per metric ton —

10 if the Buyer's estimated usage could enable delivery by the Seller in quantities of more than 25,400 metric tons per delivery.

BP Furnace Oil	\$A 12.45 per metric ton —
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if the Buyer's estimated usage could not enable delivery by the Seller in quantities of more than 25,400 metric tons per delivery.

Price Variations

9(A) **Super Motor Spirit and Diesoleum**

Freight Rates—

20 Until the first day of January, 1977 the said base prices per metric ton for Super Motor Spirit and Diesoleum delivered hereunder shall be adjusted on the first day of July and January in each year by adding to or subtracting from them as the case may require the amount (converted to Australian currency per metric ton) by which the ocean freight rate effective on that day for the voyage Aden/Gove calculated from the assessment known as GP AFRA is above £(S)2.7.9 per long ton or is below £(S)1.8.8 per long ton.

(a) On the first day of January 1977 the said base prices per metric ton shall be adjusted by adding to or subtracting from them as the case may require the amount (converted to Australian currency per metric ton) by which the average of the monthly assessments of the said GP AFRA ocean freight rate for the twelve months period commencing on the first day of January 1976 shall be above or below £(S)1.18.2.

30 (b) After the first day of January 1977 the said base prices per metric ton (adjusted as provided in the preceding paragraph (a)) shall be further adjusted on the half yearly days aforesaid by adding to or subtracting from them as the case may require the amount (converted to Australian currency per metric ton) by which the said GP AFRA ocean freight rate, effective on that day is more than twenty-five per centum above or below the said average of the monthly freight rate assessments. Such basis for further adjusting the base prices per metric ton shall remain effective for a period of five years from the first day of January 1977.

40 For the purposes of this sub-clause (A) and sub-clause (B) of this clause conversion of Sterling amounts to Australian currency shall be at the officially fixed rate of exchange applying on the date of adjustment.

(B) **Furnace Oil**

Freight Rates—

Until the first day of January 1977 the said base prices per metric ton for Furnace Oil delivered hereunder shall be adjusted on the first day of July and January in each year by adding to or subtracting from it as the case may re-

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Defendant and
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11th June 1970
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(Cont'd)

No. 3
 Supply Agreement:
 Defendant and
 Plaintiff:
 11th June 1970
 (Annexure A to
 Affidavit of
 D. Griffin)
 (Cont'd)

quire the amount (converted to Australian currency per metric ton) by which the ocean freight rate effective on that day for the voyage Aden/Gove calculated from the assessment known as MR AFRA is above £(S)1.15.10 per long ton or is below £(S)1.1.6 per long ton.

- (a) On the first day of January 1977 the said base price per metric ton shall be adjusted by adding to or subtracting from it as the case may require the amount (converted to Australian currency per metric ton) by which the average of the monthly assessments of the said MR AFRA freight rate for the twelve months period commencing on the first day of January 1976 shall be above or below £(S)1.8.8. 10
- (b) After the first day of January 1977 the said base price per metric ton (adjusted as provided in the preceding paragraph (a)) shall further be adjusted on the half yearly days aforesaid by adding to or subtracting from it as the case may require the amount (converted to Australian currency per metric ton) by which the said MR AFRA freight rate effective on that day is more than twenty-five per centum above or below the said average of the monthly freight rate assessments. Such basis for further adjusting the base price per metric ton shall remain effective for a period of five years from the first day of January 1977.

(C) Super Motor Spirit, Diesoleum and Furnace Oil 20

(i) F.O.B. Values—

The Seller or the Buyer may (but not earlier than the expiration of five (5) years from the date of the first delivery of Furnace Oil hereunder or the first day of April 1977 whichever shall be the earlier) by notice in writing to the other notify the other that in the opinion of the party giving such notice the F.O.B. value of Super Motor Spirit, Diesoleum and/or Furnace Oil has substantially altered since the date hereof and upon the receipt of such notice and subject to production by the party giving such notice of reasonable evidence of such substantial alteration both parties will as soon as may be practicable confer together for the purpose of fixing a fresh base price for Super Motor Spirit, Diesoleum and Furnace Oil to be delivered hereunder. If such substantial alteration be reasonably established and within one (1) month after the giving of such notice the parties do not agree in writing upon the then existing base prices continuing to apply or upon fresh base prices then either party may by three (3) months' notice to the other but without prejudice to any then existing action or right of action by one against the other terminate this agreement as from the expiration of such last mentioned notice. 30

(ii) Freight Rate Assessments— 40

If the GP and/or the MR AFRA freight rate assessments hereinbefore referred to shall cease to be fixed during the continuance of this contract then the parties hereto shall endeavour to mutually agree upon a fresh index or indices to be substituted for that or those which has or have ceased to be fixed as aforesaid. If upon the expiration of one (1) month from the date upon which any such index shall cease to be fixed there shall be any difference between the parties concerning the fixing of a new index therefor then either party may forthwith give to the other notice in writing of the existence of such difference and such difference shall be referred to arbitration. Any such reference shall be deemed to be a reference to arbitration within the meaning of the Ar-

bitration Act 1902 of the State of New South Wales or any statutory modification or re-enactment thereof for the time being in force.

(iii) Interruption to Seller's Sources of Supply—

If at any time due to circumstances beyond the Seller's control, the Seller is unable or able only on onerous terms to obtain supplies of crude petroleum and/or petroleum products from its present or then usual sources and by the present or then usual routes for such supplies, and if in consequence thereof the Seller incurs substantial additional costs in respect of the supply of Super Motor Spirit, Diesoleum and/or Furnace Oil deliverable hereunder then the Seller may give notice thereof to the Buyer and fix a revised base price per metric ton for supplies of such Super Motor Spirit, Diesoleum and/or Furnace Oil hereunder as is so affected and save as herein provided such revised base price or prices per metric ton shall become operative on the day stated in the notice being a date not less than three (3) months after the date of the notice. If any such revised base price per metric ton shall be unacceptable to the Buyer then within one month after the receipt of the said notice the buyer shall give three months' notice in writing to the Seller to terminate upon the expiration of such notice its obligation to purchase under this agreement the product or products the revised base price or prices of which is or are unacceptable in which event the Seller will until the date upon which such obligation terminates supply to the Buyer the BP product or products in respect of which the Seller shall have given notice of termination as aforesaid at the base price per metric ton effective immediately prior to the date of the said first mentioned notice subject to adjustment thereafter and in accordance with the terms and conditions of this agreement other than this clause.

(iv) Currency Revaluation

(a) If during the continuance hereof the parity of the Australian dollar as notified as at the date hereof to the International Monetary Fund is changed by five (5) percent or more, the parties shall promptly consult together (but without reference to arbitration) to determine appropriate and equitable revision of the base prices payable hereunder (by not more than the extent of the change in the valuation in question).

(b) If agreement is not reached between the parties within thirty (30) days of the date of such change in valuation, the party wishing the greater increase in the case of devaluation—or decrease in the case of revaluation upwards—in the base prices may terminate this agreement upon the expiration of thirty (30) days' notice in writing to the other.

(v) Indigenous Crude Oil

If subsequent to the date hereof—

(a) The Commonwealth Government shall refix the Absorption formula, the Allocation formula and/or the price per barrel of indigenous crude oil under the Government's policy relating to indigenous crude oil and/or

(b) The Seller shall be prohibited from supplying imported Super Motor Spirit, Diesoleum and/or Furnace Oil to the Buyer then the Seller may within three (3) months after the said event give notice thereof to the Buyer and fix a revised base price or prices per

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(Cont'd)

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 Supply Agreement:
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 Plaintiff:
 11th June 1970
 (Annexure A to
 Affidavit of
 D. Griffin)
 (Cont'd)

metric ton for supplies of Super Motor Spirit, Diesoleum and/or Furnace Oil hereunder and provisions for the variation of each such revised base price, and save as herein provided such revised base price or prices per metric ton and variation provisions shall become operative on the day stated in the notice being a date not less than three months after the date of service of the notice. If such revised base price or prices per metric ton and variation provisions shall be unacceptable to the Buyer then within one month after the receipt of the said notice the Buyer may give three (3) months' notice in writing to the Seller to terminate upon the expiration of such notice its obligation to purchase under this agreement the product or products the revised base price of which is unacceptable in which event the Seller will until the date upon which such obligation terminates supply that or those products (as the case may be) to the Buyer at the base price per metric ton effective immediately prior to the date of the first mentioned notice subject to adjustment thereafter and in accordance with the terms and conditions of this agreement other than this clause. If pursuant to this sub-clause a revised base price shall become operative for Super Motor Spirit and/or Diesoleum then in respect of that product or products having a revised price clause 11 hereof shall as from the date of the operation of such revised price be construed as if "indigenous crude penalty" had been deleted therefrom. 10 20

(vi) Demurrage

The said base prices are based on the discharge of each shipment of Super Motor Spirit and/or Diesoleum at an average rate of one hundred and sixty-five (165) metric tons per running hour and for each shipment of Furnace Oil by a GP Tankship at an average rate of 739 metric tons per running hour and by an MR Tankship at an average rate of 1,102 metric tons per running hour Sundays and holidays excepted unless used. Running hours shall commence, berth or no berth, six (6) hours after notice of readiness to discharge is given to the Buyer's nominated representative at Gove by the Master of the tankship on arrival at the port of discharge. 30

If the shipment is not discharged within the time allowed, in accordance with the preceding paragraph, the Buyer shall be liable for the payment of demurrage in respect of the excess time at the appropriate rate per day (or pro rata for part of a day) as hereinafter specified PROVIDED ALWAYS that if by reason of her own deficiencies the tankship cannot commence or having commenced cannot maintain the appropriate average rate for the discharge of the shipment in question from the time of commencing pumping, any additional time used solely by reason of such deficiencies shall be deducted in calculating the time (if any) in respect of which the Buyer is liable for demurrage as herein provided. The Buyer's liability as to laytime and demurrage shall be absolute and not subject to qualification by the provisions of the Force Majeure Clause hereof. 40

The appropriate rate of demurrage shall be the London Market Voyage Charter rate current on the date notice of readiness to discharge is given as aforesaid for a tankship of the size and type used. If the parties fail to agree within thirty (30) days upon the amount of such rate then at the instance of either party the question shall be referred to and determined by a London firm of shipbrokers agreed

upon by both parties whose decision thereon shall be final and binding.

If within 15 days after the expiry of the aforesaid period of thirty days the parties fail to so agree upon a London firm of shipbrokers John I. Jacobs & Company Ltd. of London or other company if any, then carrying on or incorporating the business of that company shall determine the said appropriate rate of demurrage.

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Defendant and
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(Annexure A to
Affidavit of
D. Griffin)
(Cont'd)

Payment 10. PAYMENT for products delivered hereunder shall be made to the Seller's office at Adelaide within ninety (90) days after presentation by the Seller to the Buyer of an invoice for the quantity so delivered.

Buyer's Liability 11. THE base prices hereinbefore set out exclude all allowances for inward wharfage at Gove, Customs Duty, Excise Duty, indigenous crude penalty, primage or any other duties or taxes and if without default by the Seller such charges shall be incurred directly and necessarily in connection with supplies to the Buyer hereunder it shall be charged to the Buyer's account.

For the purposes of this clause—

- 20 (i) no "indigenous crude penalty" shall be payable in respect of Furnace Oil delivered hereunder.
(ii) in respect of Super Motor Spirit and Diesoleum delivered hereunder the "indigenous crude penalty" shall be deemed to be \$10.47 and \$9.36 respectively per metric ton.

Commonwealth Freight Subsidy 12. IF the Seller shall become entitled to receive from the Commonwealth, from any State or Territory thereof, or from any instrumentality of any of them, any payment as or in the nature of a subsidy to distributors of petroleum products then so far as such entitlement shall be in respect of supplies hereunder it shall be credited to the Buyer's account with the Seller.

Force Majeure 13. NO failure or omission to carry out or observe any of the stipulations or conditions of this contract shall except as herein expressly provided to the contrary give rise to any claim against either party or be deemed a breach of the contract if such failure or omission arises from any cause reasonably beyond the control of the defaulting party.

40 If, by reason of any cause reasonably beyond the control of the Seller, there is such a curtailment of or interference with (i) the availability to the Seller of crude petroleum and/or petroleum products from any source of supply in any country or (ii) the transportation of such crude petroleum and/or of such petroleum products as either to delay or hinder the Seller in, or to prevent the Seller from, supplying the full quantity of the petroleum product or products (or any of them) deliverable hereunder and also at the same time maintaining in full its other business in petroleum products (wherever produced and whether for delivery at the same place or places as is or are specified herein or elsewhere), then the Seller shall be at liberty to withhold, reduce or suspend deliveries hereunder to such extent as is reasonable and equitable in all the circumstances and the Seller shall not be bound to acquire by purchase or otherwise additional quantities from other suppliers.

The Buyer shall be free to purchase from other suppliers any deficiency of deliveries caused by the operation of this Clause.

No. 3
 Supply Agreement:
 Defendant and
 Plaintiff:
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 (Annexure A to
 Affidavit of
 D. Griffin)
 (Cont'd)

14. ALL notices, consents, requests and other documents authorized 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 the Buyer to 1 Alfred Street, Sydney, N.S.W., 2000, and in the case of the Seller to 1 Albert Road, Melbourne, Victoria. Notices, consents, requests and other documents shall be deemed served or given 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. Any notice, consent or request given hereunder may be signed on behalf of the party giving it by any duly authorized representative of that party. Notwithstanding 10 the foregoing provisions of this clause a notice of readiness to discharge to be given under the provisions of sub-clause 9(C)(vi) hereof may subject to the observance of the requirements of that clause be given orally or by telegraph wireless telephone or in writing.

15. THIS agreement shall be governed by and construed in accordance with the laws for the time being of the State of New South Wales.

16. THE Buyer declares and the Seller acknowledges that the Buyer enters into this Agreement as Manager Gove Joint Venture for and on behalf of Swiss Aluminium Australia Pty. Limited and Gove Alumina Limited as Joint Venturers and accordingly 20 in any action or claim hereunder for loss or damage the Buyer 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 Buyer.

17. TERMINATION of this agreement in exercise of any right herein shall be without prejudice 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 hereunder.

18. 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.:

IN WITNESS WHEREOF these presents have been executed on the day and in 30 the year first hereinbefore written.

THE COMPANY SEAL OF BP AUSTRALIA LIMITED was hereunto affixed by authority of the Board of Directors in the presence of:

R. H. OSMAN
 Director

J. H. ROWLAND
 Secretary

THE COMMON SEAL OF NABALCO PTY. LIMITED was hereunto affixed by authority of the Board of Directors in the presence of:

DAVID GRIFFIN
 Director

BRUNO SORATO
 Director

C. A. JOEHR 40
 Secretary

**Schedule 1
Harbour Facilities**

*No. 3
Supply Agreement.
Defendant and
Plaintiff:
11th June 1970
(Annexure A to
Affidavit of
D. Griffin)
(Cont'd)*

1. FUEL OIL
 - One 18" standard weight wharfline, length approximately 6500 feet, including three 8" hose connection, pig launching and receiving chambers, pig indicator and expansion joints.
 - Three storage tanks, 140 feet diameter and 54 feet high.
 - Fuel heating facilities and transfer pump station.
 - One 8" transfer line to the Plant.
- 10 2. DIESEL OIL/MOTOR SPIRIT
 - One 10" standard weight wharfline, length approximately 10,000 feet equipped with pig clearing facilities.
 - One diesel storage tank, 60 feet diameter and 54 feet high.
 - Two diesel storage tanks, capacity each 1,700 tons.
 - Two motor spirit storage tanks capacity each 430 tons.) Existing
 - One transfer system to Plant and Services Station.
3. FIRE FIGHTING SYSTEM
 - One complete fire fighting system approved by the local Fire Fighting Authority.

20

**Schedule 2
Specification
BP Super Motor Spirit**

		METHOD TEST	
Specific Gravity @ 60° F		0.715	minm D.1293
Distillation			
10% Evaporated	° C	65	max
50% Evaporated	° C	110	max
90% Evaporated	° C	180	max
30 FBP	° C	210	max
Residue	% vol	2	max
Colour		Red	
Total Sulphur	% wt	0.20	max D.1266
Corrosion Test (3 hrs. @ 50° C)		No. 1	D.130
Vapour Pressure	lb	9.5	max D.323
V/L Ratio (36/1)	° C	65	minm Calc
Gum/Existent	mg/100 ml	4	max D.381
40 Oxidation Stability	min	360	minm D.525
Total Lead Alkyl	g.Pb/IG	3.8	max D.526
Knock Rating (R.ON)		98	minm D.908

No. 3
Supply Agreement:
Defendant and
Plaintiff:
11th June 1970
(Annexure A to
Affidavit of
D. Griffin)
(Cont'd)

**Schedule 3
Specification
BP Diesoleum**

		Method		
		ASTM	IP	
Specific Gravity @ 60° F		0.830 approx	D 1298/160*	
Distillation				
Recovered at 357° C	% vol	90 minm	D 86/123*	
Colour ASTM (2)		3 max	D 1300	
Flash Point	° F	150 minm	D 93/94*	10
Total Sulphur	% wt	0.50 max	D 1552 or X-ray	
Corrosion Test		Classification	D 130/154*	
(3 hrs @ 100° C)		1 max		
Viscosity @ 100° F	cs	1.6 — 5.5	D 445/71*	
Pour Point	° F	15 max	D 97/15*	
Carbon Residue	% wt	0.10 max	D 189/13*	
(Conradson)				
(on 10% Residue)				
Total Acid Number	mgKOH/gm			20
		1.0 max	D 974/139*	
Strong Acid Number	mgKOH/mg			
		Nil	D 974/139*	
Ash	% wt	0.01 max	D 482/4*	
Water by Distillation	% vol	0.05 max	D 95/74	
Sediment by Extraction	% wt	0.01 max	D 473/53*	
Diesel Index		58 minm	-21	

NOTES: (1) Hydrofined cycle oil content 15% vol. max.
(2) The oil shall also be clear and bright at ambient temperature.

**Schedule 4
Specification
BP Furnace Oil**

30

		Method		
		ASTM	IP	
Specific Gravity @ 60° F		0.998 max	D 1298/160	
Flash Point	° F	150 minm	D 93/34	
Total Sulphur	% wt	3.5 max	D 1552 or X-ray	
Viscosity @ 122° F	cs	370 max	D 445/71*	
@ 100° F	secs			40
Pour Point	Red 1	3500 max	Calc.	
Ash	° F	85 max	D 97/15*	
Water by Distillation	% wt	0.1 max	D 482/4*	
Sediment by Extraction	% vol	0.5 max	D 95/74*	
Vanadium	% wt	0.1 max	D 473/53	
Calorific value (Gross)	ppm	60 max	BP 370/62T*	
	BTU/lb	18660	Calculated	

* ASTM-IP Joint Method

No. 4
Notice: Defendant to Plaintiff:
 (Annexure B to Affidavit of D. Griffin)

No. 4
Notice: Defendant
to Plaintiff:
22nd March 1974
(Annexure B to
Affidavit of
D. Griffin)

To
 Nabalco Pty Ltd
 1 Alfred Street
 SYDNEY N.S.W. 2000

**Supply Agreement dated 11th June, 1970 For Super
 Motor Spirit, Diesoleum and Furnace Oil**

10 Pursuant to Clause 9C(iii) of the above Agreement BP Australia Limited (herein-
 after called "BP") hereby gives notice to Nabalco Pty Ltd that:—

- (i) Due to circumstances beyond BP's control BP is able only on onerous terms to obtain supplies of crude Petroleum and/or petroleum products from BP's present or now usual sources and by the present or now usual routes for such supplies.

20 Owing to the actions of the OPEC countries which are entirely beyond BP's control BP is only able to obtain supplies on the following terms: the cost to BP of Furnace Oil (excluding freight) rose between October, 1973 and December, 1973 by A\$3.64 per metric ton and remained at about that increased level of cost until the shipment for which loading commenced at Singapore on 31st January, 1974. Supplies of this product loaded or to be loaded in March, 1974 are available from BP's now usual sources only at a price increased by approximately A\$24.92 per metric ton (excluding freight) beyond the price paid for the said 31st January shipment. It is expected that the price will not fall below the price as so increased.

- (ii) In consequence of the foregoing BP is incurring substantial additional costs as detailed above in respect of the supply of Furnace Oil deliverable under the above Agreement.
- 30 (iii) BP hereby fixes a revised base price of A\$54.44 per metric ton for the supply of Furnace Oil under the above Agreement.
- (iv) The said revised base price per metric ton shall become operative on the 26th day of June, 1974.

DATED this 22nd day of March, 1974.

THE COMMON SEAL of BP AUSTRALIA LIMITED was hereunto affixed in the presence of:

M. R. RENDLE
 Director
 J. H. ROWLAND
 Secretary

No.5
Transcript of Proceedings Before His Honour Mr Justice Sheppard

MR. OFFICER Q.C. with MR. LOCKHART and MR. GLEESON appeared for the plaintiff.

MR. JEFFREY Q.C. appeared with MR. CONTI for the defendant.

MR. OFFICER: Perhaps I should mention briefly the nature of the matter. Several years ago there was a supply agreement entered into between B.P., as I will call it, and Nabalco for the supply of petroleum, furnace oil and other products for use at Nabalco's Gove installation.

Under the agreement there are prices fixed for the various products but provision 10 made from some change of circumstances, for example, if the f.o.b. price increased then certain things are to take place.

HIS HONOUR: Did this matter come before Mr. Justice Samuels last term or did an aspect of it come before him?

MR. OFFICER: I am sorry, I have only just come into it. I believe not.

MR. JEFFREY: I believe not, your Honour.

HIS HONOUR: Was there another dispute between Nabalco and another contractor involving the same sort of thing?

MR. LOCKHART: The very matters in issue under this contract, but in relation to a prior notification by B.P. were advised upon by Mr. Justice Samuels when he was 20 at the Bar.

HIS HONOUR: I just had an idea that there was another matter that seemed to involve the same sort of considerations, although perhaps involving different parties, and also at Gove, but perhaps I am wrong.

Q. What is the urgency of this matter?

MR. OFFICER: The urgency is this; a notice was given by B.P. purporting to be under a particular clause which would elevate the price of furnace oil by some — I think something over \$20 million in two years, over a two year period.

HIS HONOUR: What I really meant was, when do you want it on?

MR. OFFICER: We would need certain brief information from the respondents, 30 and perhaps I should mention that briefly.

Our contention is that the notice given was invalid. One of the grounds of that would be that there had not been compliance, as we would say was necessary, with the procedures under the Prices Justification Act, and since it would be wholly within the knowledge of B.P. whether they had notified the Tribunal or whether they had a relevant exemption we would ask that they be directed to make an admission as to that, an admission or statement as to whether there was, if they so claim a relevant exemption, and if so when it was gazetted.

Secondly, as to whether alternatively they had notified the Tribunal, that is notified their intention to increase, and if so when.

The second matter that we require information on is in relation to the increase. We wrote seeking particulars and we have not had a supply of particulars by them. Their response has been that the matter was fully discussed at a meeting and they do not propose therefore to give a written reply to our request for particulars.

The necessity for the particulars is that the validity of the notice turns upon whether the facts fall within clause A under which they had purported to give the notice, or whether in truth the facts are such that their only right to give a notice seeking
 10 an increase is under a different clause.

But once we have that information, if your Honour would direct it, information as to the Prices Justification and answers to the letter which we wrote for particulars, we would be available in a week or a fortnight thereafter.

HIS HONOUR: Is the matter a matter which required to be dealt with in that sort of time as you see it?

MR. OFFICER: It is a matter of urgency, your Honour, because there are tremendous consequences of course flowing from it. For example, we have challenged the validity of the notice but have said that if the notice be valid then in accordance with a provision of the contract we elect to terminate the contract as to furnace oil.

20 HIS HONOUR: How long would the matter last once it started?

MR. OFFICER: Because it is a fairly complicated agreement I would think a day and a half, perhaps two.

HIS HONOUR: I can give you time if the urgency of the case warrants me giving it to you. I have a list to call through this morning, as you can see. Would it be of assistance if you discussed the matter informally with Mr. Jeffrey as to what you want from him and then at the end of the mentioning of the other matters I will deal with any dispute that may remain.

MR. JEFFREY: There is just one thing I would like to say at this stage. The situation is very different from the defendant/s point of view to the situation as the
 30 plaintiff sees it. It is different in point of preparation and presentation.

This is not simply a summons in which a declaration is sought as to the meaning or construction of a document, although of course such questions are involved. Essentially it is a summons for a declaration as to whether in events which have happened a certain provision in the contract comes into play. The issue therefore is whether the facts answer a given description.

The relevant description in the contract is that which enables the supplier to give a notice in a certain event, and that event is described, and I quote: "If at any time due to circumstances beyond the seller's control. . . then the seller may give notice".

Now the seller, that is the defendant, has given the notice and it has given the
 40 notice on the footing that facts exist which bring that clause into play.

Proof of those facts, that they exist, involves an investigation of a very large factual area, and the preparation of the evidence which will be presented to the court on the hearing is already in train on the defendant's part but is by no means completed.

Among other things, it will be necessary for the defendant to show that it has become unable otherwise than on onerous terms to obtain supplies from its present or usual sources and this involves a consideration both of the circumstances of this particular defendant and of its relationship with the sources, particularly Middle Eastern sources from which this petroleum comes, and will involve an examination of the terms upon which, in the events which have happened in the Middle East, the seller is now able to obtain those supplies, with the object of showing that those are within the 10 meaning of the term "onerous".

My learned junior has prepared, and very properly, an elaborate advice on evidence which is the course of being implemented, and as I can see it at the moment the defendant would be putting on upwards of four lengthy affidavits, one from an Australian deponent and three, as I see it at the moment, from deponents who are outside Australia. It will certainly be necessary for evidence to be obtained from sources outside Australia and witnesses to be interviewed.

We envisage that in due time, and the soonest possible time, the defendant will be filing and serving lengthy affidavits.

We are willing that the matter proceed with the utmost expedition and we are 20 willing of course to undertake that those affidavits be prepared and filed as soon as possible, but proceedings with the utmost expedition the defendant is just not in a position to put on all its evidence in less than several weeks at the shortest time. Indeed, it is plain, as I see it, that evidence will have to be obtained by someone going to London and by witnesses being interviewed there and so on.

That being so, it seems to us with respect premature for any date to be fixed for hearing. It would, in our respectful submission, be more appropriate for the matter to be adjourned to a named date, to enable the court to receive a report on progress and if by that date the evidence is on from the defendant then of course the plaintiff will 30 consider its position with respect to any evidence in reply.

HIS HONOUR: Mr. Jeffrey, I am anxious to find out today what the differences between you are as to the speed with which the matter may progress but I am also anxious about the position of a number of other people in this court who may have other places to go to at 10 o'clock and I would like to call the rest of my list.

I am prepared, once I have called the list, to see if I can lend any assistance towards the fixing a date and when it will be ready to proceed and to make some assessment as to how long it will be likely to take.

(Short adjournment)

UPON RESUMPTION

MR. OFFICER: My learned friend has explained to us the reason why he would 40 think it would be closer to six weeks before his affidavits are ready. We think it probable that — although, of course, when the affidavits are filed there will be a serious dispute as to what flows from them as to whether the preliminary facts deposed to

answer the particular description in the clause, but we are anticipating that there will not be a dispute as to the primary facts.

We now think that probably the hearing would be somewhat longer than my initial estimate was because the evidence, even to be ready and absorbed from his affidavits will be lengthy, and we think that the hearing would more likely take four days rather than the two which I suggested.

10 Although the affidavits will not be ready, he anticipates for some six weeks, in the light of the time of whether it will be four days, we will be anxious that we should obtain from your Honour if this be possible, a hearing this year and we therefore—and my friend has no objection to the course I would put to your Honour—we therefore ask that the matter be listed for mention again in approximately four weeks time.

By that time there will be a much closer estimate able to be made as to when the affidavits will be ready, but what we would not like is to wait until the affidavits have been served and then approach your Honour in the second half of September and find that your Honour does not have four days this year.

HIS HONOUR: As things stand at the moment I will have to displace an existing fixture, which if the matter warrants it, I will do. If the urgency of this matter compared to the urgency of another matter warrants that course it is a course I would take, but I would need to be satisfied that his matter was of that degree of urgency.

20 MR. OFFICER: Perhaps I should tell your Honour the facts as regards urgency now. There was a time early after this notice had been given when the matter would have been of extreme urgency, the notice having been given of an increase of some approximately \$30, I think it is, thereabouts, a metric tonne. The plaintiff said “Well your notice is invalid but if it is valid then we exercise our right under the agreement to terminate the contract as to furnace oil” —that is the particular product in question.

That, of course, would have meant that had the notice been invalid then problems would have arisen as to whether the supplier was prepared to supply or whether we should look elsewhere.

30 We have unexpectedly found another source of supply so that it cannot be said now that the matter is urgent in the sense that the installation at Gove will be without fuel. The urgency now is merely as to whether there being an assured source of supply, as to whether the costing of the installation has to be adjusted and the output costing adjusted to accommodate either the new price at which we have obtained alternative supplies or perhaps it may be, by negotiation, a continuation of the old price from the defendant.

I should say that the contention of the plaintiff is that the facts do not bring the matter within the clause upon which the defendant has purported to give his notice, but that the facts bring it within another clause increasing F.o.b. prices under which the defendant is not at liberty under the contract to give a notice increasing for another 40 eighteen months to two year.

HIS HONOUR: On the basis of what you tell me I think all I can say is this, that I would be prepared to displace another matter which is fixed for the 18th November and for which I have set aside a week.

If I am satisfied, when the matter is mentioned again, within about four weeks time, that that cause is justified—and I mentioned that date so that you will know what date I will give you if I decide to take the matter this term.

In the meantime I will have enquiries made of the parties in that case as to what they say about being displaced and if there is any change in the date that I propose to allow, in the event that I do take it, I will have you notified. I will not do any more than indicate that as a date when I will take the matter, and I will mention the matter again, not precisely four weeks but on 2nd September.

Now can your estimate be considered to be realistic. From what you tell me I am just wondering whether four days is a realistic estimate of the case, because if I am going 10 to displace matters and fit it in, it is going to be disastrous if I find it is two weeks instead of one.

MR. OFFICER: We have approached it this way; we have assumed as we believe will be the fact that there will be no dispute as to the primary facts, that we have allowed, as it were, a day, a day and a half for the reading and absorption of what my friend says will be the lengthy affidavits, some four of them in all, and we have then allowed two days, perhaps two and a half depending on how long the affidavits take to read and absorb, for the dispute as to whether the facts come within the particular clause, come as it were within clause A or Clause B, and the question of what effect the Prices Justification Act has assuming for the purpose of so saying, that my learned 20 friend's have neither an exemption nor did they within the relevant time notify the Tribunal.

HIS HONOUR: There is not likely to be any question of the validity of that Act raised, is there?

MR. OFFICER: Not that I am aware of.

MR. JEFFREY: I reserve my position in that regard.

HIS HONOUR: If it were I think this case would leave my hands.

MR. JEFFREY: It is an important question and I am not by any means willing to abandon it. I will have to give close thought to my position in that regard.

HIS HONOUR: I can only rely on you both to make the best estimate you can, 30 and I am aware of the great difficulty in doing that, even seized with the information that you have, and I will proceed on the basis of five days ought to see it out. If either of you feel at any time that the estimate you have given me is somewhat short I would be grateful if you would let my associate know.

Now what about the information that you want from Mr. Jeffrey, Mr. Officer?

MR. OFFICER: I apprehend, although I did not directly ask him, that the evidence that he proposes to put on will cover all the matters on which we sought particulars.

MR. JEFFREY: I would think so, but I would indicate to your Honour that if my friend has already made a formal request for particulars or wishes to formalise any request which he has previously made by sending us a letter requesting particulars then 40 any particulars he is entitled to will be furnished.

HIS HONOUR: If there is any problem about that, the matter can be mentioned before me at any time.

MR. OFFICER: I should have asked my learned friend outside as to whether he could also in his evidence disclose the situation with regard to the Prices Tribunal.

MR. JEFFREY: Yes, we will disclose such information as my friend is entitled to, and if my friend addresses to us a request for information which is plainly relevant to an issue then we will not object to it on any improper grounds.

HIS HONOUR: If there is any problem that can be dealt with on short notice at any time.

10 Is there any other matter?

MR. JEFFREY: Only this; references have been made to the affidavit evidence being put on in six weeks. That is a forecast which has a trace of optimism about it. I must not be thought to be giving the court an undertaking that all the affidavit evidence will be put on in six weeks. I feel confident that at the next mention day it will be possible to make a much more accurate forecast when all the evidence will be on.

It may be that some intractable problems will cause some of the affidavit evidence to take longer to prepare than six weeks, perhaps it will be eight weeks.

HIS HONOUR: It is probably inappropriate at the moment to put you on any terms as to time, but it may become appropriate to do so on 2nd September.

20 MR. JEFFREY: Yes, and I shall be prepared on that day to indicate to the court the progress of the preparation of the evidence.

MR. OFFICER: Perhaps I should merely mention one matter, your Honour, and I would not think—if your Honour merely indicated concurrence with this it would be necessary for your Honour to make an order.

I would ask that the affidavits as prepared and finalised be served rather than that they all be held up to be served in one bundle, so that as soon as my friend has the first affidavit ready that it will be served and filed.

HIS HONOUR: He may have some tactical reasons why he would want to know precisely what was in the other affidavits before he filed the first affidavit.

30 MR. OFFICER: Very well. If your Honour would concur that my friend should use his best endeavours and judgment to let us have the affidavits as they are ready.

MR. JEFFREY: Yes, I will not unnecessarily delay the filing and serving of any completed affidavit.

HIS HONOUR: All I need say now is that the matter will be mentioned again at 9.30 am on 2nd September next.

No. 6
Affidavit:
J. W. R. Sutcliffe:
"The Principal
Affidavit"
13th September
1974

No. 6
Affidavit: J. W. R. Sutcliffe:
"The Principal Affidavit"

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10

ON the Thirteenth day of September, 1974

I, JOHN WILLIAM ROBERT SUTCLIFFE, of "Blackmoor Lodge", Four Elms, 20 Edenbridge, Kent, Company Director, say on oath:

A. THE BP GROUP

A1—I am a Director of BP Trading Limited (hereinafter called "BPT"), a Company incorporated in England, and have held that office since 1st January, 1971. I am Chairman of the Executive Committee of BPT.

A2—BPT is a wholly owned subsidiary of The British Petroleum Company Limited (hereinafter called "the Parent Company") which is also incorporated in England.

A3—The Defendant Company BP Australia Limited (hereinafter called "BPA") is a wholly owned subsidiary of The British Petroleum Company of Australia Limited 30 which is in turn a wholly owned subsidiary of the Parent Company; BPA is incorporated in the State of Victoria of The Commonwealth of Australia.

A4—The Parent Company does not trade as such but is a holding company with numerous subsidiary and associated companies.

A5—The Parent Company and its subsidiary companies comprise the BP Group (hereinafter called "the BP Group" or "the Group") which is one of the largest integrated oil groups in the world. The Group is engaged in all phases of the oil industry, including exploring for, producing, transporting, refining and marketing crude oil, petroleum products, Chemicals, gas and allied products. The Group owns approximately 6 million tons of shipping and has over 14 million tons on long term 40 charter. To manufacture petroleum products the Group owns approximately twenty refineries and in addition has a similar number of joint refinery interests.

A6—BPT is the principal operating company of the Group.

B. THE STRUCTURE OF THE OIL INDUSTRY

B1—I set out below my description of certain aspects of the structure of the oil industry; the description is given from my own knowledge of the industry based upon approximately 17 years active participation and involvement therein as an executive officer of the Group.

No. 6
Affidavit:
J. W. R. Sturcliffe:
"The Principal
Affidavit"
13th September
1974
(Cont'd)

B2—Prior to my appointment to the Board of BPT, I had been Regional Co-ordinator for the Middle East for the BP Group since 1967 and Assistant Regional Co-ordinator prior thereto; my duties have involved me with the Group's Middle East operations and affairs since the year 1957.

10 B3—Since the end of the Second World War, the rehabilitation of the contestants (for the most part the industrialised nations of the world) and the increasing requirements for the emergent or under-developed nations have led to spectacular increases in energy consumption. By 1972 this world demand for energy had reached a level of 5.5 thousand million tons of oil equivalent, an increase of about 350% from 1939. This enormous demand was met by the expansion of the oil industry which grew from a 20% share of total energy in 1930 to 64% of total energy in 1972 (oil and natural gas). This expansion was very largely achieved by the development and expansion of oil fields in the Middle East.

20 B4—The main energy consuming areas are the industrialised nations of North America, Western Europe, Japan and the Soviet bloc. The Soviet bloc has tended to expand production of energy in step with demand and its production and demand has therefore remained approximately in balance. As its activity is mostly confined to its own members, it has had little impact up to the present time on the energy requirements for the rest of the world. North America, the home of the oil industry, became a net importer of petroleum by the mid-1950's as its demand exceeded supply. Western European oil production remained insignificant and thus its expanding demand was met by imports. In the Far East the rapid and dramatic industrialisation of Japan called for ever increasing quantities of oil.

30 B5—The demand for oil in the free world, that is outside the communist countries, was met by expansion of production in the known producing areas of North America, the Caribbean, the Middle East and the Far East. Physical and sometimes political considerations dictated the relative growth and, resulting from increased exploration, new fields were discovered notably in Africa but most especially in the Middle East. This area, with only small consumption and rapidly expanding availability, became the main supply source for the industrialised nations and an illustration of the growth in the movement of oil from this producing area is furnished in the form of the Annexure hereto marked "1". By 1973 the area represented 55.4% of the world "published proved" reserves and accounted for 36.8% of world oil production; more importantly, however, the area represented 66% of the world trading in oil.

40 B6—The BP Group has been involved in the discovery and production of oil in the Middle East from its inception and the area represents over 80% of the Group's supply sources today. Annexed hereto marked "2" is a map showing the Group's Middle East supply sources of crude oil for the year ended 31st December, 1973, each expressed as a percentage of the Group's world wide supply sources for that year.

No. 6
Affidavit:
J.W.R. Sutcliffe:
"The Principal
Affidavit"
13th September
1974
(Cont'd)

B7—The increasing volumes of oil to be moved to satisfy demand and the design, erection and operation of plant to convert crude oil into many and increasingly sophisticated products tended to favour the growth of large integrated companies who could command both the knowledge (discovering it where it did not exist) and the finances necessary for the development of the industry. In the United States, where mineral rights were vested in the owner of the surface area, smaller producing units could be accommodated and burgeoning demand allowed the growth of smaller refiner-marketers. Thus the industry was more diverse in North America than elsewhere. In other parts of the world mineral rights were vested in the state. To exploit these rights required evidence of considerable substance; hence concessions from states, covering large areas and implying considerable investment and skill, were for the most part sought by large companies. 10

B8—In satisfying the needs of consumers, investment had to be made not only in the production, transportation and refining of oil but also its distribution, sale and application to the consumer. The consumer, not without reason, came to rely upon the industry for his needs and the industry fulfilled its obligations by ensuring that supplies were available despite physical difficulties which might disrupt or deny routes or the exigencies of demand caused by climatic extremes. The consumer also came to rely upon the cheapness of petroleum and allied products. The ability to keep costs low stemmed from technical skill and professional expertise. Competition, which exists at all levels of activity from the well head through to the petrol pump, ensures that industry costs are competitive through the chain of operation. 20

B9—The Middle East by 1973 played an important part in the supply pattern of all major consuming areas outside the communist countries. Costs of oil from this source form an important element in the cost of energy in consuming countries. Oil was produced by companies which had at various times obtained concessions from the states. The terms differed in detail but the terms of payment established by and for the host governments were similar. Following the Aramco deal in Saudi Arabia in the early 1950's, these terms required that the producing company should deliver 12½% of production to the state as royalty. This oil was generally sold back to the producer. Tax, payable to the state, was calculated on the producer's posted price for the grade or grades of crude oil. The producer's posted price represented the reference point against which purchasers established the price they would pay. Thus the posted price was not necessarily the price at which the oil was sold but it was closely allied to it and it was the level against which tax was levied whatever the sale price might have been. Posted prices did not change either frequently or radically but they did change so as to reflect market conditions as these conditions became established. 30

B10—Throughout the later 1950's and the 1960's, crude oil prices were under pressure as new supplies sought access to markets, causing prices to fall. In the Middle East, the producers were faced with a static level of tax payment whilst their actual realisations from crude oil declined. To restore their position, postings were reduced in the Persian Gulf by a total of approximately 25c bbl on two occasions in the years 1959 and 1960. In response to this action, and to restore their level of payment to what it had been, the producing or host countries formed in September 1960 an organisation called the Organisation of Petroleum Exporting Countries, generally called "OPEC". 40

B11—Annexed hereto and marked "3" is a table which sets out the specific quantities of crude oil lifted by the Group from each of the Group's geographical

supply sources for each quarter from the beginning of 1969 until the end of March 1974.

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B12—I now refer below to events which have occurred in more recent times in the context of the oil industry of the western world and the BP Group's industrial activities in particular.

C. THE DEVELOPMENT OF OPEC

C1—The formation of OPEC earlier referred to took place at a meeting in Baghdad attended by representatives of Iran, Iraq, Kuwait, Saudi Arabia and Venezuela, 10 which were the five founder members. Annexed hereto and marked "4" and "5" respectively are true copies of what I believe to be the main two resolutions adopted by OPEC at its said foundation meeting from 10 - 14 September, 1960. The foregoing and most if not all subsequent resolutions of OPEC have been published shortly after the making thereof to the press and to the major oil companies including the BP Group from the OPEC Secretariat, originally in Geneva and subsequently in Vienna.

C2—After the OPEC 1960 Resolutions, the world oil market prices for crude were (at least for the most part) below the level of posted prices but the revenues payable to the host countries were paid by reference to the posted prices and not the market prices. In those OPEC member countries who were then producing oil, the posted prices of crude remained "pegged" at the same level from 1960 until late 1970; 20 in those countries commencing production after 1960, prices were posted which were consistent with those posted in established production areas; during that period, however, posted prices exceeded the corresponding market prices. During that period there took place individual negotiations between the Middle East OPEC Members (other than Iraq) and the Middle East oil company producers (including of course the BP Group) resulting in the Royalty Expensing Agreements of 1965; by virtue of those Agreements host government revenues were marginally increased by removing royalty as an element of the total payment to those governments and treating it as a cost. The full impact of this change was phased in over a number of years.

C3—During the 1960's the possible imposition of production output limits on a 30 "pro-rationing" basis was publicly proposed by some OPEC members but OPEC did not during that period reach any agreement in relation thereto. This was in my opinion and according to my knowledge and observations due primarily to the fact that OPEC members could not agree amongst themselves as to which of them should cut back. In these circumstances, and at the then times of world market weakness in crude oil prices, the only means available to OPEC members to increase their revenues was to encourage the Middle East oil producers to increase their levels of crude production.

C4—During the period between 1960 and 1970 the membership of OPEC increased to eleven by the addition of Algeria, Indonesia, Qatar, Abu Dhabi, Libya and Nigeria. Ecuador was admitted to membership in 1974 and some associated (non- 40 voting) members were also admitted. Thus, by 1970, the membership of OPEC included all of the major oil exporting countries of the world with the exception of Mexico, Canada and the Soviet Bloc countries (by 1973, oil from OPEC member countries constituted about 90% of world trade in crude oil). With the exception of Venezuela and Indonesia, the concessionary terms applying to the companies operating in the OPEC member countries had at least by 1970 such similarity as to enable a collective approach to be taken by OPEC to negotiations with concession holders

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(including of course the BP Group) on the subject of inter alia increasing host government revenues or what is described by usage in the industry as Government "take".

C5—The next important activity of OPEC made known to the oil industry was the adoption by OPEC members at a conference held in Vienna in June 1968 of their "Declaratory Statement of Petroleum Policy"; annexed hereto and marked "6" is a true copy of what I believe to be the resolution adopted by the OPEC Conference on 24-25 June, 1968 which set out the terms of the "Declaratory Statement of Petroleum Policy in Member Countries". Despite the terms of such Statement, OPEC as a body took no collective overt action for the purpose of imposing on the oil companies the policies the subject of the Statement until towards the end of 1970. In the meantime, action was initiated by a number of individual members of OPEC as hereafter described. 10

C6—In 1970 the Revolutionary Command Council of Libya commenced a number of confrontations with the oil companies producing oil in Libya. The Revolutionary Command Council led by Colonel Moamer Qadhafi had seized power in Libya from King Idris on 1st September, 1969. In April 1970 Colonel Qadhafi publicly called for mobilisation to fight oil producing companies which he stated to be linked with "world Zionism" and local forces of reaction". These public statements were made known through prominent news media of the English speaking world and in consequence became communicated to the BP Group. Shortly thereafter the said Council publicly proposed production restrictions on oil companies producing in Libya; from my knowledge of the industry I say that certain such companies were then subjected to such restrictions although none were then imposed upon the BP Group. 20

C7—The said actions of the Libyan government were accompanied by publicly stated threats of withdrawal of crude oil supplies to producers and nationalisation of the assets in Libya of oil producers. These actions coincided with the emergence for the first time since the 1950's of free world oil supply stringency. Because of Libya's strategic position in the Mediterranean which it enjoyed by virtue of its location west of the closed Suez Canal, the loss of Libyan production alone could in my estimation have diluted European oil stocks by approximately 50% within about one year, assuming no other Arab OPEC member took similar action. However, a world oil supply crisis did not then occur because the independent U.S. companies producing oil in Libya acquiesced in higher posting and tax demands of the Libyan government following which the major oil producing companies in Libya, including the BP Group, had to accept the Libyan governments demands in the same way. I took part in negotiations on behalf of the BP Group with Libya in October, 1970 which culminated in higher postings and tax demands being imposed upon the BP Group in Libya. Accordingly, towards the end of 1970, the posted price on which tax and royalty were assessed were raised by the Libyan government by 30c per barrel (approximately 14%) and the tax rate raised from 50% to between 54% and 58% , varying between companies, effective from 1st September, 1970. Public reports on these occurrences appeared inter alia in the various issues of Petroleum Intelligence Weekly, an authoritative and independent weekly newspaper published in New York and circulating in the oil industry, but these occurrences in any event became known to the BP Group as and when they took place. 30 40

C8—The said actions of the Libyan Government were soon reflected in demands made by other host governments who, in order to increase their revenues, were anxious to gain for themselves any advantage gained by any one government.

C9—Immediately following the enforced price increases in Libya, limited upward price adjustments were applied to posted prices of certain heavier Middle East crudes.

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D. COLLECTIVE NEGOTIATION WITH OPEC — TEHERAN AND RELATED AGREEMENTS

D1—At the OPEC Conference held at Caracas from 9 — 12 December, 1970 OPEC resolved to adopt several new objectives and a true copy of what I believe to be the relevant resolution is annexed hereto and marked "7". The threat therein contained to take "concerted and simultaneous action by all Member Countries" was received by the BP Group and, from my knowledge of the industry, by at least the major oil
10 producers as a clear threat to future oil supplies. After that Conference a representative of the Iranian Government arrived in London and stated to the BP Group that OPEC members were seeking that the industry in the (Persian) Gulf should negotiate collectively with the governments of the Gulf producing states.

D2—At the OPEC Conference held at Teheran from 3 - 4 February, 1971 OPEC adopted the resolution a true copy of which is annexed hereto and marked "8". This and the Caracas OPEC Conference referred to paragraph D1 hereof took place following upon the events in Libya set forth earlier.

D3—About this time the Middle East oil producing companies (primarily U.S., but including BP and European companies) sought and obtained from the U.S.
20 Government a special waiver of the U.S. anti-trust regulations to enable regional negotiations to take place. Thereafter meetings took place in Teheran in February, 1971 between the major oil producing companies and the Gulf Committee of OPEC which comprised the Arab Middle East Gulf States of Iraq, Abu Dhabi, Kuwait, Qatar and Saudi Arabia plus Iran (Iran not being an Arab State). I was involved in these negotiations on behalf of the BP Group. An Agreement was made, designated a "Security and Stability" Agreement, which was expressed to last for five years, whereby the host government "take" per barrel was in effect increased to a level averaging about 40% above that prevailing in October, 1970, but whereby embargoes and "leap-frogging" (that is, individual increases of host government "take") were prohibited in
30 the terms therein appearing; annexed hereto and marked "9" is a true copy of the said Agreement (hereinafter called "the Teheran Agreement") to which the Parent Company was a party.

D4—The Teheran Agreement was followed in the next few months by a series of similar negotiations resulting in the application of comparable terms by the "short haul" countries mentioned above which concluded with the signing of "the Tripoli Agreement", "the Lagos Agreement" and "the Eastern Mediterranean Agreement"; I personally took part in the negotiations with Libya for the BP Group leading to the Tripoli Agreement and I was closely involved from the "London end" on behalf of the BP Group in connection with the negotiations leading to the other Agreements. Those
40 Agreements were made in essentially the same terms as the Teheran Agreement; the Tripoli Agreement was made on 2nd April, 1971 between Libya and a number of the companies; the Lagos Agreement was made in April, 1971 between Nigeria and a number of the companies; and the East Mediterranean Agreement was made between Iraq and a number of the companies. In the case of each of the said Agreements, either a BP Group company, or a company in which the Group held an interest, was a party thereto.

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D5—At the OPEC Conference held in Vienna from 12 - 13 July, 1971 it was proposed that member host governments should have a share in the concessions held by oil producers in their respective countries. "Participation" was the expression used for the proposed acquisition by the host governments of direct interests in the concessions, to be effected by negotiation rather than by nationalisation. Annexed hereto and mared "10" is a true copy of what I believe to be the Resolution adopted at Vienna Conference held on 12 - 13 July, 1971. A further OPEC meeting was then convened in Beirut on 22nd September, 1971. Annexed hereto and marked "11" is a true copy of what I believe to be the Resolution adopted by the Beirut Conference calling for participation, failing which the same was to be enforced "through concerted 10 action".

D6—At the Beirut Conference the proposal was also publicly raised of requiring compensation to be furnished by oil producers to OPEC countries to make good the decline in the value of the U.S. dollar by reason that at least the majority of the concession agreements provided for payment of government "take" in U.S. Dollars. Annexed hereto and marked "12" is a true copy of what I believe to be the Resolution adopted by OPEC on this issue at the Beirut Conference.

E. LIBYAN NATIONALISATION OF BP INTERESTS

E1—Meanwhile on 7th December, 1971, without prior warning, the Libyan government promulgated a decree purporting to nationalise all of BP's rights and assets 20 in relation to its oil concession in that country, held jointly with the Nelson Bunker Hunt interests of the U.S.A. Annexed hereto and marked "13" is a true copy of what I believe to be the decree which purported to nationalise the Group's interests and transfer the same to the Arabian Gulf Exploration Company; also annexed hereto and marked "14" is a true copy of what I believe to be the provisional record of a meeting of the United Nations Security Council held in New York on 9th December, 1971 at which a statement on his Government's action was reportedly made by the representative of the Libyan Arab Republic.

E2—The BP Group immediately protested to the Libyan Government, stating to it that the Group regarded its measures as a breach of international law and as without 30 legal validity. The Group publicly announced that it would sue any person who purchased from the Libyan instrumentalities any oil derived from its concession areas. Legal action was commenced by the BP Group in various countries in order to prevent the disposal by Libya of the oil expropriated from the BP Group. The BP Group concession holder operating in Libya, BP Exploration Company (Libya) Limited, (hereinafter called "BP Libya") applied to the President of the International Court of Justice for the appointment of a sole arbitrator pursuant to the provisions of the BP Libya concession agreement. The President of the said Court on 28th April, 1972 appointed Judge Gunnar Lagergren of Sweden to determine the dispute. The Libyan government did not acknowledge the Tribunal, which then proceeded to determine the 40 dispute in Libya's absence, ultimately holding that the Libyan nationalisation law above referred to and the subsequent implementation thereof was a breach of the BP Libya concession agreement but nevertheless was effective to terminate the concession. No offer of adequate compensation was made by the Government.

E3—On 30th December, 1971 BP Libya instituted legal proceedings in Italy to recover the first cargo of oil for which Arabian Gulf Exploration Company had found a buyer, for the purpose of preventing the Libyan Government from marketing the BP

Group expropriated oil. However, by October 1972 the Libyan Government had apparently entered into barter deals with the U.S.S.R., Bulgaria, and Romania for the disposal of the expropriated oil, notwithstanding the protests of the British Government. Ultimately, in February 1973 the proceedings in Italy were decided against BP Libya at first instance; an appeal has been lodged but has not yet been heard. However, the decision at first instance had the effect of reducing the deterrent effect of the proceedings and of enabling Libya to more easily achieve disposal of the expropriated oil.

F. THE GENEVA AGREEMENTS

10 F1—Following the Beirut OPEC Conference referred to in paragraph D6 hereof, the "Geneva Agreement" or "Geneva I Agreement" was signed on 20th January, 1972. The OPEC members (excluding Libya) and the major oil producers including the Parent Company were parties to the Agreement. Its effect was to relate the U.S. dollar price to the U.S. dollar exchange rate with a range of nine other currencies, with adjustments being made quarterly; a true copy of the Geneva Agreement is annexed hereto and marked "15". Although the immediate effect of the Geneva Agreement was to increase the U.S. dollar posted price of Middle Eastern crude oils by 8.49%, the oil revenues of the host governments remained comparatively unchanged in terms of sterling currency.

20 F2—The Geneva Agreement was negotiated collectively by the oil industry with the Middle East and African OPEC member states collectively, although Libya dissociated itself from the negotiations during the course thereof and demanded a separate agreement; I took part in such negotiations on the part of the BP Group.

F3—A "Supplemental Geneva Agreement" or "Geneva II Agreement" was signed on 1st June, 1973, having also been negotiated collectively by the parties to the Geneva Agreement. The making of the agreement followed public protestations of OPEC to the oil producing companies that the application of the indices the subject of the Geneva Agreement was not sufficiently favourable to them. Exhibited hereto and marked "16" is a true copy of the Supplemental Geneva Agreement. I took part in the negotiations
30 on the part of the BP Group leading to the Supplemental Geneva Agreement.

G. GOVERNMENT PARTICIPATION IN OIL CONCESSIONS

G1—Further to the Vienna and Beirut OPEC Conferences referred to in paragraph D5 hereof negotiations took place throughout the whole of 1972 on the question of participation and its implementation between negotiators of the five Arab Gulf producing states named Saudi Arabia, Kuwait, Iraq, Abu Dhabi and Qatar (all members of OPEC) with representatives of the oil companies operating in those states; I took part in a number of these negotiations.

G2—These negotiations eventually resulted in the conclusion of what were called the "General Agreements on Participation" or more briefly "the General Agreement"
40 which were signed in December 1972 and January 1973. A true copy of the Agreement signed on 20th December 1972 by Saudi Arabia and Abu Dhabi is annexed hereto and marked "17"; as appears therefrom the Parent Company was a part to the Agreement; other "General Agreements" were signed in the same form by Qatar and Kuwait but, in the case of Kuwait, its National Assembly refused to ratify the making thereof.

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G3—During the negotiations leading up to the General Agreements on participation, the OPEC countries continued to make public threats against the oil companies of "concerted action" for failing to comply with the decisions of OPEC Conferences. Annexed hereto and marked "18" is a true copy of what I believe to be the Resolution adopted by the OPEC Conference held at Beirut on 11 — 12 March 1972.

G4—During the course of the 1972 negotiations Iran withdrew from the discussions and entered into separate discussions with the oil producers operating in its country, to which I shall hereafter refer.

G5—Iraq also withdrew from the discussions after it had taken unilateral action in 10 June 1972 to nationalise the Iraq Petroleum Company Limited, the largest concession holder in Iraq, to which I shall also hereafter refer.

G6—As appears therefrom, the "General Agreement" provided for a 25% ownership interest in the respective concessional areas to be transferred to the host governments on 1st January, 1973, such interest increasing in stages thereafter to 51% by 1st January, 1982. Also as appears therefrom provision was also made in the General Agreement for the purchase by the oil producing companies over a period of years of quantities of government crude oil, described as "participation crude"; the share remaining to the companies is described as "cost crude" or "equity crude"; the companies were entitled to purchase part of the "participation crude" to satisfy their 20 own customer requirements and were obliged to purchase so much of the balance as was not required by the host country for disposal to its own consumer connections.

G7—These "General Agreements" applying to the said Gulf states were followed in the case of Nigeria with a Participation Agreement taking effect as from 1st April, 1973, in relation to the BP Group's concession areas to the extent of a 35% undivided interest in favour of the Nigerian Government with the right to take up a further 16% interest by 1982.

H. IRAQI NATIONALISATION OF BP INTERESTS

H1—On 1st June, 1972 the Iraq Government nationalised the production assets of the Iraq Petroleum Company Limited (hereinafter called "IPC"). The BP Group 30 held a 23.75% interest in IPC; a true copy of what I believe to be a correct translation of the relevant decree (Law 69 of 1972) as published by the "Middle East Economic Survey" is annexed hereto and marked "19".

H2—Following the nationalisation, discussions took place on behalf of IPC with the Iraq Government as to compensation and other matters which resulted in a settlement being reached on 28th February, 1973. This provided inter alia for IPC to pay the Iraq Government £141 million sterling in final settlement of claims made by the Government covering a number of previous years and for compensation for the assets nationalised to be paid by the Government by delivering to the IPC shareholders 40 between March 1973 and May 1974 14 million tons of crude oil at the Eastern Mediterranean Sea-board free of all costs and charges. Annexed hereto and marked "20" is a true copy of the Heads of Agreement signed between IPC and the Government of Iraq, which sets out the terms of the settlement. As appears from the Affidavit of James Hutchison Porter sworn herein, the Group's only surviving source of crude in Iraq is through its 23.75% interest in Basrah Petroleum Company Limited

and that source is also subject to likely "Participation" as from 1st January, 1973 in the circumstances referred to in that Affidavit.

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H3—On 9th June, 1972 at its Beirut Conference OPEC resolved to support the nationalisation of IPC. Annexed hereto and marked "21" is a true copy of what I believe to be the relevant Resolution.

J. IRANIAN CONSORTIUM NEGOTIATIONS

J1—During October 1972 the Government of Iran publicly announced that it required the Iranian Oil Consortium in which the BP Group holds the largest interest, namely 40% , to discuss amendments to the existing (1954) Agreement between the
10 Government and the Consortium on the grounds of changing circumstances.

J2—On 23rd January, 1973 the Shah of Iran publicly announced that the 1954 Consortium Agreement would come to an end in 1979 (notwithstanding the provisions for extension contained therein) but alternatively, under a new agreement, "the companies shall become customers and oil shall be made available to them at reasonable terms on a long-term basis". Annexed hereto and marked "22" is what I verily believe to be a correct translation of the speech made by the Shah on that date as published in "Petroleum Intelligence Weekly".

J3—Subsequently in July 1973 the Consortium reached Agreement with Iran in the manner referred to in the Affidavit of James Hutchison Porter sworn herein, called
20 the "Sale and Purchase Agreement".

K. UNILATERAL OPEC ACTIONS ON POSTED PRICES, PRODUCTION CUTBACKS AND EXPORT EMBARGOES

K1—Towards the middle of 1973 OPEC demanded further collective negotiation with the oil producing companies on the level of posted prices. Annexed hereto and marked with the letter "23" is a true copy of what I believe to be a policy statement adopted by Resolution at the Vienna Conference of OPEC held from 27 - 28 June, 1973.

K2—Further meetings of OPEC were held in Vienna from 15th to 16th September 1973 at which Resolutions were passed calling for negotiations to be held in
30 Vienna on 8th October 1973 for revision of the Teheran Agreement; a true copy of what I believe to be the Resolution on that subject matter is annexed hereto and marked "24".

K3—A meeting was accordingly held at Vienna on 8th October 1973 between the Gulf members of OPEC and industry representatives; two days earlier, war had broken out between Israel and the Arab countries (frequently referred to as the "October War"). I did not personally attend the Vienna negotiations but kept in close communication from London with the BP Group's negotiating team at all stages; the OPEC Gulf Members proposed to the industry representatives posted prices increases of the order of 100% ; the industry representatives advised the OPEC representatives
40 that, having regard to the consequential adverse effect of any such increases on the balance of payments situations of consumer countries, they could not give any indications to the proposal without prior consultation with governments of such consumer countries; the meeting was adjourned but before any negotiations were resumed, the six

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Gulf members of OPEC (namely Iran, Iraq, Saudi Arabia, Abu Dhabi, Kuwait and Qatar) unilaterally announced on 16th October, 1973 large increases in posted price levels to take immediate effect. Annexed hereto and marked "25" is a true copy of what I believe to be the communique issued by the Ministerial Committee of these countries on that date. No prior warning of the announcement was given. The effect on the then existing posted prices of Persian Gulf crude oil were increases of 70% to almost 100%

K4—Following the said announcement, correspondence passed between the various governments and oil producing companies there on. The nature of such correspondence is indicated from the copies of the undermentioned communications annexed hereto marked with the numbers "26", "27", "28" and "29":— 10

"26" Letter dated 20th October, 1973 from the Kuwait Minister of Finance and Oil to the Parent Company (in Arabic).

"27" English translation thereof.

"28" Letter dated 1st November, 1973 from BP (Kuwait) Limited to the Kuwait Minister of Finance and Oil.

"29" Telex dated 7th November, 1973 from the Kuwait Oil Company to the Parent Company setting out the text of a letter from the Kuwait Minister of Finance and Oil to BP (Kuwait) Limited.

Letters were sent by the other producing companies in which the BP Group held interests to the governments of each of the other five Gulf Members of OPEC in similar terms to the said letter marked "28". Replies to such letters were received from the said governments in virtually identical terms to the said letter marked "29". Annexed hereto and marked "30" is what I believe to be a true copy of a letter dated 5th November, 1973 from the Iranian Minister of Finance to the members of the Iranian Consortium. 20

K5—Although the OPEC countries had in the past repeatedly made threats of action against oil producer companies who might fail to agree to the terms of supply sought by the OPEC countries, the 16th October, 1973 announcement was the first occasion of OPEC members taking and implementing decisions unilaterally, that is to say, without first securing their object by prior negotiation with the oil producers. The announcement was made notwithstanding the subsistence of the Teheran Agreement. 30

K6—On the following day, namely 17th October, 1973, the Arab State members of OPEC announced certain production cut-backs and embargoes. Annexed hereto and marked "31" is a true copy of what I believe to be the communique issued by these countries on that date as received by the BP Group.

K7—In the wake of the foregoing communiqués, world crude oil market prices rose very sharply; for example, the Iranian Government conducted an auction of crude oil on 11th December, 1973 when sales took place at the price of U.S. \$17 per barrel. Such occurrences caused a scramble amongst oil consumers to secure supplies of crude, many would-be purchasers by-passing the oil producing companies and seeking to negotiate directly with host governments. 40

K8—On 23rd December, 1973 the said Gulf members of OPEC again took unilateral action to raise the posted price levels effective from 1st January, 1974. Annexed hereto and marked "32" is a true copy of what I believe to be the communique issued to inter alia the BP Group by the Ministerial Committee of the

Gulf States on 23rd December, 1973 as published in "Petroleum Intelligence Weekly". Again, no prior warning was given, nor was any opportunity afforded to oil producer companies for discussion or negotiation. The effect on the then existing posted prices (i.e. as at 31st December, 1973) was an increase of about 130%. Also contained in the said annexure marked "32" is what I believe to be a true copy of a communique issued on 25th December, 1973 by the Saudi Arabian Oil Minister.

10 K9—Prior to 20th March 1974 no further change took place in the posted prices made effective from 1st January, 1974 as aforesaid. Libya and Nigeria unilaterally adopted and announced and aforesaid posted prices respectively as from 16th October, 1973 and 1st January, 1974 following upon the announcements of the Gulf State Members.

L. INCREASES IN GOVERNMENT PARTICIPATION

20 L1—As earlier appears in this Affidavit, Libya was not a party to any of the "General Agreements" on participation entered into at the end of 1972 and the beginning of 1973; instead, on or about 7th May, 1973, Libya announced demands upon all foreign owned oil producing companies still operating in Libya for the take-over of the whole of their operations; by this time, as indicated earlier, the BP Group interests in Libya had already been expropriated; on or about 11th June, 1973 Libya announced the nationalisation of the Nelson Bunker Hunt interests (the U.S. Company) in Libya; finally, in or about August 1973 Libya announced the nationalisation of 51% of the Libyan operations and assets of the remaining major foreign oil producers. At the OPEC meeting in Vienna in September 1973 earlier referred to, a Resolution was passed giving support for the said 51% nationalisations in Libya; annexed hereto and marked "33" is a true copy of what I believe to be the said Resolution.

L2—In December 1973 a bill to nationalise oil producing companies was introduced in the Kuwait National Assembly; the legislation was not enacted because on 29th January, 1974 the Consortium in Kuwait in which the BP Group holds a one half interest ceded a 60% "participation" in its Kuwait concession and operations as from 1st January, 1974.

30 L3—On 20th February, 1974, the Consortium in Qatar in which the BP Group holds a 23.75% interest also ceded a 60% "participation" in its Qatar concession and operations as from 1st January, 1974, in lieu of the 25% "participation" theretofore applicable.

L4—Early in the year 1974 (and prior to 22nd March, 1974) negotiations commenced at the instance and demand of the Abu Dhabi government for the ceding by the Consortia in which the BP Group holds a 23.75% interest of 60% "participation" in its Abu Dhabi concession and operations as from 1st January, 1974 in lieu of the 25% "participation" theretofore applicable; the result of these negotiations is referred to in the Affidavit of James Hutchison Porter herein.

40 L5—Early in the year 1974 (and prior to 22nd March, 1974) negotiations also commenced at the instance and demand of the Iranian Government for additional "balancing margin" payments under the Sale and Purchase Agreement of 1973, by reason of the increased benefits accruing to the Kuwait and Qatar Governments under the 60% "participation" agreements above referred to; such negotiations have resulted

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in a provisional agreement being signed on 6th June, 1974 (applying retroactively to 1st January, 1974) referred to in the Affidavit of James Hutchison Porter herein.

M. GENERAL

M1—I say that in relation to:

- (a) Each of the unilateral posted price fixings taking effect from 16th October, 1973 and 1st January, 1974;
- (b) Each of the unilateral actions to impose production cutbacks or export embargoes taking effect on or after 17th October, 1973.
- (c) Each of the Teheran, Tripoli, Lagos and East Mediterranean Agreements;
- (d) Each of the Agreements made as to "participation", (including those initially 10 conceding 25% "participation").
- (e) The Iranian Sale and Purchase Agreement.

Neither the BP Group nor the Consortia in which the BP Group holds interests and membership were willing to accept or enter into the same (as the case may be) but in each case the BP Group and the said Consortia did accede to the said price fixings and other actions and enter into the said agreements in order to avoid the loss of availability of crude oil from each of the relevant sources of supply.

M2—Crude oil being the raw material for the manufacture of refined products such as furnace oil, the foregoing increases in posted prices (and therefore in the tax paid cost and the cost burden of participation) of crude oil effected as from 16th 20 October, 1973 and 1st January, 1974 increased the cost to the BP Group of manufacturing its full range of refined products by the same extent as the increases in the cost of crude oil.

SWORN by the deponent on 13th September,
1974 at London before me

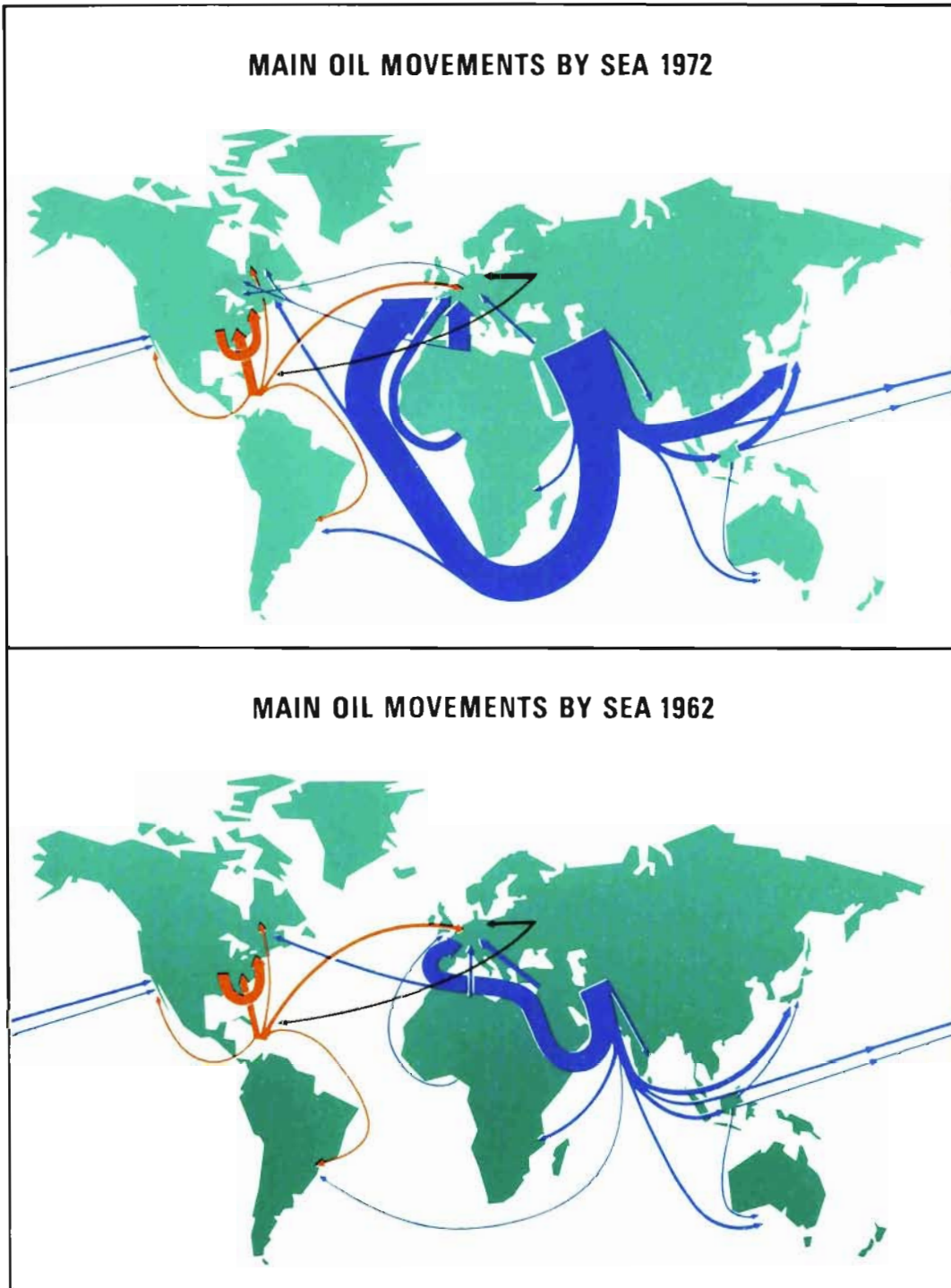
J. W. R. SUTCLIFFE
D. W. JULIAN

NOTARY PUBLIC
LONDON

No. 7
Illustration of Oil Movements by Sea:
(Annexure 1 to The Principal Affidavit)

No. 7
Illustration of oil
movements by sea
(Annexure 1 to
The Principal
Affidavit)

No. 7



No. 8
Map of supply
sources:
(Annexure 2 to
The Principal
Affidavit)

No. 8
Map of Supply Sources:
(Annexure 2 to The Principal Affidavit)

No. 8



No. 9
Table: Sources of BP Group Crude Oil
(Annexure 3 to The Principal Affidavit)

SOURCES OF BP GROUP CRUDE OIL — QUARTERLY ANALYSIS (METRIC TONS — MILLIONS)																					
Quarters	1969				1970				1971				1972				1973				1974
	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1
CRUDE																					
Iran	14.8	12.9	15.0	15.8	16.7	15.8	17.1	18.3	17.8	18.0	19.3	19.6	21.0	20.5	22.5	25.1	25.7	24.8	23.4	25.2	24.7
Kuwait	11.5	15.0	13.4	14.6	13.7	15.2	14.7	13.8	14.7	15.9	14.5	14.6	17.2	16.8	19.6	19.9	17.1	14.3	19.1	15.8	15.1
Abu Dhabi—																					
Land	1.0	0.9	1.1	0.5	1.0	1.1	0.7	1.0	1.3	1.2	1.6	1.5	1.6	1.9	1.5	1.9	2.3	2.0	2.2	2.3	1.9
Marine	1.9	2.1	1.1	1.8	2.1	1.7	2.5	2.0	2.5	1.7	2.3	3.0	3.1	3.2	3.8	4.2	3.9	3.4	2.5	1.2	2.1
Iraq	4.9	4.0	4.5	4.3	4.6	4.4	4.7	5.2	4.5	5.7	4.4	5.8	4.9	3.3	2.0	2.1	2.2	2.7	2.9	2.9	3.3
Qatar	0.5	0.5	0.6	0.6	0.5	0.6	0.3	0.4	0.5	0.7	0.6	0.6	0.6	0.7	0.7	0.7	0.9	0.6	0.7	0.6	0.6
Libya	2.1	2.1	2.1	2.4	3.0	3.1	3.1	3.3	3.3	3.3	3.2	2.0	—	—	—	—	—	—	—	—	—
Nigeria	2.1	2.1	2.1	2.8	3.4	4.7	5.2	6.1	6.4	6.6	6.4	8.1	7.2	6.8	7.9	7.3	7.2	7.6	7.6	8.6	8.3
Trinidad	0.6	0.4	0.4	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Canada	0.4	0.3	0.4	0.5	0.4	0.3	0.4	0.5	0.4	0.4	0.3	0.6	0.5	0.4	0.4	0.5	0.5	0.5	0.6	0.8	0.7
Africa— Franc	0.9	1.1	1.1	1.3	1.3	1.0	1.2	1.2	0.7	—	—	—	—	—	—	0.1	0.6	0.3	0.4	0.3	—
Australia	—	—	—	—	0.1	0.4	0.5	0.4	0.5	0.6	0.9	0.6	0.7	0.7	0.8	0.7	0.7	0.8	0.7	0.9	0.7
SUNDRY PURCHASED & MISC.																					
Production	0.8	1.6	1.1	1.1	1.1	1.0	0.9	1.4	1.1	1.7	1.3	1.4	2.5	2.3	2.3	2.4	1.2	0.5	0.4	(0.3)	0.3
	41.5	43.0	43.1	45.7	47.9	49.3	51.3	53.6	53.7	55.8	54.8	57.8	59.3	56.6	61.5	64.9	62.3	57.5	60.5	58.3	57.7
TOTAL P.A.	173.3				202.1				222.1				242.3				238.6				

55

No. 9
 Table: Sources of
 BP Group Crude
 Oil: (Annexure 3
 to The Principal
 Affidavit)

*No. 10
OPEC Resolution:
10th-14th
September 1960
(Annexure 4 to
The Principal
Affidavit)*

No. 10
OPEC Resolution:
(Annexure 4 to The Principal Affidavit)

RESOLUTION I. 1

1. That Members can no longer remain indifferent to the attitude heretofore adopted by the Oil Companies in effecting price modifications;
2. That Members shall demand that Oil Companies maintain their prices steady and free from all unnecessary fluctuations; that Members shall endeavour, by all means available to them, to restore present prices to the levels prevailing before the reductions; that they shall ensure that if any new circumstances arise which in the estimation of the Oil Companies necessitate price modifications, the said Companies shall enter into consultation with the Member or Members affected in order fully to explain the circumstances; 10
3. That Members shall study and formulate a system to ensure the stabilization of prices by, among other means, the regulation of production, with due regard to the interests of the producing and of the consuming nations and to the necessity of securing a steady income to the producing countries, an efficient, economic and regular supply of this source of energy to consuming nations, and a fair return on their capital to those investing in the petroleum industry;
4. That if as a result of the application of any unanimous decision of this Conference any sanctions are employed, directly or indirectly, by any interested Company against one or more of the Member Countries, no other Member shall accept any offer of a beneficial treatment, whether in the form of an increase in exports or an improvement in prices, which may be made to it by any such Company or Companies with the intention of discouraging the application of the unanimous decision reached by the Conference. 20

*No. 11
OPEC Resolution:
10th-14th
September 1960
(Annexure 5 to
The Principal
Affidavit)*

No. 11
OPEC Resolution:
(Annexure 5 to The Principal Affidavit)

RESOLUTION I. 2

1. With a view to giving effect to the provisions of Resolution No. 1. 1 the Conference decides to form a permanent Organization called the Organization of the Petroleum Exporting Countries, for regular consultation among its Members with a view to co-ordinating and unifying the policies of the Members and determining among other matters the attitude which Members should adopt whenever circumstances such as those referred to in Paragraph 2 of Resolution No. 1. 1 have arisen. 30

2. Countries represented in this Conference shall be the original Members of the Organization of the Petroleum Exporting countries.
3. Any country with a substantial net export of crude petroleum can become a new Member if unanimously accepted by all five original Members of the Organization.
4. The principal aim of the Organization shall be the unification of petroleum policies for the Member Countries and the determination of the best means for safeguarding the interests of Member Countries individually and collectively.
- 10 5. The Organization shall hold meetings at least twice a year and if necessary more frequently in the capital of one or other of the Member Countries or elsewhere as may be advisable.
6. (a) In order to organize and administer the work of the Organization there shall be established a Secretariat of the Organization of the Petroleum Exporting Countries.
- 20 (b) A subcommittee of not less than one member from each country shall meet in Baghdad not later than the first of December 1960 in order to formulate and submit to the next Conference draft rules concerning the structure and functions of the Secretariat; to propose the budget of the Secretariat for the first year; and to study and propose the most suitable location for the Secretariat.

*No. 11
OPEC Resolution:
10th-14th
September 1960
(Annexure 5 to
The Principal
Affidavit)
(Cont'd)*

No. 12
OPEC Resolution:
(Annexure 6 to The Principal Affidavit)

RESOLUTION XVI. 90
DECLARATORY STATEMENT
OF PETROLEUM POLICY IN MEMBER COUNTRIES

*No. 12
OPEC Resolution:
24th-25th June
1968 (Annexure 6
to The Principal
Affidavit)*

The Conference,
recalling Paragraph 4 of its Resolution I. 2; recognizing that hydrocarbon resources in Member Countries are one of the principal sources of their revenues and foreign exchange earnings and therefore constitute the main basis for their economic development;

bearing in mind that hydrocarbon resources are limited and exhaustible, and that their proper exploitation determines the conditions of the economic development of Member Countries, both at present and in the future;

bearing in mind also that the inalienable right of all countries to exercise permanent sovereignty over their natural resources in the interest of their national development is

a universally recognized principle of public law and has been repeatedly reaffirmed by the General Assembly of the United Nations, most notably in its Resolution 2158 of November 25, 1966;

considering also that in order to ensure the exercise of permanent sovereignty over hydrocarbon resources, it is essential that their exploitation should be aimed at securing the greatest possible benefit for Member Countries;

considering further that this aim can better be achieved if Member Countries are in a position to undertake themselves directly the exploitation of their hydrocarbon resources, so that they may exercise their freedom of choice in the utilization of hydrocarbon resources under the most favorable conditions; 10

taking into account the fact that foreign capital, whether public or private, forthcoming at the request of the Member Countries, can play an important role, inasmuch as it supplements the efforts undertaken by them in the exploitation of their hydrocarbon resources, provided that there is government supervision of the activity of foreign capital to ensure that it is used in the interest of national development and that returns earned by it do not exceed reasonable levels;

bearing in mind that the principal aim of the Organization, as set out in Article 2 of its Statute, "is the co-ordination and unification of the petroleum policies of Member Countries and the determination of the best means for safeguarding their interests, individually and collectively"; 20

recommends that the following principles shall serve as basis for petroleum policy in Member Countries.

MODE OF DEVELOPMENT

1. Member Governments shall endeavour, as far as feasible, to explore for and develop their hydrocarbon resources directly. The capital, specialists and the promotion of marketing outlets required for such direct development may be complemented when necessary from alternate sources on a commercial basis.
2. However, when a Member Government is not capable of developing its hydrocarbon resources directly, it may enter into contracts of various types, to be defined in its legislation but subject to the present principles, with outside 30 operators for a reasonable remuneration, taking into account the degree of risk involved. Under such an arrangement, the Government shall seek to retain the greatest measure possible of participation in and control over all aspects of operations.
3. In any event, the terms and conditions of such contracts shall be open to revision at predetermined intervals, as justified by changing circumstances. Such changing circumstances should call for the revision of existing concession agreements.

PARTICIPATION

Where provision for Governmental participation in the ownership of the concession-holding company under any of the present petroleum contracts has not been 40 made, the Government may acquire a reasonable participation, on the grounds of the principle of changing circumstances.

If such provision has actually been made but avoided by the operators concerned, the rate provided for shall serve as a minimum basis for the participation to be acquired.

RELINQUISHMENT

A schedule of progressive and more accelerated relinquishment of acreage of present contract areas shall be introduced. In any event, the Government shall participate in choosing the acreage to be relinquished, including those cases where relinquishment is already provided for but left to the discretion of the operator.

POSTED PRICES OR TAX REFERENCE PRICES

- 10 All contracts shall require that the assessment of the operator's income, and its taxes or any other payments to the State, be based on a posted or tax reference price for the hydrocarbons produced under the contract. Such price shall be determined by the Government and shall move in such a manner as to prevent any deterioration in its relationship to the prices of manufactured goods traded internationally. However, such price shall be consistent, subject to differences in gravity, quality and geographic location, with the levels of posted or tax reference prices generally prevailing for hydrocarbons in other OPEC Countries and accepted by them as a basis for tax payments.

LIMITED GUARANTEE OF FISCAL STABILITY

- 20 The Government may, at its discretion, give a guarantee of fiscal stability to operators for a reasonable period of time.

RENEGOTIATION CLAUSE

1. Notwithstanding any guarantee of fiscal stability that may have been granted to the operator, the operator shall not have the right to obtain excessively high net earnings after taxes. The financial provisions of contracts which actually result in such excessively high net earnings shall be open to renegotiation.
2. In deciding whether to initiate such renegotiation, the Government shall take due account of the degree of financial risk undertaken by the operator and the general level of net earnings elsewhere in industry where similar circumstances prevail.
- 30 3. In the event the operator declines to negotiate, or that the negotiations do not result in any agreement within a reasonable period of time, the Government shall make its own estimate of the amount by which the operator's net earnings after taxes are excessive, and such amount shall then be paid by the operator to the Government.
4. In the present context, "excessively high net earnings" means net profits after taxes which are significantly in excess, during any twelve-month period, of the level of net earnings the reasonable expectation of which would have been sufficient to induce the operator to take the entrepreneurial risks necessary.
- 40 5. In evaluating the "excessively high net earnings" of the new operators, consideration should be given to their overall competitive position vis-a-vis the established operators.

No. 12
 OPEC Resolution:
 24th-25th June
 1968 (Annexure 6
 to The Principal
 Affidavit)
 (Cont'd)

ACCOUNTS AND INFORMATION

The operator shall be required to keep within the country clear and accurate accounts and records of his operations, which shall at all times be available to Government auditors, upon request.

Such accounts shall be kept in accordance with the Government's written instructions, which shall conform to commonly accepted principles of accounting, and which shall be applicable generally to all operators within its territory.

The operator shall promptly make available, in a meaningful form, such information related to its operations as the Government may reasonably require for the discharge of its functions. 10

CONSERVATION

Operators shall be required to conduct their operations in accordance with the best conservation practices, bearing in mind the long-term interests of the country. To this end, the Government shall draw up written instructions detailing the conservation rules to be followed generally by all contractors within its territory.

SETTLEMENT OF DISPUTES

Except as otherwise provided for in the legal system of a Member Country, all disputes arising between the Government and operators shall fall exclusively within the jurisdiction of the competent national courts or the specialized regional courts, as and when established. 20

OTHER MATTERS

In addition to the foregoing principles, Member Governments shall adopt on all other matters essential to a comprehensive and rational hydrocarbons policy, rules including no less than the best of current practices with respect to the registration and incorporation of operators; assignment and transfer of rights; work obligations; the employment of nationals; training programs; royalty rates; the imposition of taxes generally in force in the country; property of the operator upon expiry of the contract; and other such matters.

DEFINITION

For the purposes of the present Resolution, the term "operator" shall mean any person entering into a contract of any kind with a Member Government or its designated agency including the concessions and contracts currently in effect, providing for the exploration for and/or development of any part of the hydrocarbon resources of the country concerned. 30

No. 13
OPEC Resolution:
 (Annexure 7 to The Principal Affidavit)

No. 13
OPEC Resolution.
9th-12th
December 1970
(Annexure 7 to
The Principal
Affidavit)

RESOLUTION XXI. 120

The Conference,

having heard the statement of the Head of the Libyan Delegation with regard to the outcome of the negotiations carried out by that Member Country with its concessionaire companies to correct the unjustifiable bases on which Libyan posted prices had been calculated since their inception;

- 10 **having heard** the statements of the Heads of the Iranian and Kuwait Delegations with regard to the recent increases made in the posted prices of certain crude oils and the adoption of a uniform 55 per cent tax rate in those Member Countries, having also noted the statement of the Head of the Saudi Arabian Delegation that an offer of a similar nature has been made to his country;

having noted the recent 20 cent per barrel upward adjustment published by the concessionaire companies in Iraq and Saudi Arabia for the crude oil shipped from East Mediterranean terminals;

- 20 **having heard** the statement made by the Head of the Algerian Delegation on the negotiations being held with the French Government concerning the revision of the fiscal terms applicable to the French oil companies;

having heard the statement made by the Head of the Venezuelan Delegation on the price situation in that Member Country, where some of the concessionaire exporting companies have failed to adjust their export prices to take into account prevailing market conditions, as established in existing reference price agreements, to the eventual detriment of the Venezuelan fiscal revenue;

recalling Resolutions XIII. 80, XIII. 81 and XIX. 105, where the Organization supported the measures that were being taken by the Libyan, Iraqi and Algerian Governments to safeguard their legitimate interests with respect to the upward revision of posted or reference prices and of fiscal revenue;

- 30 **pursuant to** the principles established in Resolution XVI. 90, calling for revision of existing agreements as justified by changing circumstances, and that the reference price for the purpose of determining the tax liability of the concessionaire companies should be determined by the Governments of Member Countries;

having heard the reports presented by the Secretariat concerning the necessity for an immediate elimination of the disparities as well as an upward adjustment of the existing posted or reference prices in all Member Countries;

considering the general improvement in the economic and market outlook of the international oil industry, as well as in its competitiveness with other sources of energy;

resolves that all Member Countries adopt the following objectives:

- 40 1. to establish 55 per cent as the minimum rate of taxation on the net income of the oil companies operating in the Member Countries,

No. 13
OPEC
Resolutions:
9th-12th
December 1970
(Annexure 7 to
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(Cont'd)

2. to eliminate existing disparities in posted or tax-reference prices of the crude oils in the Member Countries on the basis of the highest posted price applicable in the Member Countries, taking into consideration differences in gravity and geographic location and any appropriate escalation in the future years,
3. to establish a uniform general increase in the posted or tax-reference prices in all Member Countries to reflect the general improvement in the conditions of the international petroleum market,
4. to adopt a new system for the adjustment of gravity differential of posted or tax-reference prices on the basis of 0.15 cents/bbl/0.1° API for crude oil of 40° API and below, and 0.2 cents/bbl/0.1° API for crude oil of 40.1° API and above, 10
5. to eliminate completely the allowances granted to oil companies as from the first January, 1971.

To this end, all Member Countries shall establish negotiations with the oil companies concerned with a view to achieving the above objectives and, recognizing the similarity of geographical location and other conditions in Abu Dhabi, Iran, Iraq, Kuwait, Qatar and Saudi Arabia, a Committee shall be formed consisting of the representatives of Iran, Iraq and Saudi Arabia who shall negotiate on behalf of Abu Dhabi, Iran, Iraq, Kuwait, Qatar and Saudi Arabia with the representatives of the oil companies operating in said Member Countries.

The Committee shall establish negotiations with the oil companies concerned in 20 Tehran within a period of 31 days from the date of the conclusion of the present Conference and report to all Member Countries through the Secretary General the results of the negotiations not later than 7 days thereafter.

Within 15 days of the submission of the Committee's report to Member Countries, an extraordinary meeting of the Conference shall be convened in order to evaluate the results of the Committee's and of the individual Member Countries' negotiations. In case such negotiations fail to achieve their purpose, the Conference shall determine and set forth a procedure with a view to enforcing and achieving the objectives as outlined in this Resolution through a concerted and simultaneous action by all Member Countries. 30

No. 14
OPEC Resolution:
 (Annexure 8 to The Principal Affidavit)

No. 14
OPEC Resolution:
3rd-4th February
1971 (Annexure 8
to The Principal
Affidavit)

RESOLUTION XXII. 131

The Conference,

having heard the report of the three-member Ministerial Committee representing the Member Countries bordering the Gulf on the outcome of their negotiations with the oil companies' representatives on the implementation of Resolution XXI. 120;

- 10 **having also heard** the reports of the Heads of the Delegations of Algeria, Libya and Venezuela on the actions taken by their respective Governments towards the implementation of the objectives of said Resolutions;

bearing in mind the sharp increase and the general firming up of crude oil and product prices in the world markets coupled with the staggering growth of demand for petroleum in the main consuming countries;

taking note of the continued erosion in the purchasing power of Member Countries' oil revenues, due to world-wide inflation and the ever-widening gap existing between the prices of capital and manufactured goods essential for their economic development and those of petroleum;

- 20 **recalling** the Declaratory Statement of Petroleum Policy embodied in Resolution XVI. 90 which provides, inter alia, that the determination of oil posted and tax reference prices be made by the Governments of the producing countries;

with a view towards safeguarding Member Countries' rightful and legitimate interest in an equitable manner, and recognizing the benefits that stability in the fiscal obligations of the oil industry represents for the consuming countries as well as for those investing in crude oil production:

- 30 **resolves** that each Member Country exporting oil from Gulf terminals shall introduce on the 15th of February the necessary legal and/or legislative measures for the implementation of the objectives embodied in Resolution XXI. 120. In the event that any oil company concerned fails to comply with these legal and/or legislative measures within seven days from the date of their adoption in all the countries concerned, Member Countries, Abu Dhabi, Algeria, Iran, Iraq, Kuwait, Libya, Qatar, Saudi Arabia and Venezuela, shall take appropriate measures including total embargo on the shipments of crude oil and petroleum products by such company.

In case the oil companies operating in Member Countries concerned express their willingness to comply with the minimum requirements agreed upon by the six Member Countries bordering the Gulf on the implementation of the objectives of Resolution XXI. 120 before the expiry of the time limit set out above, then the Member Countries concerned shall refrain from resorting to the legal and/or legislative measures referred to above,

- 40 **and with respect** to Algeria and Libya the necessary legal and/or legislative measures for the implementation of the objectives embodied in Resolution XXI. 120 applicable to them shall be introduced at the convenience of their respective Governments. In the event that any oil company operating in these Member Countries fails to comply, within seven days from the date of their adoption, with the same minimum requirements

No. 14
OPEC Resolution:
3rd-4th February
1971
(Annexe 8 to The
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agreed upon by the Member Countries bordering the Gulf plus an additional premium reflecting a reasonable justified short-haul freight advantage for their crude oil exports, Member Countries, Abu Dhabi, Algeria, Iran, Iraq, Kuwait, Libya, Qatar, Saudi Arabia and Venezuela shall take appropriate measures including total embargo on the shipment of crude oil and petroleum products by such company.

No. 15
Teheran
Agreement:
14th February
1971
(Annexure 9 to
The Principal
Affidavit)

No. 15
Teheran Agreement:
(Annexure 9 to The Principal Affidavit)

Abu Dhabi, Iran, Iraq, Kuwait, Qatar and Saudi Arabia (the said six States being hereinafter known as "the Gulf States" insofar as their exports from the Gulf are concerned) and the Companies listed in Annexe 1 and their affiliates (hereinafter known as "the Companies"), to establish security of supply and stability in financial arrangements agree: 10

1. The existing arrangements between each of the Gulf States and each of the Companies to which this Agreement is an overall amendment, will continue to be valid in accordance with their terms.
2. The following provisions constitute a settlement of the terms relating to government take and other financial obligations of the Companies operating in the Gulf States as to the subject matters referred to in OPEC Resolutions and as regards oil exported from the Gulf, for a period from 15th February, 1971 through 31st December, 1975. These provisions shall be binding on both the Gulf States and the Companies for the said period. 20
3. These provisions are:—
 - (a) During this Agreement no Gulf State will seek any increase in government take or other financial obligations over that now agreed regarding Gulf production, as a result of:—
 - (1) The application of different terms in:
 - (i) any Gulf State as a Mediterranean exporter; or
 - (ii) any Mediterranean producer; or
 - (iii) any producer from any other area; or 30
 - (2) The breach of contract through unilateral action by any Government in the Gulf; or
 - (3) The elimination of existing disparities in the Gulf under paragraph (c)(2)(iv) or any settlement under paragraph (c)(3) THIRDLY; or
 - (4) The application of different terms to any future agreement in any country bordering on the Gulf.
 - (b) The requirements of the six Member Countries of OPEC bordering the Gulf under OPEC Resolutions XXI.120 and XXII.131 are satisfied by the terms of this Agreement. During the period of this Agreement the Gulf States shall not take any action in the Gulf to support any OPEC 40 member which may demand either any increase in government take

No
Leapfrogging

No Embargo

above the terms now agreed, or any increase in government take or any other matter not covered by Resolution XXI.120.

No. 15
Teheran
Agreement:
14th February 1971
(Annexure 9 to
The Principal
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(Cont'd)

Financial Terms
to meet OPEC
Resolution
XXI.120.

- (c) (1) Total tax rates on income shall be stabilized in accordance with existing arrangements, except that insofar as present tax laws provide for total rates lower than 55 per cent, the Companies concerned will submit to an amendment to the relevant income tax laws raising the total rates to 55 per cent.

OPEC 120
Paragraph 1

10

- (2) In satisfaction of the several claims arising out of paragraphs 2 and 3 of OPEC Resolution XXI.120

(i) Each of the Companies shall uniformly increase as from the effective date its crude posted prices at the Gulf terminals of the Gulf States by 33c per barrel.

20

(ii) (aa) Each of the Companies shall make further upward adjustments to its crude posted prices to the nearest tenth * of a cent per barrel by increasing on 1st June, 1971 each of such posted prices by an amount equal to 2½% of such posted price on the day following the effective date. On 1st January of each of the years 1973 through 1975 a further increase to the nearest tenth of a cent shall be made in each such posted price equivalent to 2½% of the posted price prevailing on 31st December of the preceding year.

(ii) (bb) Each of the Companies shall increase its crude posted prices on 1st June, 1971 by 5c per barrel and by a further increase of 5c per barrel on 1st January in each of the years 1973 — 1975.

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(ii) (cc) Each of the Companies shall further increase its crude posted prices as from the effective date by 2c per barrel which, together with paragraph 3(d) is in satisfaction of claims related to freight disparities.

(iii) The increases included in (ii) above shall be in satisfaction of claims in respect of freight, escalation and of inflation under both OPEC Resolution XXI. 120 and OPEC Resolution XXI. 122, and also in satisfaction of certain other economic considerations raised by the Gulf States.

40

(iv) Each of the Gulf States having an existing claim under negotiation based on posted price disparity has discussed and resolved such claim with the Companies exporting the crude grade concerned as follows:

In the case of Iranian Heavy, Saudi Arab Medium and Kuwait, the posted prices shall each be increased by the companies concerned by one cent with effect from the effective date. In the case of Basrah after the adjustment provided for in (3) FIRSTLY the posted price will be \$1.805 for 35° API.

OPEC 120
Paragraph 4

- (3) FIRSTLY For crude oil API gravity 30.0° to 39.9° with effect from the effective date each posted price shall be further increased by the Companies by ½c per barrel for each degree such crude is

* For each decimal fraction of a cent of 0.05 cents or above the amount is to be increased to the next higher whole 0.1 cent. For each decimal fraction of a cent below 0.05 cents the amount is decreased by this fraction.

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Teheran
Agreement:
14th February 1971
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(Cont'd)

less than API° 40. A table showing the resulting increases before taking into account the settlement of disparities under(c)(2)(iv) is attached (Annexe 2) and forms part of this Agreement.

SECONDLY Posted prices shall apply to shipments falling within the range of .0 to .09 degrees of any full degree of API gravity and shall be subject to a gravity differential on the basis of 0.15c per barrel for each full 0.1 degree API.

THIRDLY In the case of crudes under 30° API the Governments and Companies shall agree on a basis for adjusting the posted price. However, if no such agreement is reached the same principles 10 applied in FIRSTLY and SECONDLY above shall apply.

The existing per cent allowance, the gravity allowance and the ½c per barrel marketing allowance shall be eliminated as from the effective date of this agreement.

OPEC 120
Paragraph 5

- (d) If Libya is receiving a premium for short haul crude which premium is to fluctuate according to freight conditions in accordance with a freight formula and if in respect of any period the premium applied by any major oil company which has production in Libya and the Gulf States exceeds for any reason the lowest level Permitted by such formula for such period the Gulf States shall be entitled to additional payments as set 20 out in Annexe 3.

4. "Affiliate" shall mean in relation to any Company, any company which is wholly or partly owned directly or indirectly by that Company.

5. Each of the Gulf States accepts that the Companies' undertakings hereunder constitute a fair appropriate and final settlement between each of them, and those of the Companies operating within their respective jurisdictions, of all matters related to the applicable bases of taxation and the levels of posted prices up to the effective date.

6. The effective date of this Agreement shall be 15th February, 1971.

Done this 14th Day of February, 1971 at Tehran, Iran.

30

For the Gulf States:

Mana Saeed Otaiba
Abu Dhabi

Jamshid Amouzegar
Iran

Saadoun Hammadi
Iraq

Abdul-Rahman Al-Ateeqy
Kuwait

Hassan Kamel
Qatar

Ahmed Zaki Yamani
Saudi Arabia

For the Companies:

Strathalmond

George T. Piercy

A. C. DeCrane, Jr.

John E. Kircher

W. P. Tavoulaareas

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ANNEXE 1

The British Petroleum Company Limited
 Compagnie Francaise des Petroles
 Gulf Oil Corporation
 Mobil Oil Corporation
 The Shell Petroleum Company Limited and
 Shell Petroleum N.V.
 Standard Oil Company of California
 Standard Oil Company (New Jersey)
 Texaco Inc.
 Continental Oil Company
 Standard Oil Company (Ohio)
 Hispanica de Petroleos S.A.
 American Independent Oil Company of Iran
 Signal (Iran) Petroleum Company

No. 15
 Teheran
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 (Cont'd)

10

ANNEXE 2

Crude	° API	Present Posting \$ pb	1/2 c pb x Degrees of Gravity under 40°	Adjusted Posted Price* \$ pb
20 Qatar	40	1.93	0	1.93
Abu Dhabi	39	1.88	.005	1.885
Abu Dhabi Marine	37	1.86	.015	1.875
Qatar Marine	36	1.83	.02	1.85
Basrah	35	1.72	.025	1.745
Arabian Light	34	1.80	.03	1.830
Iran Light	34	1.79	.03	1.820
Iran Heavy	31	1.72	.045	1.765
Kuwait	31	1.68	.045	1.725
Arab Medium	31	1.68	.045	1.725

30 The crude below API Gravity 30° is not covered by this table.

* Subject to paragraph 3(c)(2)(iv)

ANNEXE 3
 Short Haul Freight

The following provisions shall apply with respect to the implementation of paragraph 3(d) of the Agreement to which this Annexe 3 is attached.

(1) Any major oil company concerned shall pay to each Gulf State (as a supplemental payment) that proportion of a "balancing amount" as such Company's crude production exported from Gulf terminals (including

No. 15
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- Arabia/Bahrein pipeline) in such Gulf State bear to the total of such Company's crude exports in such period from all Gulf States in the Gulf.
- (2) The "balancing amount" will be equal to the monetary amount by which the Company's payments to Libya for the period exceed the monetary amount which the Company would have paid to Libya for the period if it had effected the full reduction of premium permitted by its agreement with Libya or if it had effected a reduction in premium equal to 21½c/B which is agreed with the Gulf States to be the short haul premium, whichever reduction is smaller.
- (3) "Major Oil Company" for the above purpose means any of Esso, Texaco, Social, Gulf, Mobil, BP, Shell and CFP. 10
- (4) Illustrative examples of the implementation of the terms of this annexe are shown in Exhibit A, attached.

EXHIBIT A
ILLUSTRATIVE EXAMPLE OF "BALANCING AMOUNT"

	Cents/BBL			
Shorthaul Premium agreed with the Gulf States	21.5	21.5	21.5	21.5
Libyan "Premium" for illustrative purposes:	18.0	21.5	24.0	30.0
Lesser of Under-Reduction of Libyan Freight Premium or 21½c/B:				
1. Libyan Premium should be reduced by 25% but is not	4.5	5.375	6.0	7.5
2. Libyan Premium should be reduced by 50% but is not	9.0	10.75	12.0	15.0
3. Libyan Premium should be reduced by 100% but is not	18.0	21.5	21.5	21.5
4. Libyan Premium should be reduced by 100% but was only reduced to 50%	9.0	10.75	12.0	15.0
5. Libyan Premium should be reduced by 100% but was only reduced by 25%	13.5	16.125	18.0	21.5
To obtain balancing amount:				
(a) Multiply figure given under 1 — 5 by the total Libyan tax rate on income plus (100 per cent minus such rate) applied to the royalty, all as applicable to the producer concerned.				30
(b) Multiply resultant dollar/B figure in (a) by the barrels of the major company's crude production exported from Libya.				

14th February, 1971

Representatives of Abu Dhabi
Iraq
Qatar

Excellencies:

This will confirm the understanding between yourselves and the Companies listed 40 in Annexure 1 to this letter. It is estimated that the aggregate of the payments by such Companies by reason of the increases in posted prices provided for in Paragraph 3(c)(ii)(aa) and 3(c)(ii)(bb) of the "Agreement" executed on 14 February 1971 at Tehran, Iran, in respect of the period 1 June 1971 through 31 December 1971 shall be:

Basra (BPC)	8.0
Qatar (Q.P.C.)	2.3

Qatar (Shell Qatar)	2.7	
Abu Dhabi (A.D.P.C.)	6.3	
Abu Dhabi (ADMA)	3.9	
	<hr/>	
Total	23.2	million dollars
	<hr/>	

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1. If, in respect of any operating venture listed above, such aggregate payments to the Government concerned in respect of 1971 exceed the above estimate then the Company or Companies concerned will be reimbursed at the beginning of 1972 in a manner to be agreed.
- 10 2. If in respect of any operating venture listed above such aggregate payments to the Government concerned in respect of 1971 are less than the above estimate the Company or Companies concerned shall make a make-up payment of the short fall to such Government before the end of January 1972.
3. The term Companies as used herein shall mean such of the Companies listed in Annexe 1 or affiliate of any such Company, which is responsible for tax payments or make-up payments in respect of the appropriate operating ventures.

20 Respectfully yours,

GEORGE T. PIERCY
W.P. TAVOULAREAS
STRATHALMOND

Agreed:
HASSAN KAMEL
SAADOUN HAMMADI
MANA SAEED OTAIBA

ANNEXE 1

30 The British Petroleum Company Limited
Compagnie Francaise des Petroles
Mobil Oil Corporation
The Shell Petroleum Company Limited and
Shell Petroleum N.V.
Standard Oil Company (New Jersey)

No. 16
OPEC Resolution:
12th-13th July
1971 (Annexure
10 to The
Principal
Affidavit)

No. 16
OPEC Resolution:
(Annexure 10 to The Principal Affidavit)

RESOLUTION XXIV. 135

The Conference,
recalling Resolution XVI. 90 embodying the Declaratory Statement of Petroleum Policy in Member Countries;

having heard the statement of the Ministerial Committee established by the XXI Conference to study the implementation of the principle of Participation;

considering the change of circumstances which entails the implementation of Member 10 Countries' right to participate in the existing oil concessions;

resolves

that Member Countries shall take immediate steps towards the effective implementation of the principle of Participation in the existing oil concessions. To this end, a Ministerial Committee shall be formed consisting of the representatives of Iran, Iraq, Kuwait, Libya and Saudi Arabia to draw up the bases for the implementation of effective participation by Member Countries in existing concessions and to submit its recommendations to an extraordinary meeting of the Conference to be convened on 22nd September 1971.

No. 17
OPEC Resolution:
22nd September
1971 (Annexure
11 to The
Principal
Affidavit)

No. 17
OPEC Resolution:
(Annexure 11 to The Principal Affidavit)

20

RESOLUTION XXV. 139

The Conference,
recalling Resolution XXIV. 135,

having heard the statement of the Ministerial Committee established by said Resolution for the drawing up of the bases for the implementation of effective participation by Member Countries in existing concessions;

reaffirming the determination of Member Countries to take immediate steps towards the implementation of effective participation in the existing oil concessions; 30

resolves

1. that all Member Countries concerned shall establish negotiations with the oil companies, either individually or in groups, with a view to achieving effective participation on the bases proposed by the said Ministerial Committee, and

2. that the results of the negotiations shall be submitted to the Conference for coordination. In case such negotiations fail to achieve their purpose, the Conference shall determine a procedure with a view to enforcing and achieving the objectives of effective participation through concerted action.

No. 15
Teheran
Agreement:
14th February 1971
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No. 18
OPEC Resolution:
(Annexure 12 to The Principal Affidavit)

RESOLUTION XXV. 140

No. 18
OPEC Resolution:
22nd September
1971 (Annexure
12 to The
Principal
Affidavit)

The Conference,

- 10 **having considered** the report of the Secretary General concerning the recent international monetary developments and their adverse effects on the purchasing power of the oil revenue of Member Countries;

noting that these developments have resulted in a *de facto* devaluation of the United States Dollar, the currency in which posted prices are established, vis-a-vis the currencies of the major industrialized countries;

recalling Resolution XXI. 122 which calls, *inter alia*, for adjustment in posted or tax-reference prices so as to offset any adverse effect resulting from *de facto* or *de jure* changes in the parity of monies of major industrialized countries;

resolves

- 20 1. that Member Countries shall take necessary action and/or shall establish negotiations, individually or in groups, with the oil companies with a view to adopting ways and means to offset any adverse effect on the per barrel real income of Member Countries resulting from the international monetary developments as of 15th August, 1971.
2. that the results of negotiations shall be submitted to the next Conference. In case such negotiations fail to achieve their purpose, the Conference shall determine such action as necessary for the implementation of this Resolution.

No. 19
Libyan
Nationalisation
Law:
7th December
1971
(Annexure 13 to
The Principal
Affidavit)

No. 19
Libyan Nationalisation Law:
(Annexure 13 to The Principal Affidavit)

(As published in supplement to Middle East Economic Survey dated 10th December 1971, corrected against Arabic Text in the Libyan newspaper "Ath Thawrah" of 8th December, 1971).

In the name of the people,

The Revolutionary Command Council,

After review of Constitutional Proclamation Number 1 of 2 Shawwah 1389 (11 December 1969); and of Petroleum Law Number 25 of 1955, and the Laws amending 10
it; and of Law Number 24 of 1970 relating to the National Oil Corporation and the
Laws amending it; and of the Commercial Law and Law 65 of 1970 establishing
certain regulations relating to merchants and commercial companies and the super-
vision thereof; and of Oil Concession Agreement Number 65 and the agreements
relating thereto; and in accordance with the proposal of the President of the Council of
Ministers and with the approval of the said Council, has issued the following Law:

ARTICLE 1

The activities of BP Exploration (Libya) Limited in Oil Concession Number 65 shall be nationalised. Ownership of all properties, rights, assets and shares relating to the above-mentioned activities, shall revert to the state, including specifically the installa- 20
tions and facilities for exploration, drilling, production of crude oil and natural gas,
transportation, utilization, refining, storage and export and other assets and rights
relating to such activities.

ARTICLE 2

A joint stock company of Libyan nationality, whose capital shall be wholly owned by the National Oil Corporation, shall be established under the name of "The Arabian Gulf Exploration Company", and all properties, rights and assets of BP Exploration Limited which have reverted to the state in accordance with the provisions of the previous Article shall be transferred to this Company.

The Arabian Gulf Exploration Company shall not be responsible for previous 30
obligations relating to the nationalised activities except within the limits of the
properties, rights and assets which have reverted to the state. The objects of this
Company shall be the production of crude oil and natural gas, and refining, utilization,
storage, export and other operations relating thereto whether within the area of the
Concession referred to in the previous article or in any other areas designated by the
Board of Directors of the National Oil Corporation.

ARTICLE 3

The Arabian Gulf Exploration Company shall have the right to implement existing employment contracts or crude oil sales contracts relating to the nationalised activities, or to amend or annul them, as it deems appropriate in the public interest. Its decisions 40
in this regard shall apply to the other partner in the aforementioned Concession
Number 65.

ARTICLE 4

The Arabian Gulf Exploration Company shall pay to the State treasury through the Ministry of Petroleum all duties, land rents, royalties and additional taxes imposed on BP Exploration (Libya) Limited as from the effective date of this law in accordance with the provisions of the Petroleum Law and the Concession Agreement referred to above and the agreements amending it.

*No. 19
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Nationalisation
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ARTICLE 5

10 The state shall pay compensation to the party concerned for the properties, rights and assets reverting to it by virtue to Article 1. The determination of the amount of such compensation shall be undertaken by a Committee to be formed by a decree issued by the Minister of Petroleum in the following manner:

- (a) A judge of the Court of Appeal as Chairman, to be nominated by the Minister of Justice.
- (b) A representative of the National Oil Corporation as a member, to be nominated by the Minister of Petroleum.
- (c) A representative of the Ministry of the Treasury as a member, to be nominated by the Minister of the Treasury.

The Committee may seek the aid of employees or others as it deems necessary in the performance of its task.

20

ARTICLE 6

The amounts required to settle outstanding taxes, duties and any other payments due to the State Treasury and any debts connected with the nationalised activities shall be deducted from the amount of compensation due to the party concerned in accordance with the preceding Article within the limits of the amount of compensation.

Those entitled to the aforementioned debts must submit a statement of the sums owed to them with supporting documents to the Committee provided for in Article 5 within a period not exceeding thirty days from the date of issue of the decree forming the Committee.

ARTICLE 7

30 The Committee provided for in Article 5 shall issue a decision fixing the compensation and determining the debts to be deducted therefrom within a period not exceeding three months from the date of issue of the decree forming the Committee. The decision of the Committee shall be causative and final and shall admit of no appeal whatsoever. It shall be communicated to the Minister of Petroleum who shall notify the party concerned within thirty days of its date of issue.

ARTICLE 8

40 Within not more than three months from the effective date of this Law a decree of the Council of Ministers upon the proposal of the Minister of Petroleum shall be issued setting forth the articles of association of the Company, determining its term, capital, official headquarters, administrative organization, the conditions for drawing up its budget, and other matters and questions relating thereto, within the provisions of this

No. 19
 Libyan
 Nationalisation
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Law and Law 24 of 1970 and without being bound by the provisions of the aforementioned Commercial Law and Law 65 of 1970.

ARTICLE 9

The Board of Directors of the Company shall be composed of six members, including the Managing Director (General Manager?) who shall be Chairman of the Board. The Chairman and members of the Board of Directors shall be appointed, and their salaries determined, by a decision of the Council of Ministers upon the proposal of the Minister of Petroleum.

ARTICLE 10

The Board of Directors of the Company shall have the widest authority in administering the Company, discharging its affairs, and laying down the Company's general policy and the financial and administrative rules and regulations to be followed, with the exception of the jurisdictions which are explicitly reserved for the General Assembly in the articles of the Company. 10

ARTICLE 11

A quorum shall be constituted at meetings of the Board of Directors of the Company by the presence of a majority of its members, and decisions shall be issued by a majority of the votes present. In the event of a tie the side receiving the Chairman's vote shall prevail.

ARTICLE 12

20

The Chairman of the Board of Directors of the Company shall undertake the achievement of its objectives, and shall administer it and discharge its affairs in accordance with the articles of the Company.

ARTICLE 13

The Board of Directors of the National Oil Corporation shall have, in relation to the said Company, the powers of the shareholders' general meeting as determined as stipulated in respect of a joint-stock company.

ARTICLE 14

The Company shall have a special budget modelled on the pattern of the budgets of Commercial projects, and the net profits of the Company after deduction of reserves and other amounts stipulated in the articles of the Company shall pass to the National Oil Corporation, and until such time as the first budget for the Company is drawn up the government shall allocate the funds necessary for the operation of the Company. 30

ARTICLE 15

The Company shall have one or more auditors for its accounts, and their obligations and powers shall be defined in accordance with the laws in force, and the Board of Directors of the National Oil Corporation shall issue a decision appointing them and fixing their fees. The auditor shall take the place of the Inspection Committee specified in the Commercial Law.

ARTICLE 16

The rules and procedures applicable in the government shall not apply to the Company's properties, work regulations and employees.

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(Cont'd)

ARTICLE 17

Employees and workers of Libyan nationality who are in the employ of the Company referred to in Article 1 shall join the new Company, and none of them may leave or refuse to report to work unless discharged by a decision of the Company's Board of Directors. Foreign employees and workers may choose between remaining in their new posts or leaving their work. Libyan employees and workers, and also foreigners who
10 choose to remain in their work, shall retain their present wages and salaries. The Minister of Petroleum may issue an order upon the proposal of the Chairman of the Board or the National Oil Corporation seconding Libyan workers and employees of other companies to work in the new Company as he sees fit, and this Company shall bear (the payment of their) salaries and allowances fixed for them in their original post throughout their term of their secondment.

ARTICLE 18

A committee or committees shall be appointed by a decision of the Board of Directors to undertake the task of taking over the properties, assets and rights relating to the nationalised activities. By a decision of the Minister of Petroleum upon the proposal of
20 the Chairman of the Board of Directors of the National Oil Corporation, this committee or committees may be composed of the members of the Board of Directors of the Arabian Gulf Exploration Company or government employees or public institutions or bodies or the company referred to in Article 1.

ARTICLE 19

Any agreement, action or measure carried out contrary to the provisions of this Law shall be considered absolutely null and void. Banks, organizations or individuals are prohibited from paying any sums or settling any claims or liabilities which are due from the party concerned referred to in this law except with the approval of the Board of Directors of the aforementioned Company.

30

ARTICLE 20

The violation of any of the provisions of this law shall be punishable by imprisonment for a term not exceeding two years and a fine not exceeding 500 dinars, or by either of these two penalties. Furthermore, any person violating the provisions of the preceding Article shall be sentenced to pay three times the amount of the sums lost to the state through the violation.

ARTICLE 21

The Minister of Petroleum shall execute this Law, which shall be effective from the date of its issue, and it shall be published in the *Official Gazette*.

Issued 20th Shabral, 1391
40 7th December, 1971

Revolutionary Command Council
Col. Muammar Al Qadafi

No. 20
Text of meeting:
United Nations
Security Council:
9th December
1971 (Annexure
14 to The
Principal
Affidavit)

No. 20
Text of meeting: United Nations Security Council:
(Annexure 14 to The Principal Affidavit)

Held at Headquarters, New York,
on Thursday, 9 December 1971, at 3.30 p.m.

The President	Mr. TAYLOR-KAMARA	Sierra Leone	
Members	Argentina	Mr. Ortiz de Rozas	
	Belgium	Mr. Van Ussel	
	Burundi	Mr. Terence	
	China	Mr. Huang	10
	France	Mr. Kosciusko-Morizet	
	Italy	Mr. Vinci	
	Japan	Mr. Nakagawa	
	Nicaragua	Mr. Lang	
	Poland	Mr. Ludwiczak	
	Somalia	Mr. Farah	
	Syrian Arab Republic	Mr. Jouejati	
	Union of Soviet Socialist Republics	Mr. Issraelyan	
	United Kingdom of Great Britain and Northern Ireland	Sir Colin Crowe	
	United States of America	Mr. Phillips	20

The President The next name on the list of speakers is that of the representative of the Libyan Arab Republic. I invite him to take a place at the Council table and to make his statement.

Mr. Maghribi (Libyan Arab Republic): Although we have great respect for the Charter of the United Nations and its principles, we are on the point of losing faith in some of its institutions, especially the Security Council. We have reached this conclusion after many years of experience during which we have observed the work of the Council, its deliberations and resolutions. This diminishing faith in the Security Council is one of the reasons why my statement will be brief. 30

We have witnessed that a big Power can do anything it wishes, anything it deems in accordance with its chauvinistic interests, in violation of the Charter of the United Nations. The small States have always been left powerless against such actions and behaviour. Furthermore, we have seen that any State in agreement with a big Power can take similar liberties without respect for the Charter or international law. The Iranian military aggression in occupying the three Arab islands of Abu Musa and the Greater and Lesser Tunb, in connivance with Great Britain, is a clear manifestation of this. 40

The Government of Great Britain has violated the provisions of the very treaties it had itself imposed upon the Sheikdoms of the Arabian Gulf decades ago. The treaties imposed occupation and colonialism. However, they also provided for the protection of the territorial integrity of those Sheikdoms and their islands. For many decades Great Britain has exploited all the provisions of

those treaties to its own advantage and until now it has readily exploited the natural wealth of the Sheikdoms. On the one occasion that Great Britain was called upon to apply the protection provision, it failed miserably and intentionally, reflecting the true nature by which the world has known it for centuries: “divide and rule”, trickery, treachery and butchery.

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10 A glance through past centuries gives proof of this. Indeed, hardly any major conflict or turmoil the modern world has known has not been the Creation of Britain or its like-minded States, either directly or indirectly. And in the present instance of the Iranian aggression and occupation of the Arab islands Britain has been faithful to its nature and tradition. Has not Great Britain done the same in Palestine, although on a larger scale?

Great Britain violated the treaties that it had itself imposed on the Sheikdoms of the Arabian Gulf. It violated the principles of the Charter of the United Nations.

20 My Government, an Arab Government, replied in the only way understood by the imperialists—by nationalizing the oil interests of Great Britain in the Libyan Arab Republic and withdrawing our deposits from British banks. The British Petroleum Company, owned in essence by the British imperialist Government, has exploited the natural wealth of my country for many years. Our step violates no principle of the Charter or international law; it is in accordance with those principles and also with the General Assembly resolutions concerning the natural resources of States.

30 Imperialism in all its forms—old, new or emerging—does not understand the language and high principles of justice and morality. These high principles are merely a screen behind which imperialism hides its poisonous fangs. According to British action the principles of justice and morality are to be applied and respected by the small States only, for it is in the interests of the big States that the small States be Members of the United Nations, with the psychological satisfaction of a single vote, whereas in fact they are powerless. The small States of the Third World should therefore unify their efforts so that their voice—the voice of the conscience of the world—may be heard. Because the imperialists understand only the language of their own self-interest, they must be hit there where it counts instead of only complaining to the Security Council.

40 We have fulfilled but a small part of this objective, for the United Nations lends a deaf ear to the loud cries of the small and the weak while it listens attentively and obediently to the words and whispers of the big Powers.

My Government strongly condemns the Iranian military aggression and occupation of the Arab islands in the Arabian Gulf. It also strongly condemns the connivance of the British Government and its violation of treaty provisions and international law.

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The Arab position—the true Arab position—has been reflected and recorded recently on the island of Greater Tumb, where all of the small police force were killed defending it. It has also been reflected and recorded in the demonstrations of the Arab masses in their respective countries against the aggressors and their partners.

May I conclude by expressing the hope that the Security Council will rise to its responsibilities and to the expectations of the world community.

10

No. 21
Geneva
Agreement:
20th January
1972
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Affidavit)

No. 21
Geneva Agreement:
(Annexure 15 to The Principal Affidavit)

20

Abu Dhabi, Iran, Iraq, Kuwait, Qatar, and Saudi Arabia (hereinafter referred to as the “Gulf States”) and the Companies listed in Annex 1 hereto and their Affiliates (hereinafter referred to as “the Companies”) have previously entered into various arrangements including the following agreements:

Agreement dated February 14, 1971 between the Gulf States and certain of the Companies concerning oil exported from the Gulf; Agreement dated May 14, 1971 between Kuwait and Saudi Arabia and Arabian Oil Company concerning oil exported from the Gulf; East Mediterranean Agreement dated June 7, 1971 between Iraq and certain of the Companies; and Agreements dated June 23, 1971 between Saudi Arabia and Arabian American Oil Company concerning crude oil sold for delivery at Sidon, Lebanon and relating to the February 14, 1971 agreement as it concerns crude oil sold by Aramco for export from the Gulf. (All of the foregoing are herein referred to as “Related Agreements”.)

30

The parties have agreed to supplement such arrangements to the extent and in the manner hereinafter provided.

Accordingly it is now agreed between the parties as follows:

1. This Agreement is supplemental to and incorporated in existing arrangements between each of the Gulf States and each of the Companies, including the Related Agreements referred to above. All such arrangements continue to be valid in accordance with their terms which, including paragraph 3(a) and paragraph 3(b) of the above mentioned February 14, 1971 agreement extended to apply to Gulf States' crude exports from Eastern Mediterranean terminals (hereinafter called “Eastern Mediterranean exports”), shall apply to the subject matters of this Agreement. Iraq and Saudi Arabia shall however

40

be entitled to seek and the Companies concerned shall examine in good faith and not unreasonably withhold additional adjustments to prices applicable to Eastern Mediterranean exports, if

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- 10 (a) any agreement dealing with the same subject matters as this Agreement and amending an existing agreement, is entered into between a Mediterranean producer and a major oil company (as defined in the above-mentioned February 14, 1971 Agreement); and
- (b) such agreement provides for increases in posted prices greater when expressed as a percentage than the percentage increases resulting from application of Annex 2 to Eastern Mediterranean exports; and
- (c) such agreement provides for increases in posted prices greater than those calculated on the basis of a formula generally similar in concept to that set out in Annex 2, after allowing for different factors and other relevant differences if any.
2. The Companies undertake to supplement the adjustments to crude oil posted prices provided for in the Related Agreements, including the periodic increases provided therein, by such additional adjustments to crude oil posted prices as may be required by Annex 2 attached hereto and hereby made a part of this Agreement.
- 20 3. (a) For the purposes of the arrangements under which each of the companies carries on its operations within the jurisdiction of any of the Gulf States for converting posted prices posted in currencies other than sterling and for converting into the currencies of payment sums due to governments or their agencies which are calculated or expressed in any currencies other than the currencies of payment.
- 30 (i) the rate of exchange to be used in respect of any month for currencies other than the currency of the State concerned shall be the arithmetic average as certified by the National Westminster Bank London (or other bank mutually agreed by the parties concerned) of the mean of the buying and selling rates in respect of telegraphic transfers for the currencies in question quoted by the Bank at 10.30 a.m. G.M.T. on those days in such month on which the London foreign exchange market is open, and
- (ii) the rate of exchange to be used in respect of any month for the currency of the State concerned shall be the weighted average monthly rate of exchange at which such currency was purchased by the Company during that month.
- 40 (b) Each company shall be entitled to buy local currency required for the discharge of its obligations under existing agreements at commercial monetary rates generally available on a non-discriminatory basis.
4. Each of the Gulf States accepts that the Companies' undertakings hereunder and under the Related Agreements referred to above constitute a fair, appropriate and final settlement of all claims and objectives of the Gulf States with regard to changes in the value of any currency whether in terms of a common denominator or in terms of any other currency that have occurred or may hereafter occur and in the purchasing power or real value of revenues related to oil exported from the Gulf States during the period through December 31,

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1975 including the claims and objectives related to these matters and stated or referred to in OPEC's resolutions (particularly Resolutions 32, 90, 103, 122, 131 and 140).

5. Each Gulf State shall adopt within its jurisdiction such measures as may be necessary to implement the provisions of this Agreement.
6. Any Company party hereto that was not a party to any of the Related Agreements mentioned above by its becoming a party to this Agreement thereby adopts and adheres to the provisions of the above-mentioned February 14, 1971 agreement from the date of this Agreement so far as its operations within the jurisdiction of any of the Gulf States are concerned. 10
7. "Affiliate" shall mean in relation to any Company, any company which is wholly or partly owned directly or indirectly by that Company.
8. The Effective Date hereof is January 20, 1972.

Done this 20th day of January 1972 at Geneva, Switzerland.

For the Gulf States:

Abu Dhabi

Iran

Iraq

Kuwait

Qatar

Saudi Arabia

For the Companies:

G. T. Piercy

B. A. Carlisle

A. C. DeCrane, Jr.

J. W. Simmons

J. W. R. Sutcliffe 20

(signatures undecipherable)

ANNEXE I

The British Petroleum Company Limited

Compagnie Francaise des Petroles

Gulf Oil Corporation

Mobil Oil Corporation

The Shell Petroleum Company Limited and
Shell Petroleum N.V. 30

Standard Oil Company of California

Standard Oil Company (New Jersey)

Texaco Inc.

Continental Oil Company

Atlantic Richfield Company

Standard Oil Company (Ohio)

Hispanica de Petroleos S.A.

American Independent Oil Company of Iran

Signal (Iran) Petroleum Company
 Arabian Oil Company Limited
 Phillips Petroleum Company

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ANNEXE 2

1. As of the Effective Date the present posted price for each crude oil exported from the Gulf States will be increased by 8.49%. With regard to posted prices for Eastern Mediterranean Exports, the increase will be applied separately to the posted prices (excluding Suez Canal Allowance and Temporary Freight Premium) and to whatever Suez Canal Allowance and Temporary Freight Premium is applicable from time to time.
2. Thereafter posted prices will be further adjusted as follows:
- (a) The arithmetic average of the Exchange Rate changes of the nine other Group of Ten currencies is 11.02% against the U.S. Dollar (in terms of central rates against 30th April, 1971 IMF parities) as shown in attachment "A", and such arithmetic average is hereinafter referred to as the "Starting Average".
- (b) On the 1st of March, 1st of June, 1st of September, and 1st of December in each year the arithmetic average of the Exchange Rate change of the said nine currencies against the U.S. Dollar against the April 30, 1971 IMF parities shall be recalculated. If such recalculation shows a variation of two whole points or more up or down from the Starting 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 quarter. "Exchange Rate" as used herein means the rate of exchange existing between any one of the nine currencies by virtue of that currency's rate and the rate for the U.S. Dollar, notified to the IMF resulting from the realignment of exchange rates agreed by the Group of Ten countries or any successors to such rates. If any of the nine currencies concerned is hereafter permitted to float in relation to the Dollar (that is to say it is no longer being maintained by the Central Bank of the country concerned within the margins of general application to members of the IMF) the Exchange Rate for that 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 buying and selling rates in respect of telegraphic transfers for the currency concerned into U.S. Dollars quoted by the Bank at 10.30 a.m. G.M.T. for those days in the calendar month preceding the month of calculation on which 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 adjusted in the manner indicated below:
- (i) With respect to posted prices of crude oils exported from the Gulf:
- $$\text{Posted price (including the effect of all periodic increases which have become applicable as provided for in the appropriate Related Agreement) that would have applied on first day of the quarter absent this latest adjustment} + .0849 \left(\frac{T \times B - A}{11.02} \right) = \text{adjusted posted price}$$

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- (ii) With respect to posted prices for Eastern Mediterranean exports, the formula set forth in (i) above shall be performed separately for the posted prices (excluding any Suez Canal and Temporary Freight Allowances but including the effect of all periodic increases which have become applicable as provided for in the appropriate Related Agreement. The sum of such allowances whenever applicable, shall be multiplied by the following formula and the result added to the separate posted price calculation performed under the first sentence of the subparagraph (c)(ii):

$$\begin{array}{l} \text{Adjusted Suez} \\ \text{Canal Allowance} \\ \text{plus Temporary} \\ \text{Freight Premium} \end{array} = \begin{array}{l} \text{Suez Canal Allow-} \\ \text{ance and Tem-} \\ \text{porary Freight Pre-} \\ \text{mium as deter-} \\ \text{mined under ap-} \\ \text{propriate Related} \\ \text{Agreement, ex-} \\ \text{cluding the effect of} \\ \text{any adjustments} \\ \text{under this Agree-} \\ \text{ment} \end{array} \times \left(1 + \frac{B \times .0849}{11.02}\right) \quad 10$$

- Where T = Posted price as of day before the Effective Date as provided under the appropriate Related Agreement. 20
A = The most recent prior Effective Average preceding the currency change (or the Starting Average if no prior Effective Average had superceded it), and
B = The new Effective Average

- (d) Notwithstanding sub-paragraph (c) 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) 30 produces 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 "A" to Annexe 2

Exchange Rate Changes Against U.S. Dollar:
Central Rates as of Effective Date
Against April 30, 1971 IMF Rates

Belgium.....	+ 11.57%	
France.....	+ 8.57	40
Germany.....	+ 13.58	
Italy.....	+ 7.48	
Japan.....	+ 16.88	
Netherlands.....	+ 11.57	

Sweden.....	+	7.49	
United Kingdom.....	+	8.57	
Switzerland.....	+	13.50	
			99.21

Arithmetic average = $\frac{99.21}{9}$ = 11.02%

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This General Agreement ("Agreement") sets forth provisions covering participation and is made between the Gulf States listed in Column 1 of Annex 1 and the Companies listed in Columns 2 and 3 of Annex 1.

PREAMBLE

Whereas the Conference of the Organization of Petroleum Exporting Countries (OPEC) has passed certain resolutions demanding participation in respect of existing crude oil Concessions within such countries; and

Whereas the Companies listed in Column 2 of Annex 1 have previously expressed their agreement in principle to participation by the Gulf States party to this Agreement in the Concessions held by such Companies, subject to mutually satisfactory resolution of certain related issues;

Now, therefore, the parties agree as follows:

ARTICLE ONE

- (a) This Agreement applies to each crude oil Concession within the jurisdiction of each Gulf State listed in Column 1 of Annex 1 now held by any one or more of the Companies listed in Column 2 of Annex 1 ("Concession").
- (b) The provisions of this Agreement shall take effect so as to create rights and obligations only between the Gulf State grantor of each Concession and the Company or Companies (and their successors and assigns) concerned therein.

ARTICLE TWO

- (a) Promptly after the signing of this Agreement, negotiations shall be undertaken between each Gulf State listed in Column 1 of Annex 1 and the appropriate Company or Companies listed in Columns 2 and 3 of Annex 1 to conclude a separate

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agreement applicable to each Concession ("Implementing Agreement") which shall implement the provisions of this Agreement and cover other matters related to participation, whether reserved in this Agreement for resolution in the Implementing Agreement or not dealt with in this Agreement.

- (b) Each such Implementing Agreement shall include provision for the structural, organizational or corporate arrangements for the ownership and operation of the Concession concerned. While this Agreement has been prepared in contemplation of an undivided interest form of concession ownership and operation between the Company or Companies concerned and the Gulf State participant, if the corporate form is adopted, the principles and terms of this Agreement shall be adapted in the applicable Implementing Agreement to the corporate form. 10

ARTICLE THREE

- (a) Each Gulf State shall have an initial percentage level of participation equal to twenty-five percent (25%) in each Concession as provided in paragraph (b) of this Article; thereafter, it shall have the right to acquire percentage increments and resulting percentage levels of participation in accordance with Annex 2, provided the obligations of the Gulf State under the provisions of Article Four and Annexes 2 and 4 applicable to its then existing percentage level of participation have been currently met.
- (b) As a participant in a Concession, each Gulf State shall have an interest, directly or indirectly, as the case may be, in that Concession's crude oil concession rights, in the crude oil produced therefrom, and in the Concession's crude oil production facilities, whether such facilities are tangible or intangible, situated within such Gulf State's jurisdiction, equal to its percentage level of participation from time to time in that Concession. In this Agreement, the term "crude oil production facilities" shall include, without limitation, exploration, development, production, pipeline, storage, delivery and export facilities as shall be defined in the applicable Implementing Agreement. For the purposes of this Article and Article Four, the term "crude oil" shall include both crude oil and natural gas; matters relating to natural gas (other than in connection with crude oil production) shall be dealt with, where necessary, by separate agreement between the Gulf State and the Company or Companies concerned. Unless otherwise provided in this Agreement, the Company or Companies concerned shall be relieved of all related concession obligations to the extent of the Gulf State's percentage level. In respect of each Concession, the Gulf State may call upon the Company or Companies concerned to discuss whether and on what terms such Gulf State will also participate in rights and facilities of the Concession within such Gulf State's jurisdiction other than crude oil concession rights and crude oil production facilities. Such other rights and facilities shall include, without limitation, those relating to refining and gas processing (other than in connection with crude oil production). 20 30 40

ARTICLE FOUR

- (a) (1) Consideration for the initial percentage level of participation in each Concession shall be an amount equal to twenty-five percent (25%) of the Book Value of the crude oil production facilities (whether in existence or under construction) and of exploration and intangible development (whether complete or in process) of such Concession on the day before the Effective Date

for Participation, as determined from the books as used for fiscal purposes in the Gulf State of the Company or Companies listed in Column 2 of Annex 1 holding such Concession pursuant to paragraph (a)(2) of this Article, such determination to be certified by an internationally recognized firm of public accountants to be agreed upon between the Gulf State and the Company or Companies concerned prior to or concurrently with the execution of the applicable Implementing Agreement.

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- (2) For the purposes of this Article, Book Value shall be computed as follows:
- 10 (i) for each year of such Concession calculate the difference (whether positive or negative) between capitalized expenditures (including for this purpose all exploration and intangible development costs not capitalized) made in such year and the amount by which the revenue of the Gulf State concerned in respect of such year was reduced as a result of depreciation and amortization (including exploration and intangible development costs for those years in which such costs were fully amortized or written-off as incurred) allowed for such year;
- 20 (ii) apply to each of the paragraph (a)(2)(i) calculations for years prior to 1945 a multiplier of 1.00 and for 1945 and subsequent years the appropriate multiplier shown in the Middle East Construction Price Factors table set forth in Annex 5;
- (iii) determine the sum of all paragraph (a)(2)(ii) calculations.
- (b) Consideration for each percentage increment of participation in each Concession shall be an amount equal to a fraction (of which the numerator shall be the percentage increment being acquired and the denominator the percentage interest of the Company or Companies concerned on the day before the date of acquisition of such increment) of the Book Value of such percentage interest of the Company or Companies concerned in the crude oil production facilities (whether in existence or under construction) and the exploration and intangible development (whether complete or in process) of such Concession on the day before the date of acquisition of such increment, as determined from the books as used for fiscal purposes in the Gulf State of the Company or Companies concerned pursuant to paragraph (a)(2) of this Article, except that all calculations shall be brought forward to the date of acquisition of such increment, and certified by an internationally recognized firm of public accountants to be agreed upon between the Gulf State and the Company or Companies concerned.
- 30 (c) For the purposes of computations made under paragraphs (a)(1), (a)(2)(i) and (b) of this Article, any amounts originally stated in sterling shall be converted and restated in U.S. dollars in respect of each year at the average rate of exchange used for the purpose of computing tax liabilities for such year. In any year when no tax liabilities arose, the average commercial rate of exchange in such year shall apply.
- 40 (d) In respect of each Concession, the amounts computed under paragraphs (a) and (b) of this Article shall be paid by the Gulf State concerned to the Company or Companies concerned in accordance with Annex 4.
- (e) For the purposes of calculations to be made under paragraph (b) of this Article, a continuation of the Middle East Construction Price Factors table set forth in Annex 5 will be prepared by the firm of Haskins & Sells, unless by mutual agreement between the Gulf States and the Companies such preparation is assigned to a different firm of international reputation and with appropriate competence.

ARTICLE FIVE

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- (a) During each full calendar year each Gulf State as a participant shall have a Basic Right to a percentage of each grade of crude oil available at each specified offtake point equal to its percentage level of participation for such year. During each such year the Company or Companies (considered as a group for administrative purposes) concerned in a Concession shall retain the Basic Right to a percentage of each grade of crude oil available at each specified offtake point equal to the difference between one hundred percent (100%) of such crude oil available at such point and the Gulf State's Basic Right percentage thereof.
- (b) "Crude oil available" means, in respect of each grade at each specified offtake point in each calendar year, the quantity of that grade of crude oil which installed facilities are capable of producing and delivering during such year at such offtake point. In computing said quantity, relevant operating factors, including *force majeure*, which apply during such year shall be taken into account. 10
- (c) Each Implementing Agreement shall contain detailed procedures appropriate to the particular circumstances in the Gulf State or relating to the Concession concerned and consistent with those outlined in Annex 3, governing the exercise of Basic Rights. Such procedures, among other things, shall specify offtake points for the total of each grade of crude oil produced in the relevant Concession and shall provide in detail for the exercise of Basic Rights at substantially even rates during 20 each full calendar year.
- (d) Under contracts to be entered into in respect of each Concession between each Gulf State and the Company or Companies concerned or their designated subsidiaries (acting either individually or collectively as they may elect in the applicable Implementing Agreement), such Company or Companies or their designated subsidiaries shall purchase and the Gulf State shall sell certain quantities of "bridging" crude oil, of each grade at each specified offtake point, out of the Gulf State's Basic Right to such crude oil in respect of the Concession concerned. Unless arrangements more appropriate to the Concession concerned are mutually agreed, the purchase contracts for bridging crude oil in respect of the Gulf State's-30 initial percentage level of participation, shall be for seventy-five percent (75%) of its Basic Right to such grade of crude oil at such specified offtake point during the first year, fifty percent (50%) during the second year, and twenty-five percent (25%) during the third year. The price to be charged by the Gulf State concerned and the conditions of payment for each grade of bridging crude oil shall be specified in a collateral agreement to be executed with respect to each Concession by the Gulf State and the Company or Companies concerned prior to or concurrently with the execution of this Agreement.
- (e) In response to the requirements of the Gulf State, the Company or Companies concerned or their designated subsidiaries (acting either individually or collectively as 40 they may elect in the applicable Implementing Agreement) shall purchase from the Gulf State, for each year specified in Paragraph E of Annex 3, certain quantities of "phase-in" crude oil, of each grade at each specified offtake point, pursuant to the provisions and procedures in Paragraph E of Annex 3, in addition to the quantities of bridging crude oil to be purchased under paragraph (d) of this Article.
- (f) In respect of any Concession the obligations of the Company or Companies concerned to purchase crude oil from the Gulf State pursuant to this Agreement will

be satisfied by the contracts to be entered into, and duly performed, under paragraphs (d) and (e) of this Article and Paragraphs D and E of Annex 3.

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(g) With effect from the Effective Date for Participation:

- 10 (1) Where any Company or Companies concerned in respect of any Concession is or are, immediately prior to the Effective Date for Participation, under obligation to supply crude oil for domestic consumption requirements in the Gulf State concerned, the Gulf State participant shall supply in any year, out of the crude oil to which it has a Basic Right in respect of such Concession, that proportion of such supplies which the total quantity of its Basic Right crude oil bears to the total of both parties' Basic Right crude oil in respect of such Concession.
- (2) The sum of
- (i) the quantity of crude oil, by grade and specified offtake point, taken by any Gulf State pursuant to its Basic Right in respect of any Concession in any year, and
- (ii) the quantity of such crude oil taken by such Gulf State pursuant to its right to take royalty in kind in such Concession in such year shall not exceed 51% of the total of such grade of crude oil available at such offtake point during such year.
- 20 (3) Existing barter oil obligations of the Company or Companies concerned shall terminate.

ARTICLE SIX

- (a) Each Gulf State as a participant in a Concession shall have the right to take an active part with the Company or Companies concerned in management. Major management decisions shall require the approval of an agreed number (which may be all) of the parties concerned holding, directly or indirectly, a total agreed percentage interest in the Concession, as may be provided in the Implementing Agreement. Major management decisions are those which relate to the following matters and any other matters which may be specified in the applicable Implementing Agreement:
- 30 (1) Sale or disposition of assets above a value to be specified in the applicable Implementing Agreement.
- (2) Capital and operating expenditures and disposition of funds above a value or of a type to be specified in the applicable Implementing Agreement.
- (3) Exploration and development programs and construction of new facilities.
- (4) Selection of key personnel, and
- (5) Employee compensation and benefit plans.
- 40 Modification or termination of any Concession and related agreements, or of the corporate or other arrangements provided in the applicable Implementing Agreement for the ownership and operation of the Concession concerned, shall require the approval of the Gulf State concerned and the Company or Companies concerned listed in Columns 2 and 3 of Annex 1; provided, however, that in any case where any Company or Companies listed in Column 2 of Annex 1 have an existing right of termination or abandonment of a Concession, such Company or Companies shall continue to have such right.
- (b) If the undivided interest form of concession ownership and operation between the Company or Companies concerned and the Gulf State participant is not adopted in the applicable Implementing Agreement, such Agreement shall contain a

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provision to protect the interests of all shareholders, whatever their percentage holdings of the total shares may be, in respect of the declaration and payment of dividends.

- (c) Matters relating to negotiation between any Gulf State, as the grantor of a Concession, and the Company or Companies concerned shall be handled as provided in the applicable Implementing Agreement, which will also provide that no party holding an interest in a Concession shall interfere with or prevent any other party from exercising any remedies under existing agreements in relation to the settlement of disputes.
- (d) Decisions relating to relinquishment of Concession areas pursuant to existing 10 agreements, including, without limitation, designation of the areas to be relinquished, shall be made by the Company or Companies concerned after consultation with the Gulf State participant.

ARTICLE SEVEN

- (a) In accordance with provisions to be included in the applicable Implementing Agreement, each Gulf State and the Company or Companies concerned (considered as a group for administrative purposes) shall bear the costs associated with the production and delivery of crude oil in respect of each Concession as follows:
- (1) Capital requirements, including advances for working funds, in accordance with their respective percentage interests from time to time in the Concession 20 concerned.
 - (2) All other costs, including without limitation depreciation and overhead, in the proportion that their respective lifting bear to total liftings, by grade and offtake point where appropriate. A party's liftings shall include any quantities sold by it as bridging, phase-in, and forward avails crude oil and any quantities for which it is paid the overlift price as provided in Paragraphs F and G of Annex 3.
- (b) The applicable Implementing Agreement shall provide that if any Company or Companies concerned have failed to pay, when due, any obligation under paragraph (a)(1) of this Article, the Gulf State participant concerned shall have the 30 right to make such payment on behalf of such Company or Companies and to reduce by the same amount any financial obligation to such Company or Companies, individually or collectively at the Gulf State's discretion. Such Company or Companies shall have a similar right to make payment and set-off against any financial obligation to such Gulf State participant if the latter fails to pay, when due, any obligation under paragraph (a)(1) of this Article; provided that no financial obligation of such Company or Companies to the Gulf State concerned other than in its capacity as a participant hereunder shall be affected.

ARTICLE EIGHT

- (a) Each applicable Implementing Agreement shall contain provisions pursuant to 40 which, following ratification of such agreement, the concerned Gulf State may transfer or assign the whole or part of its participation interest in the concerned Concession. Each Gulf State undertakes that any such transfer or assignment shall be to its existing national oil company, or to any entity at least 51% owned by the concerned Gulf State or by its existing national oil company, and the balance of which is owned, directly or indirectly, by individuals who are nationals of such

Gulf State. Notwithstanding any such assignment, the whole of such interest, as it may exist from time to time, and the owners or holders thereof, shall be considered as a unit and shall be represented in relation to the Company or Companies concerned by either the concerned Gulf State or its existing national oil company.

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(b) Any transferee or assignee of an interest in any Concession shall assume and be subject to the concessionary and related obligations, fiscal and otherwise, in proportion to its percentage level of participation.

(c) Each Gulf State shall guarantee the performance and obligations of its transferee or assignee.

10 ARTICLE NINE

Each Gulf State and the Company or Companies presently holding a Concession agree that all existing agreements between them in respect of such Concession shall remain in full force and effect in accordance with their terms, the terms of this Agreement and the applicable Implementing Agreement. Each State and the Company or Companies concerned shall cause all steps to be taken to perform their respective obligations in respect of the relevant Concession.

ARTICLE TEN

20 In respect of each Concession, the applicable Implementing Agreement shall include appropriate provisions for the settlement of any difference or dispute which may arise concerning the interpretation or performance of such agreement between any transferee or assignee of the Gulf State's interest and the Company or Companies specified therein.

ARTICLE ELEVEN

All Annexes referred to in this Agreement shall be considered as fully a part hereof as though repeated herein verbatim.

ARTICLE TWELVE

The Effective Date for Participation under this Agreement shall be 1 January 1973 and the term of this Agreement in respect of each Concession concerned shall continue until the end of such Concession.

30 Done this 15th day of Dhu al-Qa'dah 1392, corresponding to the 20th day of December 1972, at Riyadh, in both Arabic and English texts (the Arabic text being in eight pages, including the signature pages).

For the Gulf States:

Saudi Arabia

Abu Dhabi

For the Companies:

Abu Dhabi Marine Areas Limited
The British Petroleum Company
Limited

Abu Dhabi Petroleum Company Limited
Compagnie Francaise des Petroles

Exxon Corporation

Mobil Oil Corporation

40 The Shell Petroleum Company
Limited

Shell Petroleum N.V.

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Participations and Explorations
Corporation

Standard Oil Company of
California

(signatures not reproduced)

Arabian American Oil Company

Texaco Inc.

ANNEX 1

Column 1	Column 2	Column 3	
COUNTRIES	CONCESSION HOLDERS OR PARTIES TO GOVERNMENT AGREEMENTS	SHAREHOLDERS, DIRECT OR INDIRECT, OF CONCESSION HOLDERS OR OF PARTIES TO GOVERNMENT AGREEMENTS	10
ABU DHABI	(1) Abu Dhabi Marine Areas Limited	(1) The British Petroleum Company Limited Compagnie Francaise des Petroles	
	(2) Abu Dhabi Petroleum Company Limited	(2) The British Petroleum Company Limited Compagnie Francaise des Petroles Exxon Corporation Mobil Oil Corporation	20
SAUDI ARABIA	(3) Arabian American Oil Company	(3) Mobil Oil Corporation Standard Oil Company of California Exxon Corporation Texaco Inc.	30

ANNEX 2

INCREMENTS AND PERCENTAGE LEVELS OF PARTICIPATION

Increment	Percentage Increments	Percentage Levels of Participation	Earliest Dates for Acquisition of Percentage Increments	
First	5%	30%	1 January 1978	
Second	5%	35%	1 January 1979	
Third	5%	40%	1 January 1980	
Fourth	5%	45%	1 January 1981	
Fifth	6%	51%	1 January 1982	40

In respect of each percentage increment each Gulf State will give notice to the Company or Companies concerned of its intention to exercise its right to acquire such increment, such notice to be given on or before the date on which notice of the phase-in quantities is given pursuant to Paragraph E (2)(b) of Annex 3 for the year when such

increment is to become effective. Only one percentage increment may be acquired in any one year and the Effective Date for each increment shall be 1 January. If a Gulf State has not given notice as above provided, or has not satisfied all payment obligations due under paragraphs (c) (i) and (ii) and (d) of Annex 4 and paragraph (a) of Article Seven prior to 31 December of the year preceding the year when such increment would have become effective, the earliest date for acquisition of such increment and for each succeeding percentage increment shall be postponed one year.

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ANNEX 3

10 OUTLINE OF PROCEDURES GOVERNING EXERCISE OF BASIC RIGHTS AND PRICES RELATIVE TO DISPOSITION OF CRUDE OIL

- A. Each year the Gulf State and the Company or Companies concerned (considered as a group for administrative purposes) shall simultaneously table their respective offtake requirements by grade and specified offtake point for the year three years forward ("planned year"), such tablings to be made on or before an agreed date prior to 1 January, e.g., prior to 1 January 1974, for 1977. Quantities to be purchased pursuant to paragraphs (d) and (e) of Article Five shall be included in the Gulf State's tabled requirements.
- B. Each party may table its requirements in any one of the following forms:
- 20 (1) Any quantity;
- (2) A quantity with a proviso for automatic reduction if necessary to insure that its requirements shall not exceed its Basic Right percentage of the total quantity tabled by both parties; or
- (3) A quantity with a proviso for automatic increase if necessary to insure that its requirements shall not be less than its Basic Right percentage of the total quantity tabled by both parties.
- C. "Planned Capacity" for each grade and specified offtake point shall be set, if feasible, at a level not less than the total quantity tabled by both parties plus a margin taking into account appropriate operational and seasonal factors, unless otherwise agreed in the applicable Implementing Agreement. If such is not feasible, Planned Capacity shall be set at the maximum reasonably feasible. In such event, tabled requirements shall be cut back to equal Planned Capacity after allowance for operational and seasonal factors, with cut-backs falling first upon the party which tabled more than its Basic Right percentage of total tabled requirements until its revised tabled requirements are equal to its Basic Right percentage of the sum of its revised requirements and the tabled requirements of the other party, and thereafter in accordance with Basic Right percentages.
- 30
- D. (1) For each grade at each specified offtake point the amount of the excess, if any, of either party's tabled requirements, adjusted if necessary under Paragraph C, over its Basic Right percentage of the greater of (a) total tabled requirements for such year for that grade and specified offtake point, adjusted if necessary under Paragraph C ("Total Requirements") or (b) Planned Capacity for the preceding year, shall be known as "forward avails". (If Planned Capacity for the planned year is by reason of operational factors less than Planned Capacity for the preceding year, Planned Capacity for the planned year shall be used for this computation). Under contracts to be entered into between the Gulf State concerned, on the one hand, and the
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Company or Companies concerned or their designated subsidiaries (acting either individually or collectively as they may elect in the applicable Implementing Agreement), on the other hand, whichever party tabled above such Basic Right percentage ("overtabler") shall purchase from the other party ("undertabler"), and such other party shall sell the forward avails established in respect of each year under this Paragraph D (1) and Paragraph D (2), subject to adjustment with respect to quantities under Paragraph D (3), at the price provided in Paragraph D (4).

- (2) If in respect of any planned year the tabling procedures in Paragraphs A, B and C result in the establishment of forward avails under Paragraph D (1), then a quantity of forward avails for each grade and specified offtake point shall be calculated for each of the four succeeding years equal, respectively, to 4/5, 3/5, 2/5 and 1/5, of the quantity of forward avails calculated for such planned year. In tabling requirements for each succeeding year after the planned year, each party shall take account of the quantities calculated for each such succeeding year, with the initial undertabler including the relevant quantities (4/5, 3/5, 2/5 or 1/5 as the case may be) in its tabled requirements, and the initial overtabler excluding the relevant quantities from its tabled requirements. 10
- (3) (a) At the conclusion of the lifting year, a quantity of forward avails shall be computed for each party by grade and specified offtake point as follows: 20
- (i) Calculate such party's Basic Right share of the total crude oil of the grade concerned available in the lifting year;
 - (ii) Determine the cumulative sum of forward avails, calculated according to Paragraphs D (1) and D (2) in respect of such lifting year;
 - (iii) Multiply the quantity determined under paragraph (ii) by a fraction of which the numerator is the quantity of the grade of crude oil concerned (excluding purchases of such grade of phase-in crude oil and any other purchases other than forward avails) taken by such party and the denominator the total of the quantities determined under paragraphs (i) and (ii); 30
- (b) The quantity of forward avails which such party shall purchase, and the other party shall sell to such party, shall be the quantity determined in paragraph (3)(a)(iii).
- (4) The price ("contract price") for each grade of forward avails crude oil and the conditions of payment shall be specified in a collateral agreement to be executed with respect to each Concession by the Gulf State and the Company or Companies concerned prior to or concurrently with the execution of this Agreement. 40
- (5) If a Gulf State gives notice of its intention to acquire a percentage increment of participation as provided in Annex 2 but for any reason does not acquire such increment on the date stated in such notice, any contracts for the purchase of forward avails crude oil which were entered into by the Company or Companies concerned or their designated subsidiaries in reliance on such notice may be cancelled or modified at the option of the purchasers so as to exclude therefrom a total amount of crude oil equal to the anticipated

increase in the Gulf State's Basic Right which did not materialize because of the postponement provisions of Annex 2.

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- E. (1) (a) Pursuant to the provisions of paragraph (e) of Article Five, the quantities of "phase-in" crude oil, of each grade at each specified offtake point, in respect of the Gulf State's initial percentage level of participation, shall be as specified pursuant to Paragraph E (2) below, but shall not exceed the following stated percentage of the Gulf State's Basic Right to such crude oil in the particular participation year:

10	First year	15%
	Second year	30%
	Third year	50%
	Fourth year	70%
	Fifth year	65%
	Sixth year	60%
	Seventh year	50%
	Eighth year	40%
	Ninth year	30%
	Tenth year	10%

20 In respect of the year 1976 and any subsequent year, the percentages stated above shall be applied for the purposes of this Paragraph E (1)(a) only to the quantity of crude oil available to the Gulf State as its Basic Right in the Concession concerned in the year 1975.

- (b) Pursuant to the provisions of paragraph (e) of Article Five, the quantities of phase-in crude oil, of each grade at each specified offtake point, in respect of each increase in the Gulf State's Basic Right to crude oil arising out of the acquisition of percentage increments and resulting percentage levels of participation, shall be as specified pursuant to Paragraph E (2) below, subject always to the right of either party to give the notices as provided in Paragraph K. The applicable percentages, in respect of each such increment, shall for the ten-year period immediately following the Effective Date for each such increment be:

30	First year	90%
	Second year	80%
	Third year	75%
	Fourth year	70%
	Fifth year	65%
	Sixth year	60%
	Seventh year	50%
	Eighth year	40%
40	Ninth year	30%
	Tenth year	10%

For each year in the table above, the phase-in quantity in respect of each such increment shall not exceed the quantity obtained by applying the applicable percentage increment of participation to the quantity of crude oil available in the Concession concerned in the year 1975 and multiplying the result by the percentage stated in the table above in respect of such year.

- (2) (a) Prior to the Effective Date for Participation for each Concession, each Gulf State shall give notice in respect of that Concession of the annual

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- amounts of phase-in crude oil which it requires the Company or Companies concerned to take for each of the first four calendar years beginning with such Effective Date. Amounts of phase-in crude oil may be expressed in such notices, and in any subsequent notices, either as a quantity or as a percentage of the Gulf State's Basic Right, both subject to the overall limitation of the percentages stated in Paragraph E (1)(a).
- (b) In each year (including the first year of participation), at least one month before tablings of requirements are due under Paragraph A, each Gulf State shall give notice of the amount of phase-in crude oil which it requires the Company or Companies concerned to take during the fourth 10 calendar year ("planned year") after the year in which such notice is given, e.g., in 1973 for the year 1977.
- (c) Each Gulf State undertakes that, except as may be permitted by the scheduled reductions in Paragraphs E (1)(a) and E (1)(b), the amount of phase-in crude oil specified in each such notice for any planned year will not be less than three-fourths (3/4) of the amount of phase-in crude oil it requires the Company or Companies to take during the calendar year immediately preceding the planned year; provided, however, that each Gulf State shall have the right, in any notice duly given in respect of any 20 planned year, i.e. any calendar year after the first four calendar years beginning with the Effective Date for Participation, to reduce the amounts of phase-in crude oil which it requires the Company or Companies concerned to take to zero over a four-year period, beginning with such planned year, in steps not exceeding 25% of the amount it requires the Company or Companies concerned to take during the calendar year immediately preceding such planned year (i.e., the notice would specify an amount for such planned year not less than 75% of the amount specified for the year immediately preceding the planned year, 50% in the first year following the planned year, 25% in the second year following the planned year, and zero in the third year following the 30 planned year).
- (3) In any calendar quarter the quarterly quantities of phase-in crude oil, i.e., one-quarter of the annual amount arrived at pursuant to Paragraphs E (1) and E (2), may, at the election of the Gulf State concerned and by notice given not less than one year before the beginning of such quarter, be increased or decreased by 10% , subject always to the overall limitation of the percentages stated in Paragraphs E (1)(a) and E (1)(b).
- (4) The price ("contract price") to be charged by the Gulf State concerned and the conditions of payment for each grade of phase-in crude oil shall be specified in a collateral agreement to be executed with respect to each Concession 40 by the Gulf State and the Companies concerned prior to or concurrently with the execution of this Agreement.
- F. If, at the end of any calendar year, in respect of each Concession, either the Gulf State, or the Company or Companies concerned or their designated subsidiaries (regarded for this purpose as a group for administrative purposes), has lifted in total a quantity of a grade of crude oil in excess of its total Basic Right to such grade of crude oil at all specified offtake points ("overlift" crude oil), the party so overlifting shall pay to the other party the overlift price (as defined in Paragraph G) for each such overlifted barrel. Total quantities of each grade of crude oil con-

tracted for under paragraphs (d) and (e) of Article Five and Paragraph D of this Annex shall be included in the liftings of the seller.

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G. The term "overlift price" of a barrel of crude oil means:

(1) through year-end 1975, either

(a) that amount equal to the sum of the total costs (exclusive of taxes and royalties) and taxes and royalties payable by the Company or Companies concerned, and their designated subsidiaries, in respect of an identical barrel if sold by it or them for export, plus a margin equal to twenty-five percent (25%) of the difference between such sum and the posted price of such barrel determined in accordance with the Teheran Agreement of February 14, 1971, and related agreements as supplemented by the Geneva Agreement of January 20, 1972; or

(b) that lesser amount equal to the sum of the total per barrel costs (exclusive of taxes and royalties) determined under Paragraph G (1)(a), and the royalties payable in respect of such barrel, plus such amount which, when multiplied by the difference between one hundred percent (100%) and the applicable percentage tax rate, would equal the margin determined pursuant to Paragraph G (1)(a); and

(2) beginning 1 January 1976, either

(a) an amount such as shall equal the sum of the total costs (exclusive of taxes and royalties) and taxes and royalties then payable by the Company or Companies concerned, and their designated subsidiaries, in respect of an identical barrel if then sold by it or them for export, plus a margin equal to twenty-five percent (25%) of the difference which would have been determinable for 1975, pursuant to Paragraph G (1)(a), for an identical barrel had it been overlifted on 31 December 1975, or

(b) that lesser amount equal to the sum of the total per barrel costs (exclusive of taxes and royalties) determined under Paragraph G (2)(a) and the royalties payable in respect of such barrel, plus such amount which, when multiplied by the difference between one hundred percent (100%) and the applicable percentage tax rate, would equal the margin determined pursuant to Paragraph G (2)(a).

Which of the foregoing alternative overlift prices shall apply in respect of each Concession shall be determined according to principles to be set forth in the applicable Implementing Agreement.

H. The term "contract price" of a barrel of crude oil means either:

(1) the sum of the total per barrel costs (exclusive of taxes and royalties) and taxes and royalties payable by the Company or Companies concerned, and their designated subsidiaries in respect of an identical barrel if sold by it or them for export, plus the applicable margin agreed for the Concession concerned between the Gulf State and the Company or Companies concerned; or

(2) that lesser amount equal to the sum of the total per barrel costs (exclusive of taxes and royalties) determined under Paragraph H (1), and the royalties payable in respect of such barrel, plus such amount which, when multiplied by the difference between one hundred percent (100%) and the applicable

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percentage tax rate, would equal the applicable margin agreed for the Concession concerned pursuant to Paragraph H (1).

Which of the foregoing alternative contract prices shall apply in respect of each Concession shall be determined according to principles to be set forth in the applicable Implementing Agreement.

- I. (1) Except as provided in paragraph (2)(a) below, the Company or Companies concerned in each Concession and their designated subsidiaries, and each of them, shall be relieved of any and all obligations to the concerned Gulf State in respect of the crude oil included within such Gulf State's Basic Right, other than the obligation to pay the applicable price for any such crude oil 10 purchased or overlifted by any of them.
- (2) If the overlift price is as defined in Paragraphs G (1)(b) or G (2)(b), or if the contract price is as defined in Paragraph H (2) of this Annex, the Company or Companies concerned and their designated subsidiaries shall:
- (a) remain subject to the obligation under the applicable tax laws and applicable agreements to pay tax, in respect of any Gulf State's Basic Right crude oil purchased or overlifted by them or their designated subsidiaries, on the difference between the applicable posted price and such purchase price; and
- (b) be relieved of any obligation to pay tax in respect of crude oil overlifted 20 by the Gulf State pursuant to Paragraph F of this Annex on the difference between the price received from such Gulf State for such crude oil and the applicable posted price.
- J. The terms "tax" and "taxes" mean the taxes imposed under applicable tax laws as well as amounts equivalent to and in lieu of such taxes payable to the Gulf State concerned under applicable agreements, and the term "tax rate" means the tax rate under applicable income tax laws as well as the rate used under applicable agreements for determining such equivalent amounts.
- K. (1) Each Implementing Agreement will provide that either party to such Implementing Agreement (i.e., the Gulf State or the Company or Companies con- 30 cerned) may by giving written notice to the other party not later than 1 March 1976 request the other party's agreement to a revision of the margin for phase-in, forward avails, and overlift crude oil (or any of them) to be effective 1 July 1976 and thereafter. Similar requests may be made at three-year intervals thereafter, i.e., not later than 1 March 1979 to be effective 1 July 1979 and thereafter, etc.
- (2) If after any such request the parties fail to agree upon a revised margin by the 1 May before the 1 July when the revision, if any, is to be effective, the existing price arrangements shall continue unaffected (subject always to the right of either party to give notice not later than the 1 March of the third year 40 forward, as provided in Paragraph K (1)).
- (3) If, however, by 1 June either party gives to the other party written notice of dissatisfaction requesting an increase or decrease in the margin for the types of crude oil concerned (i.e., phase-in, forward avails, or overlift), then

- (a) If such notice requested an increase, the party receiving such notice shall have the option, exercisable by giving written notice on or before the 1 July in question, to continue arrangements for the type of crude oil concerned (subject always to the right of either party to give notice as provided in Paragraph K (1)) with an increase in the margin of four U.S. cents per barrel for phase-in and forward avails and three U.S. cents per barrel for overlift;
- 10 (b) If such notice requested a decrease, the party receiving such notice shall have the option, exercisable by giving written notice on or before the 1 July in question, to continue the arrangements for the type of crude oil concerned (subject always to the right of either party to give notice as provided in Paragraph K (1)) with a reduction in the margin of two U.S. cents per barrel. If however as a result of cumulative reductions in the margin pursuant to this Paragraph K (3)(b) a further exercise of the option under this Paragraph would have the effect of reducing the margin to a level of twenty percent (20%) or more below the margin applicable as of the Effective Date for Participation, any party receiving a notice of dissatisfaction requesting a further decrease shall have the option to continue the arrangements for the type of crude oil concerned at a margin equal to the margin applicable as of the Effective Date for Participation reduced by twenty percent (20%);
- 20 (c) If each party has given notice of dissatisfaction, and if both parties duly exercise the options available to them under (a) and (b), the arrangements for the type of crude oil concerned shall continue (subject always to the right of either party to give notice as provided in Paragraph K (1)) with the margin increased by an amount equal to half the difference between the increase and decrease specified in such options (i.e., one U.S. cent per barrel for phase-in and forward avails and one-half U.S. cent per barrel for overlift).
- 30 (d) If neither of the options in (a) or (b) is exercised on or before the 1 July in question, either party may then elect, by written notice given on or before 31 July, with no change in price arrangements, to
- 40 (i) continue any affected phase-in crude oil arrangements for three calendar years following the current calendar year, phasing out such arrangements at quantities equal to three-fourths for the first year, one-half in the second year, and one-fourth in the third year, of the quantities of phase-in crude oil committed for the current calendar year;
- (ii) continue any affected forward avails arrangements for a period sufficient to satisfy, in the first three subsequent calendar years the existing obligations between the parties which have arisen pursuant to Paragraph D of this Annex, and to phase out such forward avails arrangements at quantities equal to two-thirds in the fourth subsequent calendar year, and one-third in the fifth subsequent calendar year, of the cumulative quantity of forward avails crude oil purchased in the third subsequent calendar year following the notice year.
- (e) If none of the options in (a), (b) or (d) is exercised, the service of such notice of dissatisfaction shall operate effectively to terminate the existing arrangements for the type of crude oil concerned at the end of that current calendar year.

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(4) The term "margin" as used in this Paragraph K means the margin referred to in Paragraph G or H, as the case may be, of this Annex.

- L. The provisions and definitions in respect of prices contained in this Annex and in the Agreement shall be incorporated in the applicable Implementing Agreement and shall apply only to crude oil delivered at offtake points in the Gulf area.

ANNEX 4

PAYMENT OF CONSIDERATION

Each amount to be paid by each Gulf State pursuant to paragraphs (a) and (b) of Article Four shall be:

- (a) Determined and expressed in United States Dollars; 10
- (b) Paid in United States Dollars or Sterling as specified in the applicable Implementing Agreement. If any such sum or any portion thereof is to be paid in Sterling, the rate of exchange to be used in respect of such Sterling payment shall be that rate determined pursuant to the provisions of paragraph 3(a)(i) of the Agreement executed in Geneva, Switzerland, on 20 January 1972, by representatives of certain Gulf States and certain companies, for the month prior to the month of payment;
- (c) Paid in a lump sum;
- (i) in the case of the amount to be paid pursuant to paragraph (a) of Article Four, it shall be paid within thirty (30) days following the Effective Date 20 for Participation;
- (ii) in the case of each amount to be paid pursuant to paragraph (b) of Article Four, it shall be paid on or before the December 31 preceding the date for acquisition of the percentage increment concerned;
- (d) Notwithstanding (c)(i) above, the applicable Implementing Agreement may, if the Gulf State concerned so requests, provide that the amount to be paid pursuant to paragraph (a) of Article Four may be paid in three (3) instalments. These three instalments shall be paid as follows:
- (i) the first instalment shall equal thirty percent (30%) of the total amount agreed to pursuant to paragraph (a) of Article Four and shall be paid 30 within thirty (30) days following the Effective Date for Participation;
- (ii) the second instalment shall be paid on or before the anniversary of the date of payment of the first instalment in the year following the Effective Date for Participation and shall equal thirty-five percent (35%) of the aforesaid total amount; and
- (iii) the third instalment shall be paid on or before the anniversary of the date of payment of the first instalment in the second year following the Effective Date for Participation and shall equal thirty-five percent (35%) of the aforesaid total amount.
- (e) If payment is to be made in instalments as provided for in paragraph (d) above, the 40 amount of principal to be paid by the Gulf State concerned shall bear interest at the rate of interest specified in paragraph (h) below. Such interest shall be calculated separately for the six month period commencing on the thirty-first (31st) day following the Effective Date for Participation and for each succeeding period of

six months until the final instalment is paid. Each such calculation shall be in respect of the amount of principal outstanding at the beginning of the period concerned and the amount of interest shall be payable on the last day of the six month period concerned. If such payment due date falls on a day which is not a business day, then the interest payment shall become due on the first succeeding business day.

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- (f) The amounts payable by the Gulf State concerned shall be:
- 10 (i) paid into a bank designated by the Company or Companies receiving payment of such sums;
- (ii) free of any tax or other financial imposition by such Gulf State.
- (g) The amounts to be paid pursuant to paragraphs (a) and (b) of Article Four shall, if a corporate form of concession ownership and operation is adopted and if such amounts be paid to such corporation, be increased sufficiently so that the portions attributable, within such corporation, to the interests of all the shareholders other than the Gulf State will be equal to such amounts.
- 20 (h) The interest rate referred to in paragraph (e) above shall be equal to one percent (1%) per annum above the rate at which U.S. dollar deposits for six months are offered in the inter-bank deposit market in London, such rate to be certified by the National Westminster Bank, London, for each period of six months or less that such interest is due, as the rate at which such deposits are offered to it at noon on the first day of such period, or in the event that such first day is not a business day then on the first succeeding business day.

ANNEX 5

MIDDLE EAST CONSTRUCTION PRICE FACTORS Index Numbers and Derived Multiplier Factors

	Year	Index	Multiplier
	1972	140	1.00
	1971	126	1.11
	1970	117	1.20
30	1969	114	1.23
	1968	108	1.30
	1967	102	1.37
	1966	100	1.40
	1965	97	1.44
	1964	94.2	1.49
	1963	91.5	1.53
	1962	88.9	1.57
	1961	88.1	1.59
	1960	87.5	1.60
40	1959	87.5	1.60
	1958	83.8	1.67
	1957	81.4	1.72
	1956	79.0	1.77
	1955	74.1	1.89
	1954	70.6	1.98
	1953	67.3	2.08

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	1952	65.4	2.14
	1951	62	2.26
	1950	58.8	2.38
	1949	58	2.41
	1948	58	2.41
	1947	51	2.75
	1946	38	3.68
	1945	32	4.37

*No. 23
OPEC Resolution:
11th-12th March
1972 (Annexure
18 to The
Principal
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No. 23
OPEC Resolution:
(Annexure 18 to The Principal Affidavit)

10

RESOLUTION XXVII. 145

The Conference,
recalling paragraph 4 of Resolution 1.2;

bearing in mind that a principal aim of the Organization is the determination of the best means for safeguarding the interests of Member Countries individually and collectively;

considering that some actions taken by oil companies detrimental to the interest of any Member Country may prove harmful to other Member Countries;

20

noting that oil companies may attempt to undermine the solidarity of the Organization by submitting to the demand of participation in some Member Countries and not in others;

resolves that in case one or more oil companies fail to comply with, or in any other manner oppose, any action taken by a Member Country in accordance with decisions adopted by the Conference, the Organization shall, at the request of the Member Country concerned, take appropriate action including sanctions against said company or companies.

No. 24
Iraqi Nationalisation Law:
 (Annexure 19 to The Principal Affidavit)

*No. 24
 Iraqi
 Nationalisation
 Law:
 1st June 1972
 (Annexure 19 to
 The Principal
 Affidavit)*

TEXT OF IRAQI LAW 69 of 1972 NATIONALIZING IPC
 (Unofficial MEES Translation Monitored from Radio Baghdad)

In the name of the people,

The Revolutionary Command Council,

On the basis of the provisions of Paragraph (a) of Article 42 of the Provisional Constitution, has decided at a meeting held on 1 June 1972 to issue the following Law:

10 **Law No. 69 of 1972 Nationalizing the Operations
 of the Iraq Petroleum Company Limited**

ARTICLE ONE

The operations of the Iraq Petroleum Company Limited in the areas delimited for it in accordance with Law 80 of 1961 shall be nationalized. The ownership of all property and existing rights relating to the above-mentioned operations shall revert to the State, and this includes in particular installations and equipment for exploration, drilling, production of crude oil and gas, treatment, gathering, pumping, transportation, refining and storage, and the main and field pipelines, and other installations and equipment as well as other assets, amongst them the office of the above-mentioned
 20 company in Baghdad with all its installations and equipment.

ARTICLE TWO

- (1) There shall be established by virtue of this Law a government company to be called the Iraqi Company for Oil Operations which shall be considered existent as of the Law's effective date. All the property, rights and assets whose ownership has reverted to the State in accordance with Article One of this Law shall be transferred to this Company, and this Company shall be responsible for the previous obligations relating to the nationalized operations only within the limits of the rights, property and assets which have reverted to the State.
- 30 (2) Upon the publication of this Law eight persons shall be appointed by a Republican Decree as president and members of the Board of Directors of the Company referred to in Paragraph One above. They shall be accorded all the jurisdiction, powers and prerogatives required to continue the administration of the oil operations and to ensure the progress of work.
- (3) The provisions contained in the annex to this Law shall be applied to the Company referred to in Paragraph One above, and these provisions shall be considered to be the Law for the Company.
- (4) Fiscal relations between the Ministry of Finance and the Company established in accordance with this Article shall be regulated by a law.

ARTICLE THREE

40 The State shall pay compensation to the Iraq Petroleum Company Limited for the rights and assets which have reverted to it in accordance with Article One. However

there shall be deducted from this compensation the sums required to meet the taxes, fees and wages and any other sums which the government has demanded or may demand, as well as local debts relating to the operations referred to, and the means of determining the compensation and deductions, and other matters required for this purpose, shall be laid down by a regulation.

ARTICLE FOUR

A committee or committees shall be appointed by a decision of the Board of Directors referred to in Article Two of this Law which shall supervise the task of taking an inventory of and transferring the property, assets and rights relating to the nationalized operations. The members of this committee or committees shall be selected from among those appointed to administer the nationalized operations and the employees and agents of the state, or any of these, in accordance with the views of the Board referred to. 10

ARTICLE FIVE

Any contract or obligation, or in general all legal ties or obligations or others which transfer the value of the reversions to the State in accordance with Article One of this Law or which make oil operations costly or more onerous, may be nullified by a decision of the Minister of Oil and Minerals.

ARTICLE SIX

Any contract, action or measure which is concluded contrary to the provisions of this Law shall be considered utterly void. 20

ARTICLE SEVEN

The property and rights relating to the nationalized operations in the Iraqi Republic shall be frozen, and banks, organizations, institutions, companies and individuals are prohibited from disposing of such property in any manner or spending any sums or meeting any claims or sums due on it without the decision of the Board specified in Article Two of this Law.

ARTICLE EIGHT

The Board of Directors of the Iraqi Company for Oil Operations shall retain the employees, servants and workers of the Iraq Petroleum Company Limited whose operations are nationalized in accordance with this Law. None of these shall be permitted to leave or relinquish his work in any way or for any reason without the permission of the Board referred to or a person delegated by it. 30

ARTICLE NINE

In exception to the regulation of Article Eight above, the foreign employees shall have the choice of continuing in their work or leaving it.

ARTICLE TEN

Without prejudice to the penalties specified in the laws in effect, any attempt connected with the company whose operations have been nationalized in accordance with the

provisions of this Law with the aim of destroying, damaging, injuring or concealing the property nationalized or the documents relating to it, or with the aim of obstructing the implementation of the provisions of this Law may lead to the partial or total cancellation of the compensation specified in Article Three of this Law.

*No. 24
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Nationalisation
Law:
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(Annexure 19 to
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ARTICLE ELEVEN

Anyone shall be punished who:

- (1) Contravenes the provisions of Article Seven of this Law, by imprisonment for a period not exceeding two years and a fine equal to three times the value of the property involved in the infraction.
- 10 (2) Contravenes the provisions of Article Eight of this Law, by imprisonment for a period not exceeding two years in addition to being deprived of any right to gratuities, pension or indemnification.
- (3) Contravenes any provision arising from any of the other Articles of this Law, by imprisonment for a period not exceeding two years or by a fine, or by both.

ARTICLE TWELVE

Regulations may be issued to facilitate the implementation of the provisions of this Law.

ARTICLE THIRTEEN

The Minister of Oil and Minerals may take whatever measures he deems necessary to ensure the implementation of the provisions of this Law.

ARTICLE FOURTEEN

The stipulations and regulations which run counter to this Law shall not apply to it.

ARTICLE FIFTEEN

The ministers shall implement this Law.

ARTICLE SIXTEEN

This Law shall be published in the Official Gazette, and shall be considered effective from 1 June 1972.

Written in Baghdad on 18 Rabi' II 1392, corresponding to the first of June 1972.

Ahmad Hassan al-Bakr

President of the Revolutionary Command Council.

No. 25
 Heads of
 Agreement: Iraq
 Petroleum
 Company and
 Government of
 Iraq;
 28th February 1973
 (Annexure 20 to
 The Principal
 Affidavit)

No. 25
Heads of Agreement:
Iraq Petroleum Company and Government of Iraq
 (Annexure 20 to The Principal Affidavit)

1. The Government of Iraq on the one hand and Iraq Petroleum Company Limited (IPC), Basrah Petroleum Company Limited (BPC) and Mosul Petroleum Company Limited (MPC) (including their Shareholders and Shareholders' Affiliates) agree in conformity with the laws and regulations prevailing in Iraq; particularly Law No. 80 for 1961 as amended by Law No. 24 for 1970, Law No. 125 for 1967 as amended, Law No. 97 for 1967, Law No. 229 for 1970 and Law No. 69 for 1972; that the mutual undertakings set out below constitute final settlement of all outstanding issues claims and liabilities of and between the parties. 10
2. The Companies will pay a total of £ Sterling 141 (one hundred and forty-one) million which the Iraq Government accepts in final settlement of all its claims on IPC and all the liabilities of IPC to the Iraq Government and of all the Government's claims on MPC and BPC and all the liabilities to date of MPC and BPC to the Iraq Government. A first instalment of £ Sterling 30 (thirty) million will be made within one week after ratification of these Heads of Agreement.
3. The balance of the total sum payable under paragraph 2 above will be paid in monthly instalments on the last day of each month concurrently with oil deliveries under paragraph 4 below. Each instalment shall be so calculated that the amount paid by the last day of any month commencing June 1973 together with all previously paid instalments (including the initial instalment under 2 above) shall be the same proportion of £ Sterling 141 (one hundred and forty-one) million as the proportion of 15 million long tons (m.t.) of crude oil delivered up to the end of that month under paragraph 4 below. Each such instalment will bear interest at the rate of 7% per annum compound with annual rests from the date of ratification to the date of payment. 20
4. The Iraq Government will deliver or procure the delivery of 15 m.t. of Kirkuk crude oil free of all costs and free of all charges taxes dues or other impositions of whatever nature levied by the Governments or Government authorities of Iraq, Syria and Lebanon f.o.b. East Mediterranean seaboard at the rate of 1 m.t. per month commencing 1.3.1973 or at any faster rate if Government so chooses and if the Companies agree. The Companies shall accept delivery of the said 15 m.t. in final settlement of all claims of IPC and all liabilities to IPC of the Iraq Government and of all claims of MPC and BPC and all the liabilities to date of the Iraq Government to MPC and BPC. 30
5. At the request of the Iraq Government MPC agrees that its Convention shall terminate on 31.3.1973. The Iraq Government shall receive without any payment all the assets and properties in Iraq of MPC, including oil collected in storage tanks and elsewhere, free from all claims and liabilities present and future. 40
6. The Iraq Government having expressed its desire to acquire ownership of IPC's fixed assets comprising its transit and terminal facilities in the Lebanon, provided that the prior consent in writing of the Lebanese Government is obtained by 31.12.1973, IPC agrees that it will dispose to the Iraq Government of the owner-

ship of its fixed assets comprising the transit and terminal facilities in the Lebanon but not the Tripoli Refinery and its associated storage and loading and unloading facilities. The consideration for such disposition is included in the 15 m.t. to be delivered pursuant to paragraph 4 above. Such disposition shall not imply acceptance by the Iraq Government of any obligation or liability of IPC in Lebanon.

*No. 25
Heads of
Agreement: Iraq
Petroleum
Company and
Government of
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7. BPC undertakes to use its best endeavours to accelerate its expansion programme so as to meet target capacities as follows subject to good oilfield practice and the Law of Conservation of Oil and Natural Hydrocarbon Resources No. 229 for the year 1970:

10	1973	35 m.t. average
	1974	45 m.t. average
	1975	65 m.t. average
	1976	80 m.t. average

Subject to the laws and regulations in force the Iraq Government undertakes to accord BPC all reasonable facilities to achieve these target capacities.

8. The £ Sterling 30 (thirty) million loans by IPC, MPC and BPC presently outstanding will be repaid in the manner provided in the respective loan agreements but in three equal annual instalments due on 1.7.1976, 1.7.1977 and 1.7.1978 and the respective loan agreements shall be deemed to have been amended accordingly.
- 20
9. The tax commutation payment provided for in Basrah Petroleum Company's Convention shall with effect from 1.1.1973 be increased to £200,000 per annum, and shall not be included in Border Costs.
10. These Heads of Agreement have been agreed on in Baghdad on February 28, 1973 and shall become effective on the publication in the Official Gazette of a law ratifying them.

For the Government of Iraq

For and on behalf of IPC, MPC, BPC,
their Shareholders and Shareholders'
Affiliates

30 Dr. Saadoon Hammadi

Mr. Jean Emile Duroc Danner

Mr. Jan Joost de Liefde

In the presence of

In the presence of

Mr. A. Hamdani

Mr. P. Whitby

Dr. F. Chdabi

Mr. N. Hawden

No. 26
OPEC Resolution:
 (Annexure 21 to The Principal Affidavit)

RESOLUTION XXVIII. 146

The Conference,

having heard the statement of the Head of the Iraqi Delegation concerning the negotiations with the Iraq Petroleum Company the failure of which led to the nationalization of the operations of said company by the Government of Iraq;

recognizing that the oil companies have been adopting discriminatory policies against Iraq for such a long time and in such a manner that has been causing serious damages 10 on the Iraqi national economy, notably by denying Iraq such normal increases in production and other financial rights, which would have contributed effectively in accelerating economic growth in that Member Country;

noting that said companies had continuously tried to exert pressure in order to influence the outcome of negotiation on outstanding issues, most notably by the recent drastic reduction in the production of the Iraq Petroleum Company, thus causing considerable adverse effect on the implementation of the development plans of Iraq;

recalling Resolutions III. 18 adopted in 1961, VII. 49 of 1964, XI. 73 of 1966, XIII. 81 of 1967, XX. 115, XX. 116 and XXI. 125 of 1970, which expressed the concern of the Conference over the attitude of the oil companies operating in Iraq and 20 expressed also full support to any appropriate action taken by the Iraqi Government to safeguard its legitimate interests;

resolves

1. to support the action taken by the Iraqi Government to nationalize the operations of the Iraq Petroleum Company as a lawful act of sovereignty to safeguard its legitimate interests;
2. that Member Countries shall not allow oil companies to replace the crude oil exported by the Iraq Petroleum Company at the level of 1970, by oil produced in their territories, and/or to substitute that oil in its traditional markets, and
3. that a committee shall be formed of the Heads of Delegation of Abu Dhabi, Iran, 30 Libyan Arab Republic, Saudi Arabia and Venezuela, assisted by the Secretary General, to formulate effective ways and means to implement and follow-up paragraph 2 above and report its findings to the Conference.

No. 27
Speech: Shah of Iran
 (Annexure 22 to The Principal Affidavit)

No. 27
 Speech: Shah of
 Iran: 23rd January
 1973 (Annexure
 22 to The
 Principal
 Affidavit)

Following, in full, is an unofficial translation of the oil portion of a speech delivered by the Shah of Iran to the Iranian Parliament January 23 on the anniversary of Iran's "White Revolution."

10 "It is some time since we have been negotiating with the operating companies, i.e. oil consortium, which are operating in Iran. (There are five or six other companies which are operating but on a limited scale.) The negotiations have neither broken down nor come to any conclusion. That is why today, without entering into the details, its main aspects should be brought to your attention.

"When in 1954 we signed the oil agreement—and perhaps at that time we could not obtain anything better than that—one of the provisions of the agreement was that the operating companies should safeguard the interests of Iran in the best possible manner. We have reasons to believe that this has not been done.

20 "In the 1954 agreement, three renewal periods of five years each have been provided for, and it was stipulated that the interests of Iran should be safeguarded. We have sufficient reasons (to believe) that, even in accordance with the 1954 oil agreement, we should never extend our agreement with the consortium in 1979.

30 "Of course you know that sovereignty of every nation allows it to have full control over its natural wealth. The principles of the Charter of the United Nations and its special resolutions in this respect explicitly provide that not only the wealth of every country (the subterranean and surface both) belongs to it. Even in agreements concluded with foreign companies for exploration and exploitation, exploitation cannot be done without the approval of the country owning such wealth—i.e., no company can say that it wants to exploit so much of the oil in a year. For instance if, for the sake of quoting a figure, 1-million barrels per day is reasonable in respect of the reserves, and the company says that it will produce 200,000 barrels or on the contrary 2-million barrels, this right has not been granted to it. The oil industry is a complicated one; if a well is exploited at more than a certain quantity it will be killed. If (I use the English technical term) secondary recovery is not done, this is not in the interest of the country. If the required amount of gas which should be injected back into the well is not injected, this is not in the interest of the country. These have not been done in our country.

40 "There are two alternatives open to us. As we are a people who honour our signature, we say one alternative is that until 1979, i.e. in six years time, the present companies shall continue with their operations provided the income earned from every barrel of oil shall not be less than the income of the countries in the same region, and provided that Iran's export capability shall reach 8-million barrels per day. If the difference now existing with that figure shall not be covered, we shall do so ourselves and we shall know what to do with the extra amount of oil.

"In 1979 the agreement shall come to an end and the present companies shall be placed in the long row of customers of Iran's oil without any privileges. They shall queue up for it as others do.

No. 27
Speech: Shah of
Iran: 23rd January
1973 (Annexure
22 to The
Principal
Affidavit)
(Cont'd)

“Alternatively, as from the date of the signature of a new agreement, all responsibilities and whatever is not now in our hands will revert back to Iran. The present companies shall be our long-term customers. And we shall sell them the oil for a long period at a fair price with the discount that anyone grants to its good customers. This is the only way for the customer to know that as long as the agreement stands (20 or 25 years) oil will be available to him. As to the other alternative, I am not quite sure that crude oil shall be exported in such a simple manner.

“The matter should become clear to us shortly: Either the operations will be continued until 1979, or alternatively, the companies shall become customers and oil shall be made available to them at reasonable terms on a long-term basis. 10

“In order to meet the second alternative it is necessary that, especially since our industry is expanding, we shall employ the best foreign experts individually or collectively to work for us and that we shall be more careful than heretofore about preserving, exploring and exploiting our resources. More than ever before, in order to create a first class industry of an international level, we shall have to study even from tomorrow how the organization of National Iranian Oil Co. should prepare itself, immediately or for the year 1979. If we are able to do this, and in any case in 1979 which is definite, that is something the importance of which you can all appreciate.”

No. 28
OPEC Resolution:
27th-28th June
1973 (Annexure
23 to The
Principal
Affidavit)

No. 28
OPEC Resolution:
(Annexure 23 to The Principal Affidavit) 20

RESOLUTION XXXIV. 155
POLICY STATEMENT

The Conference,

noting that under the present and expected conditions of the world energy market, Member Countries should not only strive to attain the appropriate value for their oil, but also negotiate with a view to attaining conditions that would effectively foster the permanent and diversified sources of income within their territories;

taking into account that hydrocarbon resources have constituted an essential factor in the economic development of industrialized countries and that a regular and secure supply of hydrocarbons to these countries is of paramount importance for the continuity of their economic welfare; 30

bearing in mind that petroleum should not only be a source of finance for the Member Countries but a primary and effective instrument for their economic development;

noting that the inadequate economic conditions to which most developing countries are still subjected, mainly as a consequence of their lack of access to the markets and technology of industrialized countries, hamper the developing possibilities of OPEC Member Countries and of the Third World in general;

reiterating that hydrocarbon resources are of a limited and exhaustible nature and therefore their exploitation must be geared at attaining an accelerated and diversified development of Member Countries' economies;

bearing in mind that one of the main aims of the Organization is to seek a just valorization of the hydrocarbon resources of Member Countries and the adequate protection
 10 of their revenues;

bearing in mind that it is an objective of OPEC to secure a fair and equitable relationship between the producing-exporting countries and the consuming-importing countries, and not to inflict any damage to the world economy that could result from the interruption of hydrocarbon supplies;

states

1. that the exploitation and trade in hydrocarbons from Member Countries should, in one form or another, be linked to the process of a rational and accelerated economic growth;
- 20 2. that any concerted action undertaken by industrialized-importing countries aimed at undermining OPEC's legitimate aspirations would only hamper the stable relations that have normally existed between these and OPEC Member Countries, and that to seek a direct confrontation with OPEC may have a damaging effect upon the world economy;
3. that the Governments of member Countries should take, or pursue, whatever actions they see fit in the appropriate bilateral or multilateral framework in order to:
 - (a) attain greater access to the technology and markets of the developed countries for their present and future industrial products; and
 - (b) further strengthen the cooperation with the oil importing-developing
 30 countries whose energy requirements are ever-increasing.

No. 29
OPEC Resolution:
15th-16th
September 1973
(Annexure 24 to
The Principal
Affidavit)

No. 29
OPEC Resolution:
(Annexure 24 to The Principal Affidavit)

RESOLUTION XXXV. 160

The Conference,
having examined the prevailing conditions and expected future trends of the crude oil and oil products markets, as well as the worldwide inflation, especially in the industrialized countries;

having reviewed the terms of the Tehran, Tripoli and Lagos Agreements in the light of the above conditions and trends; 10

noting that the present level of posted prices as determined by those Agreements is no longer compatible with such prevailing conditions and trends thus requiring an upward adjustment;

having noted that the annual escalations provided for in those Agreements are also no longer in line with the current and expected future trends of world inflation, as well as the crude oil and product prices;

recognizing that the oil companies are reaping high unearned profits owing to developments which have occurred since the conclusion of the Tehran, Tripoli and Lagos Agreements, and that such a situation is detrimental to the Member Countries leading to a further deterioration of the value of their oil; 20

resolves

1. that the Member Countries concerned shall negotiate, individually or collectively, with the oil companies with a view to revising the Tehran, Tripoli and Lagos Agreements in the light of the prevailing conditions and expected future trends in the crude oil and oil product markets, as well as the world inflation;
2. to this end a Ministerial Committee, composed of the Heads of Delegations of the Member Countries bordering the Gulf, be established in order to negotiate collectively the revision of the terms of the Tehran Agreement with the representatives of the oil companies, on the 8th of October, 1973, in Vienna; and
3. to empower the said Committee to call for an Extraordinary Meeting of the Con- 30
ference if it is deemed necessary.

No. 30
Communique: Gulf States of OPEC:
 (Annexure 25 to The Principal Affidavit)

*No. 30
 Communique:
 Gulf States of
 OPEC:
 16th October 1973
 (Annexure 25 to
 The Principal
 Affidavit)*

“In accordance with the action taken in Vienna on Oct. 12, the Ministerial Committee, the Ministers of the six Gulf members of the Organization of Petroleum Exporting Countries, met in Kuwait on Oct. 16 and decided to:

- (1) In line with the OPEC Resolution No. 90, as well as practice of other OPEC members states, Venezuela, Indonesia and Algeria, establish and announce the posted prices of crude in the Gulf.
- 10 (2) The new posted prices are based on actual market prices in the Gulf, as well as in other areas, adjusted for gravity differentials and geographical locations.
- (3) From this day on, the actual market price will determine corresponding posted prices, keeping the same relationship between prices as existed in 1971 before the Teheran agreement. The corrections for changing the posted prices upward or downward will take place when the actual market prices exceed or drop below the corresponding level of the new announced prices by 1%
- 20 (4) The corresponding market price of the new posted price for the Arabian light crude is hereby established and announced at \$3.65. The prices of other crudes will be set accordingly. This price represents only a 17% increase over the actual sale of the same crude recently. Consequently, the posted prices for all crudes shall be increased as to produce the above results.
- (5) The sulfur premium of various crudes will be determined individually by each member state on the basis of actual market trends.
- (6) The Geneva agreement shall continue to be in force.
- (7) The effective date of the new arrangement and prices will be Oct. 16.
- (8) In case the oil companies refuse to take crude on the basis of these arrangements, the producing countries will make available to any buyer the various crudes at prices computed on the basis of the Arabian light at \$3.65 per barrel f.o.b. Ras Tanura.”

No. 31
English translation
of letter: Kuwait
Minister of
Finance and Oil to
BP: 20th October
1973 (Annexure
27 to The
Principal
Affidavit)

No. 31
English translation of letter:
Kuwait Minister of Finance and Oil to BP:
(Annexure 27 to The Principal Affidavit)

Date: 20th October, 1973.

The President,
British Petroleum Company Limited,
LONDON.

Greetings,

In accordance with the provisions of Resolution No. 90 issued by the Ministerial Council of OPEC dated 24/25 June 1968 empowering the Government to establish the posted or reference price for its hydrocarbons. 10

And in implementation of the resolution passed by the Ministerial Committee of the Gulf States of OPEC made in Kuwait on the 16th October 1973 which relates to the establishment of new posted prices for all crudes exported from the Gulf.

The Ministry hereby hastens to notify you that with effect from Tuesday 16th October 1973 the posted prices for the crude exported by your company known as Kuwait Export API 31.00° to 31.09° has become \$4.903.

The provisions of the two Geneva Agreements relating to the correction of the posted prices will apply to the new posted price. 20

You are therefore requested to hasten to take whatever arrangements are required by the application of the new posted prices with effect from the date referred to above and to notify us of those arrangements as soon as possible.

Yours sincerely,
(Sgd.) MINISTER OF FINANCE AND OIL

No. 32
Letter: BP
(Kuwait) Ltd. to
Kuwait Minister of
Finance and Oil:
1st November 1973
(Annexure 28 to
The Principal
Affidavit)

No. 32
Letter:
BP (Kuwait) Ltd. to Kuwait Minister of Finance and Oil:
(Annexure 28 to The Principal Affidavit)

1st November, 1973. 30

His Excellency Abdul Rahman Salem Al Ateeqy,
Minister of Finance and Oil,
KUWAIT.

Your Excellency,

We are in receipt of your letter dated 20th October 1973 concerning the posted prices of crude oil exported from Kuwait. It was our hope that after further negotiations

the posted price issue could have been resolved by agreement and we are disappointed that a different course was adopted.

Although further study and consideration on our part are required, we believe that it would be most desirable for further discussions to take place soon between representatives of governments and companies on the broad implications of your letter, and to clarify our understanding of the mechanism reflected in the announcement of the decisions made by the governments at the Kuwait meeting.

10 Nevertheless it is our present intention, without prejudice to our position under existing agreements, to see that you are provided with the financial effects which would result from the particular posted prices which you have announced in your letter as being effective 16th October, 1973.

Yours faithfully,
for BP (KUWAIT) LIMITED
J.W.R. Sutcliffe

No. 32
Letter: BP
(Kuwait) Ltd. to
Kuwait Minister of
Finance and Oil:
1st November 1973
(Annexure 28 to
The Principal
Affidavit)
(Cont'd)

No. 33
Text of Letter:
Kuwait Minister of Finance and Oil to BP (Kuwait) Ltd:
(Annexure 29 to The Principal Affidavit)

No. 33
Text of Letter:
Kuwait Minister of
Finance and Oil to
BP (Kuwait) Ltd:
7th November 1973
(Annexure 29 to
The Principal
Affidavit)

7.11.73

20 BP LONDON FROM KOC KUWAIT

LETTERS FROM THE KUWAIT GOVERNMENT TO GULF AND BP ACKNOWLEDGING OWNERS' REPLY DATED NOVEMBER 1ST, 1973, WERE RECEIVED FROM MINISTRY YESTERDAY AND AIRMAILED TO YOU. TEXT OF THE LETTERS IS AS FOLLOWS:

QUOTE

THIS IS TO ACKNOWLEDGE THE RECEIPT OF YOUR LETTER OF 1ST NOVEMBER, 1973, THE CONTENTS OF WHICH RECEIVED OUR DUE CONSIDERATION. PARA

WE WOULD LIKE, FIRST OF ALL, TO PUT ON RECORD THE FACT THAT THE DECISION TAKEN BY THE SIX GULF OPEC MEMBERS ON THE 16TH OF OCTOBER, 1973, TO RESORT TO THE COLLECTIVE ACTION ON POSTED PRICES WAS MADE ONLY AFTER
30 THE NEGOTIATIONS IN VIENNA WERE RECESSED AND POSTPONED THREE TIMES ON THE COMPANIES REQUEST. IT WAS IN VIEW OF SUCH REPEATED BREAKS IN THE NEGOTIATIONS THAT THE GOVERNMENTS CONCLUDED THAT THE COMPANIES WERE RESORTING TO DELAYING TACTICS AND THEREFORE THEY TOOK THE APPROPRIATE ACTION TO SAFEGUARD THEIR LEGITIMATE RIGHTS AND INTERESTS IN LINE WITH THE PRACTICE ALREADY AT WORK IN SEVERAL OTHER OPEC COUNTRIES.

PARA

THE DECISION TAKEN IN KUWAIT WITH REGARD TO OUR DETERMINING AND ANNOUNCING THE PRICES OF OUR OIL IS A MATTER OF PRINCIPLE TO US. IT SHALL NOT BE SUBJECT TO ANY NEGOTIATION. PARA

40 IN THE MEANTIME, WE THINK THAT YOUR PROPOSAL OF FURTHER DISCUSSIONS BETWEEN REPRESENTATIVES OF THE COMPANIES AND OF GOVERNMENTS COULD BE

No. 33
 Text of Letter:
 Kuwait Minister of
 Finance and Oil to
 BP (Kuwait) Ltd:
 7th November 1973
 (Annexure 29 to
 The Principal
 Affidavit)
 (Cont'd)

USEFUL IF SUCH DISCUSSIONS ARE BASED ON THE CLEAR UNDERSTANDING THAT THEY WOULD BE DIRECTED SOLELY TO HEAR YOUR VIEWS AND EXCHANGE IDEAS ON MATTERS OF PROCEDURE AND METHODS CONCERNING THE FUTURE APPLICATION OF THE DECISION TAKEN IN KUWAIT. TO THIS END WE ARE WILLING TO CONSIDER HOLDING SUCH A MEETING AT THE HEADQUARTERS OF OPEC IN VIENNA AT 10.00 AM ON SATURDAY, 17TH NOVEMBER, 1973.

YOURS FAITHFULLY
 MINISTER OF FINANCE AND OIL

UNQUOTE

No. 34
 Letter: Iranian
 Minister of
 Finance to Iranian
 Consortium:
 5th November 1973
 (Annexure 30 to
 The Principal
 Affidavit)

No. 34
Letter:

Iranian Minister of Finance to Iranian Consortium:
 (Annexure 30 to The Principal Affidavit)

10

5th November, 1973

Consortium Members
 TEHRAN.

This is to acknowledge receipt of your letter of 1st November, 1973 the contents of which received our due consideration.

We would like, first of all, to put on record the fact that the decision taken by the six Persian Gulf OPEC Members on the 16th of October, 1973 to resort to the collective action on posted prices was made only after the negotiations in Vienna were recessed and postponed three times on the companies request. It was in view of such repeated breaks in the negotiations that the Governments concluded that the companies were resorting to delaying tactics and therefore they took the appropriate action to safeguard their legitimate rights and interests in line with the practice already at work in several other OPEC Member Countries. 20

The decision taken in Kuwait with regard to our determining and announcing the prices of our oil is a matter of principle to us. It shall not be subject to any negotiation.

In the meantime, we think that your proposal of further discussions between representatives of the companies and of Governments could be useful if such discussions are based on the clear understanding that they would be directed solely to hear your views and exchange ideas on matters of procedure and methods concerning the future application of the decision taken in Kuwait. To this end, we are willing to consider holding such a meeting at the headquarters of OPEC in Vienna at 10.00 A.M. on Saturday, 17th November, 1973. 30

Dr. Jamshid Amouzegar
 MINISTER OF FINANCE

No. 35
Communique: Arab States:
 (Annexure 31 to The Principal Affidavit)

No. 35
 Communique:
 Arab States:
 17th October 1973
 (Annexure 31 to
 The Principal
 Affidavit)

17th October, 1973

“In spite of (the) fact that the world community has commitments to implement the United Nations resolutions and not to allow the aggressor to get the fruit of his aggression or to occupy other countries by force, most big industrialized countries which consume mainly Arab oil did not adopt any procedure which demonstrated their awareness of their commitment. On the contrary, some of these countries have backed
 10 the occupation, and the U.S. in particular has been very active . . . in supporting Israel . . .”

“Unless the world community corrects the situation by forcing Israel to withdraw from our occupied territories and by making the U.S. realize the high price of its support, European industrialized countries will pay as result of the unlimited American backing for Israel. Because of all this, the Arab Oil Ministers met in Kuwait on October 17 and decided to start immediately reducing oil production by not less than 5% per month compared with the previous one, until the Israeli withdrawal is completed from the whole Arab territories occupied in June 1967 and the legal rights of the Palestinian
 20 people restored. The conferees are aware that this reduction should not harm any friendly state which assisted or will assist the Arabs actively and materially. Such countries would receive their shares as before the reduction.”

No. 36
Communiqués:
Gulf States of OPEC and Saudi Arabian Oil Minister:
 (Annexure 32 to The Principal Affidavit)

No. 36
 Communiqués:
 Gulf States of
 OPEC and Saudi
 Arabian Oil
 Minister: 23rd and
 25th December 1973
 (Annexure 32 to
 The Principal
 Affidavit)

TEXT OF NEW TEHERAN OIL PRICE DECISION

Following is the full text of the communique issued in Teheran Dec. 23 by Ministers of OPEC's six Gulf member states—Iran, Saudi Arabia, Kuwait, Iraq, Abu Dhabi and Qatar—on their decision to increase posted prices Jan. 1, 1974:

30 “The ministers of the six Gulf member countries met in Tehran on Dec. 22 and 23, 1973. The meeting was also attended by other (Organization of Petroleum Exporting Countries) delegations, Algeria, Indonesia, Libya and Nigeria, and Venezuela as an observer.

“The ministers reviewed the report prepared by the Economic Commission Board held in Vienna between Dec. 17 and 20, 1973. Although the findings of the Economic Commission Board as well as direct sales realized by some of the member

No. 36
 Communiqués:
 Gulf States of
 OPEC and Saudi
 Arabian Oil
 Minister: 23rd and
 25th December 1973
 (Annexure 32 to
 The Principal
 Affidavit)
 (Cont'd)

countries indicated a price in excess of \$17 per barrel, the ministerial committee decided to set government take of \$7 per barrel for the marker crude, Arabian light 34-degree API.

“The relevant price for this crude will therefore be \$11.651 per barrel. The effective date for this posted price shall be Jan. 1, 1974. This posted price has already taken into consideration the effect of Geneva II agreement.

“It was also decided to hold an extraordinary meeting of the conference on Jan. 7, 1974, to discuss the bases of a long-term pricing policy and to review the possibility of establishing a dialogue between oil-producing and consuming countries in order to avoid entering into a spiral increase in prices and to protect the real value of their oil. 10

“Considering that the government take of \$7 per barrel is moderate, the ministers hope that the consuming countries will refrain from further increase of their export prices.”

ARAB COMMUNIQUE ON OUTPUT INCREASE

Following is the full text of the statement issued in Kuwait Dec. 25, 1973 by Saudi Arabian Oil Minister Yamani on the decision by Arab oil producing states to increase their production in January rather than impose a further cutback:

“The Arab oil ministers’ meeting in the city of Kuwait listened to the explanation 20 presented to them by both Yamani and Belaid Abdesalam about the results of their trip in the Western capitals, their impressions, and the results derived from that trip and the suggestions thereafter.

“The oil ministers’ meeting in Kuwait studied the true targets of the oil measures they adopted in their previous decisions, which are to draw the attention of the whole world to the injustice inflicted on the Arab nation by occupation of its territories and having a whole nation without a home.

“It is not in their targets to allow any economic disaster for any nation or group of nations, and they emphasized once more that they are ready, decided and declared since Oct. 17 that these measures will not touch the friendly countries, that there is a 30 very apparent distinction between those who stand beside the Arabs and those who stand beside the enemy and those who are in between.

“The ministers’ meeting in Kuwait noted the changes in the Japanese policy vis-a-vis the Arab cause, which was conveyed through various ways and means, one of them the visit paid by the Vice Premier of Japan to some of the Arab countries, and on the other hand they noted the economic situation of Japan, and therefore decided to treat especially Japan in a way which does not subject that country to the general reduction as a whole, doing this in order to protect the Japanese economy and hoping that the Japanese Government would appreciate this position and continue to take fair and equitable positions for the Arab cause. 40

“Those who met appreciated the Belgian position—the political Belgian position—and decided not to subject Belgium to any reduction of its import of oil, and to allow that oil is brought to Belgium through Holland, after having all necessary guarantees that it will arrive in Belgium completely without any reduction.

“Furthermore, they decided to export to friendly countries according to their actual needs, even though this is more than the level of September, 1973, provided that Arab oil should not be exported outside said countries and does not substitute for non-Arab oil which is imported by these friendly countries.

“Those who met in Kuwait decided therefore to raise their production in the concerned member countries by 10 per cent of the level of September in order to bring down the percentage of reduction to 15 per cent instead of 25, and not to impose the additional 5 per cent for the month of January.

10 “The participants noted with appreciation the gradual changes which started to show in American public opinion, where a remarkable proportion of the American public opinion started to know the reality of the Arab problem and the reality of the Israeli policy of expansion, and particularly when a number of Senators and Representatives of the American Senate and Congress took an objective and unbiased position on the Arab-Israeli dispute.

“The participants hope that the American Government’s desire to put their efforts in order to arrive to an equitable peaceful solution to the problem will be a fruitful thing which will lead to fruitful results for the whole world and particularly for the bilateral relationship between the American people and the Arab people.

20 “However, the embargo will continue to America and Holland, and the ministers will meet once again in the city of Tripoli in the Libyan Arab Republic on Feb. 14 after the two ministers representing them finish the second part of their trip, unless there is an urgent matter for them to meet before that.”

No. 36
Communiqués:
Gulf States of
OPEC and Saudi
Arabian Oil
Minister: 23rd and
25th December 1973
(Annexure 32 to
The Principal
Affidavit)
(Cont'd)

No. 37
OPEC Resolution:
(Annexure 33 to The Principal Affidavit)

RESOLUTION XXXV. 159

No. 37
OPEC Resolution:
15th-16th
September 1973
(Annexure 33 to
The Principal
Affidavit)

The Conference,

30 **having heard** the statement of the Head of the Libyan Delegation concerning negotiations with Producing Companies with respect to participation, the failure of which with some companies, led to the nationalization of 51% of the operations of said companies;

recalling paragraphs 4 of Resolutions I. 1 and I. 2, and Resolutions XVI. 90, XXIV. 135, XXV. 139 and XXVII. 145;

bearing in mind that a principal aim of the Organization is to safeguard the interests of Member Countries individually and collectively;

noting that certain oil companies operating in Libya have opposed the actions taken by the Libyan Government

No. 37
OPEC Resolution:
15th-16th
September 1973
(Annexure 33 to
The Principal
Affidavit)
(Cont'd)

resolves

1. to express its full support to the decision taken by the Libyan Government in fulfillment of its sovereign right to control its natural resources; and
2. that in case certain oil companies take individual or collective actions to hinder the implementation of the decision taken by the Libyan Government in the fulfillment of its sovereign right, the Conference shall take the appropriate measures which it deems necessary.

No. 38
Affidavit:
J.H. Porter: "The
Kuwait Affidavit"
19th September 1974

No. 38 Affidavit: J. H. Porter: "The Kuwait Affidavit"

10

ON the 19th day of September 1974

I, JAMES HUTCHISON PORTER, of 24 Marlowe Court, Lymer Avenue, London, England, Company Executive, say on oath:

1.—I am the Regional Co-ordinator for the Middle East of BP Trading Limited ("BPT"), having been appointed to that position in November 1973. I have been involved in the oil industry in various positions since 1953 and have been employed within the BP Group since 1956. Prior to my present appointment I served for three years in Iran as Finance Director of the two operating Companies of the "Iranian Consortium" in which the BP Group has a 40% interest.

2.—My duties involve me inter alia in supervision of the work of other BPT 20 London personnel known as Area Co-ordinators who are each responsible for their respective areas or countries. Immediately following my present appointment, I became a Director of Kuwait Oil Company Limited, Iranian Oil Participants Limited, Abu Dhabi Petroleum Company Limited, Abu Dhabi Marine Areas Limited, Qatar Petroleum Company Limited and Basrah Petroleum Company Limited as a BP Group representative on the boards of such companies.

3.—I have read the Affidavit of John William Robert Sutcliffe sworn herein (to which I shall hereafter refer as the "Principal Affidavit"); in this and in all other Affidavits sworn by me in these proceedings I shall adopt the abbreviations and terms used in this and in the Principal Affidavit; in these proceedings I shall refer to this Affidavit 30 as "the Kuwait Affidavit".

4.—All "equity crude" obtained by the Group from Middle East sources where the Group has an interest in the producing company or consortium or in the production rights is acquired at cost by a subsidiary (generally an "oil trader" subsidiary). Title passes to an oil trader at the time of acquisition. After acquiring the oil and reimbursing the producer with the cost of production and royalties paid, an oil trader must pay taxation to the host government. The aggregate of payments to the producer and of revenue payments to the host government is referred to in the industry as the "tax paid cost".

5.—The Group's interests in Kuwait are held on a joint venture basis in equal shares with Gulf Kuwait Company, a Company incorporated in the State of Delaware in the U.S.A. (hereinafter called "Gulf"). The Group's interests are held through BP (Kuwait) Limited (hereinafter called "BP Kuwait") a Company incorporated in England and which is a wholly owned subsidiary of the Parent Company.

No. 38
Affidavit:
J.H. Porter: "The
Kuwait Affidavit"
19th September 1974
(Cont'd)

6.—The Kuwait concession was originally obtained by Kuwait Oil Company Limited (hereinafter called "KOC") in 1934 although oil was not produced until 1947. The length of the concession was 75 years and this was subsequently extended in 1951 for a further 17 years to terminate in 2026. The whole of the capital of KOC has I believe at all material times been held in equal shares by the BP Group and Gulf.

7.—Exhibited hereto and marked "34" is a true copy of what I believe to be the Petroleum Concession Agreement dated 23rd December, 1934 between the Shaikh of Kuwait and KOC (hereinafter called "the Original Agreement"), which conferred on the concession holder the exclusive right to produce crude petroleum and its products and exclusive ownership of all production thereof either for use within Kuwait or for export.

8.—On 30th November 1951 KOC assigned title to the concession to BP Kuwait and Gulf, but continued as manager of the concession on their behalf.

9.—Since 1951 the revenues accruing to the Kuwait Government have included tax as well as royalty, although royalty paid was credited against the tax payable. From 1955 royalty at the rate of 12½% and tax at the rate of 50% (after crediting royalty) were assessed and calculated with reference to and on the basis of posted prices.

10.—Up until 14th November 1970 there had from time to time by negotiation been various amendments made to the Original Agreement, some of these involving for example the relinquishment of substantial parts of the concession area (originally the entire country) which were not being exploited. However none of these amendments materially affected the concession holder's exclusive rights thereunder at least insofar as the rate of crude oil production and its export and sale was concerned.

11.—One important amendment was made by Supplemental Agreement dated 19th November, 1966 between the Government of Kuwait, BP Kuwait, Gulf and KOC which provided inter alia for the phasing in of "expensing" of royalties on crude oil; what I believe to be a true copy of the said Agreement is exhibited hereto and marked "35".

12.—On 14th November, 1970 the rate of tax was raised from 50% to 55% and, in that regard, annexed hereto and marked "36" is a true copy of an aide memoire dated 23rd November, 1970 between the Government of Kuwait, BP Kuwait, Gulf and KOC.

13.—The standard quality of crude oil produced in Kuwait is referred to as "Kuwait 31.0°", the same having a gravity of 31 degrees as determined by the method established by the American Petroleum Institute.

14.—On 15th February, 1971 the "Teheran Agreement" became effective in Kuwait from which date the posted price was increased by 40.5¢ (i.e. from US \$1.68 to US \$2.085), an increase of approximately 25%. A copy of the Teheran Agreement

No. 38
Affidavit:
J.H. Porter: "The
Kuwait Affidavit"
19th September 1974
(Cont'd)

dated 14th February, 1971 signed inter alia by representatives of the Kuwait Government and the BP Group is annexed to the Principal Affidavit.

15.—On 20th January, 1972 the "Geneva Agreement" was signed, the Government of Kuwait being a party thereto. A copy of the said Agreement is annexed to the Principal Affidavit. Later, on 1st June, 1973 the "Supplemental Geneva Agreement" was signed, the Government of Kuwait being a party thereto. A copy of such Agreement is an exhibit to the Principal Affidavit.

16.—In 1972 the Government imposed crude oil production limits; annexed hereto and marked "37" is a true copy of a letter dated 8th April, 1972 from the Kuwait Ministry of Finance and Oil to Gulf relating thereto. 10

17.—On 8th January, 1973 the Government of Kuwait signed the so-called "General Agreement" on participation; a copy thereof with concurrent correspondence is annexed hereto and marked "38". The said Agreement was however never ratified by the Kuwait National Assembly although, as I shall hereafter refer, the concession holders in Kuwait have agreed that the financial benefits of the said Agreement should be enjoyed by the Kuwait Government with effect from 1st January, 1973. The said "unratified" Agreement provided inter alia that the Government should obtain an initial 25% interest effective from 1st January, 1973 in the crude oil production facilities formerly owned entirely by BP Kuwait and Gulf.

18.—On 16th October, 1973 the Kuwait Government along with the other Gulf 20 States of OPEC unilaterally fixed the posted prices for all crudes exported from the Gulf. Annexed to the Principal Affidavit and marked "26" and "27" respectively are true copies of a letter in Arabic dated 20th October, 1973 from the Kuwait Minister of Finance and Oil to the Parent Company and an English Translation thereof advising of an increase in the posted price of Kuwait crude to US \$4.903.

19.—On 17th October, 1973 the Arab States which included Kuwait imposed limitations on production and export as referred to in the Principal Affidavit.

20.—The crude oil production of BP Kuwait and Gulf for the year ended 31st December, 1973 totalled 1,004,780,521 barrels which was approximately 8% less in volume than for the year ended 31st December, 1972. This reduction was as a con- 30 sequence of the limitations referred to in paragraph 18 hereof.

21.—Annexed hereto and marked "39" is a true copy of a telex dated 1st November, 1973 received by the Parent Company from the Kuwait Minister of Finance and Oil advising of an increase in the posted price of Kuwait crude to US \$4.952. Annexed hereto and marked "40" is a true copy of a telex dated 5th November, 1973 received by the Parent Company from the Kuwait Minister of Finance and Oil advising that the said increase should be US \$4.957.

22.—Annexed hereto and marked "41" is a true copy of a telex dated 10th December, 1973 from the Kuwait Minister of Finance and Oil to the Parent Company advising of a decrease in the posted price of Kuwait crude to US \$4.822. 40

23.—Annexed hereto and marked "42" is a true copy of a letter dated 27th December, 1973 from the Kuwait Ministry of Finance and Oil to BP Kuwait advising of an increase in the posted price of Kuwait crude to US \$11.545 effective from 1st January 1974, this following the decision of the Gulf states of OPEC on 23rd December 1973 to increase prices as referred to in the Principal Affidavit.

24.—Protracted negotiations with the Government of Kuwait with respect to the question of participation had proceeded throughout 1973 and culminated with a second Agreement which took effect from 1st January 1974 whereby the Government of Kuwait acquired "participation" of 60% of its Kuwait concession, including a 60% share of the refinery operations and liquified petroleum gas operations of BP Kuwait and Gulf. Annexed hereto and marked "43" is a true copy of the said Agreement dated 29th January, 1974 between the Government of Kuwait and BP Kuwait and Gulf. The said Agreement has since been ratified by the Kuwait National Assembly.

10 25.—By Article 3 of the said Agreement BP Kuwait and Gulf became liable to pay to the Government the amount payable under "participation arrangements based on those generally applicable in other Arab countries bordering the Arabian Gulf" for the year 1973.

26.—Annexed hereto and marked "44" and "45" are true copies of two letters of agreement each dated 29th January, 1974 to the Kuwait Minister of Finance and Oil from BP Kuwait and Gulf setting out in the first case provisions as to payment and management and in the second case provisions as to buyback arrangements for the first quarter of 1974.

20 27.—Negotiations took place with the Government on the amount payable for 1973 "participation" as referred to in paragraph 25 hereof; no agreement as to such amount has yet been made, other than the provisional arrangement set out in the Aide memoire dated 14th June 1974 sent on behalf of BP Kuwait to the Kuwait Government annexed hereto and marked "46" and in the letter dated 30th July 1974 from the Kuwait Minister of Finance and Oil to BP Kuwait annexed hereto and marked "47".

30 28.—Negotiations also took place with the Government on the 1974 "buyback" price to be paid for the Kuwait Government's participation crude but agreement was in fact not reached by 28th February, 1974 as envisaged by the letter annexed hereto marked "45". As a consequence BP Kuwait became contractually obliged to redeliver to the Government the oil lifted by it during the first quarter of 1974 as referred to in the paragraph numbered 2 of the said letter; this has not however occurred but in July 1974 BP Kuwait and Gulf reached agreement with the Government of Kuwait to pay retroactively to 1st January 1974 US \$10.85 per barrel for all participation crude acquired from the Government for the first five months of 1974; this representing approximately 94% of the posted price applicable during that period.

40 29.—The said 1974 "buyback" price negotiations referred to in the last preceding paragraph commenced prior to 22nd March 1974 and prior to that date the Group had made an oral offer to the Kuwait Government of US \$9.50 per barrel. At the time of such offer the Government had stated that it would not accept a buy back price of less than 93% of posting (that is, US \$10.737 per barrel). The Government gave as its reason that Saudi Arabia was already selling oil at this price (Saudi Arabia being the largest direct seller of government-owned crude to the world market).

30.—It is the general practice of the oil industry to refer to the prices of crude oil and products in United States dollars and I have followed that practice in my Affidavits sworn herein.

SWORN by the Deponent at London before me—

J. H. PORTER
E. B. WALKER

No. 39
Aide Memoire:
Government of
Kuwait, BP
(Kuwait) Ltd,
Gulf Kuwait
Company and
Kuwait Oil
Company Limited:
23rd November
1970
(Annexure 36 to
The Kuwait
Affidavit)

No. 39
Aide Memoire:
Government of Kuwait, BP (Kuwait) Ltd,
Gulf Kuwait Company and Kuwait Oil Company Limited:
(Annexure 36 to The Kuwait Affidavit)

In meetings between representatives of the Government of Kuwait and BP (Kuwait) Limited and Gulf Kuwait Company ("the Companies") and Kuwait Oil Company Limited ("the Operating Company"), certain matters connected with the basis of taxation and levels of posted prices of the Companies in Kuwait were discussed.

As a result of these discussions, the following has now been agreed between the 10 parties:—

1. The Companies and the Operating Company will submit to an amendment to the Income Tax Law providing for an additional tax of 5% on the net income earned in Kuwait of the oil companies operating in Kuwait which will be effective as of 14th November, 1970.
2. Representatives of each of the Companies indicated that they or their affiliates will increase by nine U.S. cents per barrel with effect from 14th November, 1970, the price posted by them for Kuwait crude petroleum in accordance with the provisions of Clause 5 of the Agreement on Dealing in Crude Oil and Products in Kuwait dated 11th October, 1955. 20
3. (a) In view of the arrangements referred to in paragraphs 1 and 2 above, the Government of Kuwait agrees that the said arrangements constitute a final settlement of all matters related to the applicable basis of taxation and the level of posted prices up to the present date.
As a result of this settlement, the Government of Kuwait agrees that the prices used by each of the Companies and its respective purchasers who are taxpayers in Kuwait in calculating their income tax liability up to the present date are such as to fulfil their obligations under the said Agreement of 11th October, 1955. The Companies confirm that the agreement of the Government of Kuwait as aforementioned is directed to 30 and bears effect only with regard to the period prior to the present date.
(b) Nothing contained herein shall be construed or used to prejudice or affect in any way the position of either party in regard to the question of posted prices of crude oil subsequent to the present date.
4. The Government of Kuwait will enact an amendment to the Income Tax Law as referred to in paragraph 1 above.

Signed in Kuwait this 23rd day of November, 1970, corresponding to the 25th day of Ramadan, 1390.

for THE GOVERNMENT OF KUWAIT
Abdul Rahman Salim al-Ateeqi
Minister of Finance and Oil
for BP (KUWAIT) LIMITED
J. W. R. Sutcliffe

for GULF KUWAIT COMPANY
A. R. Martin
for KUWAIT OIL COMPANY LIMITED
M. L. Ralston

No. 39
Aide Memoire:
Government of
Kuwait, BP
(Kuwait) Ltd,
Gulf Kuwait
Company and
Kuwait Oil
Company Limited:
23rd November
1970
(Annexure 36 to
The Kuwait
Affidavit)
(Cont'd)

NOTE: For the purpose of determining the net income of the Operating Company, the Companies and their respective customers who are taxpayers in Kuwait for the year 1970, both before and after the effective date of the said additional tax, an average operating cost per barrel for the whole of the said year will be used.

LAW NO. OF 1970

- 10 Amending the Income Tax Decree No. 3 of 1955 and imposing additional Income Tax on certain bodies subject thereto.

Preamble:

ARTICLE 1

With effect from 14th November, 1970, every body corporate subject to Income Tax under the Kuwait Income Tax Decree (No. 3 of 1955) as amended by Decree No. 2 of 1957 and Law No. 8 of 1967, shall be subject to an additional income tax of 5% on income arising on or after the aforementioned date, such income to be computed in accordance with the provisions of the aforementioned Income Tax Decree as amended.

ARTICLE 2

- 20 The additional income tax referred to in the preceding Article shall not apply to incomes which are not in excess of five million Rupees (Kuwaiti Dinars 375,000) per annum.

ARTICLE 3

In paragraph (c) of Article 1 of the Kuwait Income Tax Decree (No. 3 of 1955) as amended by Law No. 8 of 1967 the words "and by this law" shall be added after the words "other than the tax imposed by this Decree".

ARTICLE 4

The Prime Minister and the Ministers concerned shall put this law into effect from the date of its publication in the Official Gazette.

30

Amir of Kuwait
Sabah al-Salim al-Sabah

Made at Sief Palace this
corresponding to

1390.
1970.

No. 40
Letter:
Kuwait Minister of
Finance and Oil to
Gulf Kuwait
Company:
8th April 1972
(Annexure 37 to
The Kuwait
Affidavit)

No. 40
Letter:
Kuwait Minister of Finance and Oil to Gulf Kuwait Company:
(Annexure 37 to The Kuwait Affidavit)

8 April, 1972

Mr. James E. Lee,
Gulf Kuwait Company,
KUWAIT.

Greetings;

Re.: CRUDE OIL PRODUCTION FOR 1972

10

The Government of Kuwait wishes to inform Gulf Kuwait Company that the daily average production of crude oil for the year 1972 should not vary substantially from the daily average production for the year 1971.

A maximum average rate of production of three million barrels per day will be permitted for the year 1972. Under no circumstances will a greater average rate be tolerated.

The Kuwait National Petroleum Company may require greater volumes of oil during 1972 than were supplied in 1971.

These increasing requirements shall be given priority and shall be included in the average daily rate of production. 20

Yours sincerely,
Abdul Rahman Salim al-Ateeqi
MINISTER OF FINANCE AND OIL

No. 41
Telex:
Kuwait Minister of
Finance and Oil to
BP:
1st November 1973
(Annexure 39 to
The Kuwait
Affidavit)

No. 41
Telex:
Kuwait Minister of Finance and Oil to BP:
(Annexure 39 to the Kuwait Affidavit)

BEEPEE LONDON

GOOD MORNING THIS IS MINISTRY OF FINANCE AND OIL KUWAIT
1ST NOVEMBER 1973

30

REFERENCE OUR LETTER 20TH OCTOBER POSTED PRICE KUWAIT CRUDE SHOULD BE
INCREASED ON 1ST NOVEMBER BY 4.9 CENTS TO DOLLARS 4.952

MINISTER OF FINANCE AND OIL KUWAIT
COL: 20TH OCT. 1ST NOVEMBER 4.9 CENTS
DOLLARS 4.952

BI BI
FINANCE KWT

No. 42
Telex:
Kuwait Minister of Finance and Oil to BP:
 (Annexure 40 to The Kuwait Affidavit)

No. 42
Telex:
Kuwait Minister of
Finance and Oil to
BP:
5th November
1973
(Annexure 40 to
The Kuwait
Affidavit)

BEEPEE LONDON
 5TH NOVEMBER 1973

10 GOOD MORNING BEEPEE THIS IS MINISTRY OF FINANCE AND OIL KUWAIT
 REFERENCE MY TELEX OF FIRST NOVEMBER PLEASE CORRECT TO READ INCREASE
 IN POSTING OF 5.4 CENTS TO DOLLARS 4.957 PER BARREL STOP THE ERROR IS
 REGRETTED STOP
 MINISTER OF FINANCE AND OIL
 THAT IS ALL THANKS AND BI BI
 FINANCE KWT

No. 43
Telex:
Kuwait Minister of Finance and Oil to BP:
 (Annexure 41 to The Kuwait Affidavit)

No. 43
Telex:
Kuwait Minister of
Finance and Oil to
BP:
10th December
1973
(Annexure 41 to
The Kuwait
Affidavit)

BEEPEELONDA LDN

20 GOODMORNING BP THIS IS MINISTRY OF FINANCE AND OIL KUWAIT
 EFFECTIVE 1ST DECEMBER 1973 POSTED PRICE OF KUWAIT CRUDE OF 31.00 TO 31.09
 DEGREES API IS DOLLAR 4.822 PER BARREL F.O.B. MENA AL AHMADI. REPEAT
 DOLLAR 4.822.
 UNDERSECRETARY—MINISTRY OF FINANCE AND OIL KUWAIT
 OK BI
 FINANCE KWT

No. 44
Letter:
Kuwait Ministry of
Finance and Oil to
BP (Kuwait):
27th December
1973
(Annexure 42 to
The Kuwait
Affidavit)

No. 44
Letter:
Kuwait Ministry of Finance and Oil to BP (Kuwait):
(Annexure 42 to The Kuwait Affidavit)

27th Dec. 1973

B.P. (Kuwait) Limited
LONDON Ec 2Y 9BU.

ATTENTION: Mr. J. W. R. Sutcliffe

Dear Sir,

It has been decided that with effect from 7 a.m. on 1st January 1974 the posted 10 price of your Kuwait crude for use in computing Royalty and Income Tax payments to the Government will be \$11.545 per barrel for 31.00° to 31.09° API crude FOB Mina al-Ahmadi in cargo lots with a gravity differential of 0.3 cents for each full one tenth of a degree API above or below the posted gravity.

Yours faithfully,
Abdul Rahman Salim al-Ateeqi
MINISTER OF FINANCE AND OIL

No. 45
Participation
Agreement:
Government of
Kuwait, BP
(Kuwait) and Gulf
Kuwait Company:
29th January
1974
(Annexure 43 to
The Kuwait
Affidavit)

No. 45
Participation Agreement:
Government of Kuwait, BP (Kuwait) and Gulf Kuwait Company:
(Annexure 43 to The Kuwait Affidavit)

20

THIS AGREEMENT is made in three originals in Kuwait on 6th Muharram, 1394, corresponding to 29th January, 1974 BETWEEN THE GOVERNMENT OF KUWAIT represented by the Minister of Finance and Oil (hereinafter referred to as the Government) of the first part and BP (KUWAIT) LIMITED and GULF KUWAIT COMPANY (herinafter jointly referred to as the Companies) of the second part.

NOW THEREFORE IT IS HEREBY AGREED as follows:

ARTICLE I

As from 1st January, 1974, the Government shall have:

- (i) 60 per cent of the operations and rights of the Companies in Kuwait in 30 respect of petroleum;
- (ii) 60 per cent of each of the Companies' existing facilities in Kuwait relating to petroleum, including refining and gas liquefaction; and
- (iii) The operations, rights and facilities referred to above shall include marine craft owned by Kuwait Oil Company Limited and petroleum inventories at 31st December, 1973.

Nothing in this Article shall prejudice the Government's rights to natural gas under existing arrangements.

ARTICLE 2

In consideration therefor, the Government shall pay ONE HUNDRED AND TWELVE MILLION UNITED STATES DOLLARS (U.S. \$112,000,000) to the Companies. Interest, calculated from the 1st January, 1974 to the date of payment, shall be added thereto.

No. 45
Participation
Agreement:
Government of
Kuwait, BP
(Kuwait) and Gulf
Kuwait Company:
29th January
1974
(Annexure 43 to
The Kuwait
Affidavit)
(Cont'd)

ARTICLE 3

The Companies shall make a payment to the Government for the year 1973 equal to the amount which would have been payable to the Government if there had been applied in Kuwait participation arrangements based on those generally applicable in
10 other Arab countries bordering the Arabian Gulf in respect of that year. The said amount shall include appropriate interest adjustments up to the date of payment.

ARTICLE 4

For each year the Government and the Companies shall each determine out of their percentage shares of permitted production their requirements of crude oil for use in Kuwait and for export. The balance, if any, of each party's share will be made available in that year to the other party for purchase on commercial prices and terms to be determined and in accordance with procedures to be agreed between the parties from time to time.

ARTICLE 5

- 20 (i) The parties shall establish a Joint Management Committee consisting of four members, of whom two shall be appointed by the Government and one by each of the Companies. The Joint Management Committee shall have the responsibility of determining all major policy matters relating to management, including:
- 30 (a) Exploration, development and work programmes and construction of new facilities;
(b) Sale or disposition of assets;
(c) Capital and operating expenditures and disposition of funds;
(d) Selection, appointment and removal of key personnel; and
(e) Employee compensation and benefit plans.

The Government shall have the right to 60 votes and each of the Companies shall have the right to 20 votes. Decisions of the Joint Management Committee shall be made by 75% of the total voting rights and such decisions shall be binding on all parties.

In the event that neither of the Companies vote in favour of any capital expenditure project, the Government may nevertheless go ahead with such project and shall put up the whole of the related expenditures and enjoy the whole of the related benefits.

- 40 (ii) Operations shall be conducted on behalf of the parties and under the direction of the Joint Management Committee by a Kuwaiti Share Company incorporated in Kuwait under Kuwait law. The capital of this Operating Company shall initially be held by the Government as to 60 per cent and by each of the Companies as to 20 per cent.
- (iii) The Chairman of the Joint Management Committee and the Chairman of the Board of Directors of the Operating Company shall each be a Kuwaiti subject.

No. 45
Participation
Agreement:
Government of
Kuwait, BP
(Kuwait) and Gulf
Kuwait Company:
29th January
1974
(Annexure 43 to
The Kuwait
Affidavit)
(Cont'd)

ARTICLE 6

- (i) The Government shall have the right to transfer or assign the whole or part of its interest hereunder to a Kuwaiti entity;
- (ii) If the Government shall make any such transfer or assignment, any transferee or assignee of such interest or part thereof shall assume and be subject to concessionary and related obligations, fiscal and otherwise, in proportion to its participation.

ARTICLE 7

The relationship between the Government and the Companies shall be reviewed prior to the end of 1979. 10

ARTICLE 8

This Agreement shall become effective upon due ratification in accordance with the Constitution of the State of Kuwait.

for THE GOVERNMENT OF KUWAIT
Abdul-Rahman Salim al-Ateeqi
Minister of Finance and Oil
for BP (KUWAIT) LIMITED
J. W. R. Sutcliffe
for GULF KUWAIT COMPANY
M. L. Ralston 20

No. 46
First letter of
agreement:
BP (Kuwait) and
Gulf Kuwait
Company to
Kuwait Minister of
Finance and Oil:
29th January
1974
(Annexure 44 to
The Kuwait
Affidavit)

No. 46
First letter of agreement:
BP (Kuwait) and Gulf Kuwait Company to
Kuwait Minister of Finance and Oil:
(Annexure 44 to The Kuwait Affidavit)

29th January, 1974

H. E. Abdul Rahman Salim Al Ateeqi
Minister of Finance & Oil
KUWAIT.

Your Excellency, 30

We refer to the Agreement on Participation made between the Government and the Companies and dated this 29th January, 1974 and we now write to confirm the further understandings reached between us as follows:

1. Neither of the Companies nor Kuwait Oil Company Limited will be subject to any tax or other financial imposition in Kuwait in respect of any sums paid to them under Article 2 of the said Agreement.

2. Messrs. Peat, Marwick, Mitchell & Co., Chartered Accountants, will be appointed jointly by the Government and the Companies to determine and certify the amount payable to the Government under Article 3 of the said Agreement, including the appropriate interest adjustments thereto, in accordance with instructions to be agreed and given to them jointly by the Government and the Companies.

3. Payment with respect to Articles 2 and 3 of the Agreement on Participation will be made by the parties thereto as follows:

- 10 (a) Within two weeks after the date upon which the Agreement becomes effective, the Government will pay to the Companies the amount of the consideration specified under Article 2, together with interest thereon from 1st January, 1974 to the date of payment.
- (b) Within two weeks after the said date upon which the Agreement becomes effective, the Companies will make an interim payment in respect of the amount due under Article 3 including the appropriate interest adjustments thereto. The amount of the said interim payment shall be computed on the basis of the Agreement made between the Government and the Companies and the letter exchanged between them, both dated 8th January, 1973. Within two weeks after the amount under Article 3, including all appropriate interest adjustments thereto, has been finally determined, the Companies will pay the balance thereof with interest thereon to the date of payment.
- 20

4. The rate for the interest adjustments applicable under Article 2 of the said Agreement and for all interest payable under Article 3 thereof shall be equal, for each period of six months commencing on 1st January or 1st July during which any such interest is payable, to one per cent above the rate certified by the National Westminster Bank, London to be that at which U.S. dollar deposits for those six months are offered in the interbank deposit market in London at noon on such 1st January or 1st July or, if that day is not a business day, on the first succeeding business day.

30 5. In addition to the provisions contained in sub-Articles 5(i) and 5(iii) of the said Agreement, the following provisions shall apply with regard to the Joint Management Committee:

- (a) The Government and each of the Companies shall have the right to appoint an alternate for any member appointed by it. Such alternate may represent his appointor and act on its behalf at any meeting of the Joint Management Committee from which the member for whom he is an alternate is absent.
- (b) Any member or alternate may be removed and replaced by his appointor at any time. Every appointment, removal or replacement by the Government or either of the Companies shall be communicated promptly to the others of them, the name and address of the appointee being clearly stated in the communication.
- 40 (c) The quorum for any meeting of the Joint Management Committee shall be three, of whom one shall be a member (or alternate) appointed by the Government and one shall be a member (or alternate) appointed by each of the Companies; provided that, if within one hour after the time appointed for the holding of a meeting a quorum is not present, the meeting shall stand adjourned to the third following business day, at the same time and place, and, if at such adjourned meeting a quorum is not present within an hour after the time so appointed but at least one

No. 46
First letter of
agreement:
BP (Kuwait) and
Gulf Kuwait
Company to
Kuwait Minister of
Finance and Oil:
29th January
1974
(Annexure 44 to
The Kuwait
Affidavit)
(Cont'd)

No. 46
 First letter of
 agreement:
 BP (Kuwait) and
 Gulf Kuwait
 Company to
 Kuwait Minister of
 Finance and Oil:
 29th January
 1974
 (Annexure 44 to
 The Kuwait
 Affidavit)
 (Cont'd)

- member (or alternate) appointed by the Government and one member (or alternate) appointed by either of the Companies is present, the members (or alternates) so present shall constitute a quorum.
- (d) The Joint Management Committee shall appoint a Secretary who shall be responsible for the arrangement of its meetings, the preparation of agenda and minutes and the coordination of all matters pertaining to such meetings. The costs and expenses of the Secretary and of such facilities and staff as the Joint Management Committee shall authorise shall be borne by the Operating Company.
- (e) Meetings of the Joint Management Committee shall be held at least once 10 in each quarter, provided that a special meeting may be convened at any time upon the request of the Government or either of the Companies. Not less than ten days' notice of every meeting shall be given by the Secretary to all members and alternates by letter, or by telex confirmed by letter.

Except as otherwise decided by the Joint Management Committee, all meetings shall be held in Kuwait. The Government and each of the Companies will bear the travel and other expenses of any member (or alternate) appointed by it.

We shall be grateful if Your Excellency will indicate your acceptance of the above 20 provisions by signing the two attached duplicate copies of this letter.

for BP (KUWAIT) LIMITED
 J. W. R. Sutcliffe

for GULF KUWAIT COMPANY
 M. L. Ralston

AGREED: Abdul Rahman Salim Al Ateeqy
 Minister of Finance and Oil
 29th January, 1974

No. 47
Second letter of agreement:
BP (Kuwait) and Gulf Kuwait Company to
Kuwait Minister of Finance and Oil:
 (Annexure 45 to the Kuwait Affidavit)

No. 47
Second letter of
agreement:
BP (Kuwait) and
Gulf Kuwait
Company to
Kuwait Minister of
Finance and Oil:
29th January
1974
(Annexure 45 to
The Kuwait
Affidavit)

29th January, 1974

H. E. Abdul Rahman Salim Al Ateeqy
 Minister of Finance and Oil
 KUWAIT.

10 Your Excellency,

This is to confirm the arrangements made between us for the lifting during the first quarter of 1974 of the oil to which the Government will become entitled with effect from 1st January, 1974 on ratification of the Agreement on Participation made between us on 29th January, 1974.

- 20
1. If a buyback price can be mutually agreed before 28th February, 1974, the Companies will buy back at such price the balance of the Government's share of permitted production during the first quarter of 1974 after deducting:
 - (a) The quantity of crude oil required by KNPC for product exports.
 - (b) The quantity necessary to enable the Government to meet sixty percent of the requirements of petroleum products for local consumption in Kuwait.
 - (c) Any quantity of crude oil lifted for export by the Government's customers.

 2. Alternatively, if by 28th February, 1974 agreement has not been reached on a buyback price, the Companies will deliver to the Government during the period 1st April, 1974 through 31st December, 1975 a total volume of crude oil equal to that which they would have bought under the buyback arrangement under (1) above.

30 In the event that ratification does not take place within the first quarter of 1974, an amended arrangement will be considered.

We shall be grateful if Your Excellency will indicate your acceptance of the above provisions by signing the two attached duplicate copies of this letter.

for BP (KUWAIT) LIMITED
 J. W. R. Sutcliffe

for GULF KUWAIT COMPANY
 M. L. Ralston

AGREED: Abdul Rahman Salim Al Ateeqy

No. 48
Aide memoire:
Government of
Kuwait and BP
(Kuwait) and Gulf
Kuwait Company:
14th June 1974
(Annexure 46 to
The Kuwait
Affidavit)

No. 48
Aide memoire:
Government of Kuwait and BP (Kuwait) and Gulf Kuwait Company:
(Annexure 46 to The Kuwait Affidavit)

**AID MEMOIRE ON PARTIAL IMPLEMENTATION
OF ARTICLES 2 AND 3 OF
THE PARTICIPATION AGREEMENT 1974**

At a meeting of the representatives of the Ministry of Finance and Oil and the Companies in London on 12th June 1974, the following method of partially implementing Articles 2 and 3 of the Participation Agreement dated 29th January, 1974 10 and paragraph 3(b) of the First Side Letter of the same date was discussed, and it was agreed that the same should be submitted to the Minister of Finance and Oil and respective Managements of the Companies for approval:

1. the due date for payment of the amounts under the said Article 2 and paragraph 3(b) is 5th June 1974;
2. the amount of the consideration specified under the said Article 2, together with interest thereon from 1st January 1974 to 4th June 1974 inclusive, is U.S. \$117,172,329 and such amount shall be deemed to have been paid to and received by the Companies on the said 5th June 1974;
3. the Companies shall be deemed to have paid and the Government shall be 20 deemed to have received on the said 5th June 1974 an amount of U.S. \$117,172,329, such amount being partly in satisfaction of the interim payment due to the Government under paragraph 3(b) of the said First Side Letter and partly as a provisional sum in respect of other amounts which may accrue to the Government under Article 3 of the Participation Agreement.

14th June, 1974

No. 49
Letter:
Kuwait Minister of
Finance and Oil to
BP (Kuwait):
30th July 1974
(Annexure 47 to
The Kuwait
Affidavit)

No. 49
Letter:
Kuwait Minister of Finance and Oil to BP (Kuwait):
(Annexure 47 to The Kuwait Affidavit)

30

30 July, 1974

B.P. (Kuwait) Limited,
LONDON EC 2Y 9BU

Dear Sirs,

With reference to the Aide Memoire dated 14th June regarding the implementation of Articles 2 and 3 of the Participation Agreement dated 29th January 1974 and paragraph 3(b) of the First Side Letter of the same date I approve the proposals set out therein as follows:

1. That the due date for payments of the amounts payable under the said Article 2 and the said paragraph 3(b) is 5th June 1974.
2. That the amount of the consideration specified under the said Article 2, together with interest thereon at 10.875% p.a. from 1st January 1974 to 4th June 1974 inclusive is \$117,172,329 and such amount shall be deemed to have been paid to and received by the Companies on 5th June 1974.
- 10 3. That the Companies shall be deemed to have paid and the Government shall be deemed to have received on the 5th June 1974 an amount of \$117,172,329, such amount being partly in satisfaction of the interim payment due to the Government under the said paragraph 3(b) and partly as a provisional sum in respect of other amounts which may accrue to the Government under the said Article 3.

No. 49
Letter:
Kuwait Minister of
Finance and Oil to
BP (Kuwait):
30th July 1974
(Annexure 47 to
The Kuwait
Affidavit)
(Cont'd)

Kindly return the attached copy of this letter duly signed in confirmation of your acceptance of the foregoing.

Yours faithfully,
Abdul Rahman Salim al-Ateeqi
MINISTER OF FINANCE AND OIL

We accept the above.

(Signed by J. W. R. Sutcliffe)

20

No. 50
Affidavit: J. H. Porter:
"The Iran Affidavit"

No. 50
Affidavit:
J. H. Porter:
"The Iran
Affidavit"
19th September
1974

ON the 19th day of September 1974

I, JAMES HUTCHISON PORTER, of 24 Marlowe Court, Lymer Avenue, London, England, Company Executive, say on oath:

- 1.—In these proceedings I shall refer to this Affidavit as "the Iran Affidavit".
- 2.—Iran has been a major source of crude oil for the BP Group since 1908 when oil was first discovered there. The Parent Company (then called the Anglo-Persian Oil Company Limited and later called the Anglo-Iranian Oil Company Limited) originally
30 held the Iran concession as the sole owner.

3.—In 1951, after negotiations between the Parent Company and the Iranian Government for the revision of the Concession Agreement had broken down, the Iranian Government enacted on 28th April 1951 a law providing for the nationalisation of the oil industry and for the constitution of the National Iranian Oil Company ("NIOC") as a government instrumentality.

No. 50
Affidavit:
J.H. Porter:
"The Iran
Affidavit"
19th September
1974
(Cont'd)

4.—During the years 1951 to 1953, negotiations took place between the Iranian Government, the Parent Company and the Governments of Britain and the United States of America for the reconstruction of the oil producing industry in Iran. In October 1954 a new agreement was concluded between the Iranian Government and NIOC of the one part and an international consortium consisting of the eight major oil companies including the Parent Company of the other part. The said companies (and other companies which were later included) came to be known as "the Iranian Consortium" or simply as "the Consortium". The 1954 Agreement came to be known as "the Consortium Agreement" and a true copy thereof is exhibited hereto and marked "48".

5.—The Parent Company took and thereafter held a 40% interest in the operations under the Consortium Agreement; the main provisions of the Consortium Agreement were as follows—

- (a) The Consortium had the exclusive right to explore for and to produce oil and gas within the agreement area and to refine and process oil and gas as required in the Abadan refinery.
- (b) The arrangement was to run for 40 years, there being an initial period of 25 years from 20th October 1954 with the Consortium having the right subject to certain conditions precedent to extend the term unilaterally for three further successive five year periods until 1994.
- (c) To carry out its operations the Consortium was to set up two foreign registered operating companies, one for exploration and production called Iraanse Aardolie Exploratie en Productie Maatschappij (Iranian Oil Exploration and Producing Company) N.V. and the other for refining called Iraanse Aardolie Raffinage Maatschappij (Iranian Oil Refining Company) N.V. Both of these companies were incorporated in the Netherlands, the same being referred to in the Consortium Agreement as the "Operating Companies".
- (d) Apart from inter alia the obligation to be "always mindful . . . of the rights and interests of Iran", the Consortium had control over its operations, subject to supervision by the Government and by NIOC which was not to be exercised "as to hinder, impede, or affect adversely the operations of the Operating Companies". NIOC had the right to nominate two of the seven directors on the Boards of each of the Operating Companies.
- (e) Payments by the Consortium for crude oil comprised production costs plus a royalty ("stated payment") of 12½% calculated by reference to posted prices (with the right of the government to take the royalty in kind) plus tax which when added to the royalty resulted in a rate of 50% based on the posted price for crude oil after deduction of production costs. These costs included depreciation on fixed assets etc. constructed by the Consortium although such fixed assets were automatically the property of NIOC (there have been two amendments of the payment provision—in 1965 it was agreed that the 12½% "stated payment" should be a deduction prior to the application of the 50% tax and in 1970 the tax rate was increased to 55%).
- (f) Each individual member of the Consortium had the right to post its own price and the Consortium had the right to set the production levels for the operation and to take all of the production required from the agreement area subject to ensuring that NIOC had its requirements of petroleum products for Iranian consumption met from the Abadan refinery.

6.—In connection with the operations under the Consortium Agreement the members of the Consortium incorporated in England two further companies namely

Iranian Oil Participants Limited (hereinafter called "IOP") a holding company to hold the shares in the operating companies and Iranian Oil Services Limited (hereinafter called "IROS") a service company to act outside of Iran for the purpose inter alia of purchasing plant and equipment, recruiting personnel and engaging contractors and other specialists required by the Operating Companies within Iran.

7.—Exhibited to me at the time of swearing this Affidavit and marked "49" is the 1972 Annual Review of the Iranian Operating Companies. By reason of the termination of the Consortium Agreement to which I shall later refer the operating companies have ceased to operate and no such document has been produced for the 1973 year.

10 8.—Because the industry had been nationalised in 1951 and because the legal ownership of the fixed assets and the oil whilst in the ground remained vested in the Government, Iran adopted a different course from the other Gulf States who were members of OPEC in relation to the revision of terms and particularly in relation to the discussions on participation which took place in 1972 as referred to in the Principal Affidavit.

9.—However shortly after the General Agreements on participation were concluded, the Shah of Iran announced in a speech to the Iranian Parliament on 23rd January 1973 that the Consortium Agreement would come to an end in 1979. A copy of what I believe to be a correct translation of the said speech is annexed to the Principal Affidavit and marked "22". After negotiations the Consortium chose the alternative of a new "Sale and Purchase Agreement" under which it was promised a supply of crude on a long term basis which it could purchase "at a fair price with the discount that anyone grants to its good customers".

10.—Exhibited hereto and marked "50" is a true copy of the Sale and Purchase Agreement dated 31st July, 1973; the main provisions of the Sale and Purchase Agreement are as follows—

- 30
- (a) The Consortium Agreement of 1954 was terminated and the new Agreement was expressed to be for a term of 20 years from 21st March, 1973.
 - (b) The area of operations was reduced by approximately 30% , although this did not include any production areas.
 - (c) NIOC was to take full charge of all operations.
 - (d) Iran was to receive the same financial benefits as it would have obtained under the "General Agreement" on participation.
 - (e) The Consortium members were to receive all the available production after allowing for Iranian consumption and certain defined quantities of export oil for NIOC. These quantities would rise from 200,000 barrels per day in 1973 by annual increases to 1,500,000 barrels per day by 1981.
 - (f) The amount to be paid by Consortium members for crude oil was to comprise operating costs (which included depreciation) plus royalty ("stated payment") of 12½% calculated by reference to posted prices plus tax calculated as before at the rate of 55% (again posted prices being the reference point) plus a "balancing margin" calculated retroactively to 21st March, 40 1973 "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".

No. 50
Affidavit:
J.H. Porter:
"The Iran
Affidavit"
19th September
1974
(Cont'd)

11.—Both under the Consortium Agreement and under the Sale and Purchase Agreement, title to the Group's crude oil passed (and still passes) at the well head from NIOC to Oil Trading Company (Iran) Ltd. (hereinafter called "OTC") a wholly-owned "oil trader" subsidiary of the Parent Company which is responsible for payment of royalties and taxes to the Iranian Government. Thereafter OTC transfers title to the crude oil to BPT at the posted price.

12.—Under the Sale and Purchase Agreement the "balancing margin" was provisionally set at 6.5¢ per barrel for 1973/1975, commencing from 21st March 1973. However following the upwards increases in posted prices and in the extent of "participation" throughout 1973 and in 1974 in the other Gulf States, the balancing margin 10 for 1973 and 1974 has not yet been finally determined as I shall later refer.

13.—On 16th October, 1973 the Iranian Government along with the other Gulf States of OPEC unilaterally fixed the posted price for crude oil produced in Iran. Annexed hereto and marked with "51" is a true copy of a letter dated 17th October, 1973 from the Iranian Minister of Finance to the Consortium members advising of increases in the posted prices of Iranian crudes to between \$4.969 and \$5.091.

14.—After receipt of such letter the Consortium members wrote to the Iranian Minister of Finance stating that it was their intention to provide Iran with the financial effects resulting from the new postings on a "without prejudice" basis. A copy of the Minister's reply dated 5th November 1973 is annexed to the Principal Affidavit and 20 marked "30".

15.—Also along with the other OPEC Gulf States Iran unilaterally fixed the posted price for crude produced in Iran as from 1st January, 1974; the posted prices so fixed for Iranian crude were \$11.635 for Iranian heavy and \$11.875 for Iranian light.

16.—Discussions have continued in 1974 between the Consortium and the Iranian Government on the determination of the current balancing margins as a result of which on 6th June, 1974 an agreement was reached between the Consortium and the Iranian Government and NIOC "provisionally . . . as an interim measure" for the 1974 payment in respect of the balancing margin being increased to US \$3.50 per barrel "as part fulfillment of members' obligation". Payment has been made retroactively to 1st 30 January, 1974 at that rate. Determination of the final balancing margin for 1974 cannot be made until 1975. Agreement has also not yet been reached between the Consortium and Iran as to the balancing margin actually to be paid for the initial period of the Sale and Purchase Agreement namely from 21st March, 1973 to 31st December, 1973. NIOC has stated that the balancing margin for the period from 21st March, 1973 to 31st December, 1973 should be approximately 28.30 cents (US) per barrel; this statement has not yet been the subject of final agreement.

17.—Annexed hereto and marked "52" and "53" respectively are true copies of two letters dated 6th June, 1974 from the Representative of the Consortium Members to NIOC. Annexed hereto and marked "54" is a true copy of a letter of the same date 40 from NIOC in reply thereto.

18.—Notwithstanding the recitals or any other provision contained in the Sale and Purchase Agreement, I say that at least as far as the BP Group was concerned, it had no alternative but to accede to the termination of the 1954 Consortium Agreement and the

making of the Sale and Purchase Agreement in 1973 as the condition of ensuring to the BP Group the continuation of the supply of crude from Iran.

SWORN by the Deponent at London before me—

J. H. PORTER
E. B. WALKER

Notary Public of London, England.

No. 50
Affidavit:
J.H. Porter:
"The Iran
Affidavit"
19th September
1974
(Cont'd)

**No. 51
Letter:**

**Iranian Minister of Finance to Iranian Consortium members:
(Annexure 51 to The Iran Affidavit)**

No. 51
Letter:
Iranian Minister of
Finance to Iranian
Consortium
members:
17th October
1973
(Annexure 51 to
The Iran Affidavit)

10 Mr. Van Reeven
Consortium Members' Representative
TEHRAN, IRAN.

Dear Sir,

This is to inform you that in accordance with the decision taken by the Members of the Organization of the Petroleum Exporting Countries bordering the Persian Gulf, effective as from October 16, 1973, the Posted Prices applicable to Iranian Light and Iranian Heavy Crudes shall be as follows:

Crude	Gravity Deg. API	Price per barrel \$	Loading Port
20 Iranian Light	34.00 - 34.09	5.091	Kharg Island
Iranian Heavy	31.00 - 31.09	4.991	Kharg Island
Iranian Light	34.00 - 34.09	5.071*	Bandar Mah Shahr
Iranian Heavy	31.00 - 31.09	4.969*	Bandar Mah Shahr

For each full 0.1 degree change above the lower end of the gravity range quoted, the above price will increase Dlr. 0015 per barrel and for each full 0.1 degree change below upper end of the gravity range quoted, the above prices will decrease Dlr. 0015 per barrel.

Please note that:

30 (1) The above postings will have the same relationship to the market prices of the relevant crude oil as those which existed immediately prior to the Tehran Agreement of February 14, 1971.

* Not normally available for export.

No. 51
Letter:
Iranian Minister of
Finance to Iranian
Consortium
members:
17th October
1973
(Annexure 51 to
The Iran Affidavit)
(Cont'd)

- (2) The necessary adjustments to the above postings will be made upward or downward reflecting the changes in the market prices if and when such changes amount to 1% or more, and to be effective as from the first day of the month following the month during which such changes take place.
- (3) The above postings reflect the API gravity and geographical locations and are exclusive of any sulfur premium which shall be dealt separately. We shall inform you of our decisions in this respect as expeditiously as possible.

Yours truly
Dr. J. Amouzegar
MINISTER OF FINANCE 10

No. 52
First letter:
Iranian
Consortium
Members to
National Iranian
Oil Company:
6th June 1974
(Annexure 52 to
The Iran Affidavit)

No. 52
First letter:
Iranian Consortium Members to National Iranian Oil Company:
(Annexure 52 to The Iran Affidavit)

STRICTLY CONFIDENTIAL

6th June, 1974

National Iranian Oil Company
TEHRAN.
(for the attention of H. E. Dr. R. Fallah)

Dear Dr. Fallah:

20

Following your request at the meeting of 2nd June, 1974, I have consulted the Consortium Member Companies and am in a position to inform you as follows—

1. As you have already been informed Agreements have been entered into on the 29th January, 1974, between the Government of Kuwait, BP (Kuwait) Limited and Gulf Kuwait Company (the 'Kuwait Agreement') and on the 20th February, 1974, between the Government of Qatar and Qatar Petroleum Company and its shareholders (the 'Qatar Agreement'). These Agreements provide for a 60% interest in the ownership of the Concession Agreements with effect from 1.1.1974. These rights replace the previous progressive increases in ownership contained in the General Agreement on Participation. 30
2. The Qatar Agreement became effective on signature and following such signature discussions took place between representatives of Iran and NIOC and of the Consortium Members with a view to agreeing what modifications to the 1973 Sale and Purchase Agreement and Related Arrangements would be appropriate in the light of the Qatar Agreement to fulfil the Consortium Members' obligations under the 1973 Sale and Purchase Agreement including Annex III. The Kuwait Agreement became effective on ratification and this has now taken place.

3. Article 4 of the Kuwait and Qatar Agreements cover possible purchase of either party's share of crude oil by the other. Article 4 of the Kuwait Agreement reads as follows—

‘For each year the Government and the Companies shall each determine out of their percentage shares of permitted production their requirements of crude oil for use in Kuwait and for export. The balance, if any, of each party's share will be made available in that year to the other party for purchase on commercial prices and terms to be determined and in accordance with procedures to be agreed between the parties from time to time.’

Article 4 of the Qatar Agreement is in substantially the same form.

Discussions under Article 4 have taken place between the parties to both Agreements. In Kuwait no agreement has been reached but discussions are continuing. In Qatar a two-year contract has been agreed that provides for Qatar Petroleum Company or its nominees to purchase 60% of the Government's 60% share (36% of gross production) at a price averaging \$11.546 per barrel for the first 6 months of 1974 with provision for quarterly price review thereafter.

4. Apart from the agreements referred to under 1 above no agreements have been concluded which would call for consultation under Annexe III of the Sale and Purchase Agreement. If and when any such agreements have been concluded the Consortium Members will consult with Iran accordingly.

Meanwhile I can confirm that, other than in the case of the Kuwait and Qatar Agreements, the General Agreement on Participation and Related Arrangements continue to govern the relationship between the signatories thereto and all payments in respect of buyback volumes and prices have been made in accordance with the terms of such Agreement and Related Arrangements.

In the light of the above the Consortium Members propose that for 1974 the payments which they should make in fulfilment of their obligations under the Sale and Purchase Agreement including Annexe III in respect of Balancing Margin, and which stand at present at the rate of 6.5 cents per barrel, should, until such time as a new rate is agreed, be increased, as a provisional and interim measure, to U.S. \$3.50 per barrel, it being understood that these arrangements would not affect either party's position in respect of the final determination of the Balancing Margin for 1974.

Members also propose that the parties meet together in September or October 1974 (or any other time mutually agreed) for discussions with a view to reaching agreement on necessary formal amendments to the Agreement to apply for 1974 and thereafter.

I shall be grateful for your confirmation that the foregoing is acceptable to Iran and NIOC.

Yours sincerely,
Alastair Manson
For the Consortium Members

No. 52
First letter:
Iranian
Consortium
Members to
National Iranian
Oil Company:
6th June 1974
(Annexure 52 to
The Iran Affidavit)
(Cont'd)

No. 53
Second letter:
Iranian
Consortium
Members to
National Iranian
Oil Company:
6th June 1974
(Annexure 53 to
The Iran Affidavit)

No. 53
Second letter:
Iranian Consortium Members to National Iranian Oil Company:
(Annexure 53 to The Iran Affidavit)

6th June, 1974

National Iranian Oil Company,
TEHRAN.(for the attention of H. E. Dr. R. Fallah)

Dear Dr. Fallah:

Arising from the application of the Consortium Members' proposal referred to in my letter to you of to-day's date, additional amounts of Balancing Margin will be due 10 by Trading Companies to NIOC in respect of crude oil purchased from NIOC under the Sales and Purchase Agreement in the period January to April 1974 inclusive. However, there will have been an over-payment of tax paid in respect of Members' liftings during this period and this overpayment will be taken into account in making the payments for the increased Balancing Margin.

Accordingly these additional amounts shall be paid by Trading Companies to NIOC beginning on 15th June 1974 provided only that payments by any Trading Company to NIOC on any date shall not be of such amount as will lead in aggregate to payments in respect of 1974 by that Trading Company to NIOC and the Ministry of Finance exceeding that Trading Company's estimated accrued liabilities for the 20 relevant period otherwise calculated in accordance with present arrangements on the basis of the proposal referred to above.

I would be grateful if you would indicate that the foregoing is acceptable to Iran and NIOC.

Yours sincerely,
Alastair Manson
For the Consortium Member Companies

No. 54
Letter:
National Iranian
Oil Company to
Iranian
Consortium
Members:
6th June 1974
(Annexure 54 to
The Iran Affidavit)

No. 54
Letter:
National Iranian Oil Company to Iranian Consortium Members:
(Annexure 54 to The Iran Affidavit)

30

6th June, 1974

Dear Mr. Manson:

This is to acknowledge receipt of your letter of to-day's date concerning the changes made in the Participation Agreement with Kuwait and Qatar and provisional adjustment proposed by the Consortium Members in the Balancing Margin provisions of our Sale and Purchase Agreement.

Since your letter requires further consideration and study we shall advise you of our reaction in due course, after which we shall be prepared to discuss with you necessary changes and amendments to be made in our Sale and Purchase Agreement.

In the meantime we agree to Members' proposal that provisionally for 1974 payment in respect of Balancing Margin be increased, as an interim measure, to U.S. \$3.50 per barrel. Such payments, however, shall be considered as part fulfilment of Members' obligation in respect of Balancing Margin, it being understood that these arrangements would not affect Iran's position in respect of the final determination of the Balancing Margin for 1974 as well as the amendments which will become necessary concerning other provisions of our Sale and Purchase Agreement.

I also acknowledge receipt of your letter of to-day's date concerning the additional payments to be made in application of Members' proposal and confirm our agreement with its terms.

Yours sincerely,
(signature indecipherable)
for Iran and N.I.O.C.

No. 54
Letter:
National Iranian
Oil Company to
Iranian
Consortium
Members:
6th June 1974
(Annexure 54 to
The Iran Affidavit)
(Cont'd)

No. 55
Affidavit: J. H. Porter:
"The Iraq Affidavit"

ON the 19th day of September 1974

I, JAMES HUTCHISON PORTER, of 24 Marlowe Court, Lymer Avenue, London, England, Company Executive, say on oath:

1.—In these proceedings I shall refer to this affidavit as "The Iraq Affidavit".

2.—Oil was formerly obtained by the BP Group from Iraq by virtue of its shareholding in the undermentioned three companies, each of which held oil concessions in Iraq and each of which was incorporated in the United Kingdom:

Iraq Petroleum Company Limited ("IPC")
Mosul Petroleum Company Limited ("MPC")
Basrah Petroleum Company Limited ("BPC")

IPC and MPC produced crude oil in North Iraq and exported it via a pipeline wholly owned by IPC, transiting Syria and Lebanon to two export terminals on the Eastern Mediterranean Coast; BPC produced crude oil in South Iraq which was (and still is) exported from terminals at the head of the Persian Gulf.

No. 55
Affidavit:
J. H. Porter:
"The Iraq
Affidavit"
19th September
1974

No. 55
Affidavit:
J.H. Porter:
"The Iraq
Affidavit"
19th September
1974
(Cont'd)

3.—The shareholdings in IPC, MPC and BPC are and at all material times been as follows:

BP Exploration Co. (Middle East) Ltd. (a wholly owned subsidiary of the Parent Company)	— 23.75%
The Shell Petroleum Company Limited	— 23.75%
Compagnie Francaise des Petroles	— 23.75%
Near East Development Corporation	— 23.75%
Participations and Explorations Corporation	— 5%

4.—IPC (then called Turkish Petroleum Company Limited) obtained its concession from the Government of Iraq in 1925 under the terms of the 1925 Convention 10 which as subsequently amended remained the basic document governing IPC's concessional affairs and relations with the Iraq Government until the events of 1972 later referred to in this Affidavit; a true copy of the Convention is exhibited hereto and marked "55". The 1925 Convention was subsequently modified by numerous supplementary agreements involving more than two hundred pages in quantity. BPC obtained its concession in 1938 and MPC obtained its concession in 1941, in each case ultimately holding the same under substantially the same terms and conditions as those applicable under the terms of the 1925 Convention and supplementary agreements for IPC. A true copy of the 1938 BPC concession is also exhibited hereto and marked "56". 20

5.—In December 1961, the revolutionary regime of General Kassem, after protracted negotiations with the three companies on outstanding disputes principally concerned with the relinquishment of concessional territory, promulgated Law 80 of 1961 which purported to deprive the three Companies of over 99.5% of their concessional areas and left in their control only those areas comprising producing oilfields; the Companies disputed the validity of the Government's action and the dispute remained unresolved until February 1973; nevertheless, until the events of 1972 later referred to in this Affidavit, the production of oil on the part of the three Companies took place on the basis of the concession agreements or conventions above referred to.

6.—Throughout the subsistence of the concessional agreements or conventions, 30 the BP Group obtained its Iraq crude oil by purchase from IPC, MPC and BPC respectively, those three companies obtaining title to their respective crude oil productions under the terms of their concession agreements or arrangements; the amount lifted by the BP Group was related to the proportion or fractional share equal to its shareholding in each of the three companies; the price paid by the BP "oil trader" was the cost of production plus the royalty payable to the Iraq Government by IPC, MPC and BPC plus one shilling per ton. The oil trader then paid to the Iraqi Government tax at the rate of 50% after crediting royalty.

7.—Iraq was not a party to any of the Royalty Expensing Agreements in 1964/1965 (referred to in Paragraph C2 of the Principal Affidavit) but in 1971 each of 40 the three Companies and Iraq agreed that government revenue payments or "take" should be forthwith increased as though such an Agreement had been concluded. In the 1973 Heads of Agreement (a copy whereof being annexed to the Principal Affidavit and marked "20"), Iraqi demands for similar payments for the period prior to 1971 were satisfied.

8.—As appears from the Principal Affidavit, Iraq was a party to the Teheran Agreement of February 1971 and the East Mediterranean Agreement of June 1971

and also the Geneva Agreements of January, 1972 and June 1973. Iraq also lifted its tax rate to 55% following the general increase at the end of 1970.

No. 55
Affidavit:
J. H. Porter:
"The Iraq
Affidavit"
19th September
1974
(Cont'd)

9.—Iraq was not a party to the General Agreement on Participation of December 1972; however at the time of the said 1973 Heads of Agreement Iraq declared verbally by its representatives to the BPC representatives that its intention was to enter into a participation or similar arrangement with BPC in respect of its concession effective from 1st January 1973, which would give Iraq financial benefits no less favourable than those obtained by other Arab Gulf States who were parties to the General Agreement; BPC has agreed to enter into such a participation arrangement with retroactive effect to 1st January 1973 and negotiations with the Iraqi Government are continuing. Annexed hereto and marked "57" is what I believe to be a true copy of a letter dated 28th February 1973 from BPC to the Iraqi Minister of Oil and Minerals. Payment of monies to Iraq retrospectively to 1st January 1973 and referable to participation has not yet been made but the BP Group anticipates demand upon BPC therefor from Iraq at any time and the BP Group has made provision for such liability in its accounts.

10.—In the meantime certain critical events in Iraq had occurred in relation to IPC and MPC; as appears from page 19 of the Principal Affidavit, on 1st June, 1972 the Iraq Revolutionary Command Council enacted Law 69 of 1972 which purported to nationalise IPC's remaining concessional interest in Iraq; the purported nationalisation was disputed by IPC with Iraq but on 28th February 1973 the Heads of Agreement above referred to were entered into under which the validity of Law 80 of 1961 and of Law 69 of 1972 was recognised and under which the MPC concession was wholly relinquished to Iraq at the end of March 1973. The loss of supplies from these concessions has however been partially offset by an expansion of the BPC facilities over the last three years.

11.—During the last three months of 1973 the Iraqi Government promulgated three further laws purporting to nationalise selectively the interests of certain shareholders in BPC namely the whole of the shareholdings of Near East Development Corporation and of Participations and Explorations Corporation and 60% of the Shell Petroleum shareholding; public announcements made on behalf of the Government indicated that this action was taken for political reasons related to the Arab/Israeli conflict; in consequence the Iraqi government has deprived BPC of access to 43% of production from its concession but up until 22nd March, 1974 there was no immediate impact from such action on the availability of BPC crude for the BP Group.

12.—As indicated in the Principal Affidavit, Iraq was a party to the unilateral price posting actions taken by the Gulf State members of OPEC in October 1973 (effective from 16th October) and December 1973 (effective from 1st January, 1974); Iraq in this regard made similar percentage increases in the price of crude to those fixed by the other Gulf States.

13.—In consequence of the implementation of the Heads of Agreement, the BP Group's crude oil source of supply in Iraq in the period from April 1973 to 22nd March 1974 has been confined to its availability through BPC except for the crude made available to IPC by way of compensation under the Heads of Agreement, all of which has been now lifted.

SWORN by the Deponent at London before me—

J. H. PORTER
E. B. WALKER

No. 56
Letter:
Basrah Petroleum
Company to Iraqi
Minister of Oil and
Minerals:
28th February
1973
(Annexure 57 to
The Iraq Affidavit)

No. 56
Letter:
Basrah Petroleum Company to Iraqi Minister of Oil and Minerals:
(Annexure 57 to The Iraq Affidavit)

28th February, 1973

His Excellency,
The Minister of Oil and Minerals,
BAGHDAD.

Your Excellency,

It is hereby agreed that the parties will resume discussions with a view to reaching 10 agreement before 31.12.1973 on the issue of participation in the B.P.C. Concession.

Please accept, Excellency, our highest respects.

For and on behalf of Basrah Petroleum Company
and its Shareholders

No. 57
Affidavit:
J.H. Porter:
"The Qatar
Affidavit"
19th September
1974

No. 57
Affidavit: J. H. Porter:
"The Qatar Affidavit"

ON the 19th day of September 1974

I, JAMES HUTCHISON PORTER, of 24 Marlowe Court, Lymer Avenue, London
England, Company Executive, say on oath: 20

1.—In these proceedings I shall refer to this Affidavit as "the Qatar Affidavit".

2.—Crude oil has been obtained from Qatar by the BP Group by virtue of its 23.75% shareholding held by its wholly-owned subsidiary BP Exploration Company (Middle East) Limited in Qatar Petroleum Company Limited "QPC").

3.—The other shareholdings in QPC correspond with those of the three Iraq concession holding companies referred to in the Iraq Affidavit.

4.—QPC originally held the concession for the entire onshore area of the State of Qatar under the terms of a concession agreement granted on 17th May, 1935, a true copy whereof is exhibited hereto and marked "58"; the said Agreement has been subsequently amended over the years, in particular involving area relinquishments; a true 30 copy of the Amending Agreement made on 23rd April, 1946 is exhibited hereto and marked "59".

5.—The BP Group's liftings of crude from Qatar have been related to its said percentage holding of 23.75% and have been effected in similar manner to that referred to in paragraph 6 of the Iraq Affidavit.

6.—The Qatari Government and QPC were parties to a Royalty Expensing Agreement as referred to in the Principal Affidavit in December 1964. Qatar was also a party to the Teheran Agreement, the two Geneva Agreements and the General Agreement on Participation. Qatar also lifted its tax rate to 55% in line with other Gulf States late in 1970. A copy of the General Agreement dated 10th January 1973 and concurrent correspondence is annexed hereto and marked “60”.

No. 57
Affidavit:
J. H. Porter:
“The Qatar
Affidavit”
19th September
1974
(Cont'd)

7.—Qatar took part in the collective unilateral fixing of posted prices in October, 1973 and December, 1973. Qatar in this regard made similar percentage increases in the price of crude to those fixed by the other Gulf States.

10 8.—On 20th February 1974 the Qatar Government and QPC signed a new Participation Agreement effective from 1st January, 1974 whereby 60% participation rights were granted to Qatar and the General Agreement on participation was terminated as at 31st December, 1973; a true copy of the Agreement of 20th February, 1974 and concurrent correspondence is annexed hereto and marked “61”.

9.—Negotiations took place prior to 22nd March 1974 with the Government of Qatar on the “buyback” prices for 1974 but had not been resolved at that date. It had also been agreed by the representatives of QPC that Qatar would be entitled to no less favourable financial benefits than those secured by any other Gulf State in respect of any retroactive adjustment of buyback prices for the period September-December,
20 1973.

10.—Exhibited to me at the time of swearing this Affidavit and marked “62” is the 1973 Annual Review of QPC.

SWORN by the Deponent at London before me—

J. H. PORTER
E. B. WALKER

No. 58
Participation Agreement:
Qatar Government and Qatar Petroleum Company and others:
(Annexure 61 to the Qatar Affidavit)

30 THIS AGREEMENT is made the 20th day of February 1974 (corresponding to the 25th day of Muharram, 1394 Hijri) BETWEEN THE GOVERNMENT OF QATAR of the first part (hereinafter called “the Government”), QATAR PETROLEUM COMPANY LIMITED of the second part (hereinafter called “Q.P.C.”) and BP EXPLORATION COMPANY (MIDDLE EAST) LIMITED, THE SHELL PETROLEUM COMPANY LIMITED, COMPAGNIE FRANCAISE DES PETROLES, EXXON CORPORATION, MOBIL OIL CORPORATION and PARTICIPATIONS AND EXPLORATIONS CORPORATION of the third part (which companies are directly or indirectly shareholders of Q.P.C. and collectively with Q.P.C. are hereinafter called “the Companies”)

No. 58
Participation
Agreement:
Qatar Government
and Qatar
Petroleum
Company and
others:
20th February
1974
(Annexure 61 to
The Qatar
Affidavit)

No. 58
Participation
Agreement:
Qatar Government
and Qatar
Petroleum
Company and
others:
20th February
1974
(Annexure 61 to
The Qatar
Affidavit)
(Cont'd)

WHEREAS the General Participation Agreement was signed on 10th January 1973 between Government of Qatar and Qatar Petroleum Company Limited

And WHEREAS the Government and the Company have agreed that the said Agreement shall be terminated and replaced by the Agreement hereinafter appearing

NOW THEREFORE IT IS HEREBY AGREED between the parties hereto as follows:

ARTICLE 1

The General Agreement on Participation, and the letters related thereto, signed by the parties to this Agreement on 10th January 1973 (hereinafter collectively referred to as the "General Agreement") shall terminate on 31st day of December 1973, save only that any outstanding obligations arising under the General Agreement with respect to any period prior to its termination shall be discharged on the due date by the parties thereto as though the General Agreement were still in full force and effect. The Participation interest of the Government provided for in Article 2 of this Agreement shall take effect in substitution for any Participation interest of the Government arising under the General Agreement. 10

ARTICLE 2

As from the Effective Date the Government shall have

- (i) 60 per cent of the operations and rights of Q.P.C. in Qatar in respect of the substances; 20
- (ii) 60 per cent of Q.P.C.'S existing facilities in Qatar relating to the substances, including gas liquefaction;
- (iii) The operations, rights and facilities referred to above shall include crude oil stocks at 31st December 1973.

Nothing in this Article shall prejudice the Government's rights to natural gas under existing arrangements.

ARTICLE 3

In consideration therefor, and taking account of sums already paid pursuant to Article 4 of the General Agreement, the Government shall pay TWENTY SEVEN MILLION FIVE HUNDRED THOUSAND UNITED STATES DOLLARS (U.S. \$27,500,000) to Q.P.C. Interest, calculated from the Effective Date to the date of payment, shall be added thereto. 30

ARTICLE 4

For each year or such lesser period as may be agreed from time to time the Government and Q.P.C. shall each determine out of their percentage shares of available crude oil from permitted production their requirements of crude oil for use in Qatar and for export. The balance, if any, of each party's share will be made available in that year or lesser period to the other party for purchase on commercial prices and terms to be determined and in accordance with procedures to be agreed between the parties from time to time. 40

ARTICLE 5

- (i) The parties shall establish a Joint Management Committee consisting of nine members, of whom two shall be appointed by the Government and one by each

of the Companies. The Joint Management Committee shall have the responsibility of determining all major policy matters relating to management including:

- (a) Exploration, development and work programmes and construction of new facilities;
- (b) Sale or disposition of assets;
- (c) Capital and operating expenditures and disposition of funds;
- (d) Selection, appointment and removal of key personnel; and
- (e) Employee compensation and benefit plans.

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(Cont'd)*

10 The Government shall have the right to 60 per cent of the votes and the Shareholders of Q.P.C. shall have the right to the following percentages of the votes:

BP Exploration Company (Middle East) Limited	9.5%
The Shell Petroleum Company Limited	9.5%
Compagnie Francaise des Petroles	9.5%
Exxon Corporation	4.75%
Mobil Oil Corporation	4.75%
Participations and Explorations Corporation	2.0%

Decisions of the Joint Management Committee shall be made by 75% of the total voting rights and such decisions shall be binding on all parties.

20 In the event that the requisite majority is not obtained in favour of any capital expenditure project, the Government may nevertheless go ahead with such project and shall put up the whole of the related expenditures and enjoy the whole of the related benefits.

- (ii) Operations shall be conducted on behalf of the parties and under the direction of the Joint Management Committee by a Qatari Share Company incorporated in Qatar under Qatar law. The capital of this Operating Company shall initially be held by the Government as to 60 per cent and by Q.P.C. as to 40 per cent.
- (iii) The Chairman of the Joint Management Committee and the Chairman of the Board of Directors of the Operating Company shall each be a Qatari subject.
- 30 (iv) The Government and each of the Companies shall have the right to appoint an alternate for any member appointed by it. Such alternate may represent his appointor and act on its behalf at any meeting of the Joint Management Committee from which the member for whom he is an alternate is absent.
- (v) Any member or alternate may be removed and replaced by his appointor at any time. Every appointment, removal or replacement by the Government or any of the Companies shall be communicated promptly to the others of them, the name and address of the appointee being clearly stated in the communication.
- 40 (vi) The quorum for any meeting of the Joint Management Committee shall be seven, of whom one shall be a member (or alternate) appointed by the Government and six shall be members (or alternates) appointed by each of the shareholders mentioned in paragraph (i) of this Article; provided that, if within one hour after the time appointed for the holding of a meeting a quorum is not present, the meeting shall stand adjourned to the third following business day, at the same time and place, and, if at such adjourned meeting a quorum is not present within an hour after the time so appointed but at least one member (or alternate)

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appointed by the Government and members (or alternates) appointed by the shareholders mentioned in paragraph (i) of this Article having voting rights equal to not less than half the voting rights of such shareholders are present, the members (or alternates) so present shall constitute a quorum.

- (vii) The Joint Management Committee shall appoint a Secretary who shall be responsible for the arrangement of its meetings, the preparation of agenda and minutes and the coordination of all matters pertaining to such meetings. The cost and expenses of the Secretary and of such facilities and staff as the Joint Management Committee shall authorise shall be borne by the Operating Company.
- (viii) Meetings of the Joint Management Committee shall be held at least once in each 10 quarter, provided that a special meeting may be convened at any time upon the request of the Government or any of the Companies. Not less than ten days' notice of every meeting shall be given by the Secretary to all members and alternates by letter, or by telex confirmed by letter.

Except as otherwise decided by the Joint Management Committee, all meetings shall be held in Qatar. The Government and each of the Companies will bear the travel and other expenses of any member (or alternate) appointed by it.

ARTICLE 6

- (i) The Government shall have the right to transfer or assign the whole or part of its 20 interest hereunder to the Qatar National Petroleum Company or any other Qatari entity.
- (ii) If the Government shall make any such transfer or assignment, any transferee or assignee of such interest or part thereof shall assume and be subject to concessionary and related obligations, whether fiscal or otherwise, in proportion to its participation.

ARTICLE 7

The relationship between the Government and the Companies shall be reviewed prior to the end of 1979.

ARTICLE 8

30

This Agreement shall come into force on signature by the parties hereto and the Effective Date shall be 1st January 1974. The parties hereto shall assume all their rights and obligations with effect from the Effective Date in accordance with the provisions of this Agreement.

FOR THE STATE OF QATAR:

FOR THE COMPANIES:

QATAR PETROLEUM COMPANY LIMITED	EXXON CORPORATION
THE SHELL PETROLEUM COMPANY LIMITED	MOBIL OIL CORPORATION
BP EXPLORATION COMPANY (MIDDLE EAST) LIMITED	COMPAGNIE FRANCAISE DES PETROLES

40

PARTICIPATIONS AND EXPLORATIONS CORPORATION

QATAR PETROLEUM COMPANY LIMITED
DOHA - QATAR*(signatures not reproduced)*

19th February, 1974

His Excellency the Minister of Finance and Petroleum,
Ministry of Finance and Petroleum,
STATE OF QATAR.

Your Excellency,

After greetings.

10 I have the honour to advise that the Company does not at this time foresee any further requirement for natural gas other than:

- (i) Gas required to meet existing commitments including that for the gas liquefaction and fractionation plant;
- (ii) those quantities of Gas required for oil field operations.

Accordingly, the Company and its shareholders agree that the Government shall have full rights to all natural gas in excess of the requirements set out above.

20 However, should the Company at some future date see a greater requirement for natural gas than the requirements set out above, any expansion of or new construction of gas or gas liquid plants will be carried out in consultation with and subject to the approval of the Government.

If this arrangement is acceptable I should be obliged if Your Excellency would so indicate by signing the attached copy of this letter.

Please accept our highest respects.

for and on behalf of
Qatar Petroleum Company Limited
(G. G. Stockwell)
MANAGING DIRECTOR

AGREED: (Signature not reproduced)

QATAR PETROLEUM COMPANY LIMITED
DOHA - QATAR

30

20th February, 1974

His Excellency the Minister of Finance and Petroleum,
Ministry of Finance and Petroleum,
STATE OF QATAR.

Your Excellency,

After greetings.

We refer to the Agreement on Participation made between the Government and the Companies and dated 20th February, 1974, and we now write to confirm the further understandings reached between us as follows:

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Agreement:
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20th February
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No. 58
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Petroleum
Company and
others:
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(Cont'd)

1. None of the Companies will be subject to any tax or other financial imposition in Qatar in respect of any sums paid to them under Article 3 of the said Agreement.
2. Payment with respect to Article 3 of the Agreement on Participation will be made within two weeks after the date of execution of the Agreement, together with interest thereon from 1st January, 1974 to the date of payment.
3. The rate of the interest adjustment applicable under Article 3 of the said Agreement shall be one per cent above the rate certified by the National Westminster Bank, London, to be that at which U.S. dollar deposits for the six months commencing on 1st January 1974 were offered in the interbank 10 deposit market in London at noon on 2nd January 1974.

We shall be grateful if Your Excellency will indicate your acceptance of the above provisions by signing the attached duplicate copy of this letter.

Please accept our highest respects.

for and on behalf of
Qatar Petroleum Company Limited,
(G. G. Stockwell)
MANAGING DIRECTOR

AGREED: (Signature not reproduced)

QATAR PETROLEUM COMPANY LIMITED
DOHA - QATAR

20

20th February, 1974

His Excellency the Minister of Finance and Petroleum,
Ministry of Finance and Petroleum,
STATE OF QATAR.

Your Excellency,

After greetings.

This is to confirm the arrangements made between us for the lifting during the first quarter of 1974 of the oil to which the Government will become entitled with effect from the 1st January 1974 on conclusion of the Agreement on Participation signed by 30 us on 20th February, 1974.

1. If a buyback price and terms are mutually agreed in accordance with Article 4 of the Agreement on Participation before 15th March 1974, Q.P.C. will purchase or procure the purchase at such price of the balance of the Government's share of available crude oil from permitted production during the first quarter of 1974 after deducting:
 - (a) The quantity necessary to enable the Government to meet sixty per cent of the requirements of crude oil for refining and distribution for local consumption in Qatar.
 - (b) Any quantity of crude oil lifted for export by the Government's 40 customers.
2. Alternatively, if by 15th March 1974 agreement has not been reached on a buyback price and terms, Q.P.C. will deliver to the Government during the

period 1st April 1974 to 31st December 1975 a total volume of crude oil equal to that which it would have bought under (1) above.

We shall be grateful if Your Excellency will indicate your acceptance of the above provisions by signing the attached duplicate copy of this letter.

Please accept our highest respects,

for and on behalf of
Qatar Petroleum Company Limited,
(G. G. Stockwell)
MANAGING DIRECTOR

*No. 58
Participation
Agreement:
Qatar Government
and Qatar
Petroleum
Company and
others:
20th February
1974
(Annexure 61 to
The Qatar
Affidavit)
(Cont'd)*

10 AGREED: (Signature not reproduced)

**No. 59
Affidavit: J. H. Porter:
"The Abu Dhabi Affidavit"**

*No. 59
Affidavit:
J.H. Porter:
"The Abu Dhabi
Affidavit"
19th September
1974*

ON the 19th day of September 1974

I, JAMES HUTCHISON PORTER, of 24 Marlowe Court, Lymer Avenue, London, England, Company Executive, say on oath:

1.—In these proceedings I shall refer to this Affidavit as "the Abu Dhabi Affidavit".

2.—The BP Group's sources of crude oil from Abu Dhabi comprise partly 20 offshore and partly onshore areas.

3.—The offshore area is held under a concession originally granted to D'Arcy Exploration Company Limited in 1953 a true copy whereof is exhibited hereto and marked "63"; this concession was subsequently assigned by the latter company to Abu Dhabi Marine Areas Limited ("ADMA") in the year 1955. Prior to 1st January, 1973 the BP Group held a 66 $\frac{2}{3}$ % shareholding interest in ADMA but with effect from that date assigned such shareholding interest to BP - Japan Oil Development Company Limited ("BP - JODCO"), a company incorporated in Scotland in which the BP Group holds a 55% shareholding interest.

4.—ADMA crude oils are produced off the coast of Abu Dhabi and transported 30 by pipeline to Das Island for processing, storage and export. The BP Group acquires its availability of offshore Abu Dhabi crude from ADMA through the Group's oil trader, BP (Abu Dhabi) Limited, in similar manner to that referred to in paragraph 6 of the Iraq Affidavit.

No. 59
Affidavit:
J.H. Porter:
"The Abu Dhabi
Affidavit"
19th September
1974
(Cont'd)

5.—The onshore area is held under a Concession Agreement granted by the State of Abu Dhabi in 1939 to Abu Dhabi Petroleum Company Ltd. ("ADPC"), (then called Petroleum Development (Trucial Coast) Limited); what I believe to be a true copy of the Concession is exhibited to me at the time of swearing this Affidavit and marked "64"; subsequently the original concession area, which had covered the entire onshore area, has been reduced by relinquishments.

6.—The BP Group's interest in ADPC is by way of 23.75% shareholding in ADPC; the other shareholdings in ADPC are the same as those referred to in the Iraq Affidavit; the Group's crude oil availability from ADPC's total resources is related proportionately to such percentage shareholding and is also acquired in similar manner 10 to that referred to in paragraph 6 of the Iraq Affidavit.

7.—Property in the ADMA crude oil so far as concerns the Group passes at the flanges in the crude oil loading lines on Das Island firstly from ADMA to BP - JODCO and thence to the oil trader BP (Abu Dhabi) Ltd. ADPC's production of oil is conveyed by pipeline to an export terminal on the Abu Dhabi coast at Jebel Dhanna where transfer of title takes place, so far as concerns the BP Group, to the said oil trader.

8.—True copies of the 1973 Annual Reviews of ADMA and ADPC are exhibited hereto and marked "65" and "66" respectively.

9.—ADMA commenced oil production in 1962 and ADPC in 1963; the tax rate was 50% until increased in line with the other Gulf States to 55% effective from 20 November, 1970.

10.—Abu Dhabi was a party to a Royalty Expensing Agreement in 1965, the Teheran Agreement, the two Geneva Agreements and the General Agreement on Participation.

11.—Abu Dhabi took part in the collective unilateral fixing of posted prices in October, 1973 and December, 1973. Abu Dhabi in this regard made similar percentage increases to those fixed by the other Gulf States. Annexed hereto and marked "67" is a copy of a telex received by ADMA on 17th October 1973. Annexed hereto and marked "68" is a copy of a telex sent by the BP Group to ADMA on 1st November 1973 and annexed hereto and marked "69" is a copy of a letter dated 8th 30 November 1973 received by ADMA from the Government of Abu Dhabi.

12.—Pursuant to the provisions of the General Agreement (a copy whereof is annexed to the Principal Affidavit and marked "17") the BP Group in common with the other ADMA and ADPC interest holders have lifted from the Government of Abu Dhabi portion of that State's "participation crude"; the Government instrumentality for that purpose is designated Abu Dhabi National Oil Company. However, on 26th September, 1973 the Abu Dhabi Minister of Petroleum and Industry advised ADPC that the arrangements for lifting of bridging supplies were cancelled pending agreement on new prices.

13.—Negotiations have during 1974 taken place between Abu Dhabi represen- 40
tatives and representatives of ADMA and ADPC on the subject matter of immediate increase of the State's participation entitlement from the initial level of 25% specified in the General Agreement; prior to 22nd March, 1974, the Abu Dhabi Government had stated that it would require at least 60% participation. ADMA and ADPC had

agreed in principle to 60% participation in line with Kuwait and Qatar. Such an agreement was subsequently signed in September 1974 (retroactive to 1st January, 1974) subject to ratification by the Ruler of Abu Dhabi, the negotiations having been deferred until September by the Government pending the outcome of negotiations in Saudi Arabia for the possible 100% takeover of the oil industry in that country.

SWORN by the Deponent at London before me—

J. H. PORTER

E. B. WALKER

No. 59
Affidavit:
J. H. Porter:
"The Abu Dhabi
Affidavit"
19th September
1974
(Cont'd)

10

No. 60
Telex:
Abu Dhabi Minister of Petroleum and Industry to
Abu Dhabi Marine Areas Ltd:
(Annexure 67 to The Abu Dhabi Affidavit)

GENERAL MANAGER
ABU DHABI MARINE AREAS LTD
ABU DHABI

FROM MANA SAEED AL-OTAIBA
MINISTER OF PETROLEUM AND INDUSTRY

IN ACCORDANCE WITH THE RESOLUTION TAKEN BY THE MINISTERIAL COMMITTEE OF THE SIX GULF STATES IN KUWAIT ON 16TH OCT 1973 PLEASE BE INFORMED THAT
20 THE GOVERNMENT OF ABU DHABI HEREBY DECLARES THE NEW POSTED PRICES OF ABU DHABI CRUDES AS FOLLOWS:

POSTED PRICE OF MURBAN CRUDE IS	U.S.D. 5.345 PER BBL.
POSTED PRICE OF ZAKUM CRUDE IS	U.S.D. 5.414 PER BBL.
POSTED PRICE OF UM-SHAIF CRUDE IS	U.S.D. 5.287 PER BBL.

THE EFFECTIVE DATE OF THE NEW POSTED PRICES IS 16TH OCTOBER, 1973 STP THESE HAVE TAKEN INTO ACCOUNT THE RECENT ADJUSTMENTS AGREED WITH THE REPRESENTATIVES OF ADPC AND ADMA IN VIENNA STP HOWEVER, THE ADJUSTMENTS AS AGREED WITH THE COMPANIES IN VIENNA ARE EFFECTIVE FROM 14TH FEBRUARY 1971

30 IN ADDITION TO THE ABOVE, THE GOVERNMENT OF ABU DHABI HAS INTRODUCED A LOW-SULPHUR PREMIUM WITH EFFECT FROM THE SAME DATE AS SHOWN HERE-UNDER TAKING ARABIAN LIGHT CRUDE OIL SULPHUR CONTENT AS A FLOOR:—

SULPHUR PREMIUM OF MURBAN IS	U.S.D. 0.70 PER BBL.
SULPHUR PREMIUM OF ZAKUM IS	U.S.D. 0.55 PER BBL.
SULPHUR PREMIUM OF UM-SHAIF IS	U.S.D. 0.25 PER BBL.

FURTHER, THE GOVERNMENT RESERVES ITS RIGHT TO MAKE A RETROACTIVE CLAIM FOR THE SULPHUR PREMIUM OF ABU DHABI CRUDES EXPORTED PRIOR TO 16TH OCTOBER, 1973. THIS PARTICULAR MATTER WILL BE THE SUBJECT OF NEGOTIATIONS WITH THE OIL COMPANIES STOP

40 FURTHER DETAILS OF THESE CHANGES WILL BE COMMUNICATED TO YOU IN DUE COURSE

MANA SAEED AL-OTAIBA
MINISTER OF PETROLEUM AND INDUSTRY

No. 60
Telex:
Abu Dhabi
Minister of
Petroleum and
Industry to Abu
Dhabi Marine
Areas Ltd:
17th October
1973
(Annexure 67 to
The Abu Dhabi
Affidavit)

No. 61
Telex:
BP to Abu Dhabi
Marine Areas Ltd.
1st November
1973
(Annexure 68 to
The Abu Dhabi
Affidavit)

No. 61
Telex:
BP to Abu Dhabi Marine Areas Ltd:
(Annexure 68 to The Abu Dhabi Affidavit)

TO ADMARINE ABU DHABI 537 1/11/73
FROM BP LONDON

U R G E N T

FOR HORNA FROM SUTCLIFFE

PLEASE TRANSMIT FOLLOWING LETTER TO MINISTER

QUOTE

WE ARE IN RECEIPT OF YOUR LETTER DATED (?) OCTOBER CONCERNING THE POSTED PRICES OF CRUDE OIL EXPORTED FROM THE DAS ISLAND TERMINAL OF ABU DHABI MARINE AREAS LIMITED. IT WAS OUR HOPE THAT AFTER FURTHER NEGOTIATIONS THE POSTED PRICE ISSUE COULD HAVE BEEN RESOLVED BY AGREEMENT AND WE ARE DISAPPOINTED THAT A DIFFERENT COURSE WAS ADOPTED. PARA ALTHOUGH FURTHER STUDY AND CONSIDERATION ON OUR PART ARE REQUIRED, WE BELIEVE THAT IT WOULD BE MOST DESIRABLE FOR FURTHER DISCUSSIONS TO TAKE PLACE SOON BETWEEN REPRESENTATIVES OF GOVERNMENTS AND COMPANIES ON THE BROAD IMPLICATIONS OF YOUR LETTER, AND TO CLARIFY OUR UNDERSTANDING OF THE MECHANISM REFLECTED IN THE ANNOUNCEMENT OF THE 20 DECISIONS MADE BY THE GOVERNMENTS AT THE KUWAIT MEETING. PARA NEVERTHELESS IT IS OUR PRESENT INTENTION AND THAT OF OUR SHAREHOLDERS, WITHOUT PREJUDICE TO OUR POSITION UNDER EXISTING AGREEMENTS, TO SEE THAT YOU ARE PROVIDED WITH THE FINANCIAL EFFECTS WHICH WOULD RESULT FROM THE PARTICULAR POSTED PRICES INCLUDING SULPHUR PREMIA WHICH YOU HAVE ANNOUNCED IN YOUR LETTER AS BEING EFFECTIVE 16TH OCTOBER, 1973. UNQUOTE

10

No. 62
Letter:
Government of
Abu Dhabi to Abu
Dhabi Marine
Areas Ltd:
8th November
1973
(Annexure 69 to
The Abu Dhabi
Affidavit)

No. 62
Letter:
Government of Abu Dhabi to Abu Dhabi Marine Areas Ltd:
(Annexure 69 to The Abu Dhabi Affidavit)

30

8/11/1973

Messrs. Abu Dhabi Marine Areas Ltd.,
LONDON EC2 Y9BU

Dear Sirs,

This is to acknowledge the receipt of your letter 1/GM.5A of 1st November, 1973, the contents of which received our due consideration.

We would like, first of all, to put on record the fact that the decision taken by the six Gulf OPEC Members on the 16th of October, 1973, to resort to collective action on posted prices was made only after the negotiations in Vienna were recessed and post- 40

poned three times at the companies' request. It was in view of such repeated breaks in the negotiations that the Governments concluded that the companies were resorting to delaying tactics and therefore they took the appropriate action to safeguard their legitimate rights and interests in line with the practice already at work in several other OPEC countries.

The decision taken in Kuwait with regard to our determining and announcing the prices of our oil is a matter of principle to us. It shall not be subject to any negotiation.

10 In the meantime, we think that your proposal for further discussions between representatives of the companies and of Governments could be useful if such discussions are based on the clear understanding that they be directed solely to the hearing of your views and the exchange of ideas on matters of procedure and methods concerning the future application of the decision taken in Kuwait. To this end we are willing to consider holding such a meeting at the headquarters of OPEC in Vienna at 10.00 A.M. on Saturday, 17th November, 1973.

In addition, we wish to reiterate the agreements reached with your representatives in Vienna on 9th and 10th October, 1973, to the effect that the adjustments to Zakum and Um Shaif posted prices be made effective from 14th February, 1971. The agreed adjustments were 7 (Seven) U.S. Cents per barrel for Zakum Crude and 4 (Four) U.S. Cents per barrel for Um Shaif Crude.

20 Regarding the sulphur premia for Abu Dhabi crudes, it is still our intention to make a retroactive claim for these sulphur premia for crude oils exported prior to 16th October, 1973. As stated in our telex of 17th October, 1973, this matter will be the subject of further discussions with your representatives at a later date.

Yours faithfully,
 Mana Saeed Al-Otaiba
 Minister of Petroleum & Industry

No. 62
 Letter:
 Government of
 Abu Dhabi to Abu
 Dhabi Marine
 Areas Ltd.
 8th November
 1973
 (Annexure 69 to
 The Abu Dhabi
 Affidavit)
 (Cont'd)

No. 63
Affidavit: R. N. Tottenham-Smith:
"The Nigeria Affidavit"

30 ON the 30th day of September 1974

No. 63
 Affidavit:
 R.N. Tottenham-
 Smith:
 "The Nigeria
 Affidavit"
 30th September
 1974

I, RALPH NORMAN TOTTENHAM-SMITH, of Georgeville, Hurtmore Road, Godalming, Surrey, England, Company Executive, say on oath:

1.—I am the Regional Co-ordinator for Africa of BP Trading Limited ("BPT") and have as a senior executive been involved in Nigerian affairs since 1969. Immediately prior to my present appointment I was Senior Planner at the BP Group's Head Office in London. I have been employed by the BP Group since 1949.

No. 63
Affidavit:
R.N. Tottenham-
Smith:
"The Nigeria
Affidavit"
30th September
1974
(Cont'd)

2.—I have read the Affidavit of John William Robert Sutcliffe sworn herein (to which I shall hereafter refer as the "Principal Affidavit") and in particular the passages thereof relating wholly or partly to the interests of the BP Group in Nigeria; in this Affidavit I shall adopt the abbreviations and terms used in the Principal Affidavit and I shall refer to this Affidavit as "the Nigeria Affidavit".

3.—Shell-BP Petroleum Development Company of Nigeria Limited ("Shell-BP") holds, and has held for more than ten years, concessionary rights for the production of oil in Nigeria under and by virtue of numerous Oil Mining Leases whereof the printed form exhibited hereto and marked "70" represents the standard form; the BP Group has a one half shareholding in Shell-BP; by virtue of the Crude Offtake Agreement bearing the date 25th August, 1964, a true copy whereof is exhibited hereto and is marked "71", BPT is entitled to purchase, on the terms as to price therein provided, one half of the crude oil produced by Shell-BP and available for export sale from Nigeria. 10

4.—Shell-BP was a party with Nigeria to the Lagos Agreement referred to in the Principal Affidavit; Nigeria was also a party to the Geneva Agreements.

5.—In line with developments in the Middle East producing countries, Nigeria sought "participation" in the Shell-BP areas and agreement was reached on 11th June, 1973; a true copy thereof is annexed hereto and marked "72" whereby with effect from 1st April, 1973 Nigeria secured a 35% undivided interest by way of "participation" in the leases and assets of Shell-BP in Nigeria and the opportunity to acquire a further 16% interest in 1982. The volume of crude available to BPT from Shell-BP was proportionately reduced; under the terms of the said Agreement BPT as a designated purchaser of Shell-BP was entitled to purchase and did in fact purchase a share of the Nigerian Government's entitlement to crude from the Shell-BP concessions. 20

6.—As with the Gulf States of OPEC, Nigeria sought to post similar increases in the price of crude effective as from October 1973 (20th October, 1973 in the case of Nigeria) and as from 1st January, 1974; annexed hereto and marked as specified hereunder are true copies of the undermentioned communications:

- "73" Circular dated 23rd October, 1973 from the Nigerian Federal Ministry of Mines and Power to "All Producing Companies". 30
- "74" Letter dated 25th October 1973 from Shell-BP to Nigerian Department of Petroleum Resources.
- "75" Letter dated 1st November 1973 from Shell-BP to the Director of Petroleum Resources together with the price lists annexed.
- "76" Press Release No. 1277 issued on 3rd November 1973 by the Federal Ministry of Information in Nigeria.
- "77" Letter dated 5th November 1973 from Shell-BP to the Director of Petroleum Resources.
- "78" Circular dated 5th November 1973 from the Director of Petroleum Resources addressed to "All Producing Companies". 40
- "79" Circular dated 2nd January 1974 from the Director of Petroleum Resources addressed to "All Producing Companies".

7.—Shortly after Kuwait and Qatar secured 60% "participation" early in 1974 in the circumstances set forth in the Principal Affidavit, oral statements were made to representatives of Shell-BP in Nigeria by Government representatives that a larger participation percentage would be sought by Nigeria; ultimately the Government initiated a

meeting with Shell-BP on 28th March 1974 and thereafter Shell-BP received a letter dated the 28th March 1974 from the Nigerian Ministry of Mines and Power whereof a true copy is annexed hereto and marked "80"; thereafter agreement was reached between the Government and Shell-BP as to 55% participation effective from 1st April 1974, in terms of the letter dated 16th April 1974 from Shell-BP to the Federal Ministry of Mines and Power whereof a true copy is annexed hereto and marked "81".

No. 63
Affidavit:
R.N. Tottenham-
Smith:
"The Nigeria
Affidavit"
30th September
1974
(Cont'd)

8.—I believe that Shell-BP had no alternative but to accede to each of the foregoing participation agreements and the Nigerian posted price increases of October 1973 and January 1974 in order to secure the continuation of crude oil supplies.

10 SWORN by the Deponent at London before me— R. N. TOTTENHAM-SMITH

D. W. JULIAN
NOTARY PUBLIC
LONDON

No. 64
Heads of Agreement:
Government of Nigeria and Shell-BP:
(Annexure 72 to The Nigeria Affidavit)

No. 64
Heads of
Agreement:
Government of
Nigeria and
Shell-BP:
11th June 1973
(Annexure 72 to
The Nigeria
Affidavit)
(Cont'd)

20 THESE HEADS OF AGREEMENT are made the 11th day of June 1973 for and on behalf of THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA (hereinafter called "the Government") of the first part and THE SHELL-BP PETROLEUM DEVELOPMENT COMPANY OF NIGERIA LIMITED, a Company incorporated in Nigeria whose registered office is at Freeman House, 21/22 Marina, Lagos, Nigeria (hereinafter called "the Company") of the second part.

WHEREAS the Government has expressed its wish to participate in the petroleum operations of existing crude oil producing companies within Nigeria and the Conference of the Organisation of Petroleum Exporting Countries (OPEC) has passed certain resolutions to the same effect in respect of existing crude oil concessions within the member countries;

and WHEREAS negotiations have taken place and agreement has been reached between the parties hereto upon the terms upon which the Government shall participate in the petroleum operations hitherto conducted by the Company in Nigeria alone;

30 NOW THEREFORE THE PARTIES HERETO AGREE AS FOLLOWS:—

1. Percentage Level of Participation

The Government shall acquire an initial percentage level of participation of 35 percent from 1st April, 1973 ("initial participation interest").

The Government shall have a right to add to the initial participation interest by the acquisition on 1st April, 1982 or on 1st April of any subsequent year of one percentage increment of 16 percent ("the increment") with the resulting percentage level of participation interest of 51 percent.

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2. Consideration for the Acquisition of Participation Interest

- (i) Consideration to be paid for the initial participation interest shall be an amount expressed in U.S. Dollars equal to 35 percent of the Company's Updated Book Value on 31st March, 1973. The foregoing Updated Book Value is to be derived from a summation of the Company's Petroleum Profits Tax documentation, expressed firstly on a U.S. Dollar basis and then multiplied by the relevant year's multiplier shown in the Middle East Construction Price Factors table as per Annex 1 hereto, for the accounting years up to 1972 inclusive and documentation on a similar basis for the quarter ending 31st March, 1973; 10
- (ii) The amount of consideration to be paid for the acquisition of the increment shall be equal to 16/65 of the Updated Book Value of the percentage interest of the Company on the day before the effective date of acquisition of the increment, to be calculated from the Company's Petroleum Profits Tax documentation by the method stipulated for the initial participation interest under 2(i) above. The multiplier factors to be used are those to be derived in continuation of those previously used.

3. Payment of Consideration

- (a) The amount of consideration for the initial participation interest shall be due on 30th April 1973 and shall be paid in four instalments as follows: 20
 25 percent of consideration on or before 30th day following signing of the Agreement;
 25 percent of consideration on or before 30th April 1974;
 25 percent of consideration on or before 30th April 1975; and
 25 percent of consideration on or before 30th April 1976.
- (b) The amount of consideration for the increment shall be paid on or before the day immediately preceding the date of acquisition of the increment;
- (c) Any amounts, under 3(a) and (b) above and 4 below, outstanding from the due dates of payment to the payment dates specified herein shall bear interest at a rate of 1 percent per annum above the rate at which U.S. Dollar deposits 30
 for six months are bid in the interbank deposit market in London, as certified by the National Westminster Bank, London, such interest to be paid at six monthly intervals (unless payable sooner) the first payment of interest being made six months after the due date of the principal and the last payment on the date following the last day of the period in respect of which the interest was due;
- (d) Amounts in U.S. Dollars due to the Company under 3(a), (b) and (c) above and 4 below shall be converted to sterling at the appropriate rate of exchange established in accordance with paragraph 4(d) of the Agreement of 5th June 1972. Such sterling amounts so derived shall be paid by the Government in 40
 full in sterling in London;
- (e) The transaction and the payment by the Government to the Company in respect of consideration, Working Capital and interest (and any amounts paid by the Company to its shareholders as dividends or otherwise from the afore-said amounts), shall be free from any tax or imposition in Nigeria and be exempt from Nigerian Exchange Control.

4. Working Capital

The Government shall pay to the Company a contribution to all items of working capital applicable to the joint operations ("the Working Capital") equal to its initial percentage interest of the amount of the Working Capital on 31st March, 1973, which shall be due on 30th April, 1973 and shall be paid on or before the 30th day following the signing of the Agreement. The Government shall subsequently pay on or before the day immediately preceding the date of acquisition of the increment an additional contribution equal to 16/65 of the value of the Company's percentage interest in the Working Capital on the day before the effective date of acquisition of the increment.

- 10 The Government will not be required to make a contribution in respect of items which relate to the Company alone e.g. trade and other debtors, creditors, tax outstanding, oil stocks etc.

5. The Government's Crude Oil

- 20 (i) The Government shall have a right to a percentage of the crude oil (per grade and at each specified offtake point) which is produced at wellhead from 1st April 1973 (and from the effective date of acquisition of the increment) and subsequently is available for lifting at the specified offtake points equal to its percentage level of participation (the Government's "Basic Right"); provided that the Government's Basic Right crude oil in any calendar year and any royalty in kind crude oil shall not exceed 51 percent of crude oil available in such calendar year. Out of its Basic Right, the Government shall retain for disposal as it wishes, "Retained Crude", in the following quantities:—

During the period	Percentage of Basic Right
1st April 1973 to 31st March 1974	25
1st April 1974 to 31st March 1975	35
1st April 1975 to 31st March 1976	40
1st April 1976 to 31st March 1977	45
30 1st April 1977 to 31st March 1978	50
1st April 1978 to 31st March 1979	55
1st April 1979 to 31st March 1980	60
1st April 1980 to 31st March 1981	65
1st April 1981 to 31st March 1982	70

- (ii) From its Retained Crude, Government shall deliver to the Refinery at Alesa-Elleme quantities of crude oil equal to the percentage of total crude oil supplies to the Refinery which corresponds to the Government's percentage level of participation.
- 40 (iii) The Government shall sell to the Company's designated purchaser(s) in any period quantities of "buyback crude oil" equal to the differences between the Government's Basic Right and its Retained Crude as specified in (i) above for such period.
- (iv) (a) The price f.o.b. export terminal payable to the Government for buyback crude oil ("buyback price") is U.S.\$3.05 per barrel of 34.00/34.09 degree API crude oil. The buyback price will be adjusted for actual gravity loaded by an increase or a decrease (as the case may require) for each full 0.1 degree API by which the gravity of

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- the crude oil loaded may be above the lower limit or below the upper limit of the gravity range to which the price applies. The amount of such increase or decrease in U.S. cents per barrel shall be in accordance with the First Schedule paragraph 1(ii) of the Agreement dated 10th May, 1971.
- (b) With effect from the date of any variation in Government take resulting from changes in the posted prices for crude oil exported from Nigeria, in accordance with the Agreement dated 10th May, 1971 as supplemented by the Agreement dated 5th June, 1972, modified by the Supplemental Agreement made in Geneva dated 1st June 1973 (including the variation with effect from 1st April, 1973), and, by way of royalty and petroleum profits tax, in accordance with any agreement that may be entered into by the Company with respect to Government take from 1st January, 1976, the buyback price shall be adjusted by the amount of such variation expressed in U.S. cents per barrel payable by the Company on an identical barrel if sold by the Company for export. 10
- (c) For quantities of buyback crude oil lifted in a calendar month, payment shall be made within 90 days following the month of loading. 20
- (v) (a) The Government or the Company may by giving written notice to the other party not later than 1st April 1976 request the other party's agreement to a revision of the buyback price effective 1st August 1976 and thereafter. A similar request may be made not later than 1st April 1979 to be effective 1st August, 1979;
- (b) If after any such requests the parties fail to agree upon a revised buyback price by the 1st May before the 1st August when the revision, if any, is to be effective, the price arrangements stipulated under paragraph 5(iv) shall continue unaffected except that both parties shall retain the right to exercise and respond to the request under paragraph 5(v)(a); 30
- (c) If, however, in a follow-up on an exercise of the request under paragraph 5(v)(a), by the 1st June either party gives to the other party written notice expressing dissatisfaction with the buyback price and requesting an increase or a decrease in the buyback price, then:
- (i) if such notice requested an increase, the party receiving such notice shall have the option exercisable by written notice on or before the 15th July of 1976 and 1979 to continue with arrangements for buyback crude with an increase in the buyback price of six U.S. cents per barrel effective the next following 1st August; 40
- (ii) If such notice requested a decrease, the party receiving such notice shall have the option, exercisable by written notice, to continue with the arrangements for buyback crude with a reduction in the buyback price of 3 U.S. cents per barrel effective the next following 1st August; and
- (iii) if each party has given notice of dissatisfaction and if both parties duly exercise the options available to them under this paragraph (c), the arrangements for buyback crude shall continue with an increase in the buyback price of an amount equal to half the difference between the increase of 6 U.S.

cents per barrel and the decrease of 3 U.S. cents per barrel specified in the options (i.e. one and one-half U.S. cents per barrel) effective the next following 1st August.

- (d) If neither of the options in (c)(i) or (ii) above is exercised on or before 15th July, the party having given the notice of dissatisfaction may elect, by written notice given on or before 31st July to:—
- (i) continue with arrangements for buyback crude unaffected except that both parties shall retain the right to exercise and respond to the request under paragraph 5(v)(a); or
 - (ii) to terminate the arrangement for buyback crude effective 12 months after the 1st August in question, that is, in 1977 or 1980 as the case may be.

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6. **Company's Right of First Refusal**

- (a) During the period from 1st April 1973 to 31st March 1976 the Government shall sell to the Company's designated purchaser(s) quantities equal to all of the Government's Retained Crude, less the quantities specified in paragraph 5(ii) and in Annex 2 hereto. The price f.o.b. export terminal payable to the Government for such quantities sold to the Company's designated purchaser(s) is U.S. Dollars 3.25 per barrel for 34.00/34.09 degree API crude oil adjusted for gravity as under paragraph 5(iv)(a) and for government take as under paragraph 5(iv)(b). Such price shall remain effective until 31st December, 1975. Payment shall be made in accordance with paragraph 5(iv)(c).
- (b) For the duration of the Agreement, the Company shall have the first option to purchase all or part of Government's Retained Crude, less the quantities specified in paragraph 5(ii) and in Annex 2 hereto in contracted lots of no less than 25,000 barrels per day, at prices and all other terms and conditions which shall be no less favourable than a third party or parties would be prepared to buy comparable quantities of comparable crude in firm bona fide commercial offers.
- (c) Prior to selling to any third party or third parties quantities of its "Retained Crude", in contract lots of no less than 25,000 barrels per day, the Government shall first offer such quantities to the Company for sale to the Company's designated purchaser(s) at the price and other terms and conditions at which such third party or parties is or are prepared to buy such crude oil.

7. **Liftings of Crude Oil**

All quantities of the Government's Retained Crude and the Company's Basic Right crude other than those to be delivered to the Refinery at Alesa-Elеме as well as 40 of buyback crude oil hereunder, whether lifted by or on behalf of the Government or by the Company's designated purchasers, shall be lifted evenly spread during the year and in terms of export grades pro rata to the export availability of such grades.

8. **Financial Requirements**

The Government and the Company shall provide all Working Capital and shall bear all capital and operating expenditure, as defined in the capital and operating budgets for the joint operations as approved by the parties, in their respective percentage levels of participation from time to time.

9. **Cash Calls**

Either party shall promptly advance cash against cash calls required for the joint

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investment and operations which are computed in accordance with the terms of this Agreement to correspond to its share of capital and operating expenditure.

10. Implementation

As soon as possible the Government and the Company shall conclude agreements to implement participation in accordance with the agreed terms. While the agreed terms have been formulated in contemplation of an undivided interest form of participation in the ownership and operations, if the parties agree to adopt the corporate form the agreed terms shall be incorporated in agreements adapted to the corporate form.

IN WITNESS WHEREOF the Government and the Company have caused these Heads of Agreement to be duly signed on the day and year first above mentioned. 10

SIGNED by His Excellency Alhaji Shettima Ali Monguno, Commissioner, Federal Ministry of Mines & Power for and on behalf of the Government of the Federal Republic of Nigeria.

In the presence of Philip Chikwuedo Asiodu, Permanent Secretary, Federal Ministry of Mines & Power.

SIGNED by Lodewijk Christiaan van Wachem, Managing Director for and on behalf of The Shell-BP Petroleum Development Company of Nigeria Limited.

In the presence of Erdhardt Johannes Fraenkl, Director, The Shell-BP Petroleum Development Company of Nigeria Limited.

ANNEX 1

20

MIDDLE EAST CONSTRUCTION PRICE FACTORS Index Numbers and Derived Multiplier Factors

Year	Index	Multiplier	
1972	140	1.00	
1971	126	1.11	
1970	117	1.20	
1969	114	1.23	
1968	108	1.30	
1967	102	1.37	
1966	100	1.40	30
1965	97	1.44	
1964	94.2	1.49	
1963	91.5	1.53	
1962	88.9	1.57	
1961	88.1	1.59	
1960	87.5	1.60	
1959	87.5	1.60	
1958	83.8	1.67	
1957	81.4	1.72	
1956	79.0	1.77	40
1955	74.1	1.89	
1954	70.6	1.98	
1953	67.3	2.08	

1952	65.4	2.14
1951	62	2.26
1950	58.8	2.38
1949	58	2.41
1948	58	2.41
1947	51	2.75
1946	38	3.68
1945	32	4.37

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ANNEX 2

10 QUANTITIES OF RETAINED CRUDE EXCLUDED FROM FIRST RIGHT OF REFUSAL

During the Period	Quantities
1st April, 1973 to 31st March, 1974	15,000 barrels per day
1st April, 1974 to 31st March, 1975	45,000 barrels per day
1st April, 1975 to 31st March, 1976	97,000 barrels per day

During subsequent periods from 1st April of a year to 31st March of the following year, the Government may wish to exclude likewise from the Company's right of first refusal certain quantities of crude oil to meet specific obligations entered into by the Government for special reasons. The Government shall notify the total of such quantities for such a period in writing to the Company by not later than the 1st July preceding the period in question.

No. 65
Circular letter:
Nigerian Federal
Ministry of Mines
and Power to "All
Producing
Companies":
23rd October
1973
(Annexure 73 to
The Nigeria
Affidavit)

No. 65
Circular letter:
Nigerian Federal Ministry of Mines and Power to
"All Producing Companies":
(Annexure 73 to The Nigeria Affidavit)

FEDERAL MINISTRY OF MINES AND POWER

23rd October, 1973

TO ALL PRODUCING COMPANIES

Dear Sir,

We wish to invite your attention to the recent increases in posted price reported for 10 light Persian Gulf crudes, with substantial additional premiums for the low sulphur variety. We would want these changes to be reflected in the postings for Nigerian crudes, but in the meantime would you please send us your comments on the implications of the developments in the Gulf states for Nigeria. Such comments must reach the undersigned before Tuesday 30th October, 1973.

Yours faithfully,
(O. Lolomari)
for Director of Petroleum Resources.

No. 66
Letter:
Shell-BP to Nigerian
Department of
Petroleum
Resources:
25th October
1973
(Annexure 74 to
The Nigeria
Affidavit)

No. 66
Letter:
Shell-BP to Nigerian Department of Petroleum Resources:
(Annexure 74 to The Nigeria Affidavit)

20

25th October, 1973

Department of Petroleum Resources,
Federal Ministry of Mines & Power,
LAGOS.

For the attention of Mr. O. Lolomari

Dear Sirs,

POSTED PRICES

We thank you for your letter dated 23rd October inviting us to send our comments 30 on the implications of the developments in the Persian Gulf States for prices posted in Nigeria.

Following his discussions on this subject with Chief M. O. Feyide and Mr. O. Lolomari on 22nd October, our Managing Director has travelled to London in order to obtain more information on the situation created by the unilateral action of the Persian Gulf states, but will return to Nigeria shortly.

In the meanwhile we should like to confirm our undertaking to discuss as soon as possible with the Government equitable arrangements to reflect in Nigerian postings whatever may become established elsewhere. Such equitable arrangements will also take into account the question of effective date.

We look forward to contacting you further on our Managing Director's return.

Yours faithfully,
 For: THE SHELL-BP PETROLEUM DEVELOPMENT
 COMPANY OF NIGERIA LIMITED
 M. Harvey
 for Managing Director

No. 66
 Letter:
 Shell-BP to Nigerian
 Department of
 Petroleum
 Resources:
 25th October
 1973
 (Annexure 74 to
 The Nigeria
 Affidavit)
 (Cont'd)

10

No. 67
Letter:
Shell-BP to Nigerian Director of Petroleum Resources
with price lists:
 (Annexure 75 to The Nigeria Affidavit)

No. 67
 Letter:
 Shell-BP to
 Nigerian Director
 of
 Petroleum
 Resources with
 price lists:
 1st November
 1973
 (Annexure 75 to
 The Nigeria
 Affidavit)

1st November, 1973

Director of Petroleum Resources,
 Federal Ministry of Mines & Power,
 LAGOS.

20 Dear Sir,

POSTED PRICES

We refer to our recent correspondence and meetings on the subject of Nigerian posted prices and in particular to the meeting between the Director of Petroleum Resources and the Oil Producing Companies on 31st October 1973. During this meeting the effects of the recent Unilateral Declaration in the Persian Gulf were discussed and industry was advised that it was the intention of the Nigerian Government to maintain for the present the process of consultation on posted prices provided for under the Petroleum Profits Tax legislation. We welcomed this opportunity and undertook to provide you with our assessment as soon as possible.

30 In the light of this we are pleased now to submit our views on an equitable relationship between the prices currently posted in the Persian Gulf and a revised Nigerian posted price. This revised Nigerian price takes into account the de facto price situation in the Persian Gulf, and is based on the principle of maintaining parity between the two export areas.

The method we have employed is to first break down the current Nigerian posting into its component parts of Sulphur Premium, Freight Differentials and comparable reference value in the Persian Gulf. Each element has then been reconstructed in the light of the moves in the Persian Gulf in order to determine the new posted price for the

No. 67
Letter:
Shell-BP to
Nigerian Director
of
Petroleum
Resources with
price lists:
1st November
1973
(Annexure 75 to
The Nigeria
Affidavit)
(Cont'd)

Nigerian 34° API reference crude. The attachment to this letter sets out the underlying principles and the results of our calculation. We would like to mention that the following members of industry participated in a meeting held today on this subject in our offices:

Nigerian National Oil Corporation,
Nigerian Agip Oil Company Ltd,
Texaco Overseas (Nigeria) Petroleum Company,
Mobil Producing Nigeria,
Gulf Oil Company (Nigeria) Ltd,
Shell-BP Petroleum Development Co. of Nigeria Ltd. 10

Whilst there remained slight differences in opinion, which may be reflected in the individual company's presentations to you, a broad measure of agreement was reached on how to arrive at an equitable solution.

Yours faithfully,
For: THE SHELL-BP PETROLEUM DEVELOPMENT
COMPANY OF NIGERIA LTD.
Managing Director.

POSTING FOR 34° API CRUDE
EFFECTIVE 1st NOVEMBER, 1973

(a) **Adjusted Base Posting 1.11.1973** 20

(1) According to 1971 and Currency Agreements

$$P^2 = P + \frac{B^1 - A^1}{100} \times T^1$$

$$3.987 + \frac{28.48 - 27.22}{100} \times 3.168 (T_1) = 4.027(P^1)$$

(2) Increase effective 20.10.73

$$3.780^* \left(1 + \frac{28.48 - 27.22}{100}\right) = \underline{3.828}$$

Adjusted Base Posting 1.11.73 7.855

(b) **Adjusted Suez Allowance and Temporary Freight Premium** 30

(1) According to 1971 and Currency Agreements

$$\frac{P^1}{T^1} \times (0.12 + 0.118) = 0.303$$

(2) Increase effective 20.10.73

$$0.243^{**} \left(1 + \frac{28.48 - 27.22}{100}\right) = \underline{0.246}$$

0.549

8.404

* Increase of \$3.780 is calculated as follows:—		
Adjusted Base Posting 20.10.73	=	7.767
Adjusted Base Posting 1.10.73	=	3.987
Increase		<u>3.780</u>

** Increase of \$0.243 is calculated as follows:—		
New Agreed Temporary Freight Premium		0.392
Temporary Freight Premium, old basis		0.149
Increase		<u>0.243</u>

POSTING FOR 27° API CRUDE
EFFECTIVE 1st NOVEMBER, 1973

10

(a) **Adjusted Base Posting 1.11.1973**

(1) According to 1971 and Currency Agreements

$$P^1 = P + \frac{B^1 - A^1}{100} \times T^1$$

$$3.847 + \frac{28.48 - 27.22}{100} \times 3.057 (T_1) = 3.886$$

(2) Increase effective 20.10.73

$$3.682^* \left(1 + \frac{28.48 - 27.22}{100}\right) = 3.728$$

20

Adjusted Base Posting 1.11.1973

7.614

(b) **Adjusted Suez Allowance and Temporary Freight Premium**

(1) According to 1971 and Currency Agreements

$$\frac{P^1}{T^1} \times (0.12 \times 0.118) = 0.303$$

(2) Increase effective 20.10.73

$$0.243^{**} \left(1 + \frac{28.48 - 27.22}{100}\right) = 0.246$$

0.5498.163

30

* Increase of \$3.682 is calculated as follows:—		
Adjusted Base Posting 20.10.73	=	7.529
Adjusted Base Posting 1.10.73	=	3.847
Increase		<u>3.682</u>

No. 67
Letter:
Shell-BP to
Nigerian Director
of
Petroleum
Resources with
price lists:
1st November
1973
(Annexure 75 to
The Nigeria
Affidavit)
(Cont'd)

** Increase of \$0.243 is calculated as follows:—

New Agreed Temporary Freight Premium	0.392
Temporary Freight Premium, old basis	0.149
	<hr/>
Increase	0.243

Enclosure

NIGERIAN POSTED PRICES

Proposed Basis for Calculating a New Posted Price for
34° API Crude

1. **Current Posting**

The October posting for 34° API contains the following elements:

	US\$/bbl	
Current posting for 34° Nigerian	4.287	
Suez Allowance	0.151	
	<hr/>	
Temporary Freight Premium	0.149	
	<hr/>	
Sulphur Premium in Base Posting	0.183	
	<hr/>	
Base Posting Excluding Sulphur Premium	3.804	
Permanent Freight Differential	0.722	
	<hr/>	
Posting Comparable to Persian Gulf	3.082	20

2. **Calculation of Parity by Element**(a) **Comparable Persian Gulf Posting**

A 70% increase is called for in order to restore comparability with the Persian Gulf. The revised basic posting of Nigerian crude before the application of Sulphur and Freight differentials therefore becomes $\$3.082 \times 1.7 = \5.239 .

(b) **Sulphur Premium**

- (i) From published information on market prices for low sulphur fuel oils, and taking into account the geographical disposition of Nigerian crude oil, it can be demonstrated that the sulphur premia for Nigerian crude expressed in terms of posted prices, falls in the bracket of 60/80 cents/bbl. 30
- (ii) Published studies on the cost of desulphurisation of fuel oils equate with a premium in the posting of Nigerian crude of maximum 70 cents/bbl.
- (iii) We recognise however that a de facto situation has been created in the Persian Gulf by the unilateral declarations made in Abu Dhabi in respect of Low Sulphur Crude Oils and, while we can find no demonstration that these premia can be recovered in the market, it could be held that in calculating a new parity the Abu Dhabi reference of 40 \$0.82 per 1% sulphur in the crude should be used. This would result in sulphur premia of \$1.09, \$1.16 and \$1.20 for Bonny Medium, Forcados Blend and Bonny Light crude oils respectively.

(c) **Freight Differentials**

On Freight Differentials we have two alternative routes to propose. The first alternative is to apply 70% to the Permanent Freight Differential ($\$0.722 \times 1.7 = \1.227). To this is added as at present the Temporary Freight Premium ($\$0.149$) and Suez Allowance ($\0.151). This gives a total freight element of $\$1.227 + \$0.149 + \$0.151 = \1.527 but has the disadvantage that only some 10% (the Temporary Freight Premium) of this figure is variable with AFRA.

10 The second alternative is to replace the old structure with a new freight differential which would be more responsive to freight market movements and which would be calculated as follows:

Ras Tanura—Rotterdam W100	\$1.300
Nigeria—Rotterdam W100	\$0.573
	<u>\$0.727</u>
at W123.9 (October 1973 LR II AFRA)	\$0.901
Increased by 70%	<u>\$1.532</u>

This total freight could be split up as follows:

20 Suez Allowance	\$0.151
Permanent Freight	\$0.722
Temporary Freight	\$0.659
	<u>\$1.532</u>

This temporary freight element could then vary with LR II AFRA in the following manner:

$$\frac{65.9\text{¢}}{123.9-72.0} = 0.127\text{¢} \quad \text{per tenth of a point variation in LR II AFRA}$$

3. **Conclusion**

A revised Nigerian posting for a 34° API reference crude would fall in the following range:

Alternative	(i)	(ii)
30 Posting comparable to Persian Gulf	\$5.239	\$5.239
Permanent Freight	\$1.227	\$0.722
Base Posting, excluding sulphur	\$6.466	\$5.961
Suez Allowance	\$0.151	\$0.151
Temporary Freight	\$0.149	\$0.659
Sulphur Premium	\$0.700/1.200*	\$0.700/1.200*
New Posting	<u>\$7.466/7.966</u>	<u>\$7.471/7.971</u>

* Abu Dhabi formula applied to sulphur content of Bonny Light.
For Forcados Blend \$1.16 would apply.

40 **Note:** A parallel calculation is being made to arrive at the new level for the posting of the Bonny Medium Stream.

1.11.73

No. 67
Letter:
Shell-BP to
Nigerian Director
of
Petroleum
Resources with
price lists:
1st November
1973
(Annexure 75 to
The Nigeria
Affidavit)
(Cont'd)

No. 68
 Press Release:
 Nigerian Federal
 Ministry of
 Information:
 3rd November
 1973
 (Annexure 76 to
 The Nigeria
 Affidavit)

No. 68
Press Release:
Nigerian Federal Ministry of Information:
 (Annexure 76 to The Nigeria Affidavit)

FEDERAL MINISTRY OF INFORMATION
 Lagos, November 3, 1973
NEW POSTED PRICE FOR NIGERIAN CRUDE OIL

The Federal Military Government and the oil producing companies in Nigeria have agreed to establish new posted price for Nigerian crude oil.

This was disclosed today, by the Federal Commissioner for Mines and Power, 10 Shettima Ali Monguno, on his return from a trip to the meeting of the Organisation of Petroleum Exporting Countries (OPEC) in Vienna and that of the Organisation of African Unity (OAU) Liberation Committee in Mogadishu, Somalia.

The Commissioner said that with effect from October 20, 1973, the posted price for Nigerian crude of 34° API gravity has been fixed at \$8.310 per barrel as compared with the previous posting of \$4.287 per barrel.

No. 69
 Letter:
 Shell-BP to
 Nigerian Director
 of Petroleum
 Resources:
 5th November
 1973
 (Annexure 77 to
 The Nigeria
 Affidavit)

No. 69
Letter:
Shell-BP to Nigerian Director of Petroleum Resources:
 (Annexure 77 to The Nigeria Affidavit)

20

5th November, 1973

The Director of Petroleum Resources,
 Federal Ministry of Mines and Power,
 LAGOS.

Dear Sir,

**Posted Prices effective as from 20th October
 and 1st November 1973**

We refer to our recent discussions on the subject of Nigerian posted prices and in particular to the meeting between the Director of Petroleum Resources and the Oil Producing Companies on 2nd November 1973. During this meeting agreement was 30 reached between the Government and the Oil Producing Companies on the level of Nigerian posted prices to be effective from 20th October 1973 which would be equit-

able in the light of posted prices established 'de facto' in other oil exporting countries, as follows:—

No. 69
Letter:
Shell-BP to
Nigerian Director
of Petroleum
Resources:
5th November
1973
(Annexure 77 to
The Nigeria
Affidavit)
(Cont'd)

(1) Base Posting excluding Sulphur for 34° API crude The current Base Posting, including Permanent Freight but excluding Sulphur Premium, to be increased by 70%	$\$3.804 \times 1.7$	=	\$6.467
(2) Sulphur Premium			\$1.300
(3) Suez Allowance			\$0.151
(4) Fourth Quarter Temporary Freight Premium			\$0.392
			<u>\$8.310</u>

10

A parallel calculation for the 27° API reference crude gives the following result:—

(1) Base Posting excluding Sulphur for 27° API crude The current Base Posting, including Permanent Freight but excluding Sulphur Premium, to be increased by 70%	$\$3.664 \times 1.7$	=	\$6.229
(2) Sulphur Premium			\$1.300
(3) Suez Allowance			\$0.151
(4) Fourth Quarter Temporary Freight Premium			\$0.392
			<u>\$8.072</u>

20

The Temporary Freight premium will now be established at 39.2 cents and will vary by every tenth of a point of quarterly change in LRII AFRA by \$0.0013.

Maintenance of Geneva II agreement would result in postings effective from November 1st as follows:—

34° API — \$8.404
27° API — \$8.163

Details of the calculations are enclosed.

To minimise the retroactive effect of these changes in the posted prices, we would be most grateful to receive your confirmation of the above as soon as possible.

30

Yours faithfully,
For: THE SHELL-BP PETROLEUM DEVELOPMENT
COMPANY OF NIGERIA LIMITED
L. C. van Wachem

No. 70
Circular letter:
Nigerian Director
of Petroleum
Resources to "All
Producing
Companies":
5th November
1973
(Annexure 78 to
The Nigeria
Affidavit)

No. 70
Circular letter:
Nigerian Director of Petroleum Resources to "All Producing Companies:"
(Annexure 78 to The Nigeria Affidavit)

5th November, 1973

To: ALL OIL PRODUCING COMPANIES.

Dear Sir,

The posted prices of Nigerian crude oils shall be as follows during the periods shown:

Period	Gravity Range	Posted Price	10
Effective 20/10/73	34.00° — 34.09°	\$8.310	
	27.00° — 27.09°	\$8.072	
Effective 1/11/73	34.00° — 34.09°	\$8.404	
	27.00° — 27.09°	\$8.163	

Yours faithfully,
(O. Lolomari)
for Director of Petroleum Resources

No. 71
Circular:
Nigerian Director
of Petroleum
Resources to "All
Producing
Companies":
2nd January 1974
(Annexure 79 to
The Nigeria
Affidavit)

No. 71
Circular:
Nigerian Director of Petroleum Resources to
"All Producing Companies":
(Annexure 79 to The Nigeria Affidavit)

20

2nd January, 1974

To: ALL OIL PRODUCING COMPANIES

Dear Sirs,

Posted Price — January, 1974

Effective 1st January, 1974, the posted prices of Nigerian crude oils shall be as below:

	27° API	34° API	30
Base posting	11.441	11.651	
Sulphur Premium	1.30	1.30	
Freight Differential	1.74	1.74	
Total	<u>14.481</u>	<u>14.691</u>	

For each degree increase in API gravity above 34° API, the posted price shall increase by 6 US cents per barrel, and for every degree decrease in API gravity below 34° API, the posted price shall be decreased by 3 US cents per barrel.

2. The above postings take into consideration the recently declared posted prices for Persian Gulf crudes.

Yours faithfully,
(O. A. Okanla)
for Director, Petroleum Resources

*No. 71
Circular:
Nigerian Director
of Petroleum
Resources to "All
Producing
Companies";
2nd January 1974
(Annexure 79 to
The Nigeria
Affidavit)
(Cont'd)*

10

**No. 72
Letter:
Nigerian Ministry of Mines and Power to Shell-BP:
(Annexure 80 to The Nigeria Affidavit)**

*No. 72
Letter:
Nigerian Ministry
of Mines and
Power to Shell-BP:
28th March 1974
(Annexure 80 to
The Nigeria
Affidavit)*

28th March, 1974

The Managing Director,
Shell-BP Dev. Co. (Nig) Ltd.,
LAGOS.

Dear Sir,

GOVERNMENT PARTICIPATION

I have to refer to our meeting of 28th March, 1974 and to confirm the main terms outlined for a revision of the existing agreement for Government participation in your petroleum operations as follows:

- (a) the level of Government participation shall be not less than 55% ;
- (b) subject to an agreement on prices Government would be willing to sell back to you out of its share of the oil produced the following quantities in the periods indicated:

1st April 1974 — 31st December 1974: 50%
1st Jan. 1975 — 31st December 1975: 25%

In addition you would be given the option, on first refusal basis, to buy the following quantities:

1st April 1974 — 31st December 1974: 25%
1st Jan. 1975 — 31st December 1975: 20%

No. 72
Letter:
Nigerian Ministry
of Mines and
Power to Shell-BP:
28th March 1974
(Annexure 80 to
The Nigeria
Affidavit)
(Cont'd)

- (c) the price of "buy-back" oil would be related to posted prices, and the price of "option" oil will be prevailing market price;
- (d) detailed arrangements for the administration and management of the joint venture operations will be worked out by mutual agreement;
- (e) the effective date of the new arrangements will be 1st April, 1974.

2. Please acknowledge receipt and, as agreed, let me have your suggestions for the implementation of those proposals not later than Wednesday, 3rd April, 1974.

Yours faithfully,
(P. C. Asiodu)
Permanent Secretary 10

No. 73
Letter:
Shell-BP to
Nigerian Ministry
of Mines and
Power:
16th April 1974
(Annexure 81 to
The Nigeria
Affidavit)

No. 73
Letter:
Shell-BP to Nigerian Ministry of Mines and Power:
(Annexure 81 to The Nigeria Affidavit)

16th April, 1974

The Permanent Secretary,
Federal Ministry of Mines & Power,
LAGOS.

Dear Sir,

**GOVERNMENT PARTICIPATION IN SHELL-BP
REVISED TERMS**

20

We write to confirm the agreement reached today regarding the amendment of the Participation Agreement between the Government and the Company dated 11th June 1973. This agreement can be summarised as follows:

- (a) **Percentage Level of Participation (Clause 1)**
The increment of 16 percent shall be increased to 20 percent and the date for the acquisition of the increment shall be brought forward from 1st April 1982 to 1st April 1974, so that the Government will acquire an interest of 55 percent with effect from 1st April of this year.

(b) Buyback and Option Volumes

The revised arrangements for buyback and option volumes will be:

- (i) For the period 1st April 1974 to 30th June 1974 the buyback percentage and option provisions under the terms of the Agreement dated 11th June 1973 shall remain in force. Consequently, the amount of 'excluded' crude shall remain unchanged for this period.
- (ii) With effect from 1st July 1974 the provisions of the Agreement dated 11th June 1973 shall be replaced by buyback and option volumes expressed as a percentage of Government Basic Right as under:

10	Period	Buyback	Option
	1st July 1974 — 31st March 1975	50	25
	1st April 1975 — 31st March 1976	25	20

- (iii) Further to the provisions set out in (i) and (ii) the Government recognises the Company's interest in being given the opportunity to buy additional volumes over and above the quantities set out above, as well as in later years. The Government will give the Company commercial opportunities to purchase such volumes and will give favourable consideration to offers received from the Company.

(c) Pricing of Buyback Oil

20 For the 2nd Quarter 1974 the firm buyback price shall be \$13.00/bbl for a reference crude of 34° API gravity.

The price basis for the period as from 1st July 1974 shall be left open for discussion and agreement at a later date. To this extent the buyback volumes as from July 1974 onwards remain subject to agreement on a future price basis.

(d) Pricing of Option Oil

For the 2nd Quarter 1974 the firm option price shall be \$13.25/bbl for a reference crude of 34° API gravity.

30 Thereafter option oil shall be purchased at market price, reflecting both spot sales and ongoing business, but the mechanism whereby such a market price may be related to actual realisations on Government sales requires further discussion.

(c) Consideration

The provisions in respect of consideration for the acquisition of the 35 percent interest will remain as set out in the Agreement dated 11th June 1973.

40 The amount of consideration for the additional 20 percent participation interest shall be the subject of further discussion between the Government and the Company. This amount will be established as soon as is practicable and will be due as from 1st April 1974.

(f) Further Implementation

This letter will be followed up by the amendment of the Agreement dated 11th June 1973 and the submission of revised drafts of the detailed Participation and Operating Agreements.

No. 73
Letter:
Shell-BP to
Nigerian Ministry
of Mines and
Power:
16th April 1974
(Annexure 81 to
The Nigeria
Affidavit)
(Cont'd)

No. 73
Letter:
Shell-BP to
Nigerian Ministry
of Mines and
Power:
16th April 1974
(Annexure 81 to
The Nigeria
Affidavit)
(Cont'd)

We should be grateful if you could give your agreement to the foregoing by initialling a copy of this letter.

Yours faithfully,
For: THE SHELL-BP PETROLEUM DEVELOPMENT
COMPANY OF NIGERIA LIMITED
L. C. van Wachem
Managing Director

P. C. Asiodu
PERMANENT SECRETARY
April 16, 1974.

10

No. 74
Affidavit:
J. C. E. Webster
30th September
1974

No. 74
Affidavit: J. C. E. Webster

ON the 30th day of September 1974
I, JAMES COLIN EDEN WEBSTER, of 19 Favart Road, London SW6, Company
Manager, say on oath:

1.—I am the Assistant General Manager of the Supply Department of BP Trading Limited (“BPT”) and I have held that office since April 1974, having previously been employed in the same Department as a Branch Manager from 1969-71 and as a Divisional Manager from 1971-73; I was first employed by the BP Group in 1959.

2.—BPT’s Supply Department is chiefly concerned with the efficient planning of 20
the logistics exercise of obtaining transporting and supplying the BP Group’s crude oil
and products to its refineries and customers.

3.—I say that the BP Group’s requirements of crude oil for the purpose of satis-
fying both the needs of its refining and market operations and its obligations to
purchasers of crude oil and products were throughout 1973 and throughout the current
year to date of such volume as to have been and still be incapable of satisfaction out of
the Group’s available sources of supply exclusive of its entitlements to “participation”
or “buy-back” crude from the Governments of Kuwait, Abu Dhabi, Qatar and Nigeria;
on the contrary, during the foregoing periods of time, the BP Group in order to satisfy
the needs of its said operations and obligations has lifted the totality of its availability 30
or entitlement to such “participation” or “buy-back” crude.

4.—I further say that by early 1973 the level of BP Group sales was already con-
strained because of losses of crude oil availability due to nationalisation of its oper-
ations in Libya in 1971 and of the operations of Iraq Petroleum Company in 1972 and
the limitation on crude oil production rates by the Kuwait Government in 1972.

5.—During the period from approximately the middle of October 1973 to at least the end of March, 1974, BPT's sources of crude oil and anticipated sources of crude oil (including in each case "participation crude") were such as to have obliged it to cut back or reduce crude oil sales to customers and limit its sales aspirations of product including furnace oil; BPT did in fact so cut back and limit its supplies to customers and potential customers during that period but was able ultimately not to impose a reduction on supplies of crude or product to BP Australia Limited ("BPA").

SWORN by the Deponent at London before me—

J. C. E. WEBSTER

D. W. JULIAN

NOTARY PUBLIC LONDON

10

No. 74
Affidavit:
J. C. E. Webster
30th September
1974
(Cont'd)

No. 75
Affidavit: D. E. Miller

No. 75
Affidavit:
D. E. Miller
4th October 1974

ON the 4th day of October 1974

I, DENNIS EDWARD MILLER, of 16 Salmons Lane, West Caterham, Surrey, Company Manager, say on oath:

1.—I am the Manager of the Pricing Division of BP Trading Limited ("BPT") and have held that office for nine years; my duties involve close association with oil pricing both as to crude and product, in the course of which I advise management on oil pricing generally including making recommendations as to posted prices of product.

20 2.—Product prices, that is to say, the price of manufactured oil or petroleum products of which one is furnace or fuel oil, are published or "posted" at a number of major supply centres throughout the world; Persian Gulf product prices were first posted in 1957.

30 3.—Price postings for individual products represent the posting company's assessment of the proper price levels for the products concerned. Changes of postings are made in the light of, firstly, the relative weight of the normal market influences, including supply and demand, on such products in the medium/long term contractual context, and the competitive price levels within the industry, and secondly, cost factors, most importantly crude oil acquisition and refining costs, to the extent considered appropriate. Cost variations are reflected only if allowed by the market but in my experience significant increases in the cost of acquisition of crude oil are reflected in an increase in the posted prices for products.

4.—Since May 1957 BPT has posted product prices for sales delivered in bulk cargo lots until 1967 f.o.b. Abadan and thereafter f.o.b. Bandar Mah-Shahr (both ports having oil product loading facilities on the Persian Gulf coast of Iran) in respect

No. 75
Affidavit:
D.E. Miller
4th October 1974
(Cont'd)

of products manufactured in the Abadan refinery. BPT announces its product postings by publishing at its London headquarters a series of schedules bearing its name and address and entitled 'Bandar Mah-Shahr Posted Prices—Petroleum Products'. These schedules are numbered and each one indicates the date on which it becomes effective. Each time that BPT changes the posted price of any of the grades of products covered by its schedules a new schedule is issued in the series. The grades of products covered by the schedules are the main grades normally manufactured at the Abadan refinery; these include furnace and fuel oil.

5.—Platt's Oilgram Price Service ("Platt's") is a recognised medium for oil price reporting and has been for many years. It publishes product prices posted by companies in the Caribbean, Middle East and Far East. Platt's has customarily published the BPT posted prices of petroleum products immediately upon being informed by BPT of a change; such prices are usually referred to in the industry as "BMS Posted Prices" and I shall hereinafter refer to the same by that expression. 10

6.—The refinery at Abadan is one of the largest in the world, the BP Group having the right to process through the refinery 120,000 barrels per day ("b/d") of crude oil; Bandar Mah-Shahr is BPT's largest supply point for refined products in the Middle East. BP Australia Limited ("BPA") customarily obtains all its imported product including furnace oil from BPT at prices (called "transfer prices") which are based on BPT's BMS Posted Prices. 20

7.—It is the practice of BPT to circularize its affiliates (including BPA) from its Pricing Division in London with details of its BMS Posted Prices as and when changes therein occur; exhibited to me at the time of swearing this Affidavit and marked "C1" is a bundle containing Schedules Numbers 25 to 81 of BMS Posted Prices (in the earlier Schedules the loading port is Abadan) issued by BPT for the period from 11th January, 1960 to 12th August, 1974.

8.—With regard to the change in the BP Group's crude oil acquisition cost the annexed tabulations marked "C2" "C3" "C4" and "C5" indicate the extent to which the variations in the tax reference price (posted price) and the tax rate and the various "participation" arrangements have affected the revenues paid by BP Group companies to producer governments for four representative Persian Gulf crude oil grades. 30

9.—The Group's acquisition cost of "equity crude" (as opposed to "participation crude") is made up of three basic elements, the operating costs (including depreciation), the royalty and the tax payable to the host government. The said annexed tabulations have been compiled (from information correctly extracted from company records). In so compiling the same, the operating cost has been held at a constant level to isolate and better illustrate the direct impact of the various changes in the tax and royalty. Also to achieve consistency throughout the period the compilations have been based on a constant specific gravity for each grade of crude oil.

10.—In addition to the increased costs of equity oil the Group has purchased "participation crude" under the various buy-back arrangements referred to in the Affidavits of James Hutchison Porter sworn herein. In the cases of Kuwait, Qatar and Abu Dhabi, the impact of the additional burden of buying back participation oil from the host governments is based on the proportions lifted and prices either as finally agreed or as indicated by host governments prior to 22nd March 1974 as minimum prices (the subsequently agreed prices were marginally higher and were retroactive to 1st 40

September, 1973). In the case of Iran (where "participation" as such does not apply) the additional cost over and above tax paid cost is based on the "balancing margin" referred to in the Iran Affidavit. The balancing margin, however, includes (relatively minor) financial adjustments which are not strictly attributable to the cost of oil and the margin shown in the tabulations has accordingly been adjusted to allow for these. The balancing margin for 1973 is still provisional and liable to increase and the balancing margin for 1974 is also provisional, being an interim payment on account.

10 11.—Exhibited hereto and marked "C6" is a graphical illustration of the development of the average total cost of Kuwait crude oil to the Group. The trend illustrated therein is representative of the general movement of the cost of Persian Gulf crudes available to the Group throughout the indicated period. This graph indicates the cost of all oil available from this source in terms of the tax paid cost for the equity share retained by the BP Group and the buy-back price for the government's share.

SWORN by the Deponent at London before me—

D. E. MILLER

D. W. JULIAN

NOTARY PUBLIC LONDON

No. 76
 Table:
 Variations in crude
 oil cost:
 Abu Dhabi
 (Annexure C2 to
 the Affidavit of
 D. E. Miller)

No. 76
Table:
Variations in crude oil cost: Abu Dhabi:
 (Annexure C2 to the Affidavit of D. E. Miller)

CRUDE OIL COST — ABU DHABI LAND EXPORT GRADE ° API F.O.B. JEBEL DHANA \$U.S.A. bbl.

	1967	1968	1969	1970		1971			1972				
				1/1- 13/11	14/11- 31/12	1/1- 14/2	15/2 31/5	1/6 31/12	1/1- 19/1	20/1- 31/12			
Posted Price	1.88	1.88	1.88		1.88	1.88		1.88	2.295	2.401		2.401	2.600
Tax Allowances	.153	.141	.128		.115	.115		.093	—	—		—	—
Taxable Price	1.727	1.739	1.752		1.765	1.765		1.787	2.295	2.401		2.401	2.600
Royalty	.235	.235	.235		.235	.235		.235	.287	.300		.300	.325
Op. Costs	.170	.170	.170		.170	.170		.170	.170	.170		.170	.170
Taxation	.661	.667	.674		.680	.748		.760	1.011	1.062		1.062	1.158
Representative Tax Paid Costs	1.066	1.072	1.079		1.085	1.153		1.165	1.468	1.532		1.532	1.653
Changes		.006	.007		.006	.068		.012	.303	.064		—	.121
				1973								1974	
	1/1- 31/3	1/4- 31/5	1- 30/6	1- 31/7	1/8- 30/9	1- 15/10	16/10- 31/10	1- 30/11	1- 31/12			1/1- 31/3	
Equity Crude Oil													
Posted Price/ Taxable Price	2.714	2.883	3.028	3.086	3.200	3.144	6.045	6.113	5.944			12.636	
Royalty	.339	.360	.379	.386	.400	.393	.756	.764	.743			1.580	
Op. Costs	.170	.170	.170	.170	.170	.170	.170	.170	.170			.170	
Taxation	1.213	1.294	1.363	1.391	1.446	1.419	2.815	2.848	2.767			5.987	
Representative Tax Paid Costs	1.722	1.824	1.912	1.947	2.016	1.982	3.741	3.782	3.680			7.737	
Buyback Crude Oil													
Average Price	2.282	2.398	2.498	2.538	2.616/2.976	2.924	5.622	5.685	5.528			11.751	
Proportion Equity/Buyback	—	—	—	—	75/22.5	—	—	—	—			40/56	
Representative Cost of Lifting	1.851	1.956	2.047	2.083	2.154/2.238	2.200	4.175	4.221	4.106			10.079	
Changes	.198	.105	.091	.036	.071/.084	(.038)	1.975	.046	(.115)			5.973	

See explanatory notes dated 3rd October, 1974

No. 77
Table:
Variations in crude oil cost: Qatar:
(Annexure C3 to the Affidavit of D. E. Miller)

CRUDE OIL COST — QATAR EXPORT GRADE 40° API F.O.B. UMM SAID \$ U.S. bbl.

	1967	1968	1969	1970		1971			1972	
				1/1- 13/11	14/11- 31/12	1/1- 14/2	15/2- 31/5	1/6- 31/12	1/1- 19/1	20/1- 31/12
Posted Price	1.930	1.930	1.930	1.930	1.930	1.930	2.280	2.387	2.387	2.590
Tax Allowances	.159	.144	.130	.117	.117	.094	—	—	—	—
Taxable Price	1.771	1.786	1.800	1.813	1.813	1.836	2.280	2.387	2.387	2.590
Royalty	.241	.241	.241	.241	.241	.241	.285	.298	.298	.324
Op. Costs	.170	.170	.170	.170	.170	.170	.170	.170	.170	.170
Taxation	.680	.688	.695	.701	.771	.784	1.004	1.055	1.055	1.153
Representative Tax Paid Costs	1.091	1.099	1.106	1.112	1.182	1.195	1.459	1.523	1.523	1.647
Changes		.008	.007	.006	.070	.013	.264	.064	—	.124
Equity Crude Oil					1973					1974
	1/1- 31/3	1/4- 31/5	1- 30/6	1- 31/7	1/8- 30/9	1- 15/10	16/10 31/10	1- 30/11	1- 31/12	1/1- 31/3
Posted Price/Taxable Price	2.705	2.877	3.025	3.084	3.200	3.143	5.834	5.899	5.737	12.414
Royalty	.338	.360	.378	.386	.400	.393	.729	.737	.717	1.552
Op. Costs	.170	.170	.170	.170	.170	.170	.170	.170	.170	.170
Taxation	1.208	1.291	1.362	1.390	1.447	1.419	2.714	2.746	2.668	5.881
Representative Tax Paid Costs	1.716	1.821	1.910	1.946	2.017	1.982	3.613	3.653	3.555	7.603
Buy-back Crude Oil										
Average Price	2.150	2.269	2.371	2.412	2.492/2.976	2.923	5.426	5.486	5.335	11.546
Proportion Equity/Buyback	←				75/22½				→	40/60
Representative Cost of Lifting	1.816	1.924	2.016	2.054	2.127/2.238	2.199	4.031	4.076	3.966	9.969
Changes	.169	.108	.092	.038	.073/.111	(.039)	1.832	.045	(.110)	6.003

See explanatory notes dated 3rd October, 1974

No. 78
Table:
Variations in crude oil cost: Kuwait:
 (Annexure C4 to the Affidavit of D. E. Miller)

CRUDE OIL COST — KUWAIT EXPORT GRADE 31° API F.O.B. MINA-AL-AHMADI \$U.S.A. bbl.

	1967	1968	1969	←1970→		←1971→			←1972→		
				1/1- 13/11	14/11- 31/12	1/1- 14/2	15/2- 31/5	1/6- 31/12	1/1- 19/1	20/1- 31/12	
Posted Price	1.590	1.590	1.590	1.590	1.680	1.680	2.085	2.187	2.187	2.373	
Tax Allowances	.119	.105	.092	.078	.082	.059	—	—	—	—	
Taxable Price	1.471	1.485	1.498	1.512	1.598	1.621	2.085	2.187	2.187	2.373	
Royalty	.199	.199	.199	.199	.210	.210	.261	.274	.274	.297	
Op. Costs	.060	.060	.060	.060	.060	.060	.060	.060	.060	.060	
Taxation	.606	.613	.620	.627	.730	.743	.970	1.019	1.019	1.109	
Representative Tax Paid Costs	.865	.872	.879	.886	1.000	1.013	1.291	1.353	1.353	1.466	
Changes		.007	.007	.007	.114	.013	.278	.062	—	0.113	
	←1973→										
	1/1- 31/3	1/4- 31/5	1- 30/6	1- 31/7	1/8- 30/9	1- 15/10	16/10- 31/10	1- 30/11	1- 31/12	1974 1/1- 31/3	
Equity Crude Oil											
Posted Price/ Taxable Price	2.482	2.639	2.776	2.830	2.936	2.884	4.903	4.957	4.822	11.545	
Royalty	.310	.330	.347	.354	.367	.361	.613	.620	.603	1.443	
Op. Costs	.060	.060	.060	.060	.060	.060	.060	.060	.060	.060	
Taxation	1.162	1.237	1.303	1.329	1.380	1.355	2.327	2.352	2.287	5.523	
Representative Tax Paid Costs	1.532	1.627	1.710	1.743	1.807	1.776	3.000	3.032	2.950	7.026	
Buyback Crude Oil											
Average Price	1.934	2.043	2.139	2.176	2.249/2.730	2.682	4.560	4.610	4.484	10.737	
Proportion Equity/Buyback	← 75/20.5 →										40/52
Representative Cost of Lifting	1.618	1.716	1.802	1.836	1.902/2.005	1.970	3.335	3.371	3.279	9.124	
Changes	.152	.098	.086	.034	.066/.103	(0.035)	1.365	.036	(.092)	5.845	

See explanatory notes dated 3rd October, 1974

No. 79
Table:
Variations in crude oil cost: Iran:
Explanatory Notes to all tables:
(Annexure C5 to the Affidavit of D. E. Miller)

CRUDE OIL COST — IRANIAN LIGHT EXPORT GRADE 34.0° API F.O.B. KHARG ISLAND \$U.S.A. bbl.

	1967	1968	1969	1970			1971			1972	
				1/1- 13/11	14/11- 31/12	1/1- 14/2	15/2- 31/5	1/6- 31/12	1/1- 19/1	20/1- 31/12	
Posted Price	1.79	1.79	1.79	1.79	1.79	1.79	1.79	2.17	2.274	2.274	2.467
Tax Allowances	.140	.126	.113	.099	.099	.076	—	—	—	—	—
Taxable Price	1.650	1.664	1.677	1.691	1.691	1.714	2.17	2.274	2.274	2.274	2.467
Royalty	.224	.224	.224	.224	.224	.224	.271	.284	.284	.284	.308
Op. Costs	.120	.120	.120	.120	.120	.120	.120	.120	.120	.120	.120
Taxation	.653	.660	.667	.674	.741	.753	.978	1.029	1.029	1.029	1.121
Representative Tax Paid Costs	.997	1.004	1.011	1.018	1.085	1.097	1.369	1.433	1.433	1.433	1.549
Changes		.007	.007	.007	.067	.012	.272	.064	—	—	.116
					1973					1974	
	1/1- 31/3	1/4- 31/5	1- 30/6	1- 31/7	1/8- 30/9	1- 15/10	16/10- 31/10	1- 30/11	1- 31/12	1/1- 31/3	
Equity Crude Oil											
Posted Price/Taxable Price	2.579	2.743	2.884	2.940	3.050	2.995	5.341	5.401	5.254	11.875	
Royalty	.322	.343	.360	.368	.381	.374	.668	.675	.657	1.484	
Op. Costs	.120	.120	.120	.120	.120	.120	.120	.120	.120	.120	
Taxation	1.175	1.254	1.322	1.349	1.402	1.376	2.504	2.533	2.462	5.649	
Representative Tax Paid Costs	1.617	1.717	1.802	1.837	1.903	1.870	3.292	3.328	3.239	7.253	
	21-31/3										
Balancing Margin	.100	.100	.100	.100	.100	.100	.100	.100	.100	1.692	
Representative Cost of Lifting	1.617/ 1.717	1.817	1.902	1.937	2.003	1.970	3.392	3.428	3.339	8.945	
Changes	.068/ .100	.100	.085	.035	.066	(.033)	1.422	.036	(.089)	5.606	

See explanatory notes dated 3rd October, 1974

No. 79
Table:
Variations in crude
oil cost:
Iran:
Explanatory Notes
to all tables:
(Annexure C5 to
The Affidavit of
D.E. Miller)

EXPLANATORY NOTES TO ALL TABLES

No. 79
Table:
Variations in crude
oil cost:
Iran:
Explanatory Notes
to all tables:
(Annexure C5 to
The Affidavit of
D.E. Miller)

A. EQUITY CRUDE OIL

1. **Posted Price**
As published.
For Abu Dhabi the published postings have been adjusted from 15/2/71 to take account of the retroactive increases for this source under government direction.
2. **Tax Allowances**
Allowances pursuant the 1965 Royalty Expensing Agreements.
3. **Royalty** 10
12½% of posted price (in Iran called "stated payment").
4. **Operating Costs**
At constant representative levels.
5. **Taxation**
At 50% to 13/11/70 and at 55% thereafter.
6. **Representative Tax Paid Cost**
The sum of royalty, operating costs and taxation.

B. BUY-BACK CRUDE OIL

7. **Average Price** 20
Abu Dhabi and Qatar
As per General Agreement on Participation to 1/9/73.
Thereafter at 93% of posting.
Kuwait
As for Abu Dhabi and Qatar pursuant to 1974 Participation Agreement.
8. **Balancing Margin (Iran)**
Net of tax and financial adjustments.
As per 1973 Sale and Purchase Agreement at provisional rate of U.S. 6½¢ gross per barrel for 1973 liftings.
As per 1974 provisional agreement as to interim payment of U.S. \$3.50 gross on account for 1974 liftings. 30

3rd October, 1974

No. 80
Affidavit: P. N. G. Price

No. 80
Affidavit:
P.N.G. Price
4th October 1974

ON the 4th day of October 1974

I, PETER NORMAN GEORGE PRICE of 61 Cornwall Road, Cheam, Surrey, England, Chartered Accountant, say on oath:

1.—I am a partner in the firm of Whinney Murray & Co. Chartered Accountants and have been a partner in the said firm and its predecessors for twelve years; my firm's London practice is conducted at and from Number 57 Chiswell Street, London EC1; apart from carrying on practice in twelve cities of the United Kingdom, my firm also
10 has associate firms which carry on practice in a number of countries overseas; I qualified as a Chartered Accountant in the United Kingdom in the year 1952.

2.—My said firm has acted as Auditors of The British Petroleum Company Limited (hereinafter referred to as "BP") since its incorporation in the year 1909; as part of our present duties as auditors of BP we report on the BP Group Accounts, which comprise a consolidation of the income statements and balance sheets of BP and all its subsidiaries with certain minor exceptions; I am engaged as a partner on the audit of the BP Group Accounts and have been so engaged for 12 years in that capacity and also for 6 years prior to becoming a partner in the course of which I have become familiar with the structure and detail of the international operations carried on by BP
20 and its subsidiaries (hereinafter referred to as "the BP Group").

3.—Exhibited to me at the time of swearing this Affidavit and marked "C7" is a true copy of the Annual Report and Accounts for the year ended 31st December 1973 which contains on pages numbered 19 to 30 inclusive the BP Group Accounts upon which my said firm has reported as auditors. Although not covered by our statutory report, that section of the Operating Statistics for 1964 to 1973 headed "Sources of Crude Oil" appearing on page 36 has been compared under my direction with the BP Group's working papers, which support the group accounts for the years in question, and found to agree therewith.

4.—The document comprising annexure "C8" hereto has been handed to me by an
30 official of BP: I have examined the material therein set forth and in my opinion, based upon my firm's independent examination of the books and records of BP and of the subsidiaries which I consider necessary for this purpose, the material contained in the said annexure has been properly prepared and correctly states the tonnages and sources of crude oil as shown therein.

5.—The documents comprising annexures "C2" "C3" "C4" and "C5" to the Affidavit of Dennis Edward Miller sworn herein have also been handed to me by an official of BP and have been exhibited to me at the time of swearing this Affidavit; I have examined the material therein set forth and in my opinion, based upon my firm's independent examination of the books and records of BP and of such of its subsidiaries
40 as I consider necessary for this purpose, the material contained in the said annexures, based on the assumptions stated in the explanatory notes thereto, has been properly prepared and fairly reflects the changes in the tax paid costs up to 1972 and average costs thereafter in respect of crude oil of the stated grades lifted by the BP Group.

SWORN by the Deponent at London before me—

NOTARY PUBLIC LONDON

P. N. G. PRICE

D. W. JULIAN

No. 81
Table:
Sources of BP
Group Crude:
(Annexure C8 to
the Affidavit of
P.N.G. Price)

No. 81
Table:
Sources of BP Group Crude:
(Annexure C8 to the Affidavit of P.N.G. Price)

SOURCES OF BP GROUP CRUDE OIL — YEARLY ANALYSIS 1969-1973
(in millions metric tons)

	Total	1969				
		Local Trader Contracts	Utilised By Other Group Companies		BP Trading	
IRAN	58.5	6.2		52.3	10	
KUWAIT	54.5	23.4		31.1		
ABU DHABI						
LAND	3.5			3.5		
MARINE	6.9			6.9		
IRAQ	17.7			17.7		
QATAR	2.2			2.2		
LIBYA	8.7			8.7		
NIGERIA	9.1			9.1		20
TRINIDAD	1.4		1.4			
CANADA	1.6		1.6			
AFRICA	4.6		4.6			
AUSTRALIA						
SUNDRY OWN PRODUCTION AND PURCHASES	4.6		0.7	3.9		
	173.3	29.6	8.3	135.4		

	Total	1970				
		Local Trader Contracts	Utilised By Other Group Companies		BP Trading	
IRAN	67.8	5.3		62.5	30	
KUWAIT	57.5	25.8		31.7		
ABU DHABI						
LAND	3.9			3.9		
MARINE	8.3			8.3		
IRAQ	18.8			18.8		
QATAR	1.8			1.8		
LIBYA	12.5			12.5		
NIGERIA	19.3			19.3		40
TRINIDAD						
CANADA	1.6		1.6			
AFRICA	4.8		4.8			
AUSTRALIA	1.4		1.4			
SUNDRY OWN PRODUCTION AND PURCHASES	4.3		0.5	3.8		
	202.0	31.1	8.3	162.6		

No. 81
Table:
Sources of BP
Group Crude:
(Annexure C8 to
the Affidavit of
P.N.G. Price)
(Cont'd)

		1971			
		BP Total	Local Trader Contracts	Utilised By Other Group Companies	BP Trading
	IRAN	74.7	9.2		65.5
	KUWAIT	59.7	24.8		34.9
	ABU DHABI				
	LAND	5.6			5.6
10	MARINE	9.5			9.5
	IRAQ	20.4			20.4
	QATAR	2.4			2.4
	LIBYA	11.6			11.6
	NIGERIA	27.5			27.5
	TRINIDAD				
	CANADA	1.7		1.7	
	AFRICA	0.7		0.7	
	AUSTRALIA	2.6		2.6	
20	SUNDRY OWN PRODUCTION AND PURCHASES	5.7		0.4	5.3
		222.1	34.0	5.4	182.7

		1972			
		Total	Local Trader Contracts	Utilised By Other Group Companies	BP Trading
	IRAN	89.1	9.8		79.3
	KUWAIT	73.5	33.5		40.0
	ABU DHABI				
	LAND	6.9			6.9
30	MARINE	14.3			14.3
	IRAQ	12.3			12.3
	QATAR	2.7			2.7
	LIBYA				
	NIGERIA	29.2			29.2
	TRINIDAD				
	CANADA	1.8		1.8	
	AFRICA	0.1		0.1	
	AUSTRALIA	2.9		2.9	
40	SUNDRY OWN PRODUCTION AND PURCHASES	9.5		0.4	9.1
		242.3	43.3	5.2	193.8

No. 81
Table:
Sources of BP
Group Crude:
(Annexure C8 to
the Affidavit of
P.N.G. Price)
(Cont'd)

	1973				
	Total	Local Trader Contracts	Utilised By Other Group Companies	BP Trading	
IRAN	99.1	10.5		88.6	
KUWAIT	66.3	29.6		36.7	
ABU DHABI					
LAND	8.8			8.8	
MARINE	11.0			11.0	10
IRAQ	10.7			10.7	
QATAR	2.8			2.8	
LIBYA					
NIGERIA	31.0			31.0	
TRINIDAD					
CANADA	2.4		2.4		
AFRICA	1.6		1.6		
AUSTRALIA	3.1		3.1		
SUNDRY OWN PRODUCTION AND PURCHASES	1.8		0.3	1.5	20
	238.6	40.1	7.4	191.1	

No. 82
Affidavit: R. A. Munt

No. 82
Affidavit:
R. A. Munt
4th October 1974

ON the 4th day of October, 1974

I, RICHARD ARTHUR MUNT of 4 Hilton Street, Beaumaris, Victoria, Accountant, say on oath:

Part A — Introduction

1.—I am the Manager—Commercial Services Department within the Central Planning and Co-ordination Division of BP Australia Limited.

10 2.—BP Australia Limited (hereinafter referred to as “BPA”) is a wholly owned subsidiary of The British Petroleum Company of Australia Limited (hereinafter referred to as “BPCA”) and is the oil owning and marketing company of the BP Group of Companies in Australia. BPCA is a wholly owned subsidiary of The British Petroleum Company Limited (hereinafter called “the Parent Company”).

3.—Up to 31st December, 1969 the import of crude petroleum (also known as crude oil but hereinafter referred to as “crude”), partly refined feedstock and finished products with minor exceptions was carried out for the purpose of BP Group operations in Australia by BP Oil Supplies Proprietary Limited (hereinafter referred to as “BPOS”) which was and still is also a wholly owned subsidiary of BPCA. On and from 1st January, 1970 the supply and trading functions of BPOS were continued by BPA.

20 **Part B — Crude Oil Supplies**

4.—All supplies of crude from overseas sources were obtained by BPOS and subsequently are now obtained by BPA from BP Trading Limited (hereinafter referred to as “BPT”) which is a wholly owned subsidiary of the Parent Company. BPT is and has for many years been the principal operating company of the BP Group. BPA has never imported into Australia crude from any company other than BPT.

5.—Prior to Australian oilfields coming into production, BPOS imported the whole of its supplies of crude into this country from overseas. In 1964 the Moonie fields in Queensland came into production. This was followed in 1967 by the Barrow fields in Western Australia and finally in October, 1969 by the Bass Strait fields.

30 6.—Supplies of Australian indigenous crude have since been purchased from the undermentioned Australian producers, prior to 1970, by BPOS and, from 1970, by BPA:

- (a) The Bass Strait fields—from Esso Exploration and Production Australia Inc. and Hematite Petroleum Proprietary Limited
- (b) The Barrow fields—from Texaco Overseas Petroleum Company
- (c) The Moonie and associated fields—from Union Oil Development Corporation and Kern County Land Company up to and including 31st December 1972 and thereafter from International Oils Exploration No Liability

40 Neither BPA nor any related or associated company have any relevant share ownership in any of the said Australian producers.

7.—Annexed hereto and marked “82” is a table showing particulars of all crude acquired by BPOS and then BPA from January, 1969 to February, 1974 both by way of import from overseas and internally from within Australia. All such crude was acquired by way of purchase.

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Affidavit:
R.A. Munt
4th October 1974
(Cont'd)

8.—With regard to the physical mode of acquisition of overseas crude, delivery has been taken by BPA from BPT at the relevant overseas ports on a C.I.F. basis, such ports at least since the year 1969 being entirely located within the Persian Gulf. Transportation to Australia has been by tank ship procured by BPT at BPA's cost.

9.—With respect to indigenous crude, the same has been physically taken up from the following points—

- (a) in respect of the Bass Strait field—initially from Long Island Point in Westernport Bay by tank ship and shortly thereafter by pipeline direct into BPA's Westernport Refinery.
- (b) in respect of the Barrow field by tank ship from Barrow Island to BPA's 10 refinery at Kwinana near Perth.

Crude obtained from the Moonie field was physically taken up by other oil companies on an exchange basis with BPA; crude from Moonie in the ordinary course is refined in Brisbane and BPA does not have a refinery in Queensland or New South Wales.

Part C — Furnace Oil Supplies

10.—With regard to furnace oil supplies, BPA obtains furnace oil within Australia from the two refineries hereinafter referred to (they being BPA Group's only Australian refineries) as well as from refineries operated by other companies pursuant to product exchange arrangements as hereinafter referred to.

11.—The BP refinery at Kwinana, Western Australia, is operated by BP Refinery 20 (Kwinana) Proprietary Limited, a wholly owned subsidiary of BPCA. It manufactures a wide range of petroleum products including furnace oil and processes Barrow Island and Middle East crudes. It is the only crude oil refinery in Western Australia and supplies the bulk of Western Australia's requirements of petroleum products. It has two crude processing (distillation) units each having a capacity of 55,000 barrels (35 Imperial gallons per barrel) per stream day and has a total potential throughput of 5.1 million long tons of crude per annum. This refinery was commissioned in 1955.

12.—At Westernport, some 45 miles southeast of Melbourne, a refinery is operated by BP Refinery (Westernport) Proprietary Limited, a wholly owned subsidiary of BPA. It is connected by pipeline to Esso/BHP's Long Island crude oil 30 terminal. The crude processed through this refinery comprises both Middle East crude and Bass Strait crude, the former now being quite insignificant in quantity since the Bass Strait field came into full production. The Westernport refinery has a crude processing (distillation) unit with a present rated maximum capacity of 60,000 barrels per stream day with a total potential throughput of 2.6 million long tons of crude per annum. Westernport refinery was commissioned in 1966.

13.—As referred to earlier BPA acquires furnace oil from other companies in Australia under product exchange arrangements. The general principle of these arrangements is that products are physically exchanged at one point for "repayment" at another point. In this way quantities of products are made available to BPA at various 40 locations throughout Australia without BPA having to transport the same long distances from BPA's own refineries to the places of demand.

14.—In addition to the output of furnace oil from BPA's own refineries, BPA purchases imported furnace oil from BPT. Annexed hereto and marked "83" is a table setting out particulars of all imported furnace oil purchased from BPT and all furnace oil manufactured within Australia from January, 1969 to February, 1974.

15.—In respect of imports of furnace oil from overseas BPA takes delivery thereof on a C.I.F. basis from the overseas ports. Transportation to Australia by tank ship at BPA's cost is arranged by BPT, as in the case of imports of crude hereinbefore referred to.

16.—BPA's furnace oil requirements in northern parts of Australia other than for Nabalco are and have always been small. Requirements for Broome and Port Hedland in the north west of Western Australia are predominantly supplied from Kwinana Refinery in small parcels on Australian coastal tankers. Requirements for Townsville are predominantly met by import from overseas. Requirements for Cairns are pre-
 10 dominantly met by product exchange arrangements. BPA has no regular requirement for furnace oil in Darwin but, when necessary in the past, supply has been achieved by purchase from another oil company.

17.—Particulars of all furnace oil delivered by BPA to Nabalco at Gove are set out on the table annexed hereto and marked "84".

Part D — Australian Indigenous Crude Policies

18.—From the inception of crude oil production in Australia (commencing with the Moonie fields), the Australian Government adopted measures to ensure that indigenous crude oil would be used by refineries in Australia and oil companies refining or marketing petroleum products in Australia (including BPA) have been
 20 required to purchase the indigenous crude produced. This has in fact always occurred, the price of indigenous crude being determined by the Government.

19.—The Australian Government policy decisions regarding the use of indigenous crude oil were announced in a statement by the Prime Minister to the Parliament on 10th October, 1968. A copy of the said statement is annexed hereto and marked "85".

20.—There has been no material change ever announced to those policy decisions. Pursuant to Letters Patent issued by the Governor General of Australia dated 12th September, 1973, Mr. Justice Wilfred Herbert Collins was appointed a Commissioner to inquire into and report upon the production, marketing and pricing of petroleum products in Australia. On 9th July, 1974, Mr. Liddell of Counsel, appearing for the
 30 Australian Government, made the following statement during the proceedings of the Commission—

"The indigenous crude oil absorption policy as formulated in 1968 by the Gorton government and as set out in the statement made by the then Prime Minister in Parliament on 10th October 1968 is confirmed by the present government in its operation as to allocation and pricing and continues in force until September 1980 with a review of price in September 1975. Consideration and review of the policy are matters for determination by the government from time to time. That is the statement that I have been instructed to make".

40 21.—Under the indigenous crude allocation formula adopted by the Australian Government in implementation of its abovementioned policy, BPA is required to purchase and has in fact purchased a quota of the total quantity of indigenous crude produced proportionate to BPA's share of the market in Australia of certain stipulated petroleum products. In 1968 these petroleum products were categorised as "Category A Products" and comprised the following—

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4th October 1974
(Cont'd)

Aviation gasoline (including international aviation bunkers)
Motor spirit
Power kerosine
Aviation turbine fuel (including international aviation bunkers)
Lighting kerosine
Heating oil
Automotive distillate
Industrial diesel fuel (including marine diesel, local and international bunkers)

22.—In the beginning of 1971 the said allocation formula was changed by adding thereto the product categorised as “inland fuel”. The expression “inland fuel” means all fuel oil sold within Australia but does not include bunker fuel oil and fuel oil exported from Australia nor does it include fuel oil categorised as “CIF”. The expression “CIF” where used in the foregoing context means product delivered into customer storage by tank ship or pipeline ex refineries. Category “CIF” includes all furnace oil supplied and required to be supplied to Nabalco pursuant to the Supply Agreement dated 11th June, 1970. Accordingly BPA does not receive any allocation of indigenous crude pursuant to the said allocation formula for the purpose of manufacturing furnace oil within Australia for sale to Nabalco under the said Supply Agreement. 10

23.—The term “fuel oil” has the same meaning as “furnace oil”. 20

Part E — Cost of Furnace Oil

24.—BPA has always obtained exclusively from BPT the totality of its requirements of overseas petroleum products and has never imported supplies of the specified quality of furnace oil the subject of the said Supply Agreement (hereinafter referred to as “the specified furnace oil”) or of any other petroleum product otherwise than from BPT with minor exceptions such as in the case of packaged products.

25.—There is no contract as such between BPA and BPT with regard to continued supply of petroleum products including furnace oil but the arrangement between them is that BPT will endeavour to supply BPA with its requirements of such products which BPA does not obtain from the BP refineries in Australia or from product exchange in Australia. 30

26.—The arrangement as to the price of fuel oil during the period of the said Supply Agreement was that BPA should pay to BPT, in addition to the cost of freight and insurance, a price as agreed between them from time to time being BPT’s Bandar Mah-Shahr posted price for light fuel oil subject to agreed discounts for grade and for market factors as hereinafter referred to in paragraph 29.

27.—Except to the extent hereinafter referred to, the foregoing arrangement between BPA and BPT is not documented in writing, although in relation to shipments and contemplated shipments there takes place between BPA and BPT correspondence dealing with such matters as quantity and type of product required, time and place of delivery and price, and invoices are issued by BPT to BPA. There does exist however correspondence between BPT and BPOS both under the name of BPOS and under its former name BP (Kwinana) Proprietary Limited, true copies whereof are bundled together and annexed hereto and marked “86” such material constituting the basis of the arrangement which has subsisted between BPA and BPT. 40

28.—Annexed hereto and marked "87" is a table showing the cost per metric ton incurred by BPA in favour of BPT in respect of all of the specified furnace oil supplied by BPA to the Plaintiff pursuant to the said Supply Agreement excluding the cost of insurance and freight.

29.—The practice within BPA with regard to prices to be paid to BPT has been that all price alterations are referred to my department which after consideration of the proper commercial price levels payable on an "arms-length" basis makes recommendations to BPA's senior management officials for their decision as to acceptability or otherwise.

10 30.—The increases in cost of furnace oil occurring since October, 1973 as shown on the said annexure marked "87" were agreed to by BPA upon my recommendation that the same were fair and reasonable. I say that BPA was, at the time of my making such recommendations, and has continued to be, obliged to meet the increases in price proposed by BPT in order to satisfy BPA's market commitments.

SWORN by the Deponent at Sydney before me—

R. A. MUNT
J. FAULKNER, J.P.

No. 83
Table: Crude oil acquired by Defendant:
(Annexure 82 to the Affidavit of R. A. Munt)

CRUDE OIL ACQUIRED BY BPA (LONG TONS TO NEAREST THOUSAND)

Country of origin	Type of Crude Oil	1969		1970		1971		1972		1973		1974	
		Quantity	% of total	Quantity	% of total	Quantity	% of total	Quantity	% of total	Quantity	% of total	January-February	% of total
Kuwait	(Kuwait	1,288,000		1,066,000		694,000		986,000		1,404,000		216,000	
	Enriched	—		46,000		—		—		—		—	
Iran	(Iranian Heavy	124,000		364,000		—		—		129,000		35,000	
	(Iranian Light	64,000		45,000		—		—		86,000		—	
Iraq	Iraq (Basra)	—		326,000		1,012,000		596,000		671,000		86,000	
Qatar	Qatar	892,000		896,000		493,000		474,000		325,000		69,000	
Abu Dhabi	(Abu Dhabi					50,000		—		—		—	
	(Marine)	662,000		26,000		—		—		—		—	
	(Abu Dhabi					—		48,000		—		—	
	(Land)	—		—		—		—		—		—	
Saudi Arabia	Arabian Light	—		3,000		—		—		—		—	
Total Imports		3,030,000	88	2,772,000	66	2,249,000	47	2,104,000	43	2,615,000	46	406,000	47
Australia	(Moonie/Alton/ Conloi/Bennet												
	(Mix	47,000		29,000		23,000		16,000		15,000		2,000	
	(Barrow Island	369,000		382,000		419,000		324,000		388,000		70,000	
	(Gippsland	—		1,012,000		2,109,000		2,477,000		2,651,000		395,000	
Total Indigenous		416,000	12	1,423,000	34	2,551,000	53	2,817,000	57	3,054,000	54	467,000	53
Grand Total		3,446,000	100	4,195,000	100	4,800,000	100	4,921,000	100	5,669,000	100	873,000	100

No. 84
Table: Furnace oil acquired by Defendant:
(Annexure 83 to the Affidavit of R. A. Munt)

FURNACE OIL ACQUIRED BY BPA (LONG TONS TO NEAREST THOUSAND)

Source Country	Source Refinery	1969		1970		1971		1972		1973		1974 January-February	
		Quantity	% of total	Quantity	% of total	Quantity	% of total	Quantity	% of total	Quantity	% of total	Quantity	% of total
Iran	Abadan	227,000		73,000		252,000		237,000		385,000		110,000	
Kuwait	Kuwait	364,000		468,000		306,000		66,000		93,000		77,000	
Aden	Aden	258,000		249,000		367,000		93,000		374,000		100,000	
Pakistan	Karachi	17,000		58,000		76,000		18,000		—		—	
New Zealand	Whangarei	19,000		—		—		—		—		—	
Singapore	Singapore	1,000		43,000		311,000		358,000		426,000		50,000	
Ceylon	Colombo	—		19,000		—		—		—		—	
Total Imports		886,000	38	910,000	37	1,312,000	35	772,000	34	1,278,000	41	337,000	58
Australia	Kwinana	1,087,000		1,283,000		1,649,000		888,000		1,145,000		195,000	
Total Australian Refinery Output	Westernport	364,000		249,000		812,000		608,000		703,000		50,000	
Grand Total		2,337,000	100	2,442,000	100	3,773,000	100	2,268,000	100	3,126,000	100	582,000	100

No. 85
Table:
Furnace oil
deliveries to
Plaintiff:
(Annexure 84 to
the Affidavit of
R.A. Munt)

No. 85
Table: Furnace oil deliveries to Plaintiff:
(Annexure 84 to the Affidavit of R. A. Munt)

BPA FURNACE OIL DELIVERIES TO NABALCO PTY. LTD. AT GOVE

Cargo Number	Name of Tank Ship	Loading Port	Date Loaded	Date of Discharge	Quantity Invoiced (Metric tons)	
1	Edgewater	Aden	31.3.71	5.5.71	5,045	
2	Nata	Aden	3.8.71	20.8.71	35,950	
3	Border Castle	Singapore	5.1.72	14.1.72	19,690	10
4	British Skill	Singapore	3.7.72	12.7.72	27,585	
5	British Skill	Singapore	27.9.72	11.10.72	24,108	
6	Amanda Miller	Brisbane	—	19.10.72	21,212	
7	Solen	Brisbane	—	1.1.73	19,887	
8	Golden Eagle	Singapore	21.1.73	2.2.73	32,313	
9	Golden Eagle	Aden	2.3.73	20.3.73	32,473	
10	Border Shepherd	Singapore	17.5.73	26.5.73	20,087	
11	Herulv	Singapore	20.6.73	1.7.73	20,727	
12	Tahama	Singapore	11.7.73	21.7.73	19,198	
13	Marna	Singapore	16.8.73	25.8.73	25,409	20
14	Emmanuel Colocotronis	Singapore	24.9.73	4.10.73	29,885	
15	Ninfea	Singapore	26.10.73	14.11.73	29,746	
16	Atlantic Universe	Singapore	3.12.73	13.12.73	29,026	
17	Promachos	Singapore	26.12.73	4.1.74	19,686	
18	Atlantic Universe	Singapore	31.1.74	10.2.74	32,172	
19	Agia Erithiani	Singapore	15.3.74	3.4.74	32,348	
20	Promachos	Singapore	12.4.74	21.4.74	19,868	
21	Border Chieftain	Singapore	11.5.74	3.6.74	19,662	
22	Loida	Singapore	5.6.74	14.6.74	32,265	
23	Tamara	Singapore	9.7.74	19.7.74	19,594	30

No. 86
Australian Prime
Minister:
Statement on
Australian
Indigenous Crude
Oil Policy: 10th
October 1968
(Annexure 85 to
the Affidavit of
R.A. Munt)

No. 86
Australian Prime Minister:
Statement on Australian Indigenous Crude Oil Policy:
(Annexure 85 to the Affidavit of R. A. Munt)

STATEMENT BY THE PRIME MINISTER

In September 1965 the Government announced certain policy decisions regarding the use of Australian indigenous crude oil.

Those decisions were a re-affirmation of the policy that the Government was determined that local refineries use all the crude oil produced in Australia, and an announcement that the price to be paid by refineries for Australian crude would be 40 \$3.14 cents a barrel at the customs port at the refining centre nearest to the producing field. Included in this price was 67 cents a barrel as an "incentive" payment.

This arrangement was to finish on September 17, 1970, and no decisions were announced as to what would happen after that date.

At that time the Moonie field was the only one in operation. The production of the Moonie and Barrow fields was, and is, comparatively small and the extra cost resulting from the crude oil they sell at \$3.14 cents a barrel, together with freight costs is already included in petrol prices in Australia.

Subsequently, very extensive oil fields were discovered in Bass Strait by Esso/BHP. Oil from these fields should begin to flow in March 1969 and by September 1970 it is expected that the fields will be producing at over 250,000 barrels of crude
10 oil a day. During that period, this field may well produce in the vicinity of 60 million barrels. The prospect of such large quantities of oil which refineries had to buy at a price so much higher than the price of imported oil, obviously created a new problem and led to forecasts of considerable rises in prices of petrol and other petroleum products.

Because of the effects that this would have throughout the economy the Government has most carefully studied the various problems raised and I have for some time been engaged in a series of negotiations with Australian oil producers and refiners.

I now wish to inform the House that the Government re-affirms its policy that for a period of ten years beginning on September 18, 1970, refineries in Australia are to
20 process Australian crude oil in order to provide the full requirements of the Australian market for petroleum products.

This is of course subject to the need for sufficient imports to meet the requirements in Australia for bitumen, lubricants and fuel oil in excess of quantities than can be realised from Australian crude.

Secondly the Government announces as policy that for a period of five years after September 17, 1970—when the present policy arrangements terminate—the price that refineries will be required to pay Australian producers will be import parity.

Import parity is defined as the posted prices of overseas oil as of today, less the discounts allowed off these posted prices as of today, plus overseas freights at the most
30 efficient and economic rates prevailing today, plus wharfage where applicable.

To this price will be added a sum for quality differential worked out by the modified Nelson method.

From the import parity price so arrived at will be deducted a sum representation the average freight cost of delivering Australian oil to the refineries from the port of delivery by the most economical means possible.

This will mean that as from September 1970, for a period of five years, the price payable for Australian oil should generally be neither higher, nor lower, than the price now payable for overseas oil except for the effect of Australian coastal freights.

I now come to the period between March 1969 and September 1970 during which
40 the present arrangement operates, during which the presently applying high prices for Australian crudes were agreed to be paid, and during which significant increases in the cost of petroleum products have been suggested.

No. 86
 Australian Prime
 Minister:
 Statement on
 Australian
 Indigenous Crude
 Oil Policy: 10th
 October 1968
 (Annexure 85 to
 the Affidavit of
 R. A. Munt)
 (Cont'd)

I have already said that the cost of oil from Moonie and Barrow at these high prices has been absorbed in existing petrol prices, and no alteration is to be made to the prices payable for oil from those fields until after September 1970—when the import parity prices which I have described will apply.

In the case of the oil fields discovered by Esso/BHP we have agreed by negotiation that there will be a reduction in the prices Australian refineries are required to pay up to September 1970.

Our agreement is that Esso/BHP will altogether forego the 67 cents a barrel known as the “incentive” allowance. In addition, Esso/BHP will allow refineries a further discount of 5 cents a barrel. 10

The result is between March 1969 and September 1970 the price to be paid for this oil will be reduced from \$3.14 cents a barrel to \$2.42 cents a barrel at the customs port at the refining centre nearest to the producing field.

After September 1970 the price payable for this oil will be import parity as already explained. This will reduce the price payable still further.

To sum up, Mr. Speaker, the new arrangements made will mean that the large newly discovered quantities of Australian oil to be used between March 1969 and September 1970 will cost 72 cents a barrel, or a little over 2 cents a gallon, less than was previously anticipated.

After September 1970 the price payable for Australian crudes will be no more 20 than the price of imported overseas crudes today except for any extra cost involved in coastal transportation.

This will not—between March 1969 and September 1970—in itself prevent any increase in the price of petrol. But it will undoubtedly materially reduce the size of any rise that might take place.

I have so far spoken only of the pricing policy for Australian crudes and of the Government's requirement that the Australian market should be supplied from such crudes.

But we need to discover more oil in Australia.

The Government is therefore currently studying the separate question of the need 30 for incentive for oil exploration in the period after September 17, 1970.

Various proposals are under examination and we will in due course announce the form of incentive, if any, which we will adopt.

In the meantime the arrangements I have just announced will provide a firm basis upon which industry can plan ahead for the use of Australian crudes and will reduce any future rise in the price of petroleum products.

CANBERRA
 10 October 1968.

No. 87
Correspondence:
BP (Kwinana) Pty Ltd, BP Oil Supplies Pty Ltd and
BP Trading Limited as to furnace oil supplies:
 (Annexure 86 to the Affidavit of R. A. Munt)

No. 87
Correspondence:
BP (Kwinana) Pty
Ltd, BP Oil
Supplies Pty Ltd
and BP Trading
Limited as to
furnace oil
supplies:
25th January
1963-1st May
1967
(Annexure 86 to
the Affidavit of
R.A. Munt)

25th January, 1963

BP (Kwinana) Proprietary Limited,
 Kwinana,
 Western Australia.

Dear Sirs,

10 We write to confirm the agreement previously reached between us that with effect from 1st December, 1961, and until further notice, we will endeavour to supply you with any petroleum products required by you in part or whole cargo lots for resale to BP Australia Limited and which you are unable to meet from your own production at Kwinana Refinery. As at the date hereof the petroleum products in question are those listed in the attachment to this letter.

It has been agreed that for the purposes of assessing the price of such products the F.o.b. and Ocean Freight Components shall be determined as follows:—

(a) **F.o.b. Component**

20 The F.o.b. component shall be the average of BP Trading Limited's posted price for sales of the quality of petroleum product in question delivered f.o.b. Abadan in bulk cargo lots effective for each day of the month preceding the month in which loading commences. If, however, there is no posted price available for the product in question, the F.o.b. component shall be as mutually agreed between us.

(b) **Ocean Freight Component**

The ocean freight component shall be the rate of freight for the voyage from Abadan to the discharge port or ports in question assessed by reference to the Medium Assessed Freight Rate Indicator ("MAFRI").

30 The other terms and conditions upon which such products shall be supplied to you shall be as agreed between us as appropriate for the product in question and in any event shall be generally in accordance with our general terms and conditions for the method of delivery in question.

In consideration of your obtaining an outlet in Australia for such petroleum products we have, subject as below, agreed to pay you with effect from 1st December, 1961 a Merchandising Fee, the amount of which shall be as mutually agreed between us from time to time.

Such Fee shall be payable in arrears at the end of each calendar quarter in sterling. It is understood, however, that payment of the said Fee may be terminated by us at any time upon giving you not less than three months' notice in writing to that effect.

40 This letter is being addressed to you in duplicate original and we shall be glad if you will kindly confirm your agreement with the terms hereof by countersigning one

No. 87
 Correspondence:
 BP (Kwinana) Pty
 Ltd, BP Oil
 Supplies Pty Ltd
 and BP Trading
 Limited as to
 furnace oil
 supplies:
 25th January
 1963-1st May
 1967
 (Annexure 86 to
 the Affidavit of
 R.A. Munt)
 (Cont'd)

original of the letter in the space provided below and returning that original to us for retention.

Yours faithfully,
 for BP TRADING LIMITED
 D. G. L. Bean
 General Manager
 Supply and Development Department

We hereby acknowledge receipt of the above-written letter and confirm our agreement with the terms thereof.

T. G. Overton
 BP (KWINANA) PROPRIETARY LIMITED

10

ATTACHMENT TO LETTER FROM BP TRADING LIMITED TO
 BP (KWINANA) PROPRIETARY LIMITED DATED 25.1.63
 Aviation Gasoline
 Aviation Turbine Fuel (i.e. both Gasoline and Kerosine types)
 Special Aviation Fuel
 Motor Spirit
 Lighting Kerosine
 Vaporising Oil
 White Spirit
 Special Boiling Point Spirits
 Special Industrial Feedstocks
 Gas Oil/Diesel Oil
 Fuel Oil

20

26th February, 1964

BP (Kwinana) Proprietary Limited,
 Kwinana,
 Western Australia.

Dear Sirs,

We refer to the Letter Agreement between us dated 25th January, 1963 and now 30 write to confirm the agreement previously reached between us that with effect from 1st January, 1964, and until further notice, the attachment thereto shall be amended to include a reference to "basic lubricating oils", supplies of which shall (subject as below) be made in accordance with the terms of the aforementioned Letter Agreement.

It has been agreed, however, that for the purposes of assessing the price of basic lubricating oils the F.O.B. and Ocean Freight Components shall be determined as follows:—

(a) **F.O.B. Component**

The f.o.b. component shall be the assessed fair market value expressed in terms of a value f.o.b. Gulf of Mexico as agreed between us as at the first day 40 of the calendar quarter in which loading commences.

(b) Ocean Freight Component

The ocean freight component shall be the sum of:—

- (i) The rate of freight for the voyage from Houston to Melbourne and Sydney as at the date of commencement of loading of the shipment in question assessed by reference to the Medium Assessed Freight Rate Indicator (MAFRI), and
- (ii) a percentage of such rate of freight as agreed between us from time to time as representing the appropriate additional cost of the carriage of basic lubricating oils in bulk as compared with the cost generally incurred in the carriage of petroleum products in bulk. Unless or until otherwise agreed, such percentage shall be at the rate of 20%

10

No. 87
Correspondence:
BP (Kwinana) Pty
Ltd, BP Oil
Supplies Pty Ltd
and BP Trading
Limited as to
furnace oil
supplies:
25th January
1963-1st May
1967
(Annexure 86 to
the Affidavit of
R.A. Munt)
(Cont'd)

This letter is being addressed to you in duplicate original and we shall be glad if you will kindly confirm your agreement with the terms hereof by countersigning one original of the letter in the space provided below and returning that original to us for retention.

Yours faithfully,
for BP TRADING LIMITED
D. G. L. Bean
General Manager

20

Supply and Development Department

We hereby acknowledge receipt of the above written letter and confirm our agreement with the terms hereof.

T. G. Overton
BP (KWINANA) PROPRIETARY LIMITED

17th July, 1964

BP (Kwinana) Proprietary Limited,
Kwinana,
Western Australia.

Dear Sirs,

30 We refer to the Letter Agreement between us dated 26th February, 1964, and now write to record that it has been agreed between us that the said Letter Agreement shall be deemed to have been amended with effect from the date of signature as follows:—

Ocean Freight Component**Sub-section (i)**

In line 1 of this sub-section the word "round" shall be deemed to have been inserted before the word "voyage".

Sub-section (ii)

In lines 1 and 2 of this sub-section the following shall be deemed to have been deleted:—

40 "(ii) A percentage of such rate of freight as agreed between us from time to time . . ."

No. 87
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BP (Kwinana) Pty
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supplies:
25th January
1963-1st May
1967
(Annexure 86 to
the Affidavit of
R.A. Munt)
(Cont'd)

and the following substituted therefor:—

“(ii) A percentage of the rate of freight for the round voyage from Houston to Melbourne and Sydney as at the date of commencement of loading of the shipment in question assessed by reference to Intascale . . .”

This letter is being addressed to you in duplicate original and we shall be glad if you will kindly confirm your agreement with the contents hereof by countersigning one original of the letter in the space provided below and returning that original to us for retention.

Yours faithfully,
for BP TRADING LIMITED
D. G. L. Bean
General Manager,
Supply and Development Department

10

We confirm our agreement to the contents of the above written letter.

T. G. Overton
BP (KWINANA) PROPRIETARY LIMITED

4th November, 1964

BP (Kwinana) Proprietary Limited,
Fremantle,
WESTERN AUSTRALIA.

20

Dear Sirs,

New AFRA Freight Assessments

As previously advised you, the London Tanker Broker's Panel has recently announced certain changes in the terms of reference which form the basis of calculation of the freight assessment known as AFRA, and in the light of these modifications, with effect from 1st July, 1964, BP is able to support AFRA as a factual indicator of the level of freight at which the major portion of world oil is being moved. AFRA awards, which have the advantage of being published, are now to be made half yearly on 1st January and 1st July.

In view of the wider support now commanded by AFRA, our intention is to 30 employ these new levels retroactively as from 1st July, 1964 in determining the ocean freight element when invoicing you, based on the following principles:

PRODUCTS

1. **Determination of Basic Category of AFRA to be applied**
G.P. AFRA will be used for all product deliveries which can be made on a regular and continuing basis on cargo lots of at least 18,000 tons.
2. **Size Premium**
Voyages involving deliveries to a port(s) necessitating the use of a vessel of under 525° L.O.A. will be invoiced at G.P. AFRA plus an appropriate size premium.

3. Invoice Voyage

The voyage to which the appropriate AFRA will be applied will be from the notional loading port applicable to that Associate (e.g. N.W.I. or Abadan) to the port or ports at which discharge is required by that Associate.

4. Deadfreight

(1) Deadfreight will be charged in all cases where the size of cargo is limited at the request of the Associate to a level below the carrying capacity of the vessel used. The amount of deadfreight will be calculated by subtracting the tonnage delivered from whichever is the lesser of the carrying capacity of:—

- 10 (i) the vessel use, or
 (ii) the vessel forming the upper limit (i.e. 24999 tons SDW) of the G.P. AFRA category.

(2) If a cargo is discharged for the account of more than one Associate, any deadfreight charges arising from the application of the above will be reduced so that the total of the sum invoiced will be equivalent to the amount derived by multiplying the appropriate rate for the voyage from the notional loading port to the actual ports of discharge by the carrying capacity of the vessel used, such reductions being apportioned equitably between the Associates according to the particular circumstances of the whole operation.

20 Accordingly, on the assumption that you will not be able regularly to request cargoes in excess of the maximum proposed category, we intend that with effect from 1st July, 1964 ocean freight for the invoicing of our products supplies to you including finished blending components but excluding bulk lubricating oils, should be calculated with reference to the AFRA assessment for General Purpose vessels.

The appropriate freight charges are as follows:—

	Abadan to Adelaide	42/-	p.l.t.
	Fremantle/Albany	38/-	"
	Melbourne/Bell Bay	45/11	"
	Brisbane	47/9	"
30	Fremantle/Bunbury	36/9	"
	Melbourne/Burnie	45/8	"
	Brisbane/Cairns	48/6	"
	Darwin/Geraldton	40/9	"
	Melbourne/Devonport	45/8	"
	Sydney/Port Kembla/Eden	48/4	"
	Fremantle	35/9	"
	Fremantle/Geraldton	36/9	"
	Brisbane/Gladstone	48/7	"
	Melbourne/Hobart	46/6	"
40	Brisbane/Mackay	48/7	"
	Melbourne	44/2	"
	Sydney/Newcastle	47/7	"
	Fremantle/Geraldton/Onslow	38/3	"
	Sydney/Port Kembla	47/3	"
	Melbourne/Portland	45/-	"
	Adelaide/Port Lincoln	43/-	"
	Adelaide/Port Pirie	43/11	"
	Sydney/South West Rocks	48/4	"

No. 87
 Correspondence:
 BP (Kwinana) Pty
 Ltd, BP Oil
 Supplies Pty Ltd
 and BP Trading
 Limited as to
 furnace oil
 supplies:
 25th January
 1963-1st May
 1967
 (Annexure 86 to
 the Affidavit of
 R.A. Munt)
 (Cont'd)

No.87
Correspondence:
BP (Kwinana) Pty
Ltd, BP Oil
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and BP Trading
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25th January
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1967
(Annexure 86 to
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R. A. Munt)
(Cont'd)

Sydney	46/3	''
Brisbane/Townsville	48/7	''
Brisbane/Urangan	48/9	''
Adelaide/Whyalla	43/7	''

The refreighting allowances will be as follows (all rates include 1s.10d. p.l.t. tank cleaning).

Aden	27/5	p.l.t.
Atlantic Islands	22/4	''
Buenos Aires	21/3	''
Far East	15/3	''
India/Ceylon	22/-	''
New Caledonia	7/1	''
New Zealand	5/9	''
North-West Europe	28/10	''
South Africa	19/8	''
U.K.	28/9	''

10

We should appreciate your formal acceptance of this proposal as soon as possible, and when we receive it we will take such steps as may be necessary to amend any relevant supply agreements between us, and also to arrange for any monetary adjustments that may be called for.

20

Yours faithfully,
for BP TRADING LIMITED
(R. G. Bridgen)
Transport Services Branch
Supply and Development Department

25th November 1964.

6402/JO'B

BP Trading Limited,
Britannic House,
Finsbury Circus,
London. E.C.2.

Letter No. 466 30

For attention: Transport Services Branch
Supply & Development Dept.

Dear Sirs,

NEW AFRA FREIGHT ASSESSMENTS

We refer to your letter S & D/301/8381 dated 4th November 1964, in which you detail the principles you propose applying for determining the freight element to be invoiced to this Company for Product purchases.

We confirm that the proposals are acceptable, and look forward to receiving the necessary credit note relating to Product purchases retroactively as from 1st July 1964.

No.87
 Correspondence:
 BP (Kwinana) Pty
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 (Annexure 86 to
 the Affidavit of
 R.A. Munt)
 (Cont'd)

We also confirm that we shall be applying the same principles to the freight element in invoices for Sales to BP Fremantle and BP Trading, and we shall be forwarding within the next few days credit notes for each Sales made after 1st July 1964.

Yours faithfully,
 BP (KWINANA) PROPRIETARY LIMITED,
 (T. G. Overton)
 Manager

23rd March, 1965

10 BP (Kwinana) Proprietary Limited,
 Fremantle
 Western Australia.

Dear Sirs,

We refer to the Letter Agreement between us dated 26th February, 1964 regarding the supply by us of your requirements of imported basic lubricating oils.

We now write to record that it has been agreed between us that with affect from 1st July, 1964 the said Letter Agreement shall be deemed to have been amended as follows:—

Section (b)(i)

20 In the last two lines of this section, the words "Medium Assessed Freight Rate Indicator (M.A.F.R.I.)" shall be deleted and replaced by "General Purpose Average Freight Rate Assessment ("G.P. A.F.R.A.")".

This letter is being addressed to you in duplicate original and we shall be glad if you will kindly confirm your agreement with the contents hereof by countersigning one original of the letter in the space provided below and returning that original to us for retention.

Yours faithfully,
 for BP TRADING LIMITED
 D. G. L. Bean
 General Manager,
 30 Supply and Development Department

We confirm our agreement to the contents of the above written letter.

BP (KWINANA) PROPRIETARY LIMITED

23rd March, 1965

BP (Kwinana) Proprietary Limited,
 Fremantle,
 Western Australia.

No.87
 Correspondence:
 BP (Kwinana) Pty
 Ltd, BP Oil
 Supplies Pty Ltd
 and BP Trading
 Limited as to
 furnace oil
 supplied:
 25th January
 1963-1st May
 1967
 (Annexure 86 to
 the Affidavit of
 R.A. Munt)
 (Cont'd)

Dear Sirs,

We refer to the Letter Agreement between us dated 25th January, 1963 regarding the supply by us of your requirements of petroleum products for resale to BP Australia Limited which are not available to you from your own production at Kwinana Refinery.

We now write to record that it has been agreed between us that with effect from 1st July, 1964 the said Letter Agreement shall be deemed to have been amended as follows:—

Section (b)

In the last line of this section, the words “Medium Assessed Freight Rate 10 Indicator (“M.A.F.R.I.”)” shall be deleted and replaced by “General Purpose Average Freight Rate Assessment (“G.P. A.F.R.A.”)”. 10

This letter is being addressed to you in duplicate original and we shall be glad if you will kindly confirm your agreement with the contents hereof by countersigning one original of the letter in the space provided below and returning that original to us for retention.

Yours faithfully,
 for BP TRADING LIMITED
 D. G. L. Bean
 General Manager, 20
 Supply and Development Department

We confirm our agreement to the contents of the above written letter.

BP (KWINANA) PROPRIETARY LIMITED

1st May, 1967

BP Oil Supplies Proprietary Limited,
 Melbourne, S.C. 2.,
 Victoria.

Dear Sirs,

We refer to the under-mentioned Letter Agreements and now write to record the agreement between us that with effect from 1st July, 1966 the said Letter Agreements 30 shall be amended as follows:—

1. **Letter Agreement between BP Trading Ltd. and BP (Kwinana) Pty. Ltd. dated 25th January, 1963.**

In lines 5 and 6 delete “at Kwinana Refinery” and substitute “in Australia”.

No.87
 Correspondence:
 BP (Kwinana) Pty
 Ltd, BP Oil
 Supplies Pty Ltd
 and BP Trading
 Limited as to
 furnace oil
 supplied:
 25th January
 1963-1st May
 1967
 (Annexure 86 to
 the Affidavit of
 R.A. Munt)
 (Cont'd)

2. **Letter Agreement between BP Trading Ltd. and BP (Kwinana) Pty. Ltd. dated 23rd March, 1965 (relating to supplies of light distillate, other semi-processed feedstock and finished blending components).**

- (i) In line 5 delete "the Kwinana Refinery" and substitute "Australia".
- (ii) In Clauses (b)(i) (1)—line , (b)(i) (2)—line 5 and (b)(iii)—line 3, delete "Kwinana" and substitute "the discharge port in question".

3. **Letter Agreement between BP Trading Ltd. and BP (Kwinana) Pty. Ltd. dated 23rd March, 1965 (relating to the shipment of crude petroleum in conjunction with light distillate or other semi-processed feedstock).**

- 10
- (i) **First Paragraph**
 In line 5 delete the words "the Kwinana Refinery" and substitute "Australia".
 - (ii) **Sub-paragraph (i)**
 In line 3 delete the word "Kwinana" and substitute "the discharge port in question".
 - (iii) **Sub-paragraph (ii)**
 In line 3 delete the word "Kwinana" and substitute "the discharge port in question".

20 4. **Letter Agreement between BP (Kwinana) Pty. Ltd. and BP Trading Ltd. dated 19th June, 1957 (as amended by Letter Agreement dated 26th February, 1965).**

- (i) In Clause I—line 2 delete "Kwinana" and substitute "Australia".
- (ii) In Clause 1.2.—line 2 delete "Kwinana" and substitute "the Australian Refinery in question".
- (iii) In Clause 1.3—line 4 delete "Kwinana" and substitute "the Australian Refinery in question".

5. **Letter Agreement between BP (Kwinana) Pty. Ltd. and BP Trading Ltd. dated 18th January, 1963.**

In line 4 delete "at Kwinana Refinery" and substitute "on our behalf at Australian Refineries".

30 This letter is being addressed to you in duplicate original and we shall be glad if you will kindly confirm your agreement with the contents hereof by countersigning one original of the letter in the space provided below and returning that original to us for retention.

Yours faithfully,
 for BP TRADING LIMITED
 General Manager
 Supply and Development Department

We confirm our agreement to the contents of the above written letter.

BP OIL SUPPLIES PROPRIETARY LIMITED

No. 88
Amended
Schedule:
Cost of furnace oil
incurred by
Defendant:
(Annexure 87A to
the Affidavit of
R. A. Munt)

No. 88
Amended Schedule:
Cost of furnace oil incurred by Defendant:
(Annexure 87A to the Affidavit of R. A. Munt)

COST IN AUSTRALIAN CURRENCY PER METRIC TON OF FURNACE OIL PURCHASED
FROM BP TRADING LIMITED FOR DELIVERY TO NABALCO PTY. LIMITED AT GOVE
(EXCLUDING INSURANCE AND FREIGHT)

Cargo Number	Date Loaded	Cost	Variation	
1	31.3.71	10.48	—	
2	3.8.71	12.26	+ 1.78	10
3	5.1.72	10.74	— 1.52	
4	3.7.72	10.19	— 0.55	
5	27.9.72	10.82	+ 0.63	
6)	Supplied by Amoco Australia Ltd.,			
7)	Brisbane, under exchange arrangements			
8	21.1.73	8.55*	— 2.27	
9	2.3.73	8.29*	— 0.26	
10	17.5.73	8.41*	+ 0.12	
11	20.6.73	8.39*	— 0.02	
12	11.7.73	8.38*	— 0.01	20
13	16.8.73	8.40*	+ 0.02	
14	24.9.73	8.27*	— 0.13	
15	26.10.73	9.68*	+ 1.41	
16	3.12.73	13.45	+ 3.77	
17	26.12.73	13.31	— 0.14	
18	31.1.74	14.00**	+ 0.69	
19	15.3.74	39.74	+25.74	
20	12.4.74	38.55	— 1.19	
21	11.5.74	39.54	+ 0.99	
22	5.6.74	38.55	— 0.99	30
23	9.7.74	38.18	— 0.37	

* (reduced following negotiations for price adjustment retrospective to 1st January, 1973)

** (amended after re-calculation)

No. 89
Affidavit: R. L. Pritchard

No. 89
Affidavit:
R. L. Pritchard
9th October 1974

ON the Ninth day of October, 1974.
I, ROBERT LLOYD PRITCHARD of 11 The Outpost, Northbridge, New South
Wales, Solicitor, say on oath:

1.—I am the Solicitor for the Defendant herein.

2.—Annexed hereto and marked "88" is a true copy of a letter dated 4th June,
1970 from the Defendant to the Plaintiff which I am instructed by the Defendant was
sent to the Plaintiff with the Agreements referred to therein prior to the execution and
10 dating of the said Agreements on 11th June, 1970.

3.—Annexed hereto and marked "89" is a true copy of an Agreement dated 11th
September, 1973 between the Plaintiff and the Defendant.

SWORN by the Deponent at Sydney before me—

R. L. PRITCHARD
J. FAULKNER

No. 90
Letter:
Defendant to Plaintiff:
(Annexure 88 to the Affidavit of R. L. Pritchard)

No. 90
Letter:
Defendant to
Plaintiff:
4th June 1970
(Annexure 88 to
the Affidavit of
R.L. Pritchard)

4th June, 1970

20 Nabalco Pty Ltd,
Sydney,
NEW SOUTH WALES, 2000.

Attention: Mr E. A. Notter

Dear Sirs,

We enclose herewith for sealing by the respective companies two copies of each of
the undermentioned documents:

Supply Agreement	—	Nabalco Pty Limited
Loan Agreement	—	Swiss Aluminium Australia Pty Limited
Loan Agreement	—	Gove Alumina Limited

30 We leave it to you to date the documents and to insert the date of the Supply
Agreement in recital (B) of the Loan Agreements.

No. 90
Letter:
Defendant to
Plaintiff:
4th June 1970
(Annexure 88 to
the Affidavit of
R.L. Pritchard)

As agreed with Mr Notter during discussions on 1st June 1970 we ask that you confirm that our agreement to delete the reference to "other marketing conditions" from sub-clause 9(c)(i) of the Supply Agreement was based on your acknowledgment that the heading to the sub-clause and the expression "F.O.B. value" appearing in the sub-clause is not to be construed as meaning Posted Prices issued by BP or any other Oil Company or prices notified in any publication such as Platt's Oilgram Price Service.

After the documents have been sealed please arrange for them to be posted or handed to our N.S.W. Solicitors, Messrs Arthur R. Pritchard & Co. of 107 Elizabeth Street, Sydney, together with the confirmatory letter mentioned above. Our cheques in payment of the first instalment of each of the loans will then be made available for 10 handing to you at the office of our N.S.W. Solicitors.

Yours faithfully,
BP AUSTRALIA LIMITED
J. H. Rowland
Secretary

No. 91
Agreement:
Defendant and
Plaintiff:
11th September
1973
(Annexure 89 to
the Affidavit of
R.L. Pritchard)

No. 91
Agreement:
Defendant and Plaintiff:
(Annexure 89 to the Affidavit of R. L. Pritchard)

AGREEMENT made the Eleventh day of September 1973 BETWEEN BP 20 AUSTRALIA LIMITED whose registered office is at 1 Albert Road, Melbourne (hereinafter called "the Seller") of the one part AND NABALCO PTY. LIMITED whose registered office is at 1 Alfred Street, Sydney (hereinafter called "the Buyer") of the other part

WHEREBY IT IS AGREED as follows—

- A. The Seller and the Buyer did on the 11th day of June 1970 enter into a certain agreement for the supply and delivery of certain products
- B. Clause 9 of that agreement refers to an ocean freight rate as being expressed in Sterling Currency
- C. The said ocean freight rate is, for reasons outside the control of either the 30 Buyer or the Seller, now expressed in United States currency only
- D. The parties wish to amend the said Clause in order to take into account the change in situation and in order to give the clause its proper and intended effect
- E. Clause 9A(b) of the said agreement refers to the conversion of Sterling amounts to Australian currency at an official rate of exchange
- F. Because of circumstances outside the control of the parties—in that the Sterling currency has since the date of the said agreement floated—there now exists no official fixed rate of exchange between Sterling and Australian Dollars

G. The parties wish to amend the said subclause in order that, by substituting an alternative exchange formula, the clause may be given its proper and intended effect

No. 91
Agreement:
Defendant and
Plaintiff:
11th September
1973
(Annexure 89 to
the Affidavit of
R.L. Pritchard)
(Cont'd)

NOW THIS DEED WITNESSETH as follows—

1.—As and from the 1st day of January 1972 the said agreement shall be read and construed to the intent that the following amendments are deemed to be and are hereby incorporated therein—

- (a) Insert the words “converted from \$US to £Stg at the relevant London selling closing exchange rate published by AAP Reuters Economic Service on the day of adjustment or if there is no such publication relative to that day then such publication made immediately prior to that day”
 - (i) between the words “rate” and “effective” where those words appear in the ninth and tenth lines (including heading and subheading) of Clause 9A of the said agreement
 - (ii) After the figures “1976” in the second last line of Clause 9A(a) of the said agreement
 - (iii) between the words “rate” and “effective” where those words appear in the tenth line of Clause 9A(b) of the said agreement
 - (iv) after the word “assessments” where that word appears in the thirteenth line of Clause 9A(b) of the said agreement
 - (v) between the words “rate” and “effective” where those words appear in the ninth line (including heading and subheading) of Clause 9B of the said agreement
 - (vi) after the figures “1976” in the ninth line of Clause 9B(a) of the said agreement
 - (vii) between the words “rate” and “effective” where those words appear in the eighth and ninth lines of Clause 9B(b) of the said agreement
- (b) by deleting the second last line of Clause 9A(b) of the said agreement and substituting therefor the words “relevant London selling closing exchange rate published by AAP Reuters Economic Service”

IN WITNESS WHEREOF these presents have been executed on the day and in the year first hereinbefore mentioned.

THE COMMON SEAL of BP AUSTRALIA LIMITED was hereunto affixed by authority of the Board of Directors and in the presence of

L. SWAN
Director
J. H. ROWLAND
Secretary

THE COMMON SEAL of NABALCO PTY. LIMITED was hereunto affixed by authority of the Board of Directors and in the presence of

DAVID GRIFFIN
Directors
EDDY NOTTER
Secretary

No. 92
Affidavit:
M.A. Adelman
6th January 1975

No. 92
Affidavit: M. A. Adelman

ON the 6th day of January, 1975

I, MORRIS ALBERT ADELMAN of 83 Nehoiden Road, Waban, Massachusetts, one of the United States of America, Professor of Economics, say on oath:

1.—I am a Professor of Economics at Massachusetts Institute of Technology, Cambridge, Massachusetts, United States of America. I am a member of the Steering Committee, Energy Laboratory, of that Institute, a former member of the American Petroleum Institute Co-ordinating Committee on Economics and Statistics and of the Energy Advisory Panel of the National Committee on Materials Policy. I am currently 10 a member of the Board of Editors of the Quarterly Journal "Energy Policy" (London, United Kingdom) and of the Energy Forecasting Committee to the Federal Energy Administration of the United States of America. I am the author of numerous articles and books concerning the oil industry particularly, "The Supply and Price of Natural Gas" (1962), "The World Petroleum Market" (1972) and a recent study as co-author entitled "Energy Self-Sufficiency: An Economic Evaluation" by Massachusetts Institute of Technology Energy Laboratory Policy Study Group published by Technology Review (May, 1974) and an article entitled "The Energy Crisis: One Year Later" (1975).

2.—I have read the affidavits filed herein, particularly the affidavits referred to 20 respectively as the Principal Affidavit, the Kuwait Affidavit, the Iran Affidavit, the Iraq Affidavit, the Abu Dhabi Affidavit, the Qatar Affidavit and the Nigeria Affidavit. The events referred to in those affidavits were the subject of widespread comment in the oil industry and of widespread publication in the industry press.

3.—The F.O.B. value of furnace oil throughout the world altered substantially, by way of increase, as a direct consequence of the events set forth in those affidavits.

MORRIS ALBERT ADELMAN

SWORN by the deponent in the City, County and State of New York in the United States of America before me this 6th day of January, 1975:

LESLIE SAMUEL WOODS 30
Australian Consulate-General
New York

No. 93
Affidavit: J. H. Rowland

No. 93
Affidavit:
J.H. Rowland
11th February
1975

ON the 11th day of February, 1975

I, JOHN HOWARD ROWLAND of 5 Remon Avenue, Camberwell, in the State of Victoria, Company Secretary say on oath:

1.—I am the Secretary of the abovenamed Defendant.

2.—I crave leave to refer to the Affidavit of David Griffin sworn the 19th June, 1974 and filed herein and in particular to the Notice annexed thereto and marked "B" which I shall herein refer to as "the said Notice".

10 3.—The Defendant has for the past eight years adopted as its accounting period the period of twelve months ended the 31st day of December in each calendar year; the Defendant's last completed accounting period prior to the giving of the said Notice was the period of twelve months ended 31st December, 1973.

4.—The sum of amounts received by the Defendant during the period of twelve months that ended on 31st December, 1973 as payments for the supply of goods exceeded Twenty million dollars (\$20,000,000.00).

20 5.—I also crave leave to refer to the Affidavit of Richard Arthur Munt sworn the 4th October, 1974 and filed herein and in particular to the table of furnace oil deliveries to the Plaintiff annexed thereto and marked "84"; as appears therefrom the last delivery of furnace oil which was made to the Plaintiff pursuant to the Supply Agreement the subject of these proceedings prior to the giving of the said Notice took place on 10th February, 1974.

6.—All deliveries to the Plaintiff from 4th January, 1974 as shown on the said table were supplied at a base price of \$13.99 per metric ton save and except the delivery made on 19th July, 1974 which was supplied at a base price of \$13.39 per metric ton. The foregoing expression "base price" represents the invoiced price of the furnace oil as delivered to the Plaintiff at Gove, such invoiced price being equivalent to the base price for the time being applicable under the said Supply Agreement. The Plaintiff duly paid the Defendant for all such deliveries at the said invoiced prices.

30 7.—Annexed hereto and marked "90" are true copies of pages 1 and 3 of the Australian Government Gazette issued on 5th December, 1973; furnace oil delivered into customer storage by tank ship pursuant to the said Supply Agreement does NOT qualify under the Australian Government's indigenous crude allocation formula for an allocation of indigenous crude oil. As appears from the said Notice the revised base price for furnace oil the subject of the said Notice was in excess, in the aggregate, of ten per cent (10%) of the base price applying under the said Supply Agreement as at the date of giving of such Notice.

40 8.—Annexed hereto and marked "91" is a true copy of a letter bearing date 21st January, 1974 sent by the Defendant to the Chairman of the Prices Justification Tribunal (hereinafter called "the Tribunal") together with an extract from the Schedule of Contracts referred to therein relevant to the said Supply Agreement; no specific reply in writing was received by the Defendant to the said letter.

No. 93
Affidavit:
J.H. Rowland
11th February
1975
(Cont'd)

9.—Annexed hereto and marked “92” is a true copy of a subsequent letter bearing date 31st January, 1974 sent by the Defendant to the Chairman of the Tribunal together with the only annexure thereto; the expression “notifications” used in the said letter was not intended by me to refer to nor did it in fact refer to any annexure or annexures to the said letter but was used by me in the sense of “notification” under the Prices Justification Act, 1973.

10.—Annexed hereto and marked “93” is a true copy of Notification of Inquiry bearing date 8th February, 1974 received by the Defendant from the Chairman of the Tribunal.

11.—Annexed hereto and marked “94” is a true copy of Notification of Prices Pursuant to Section 18(1)(a) sent by the Defendant to the Tribunal on 14th February, 1974; in reply thereto the Defendant received Notification of Inquiry bearing date 22nd February, 1974 from the Chairman of the Tribunal, a true copy whereof is annexed hereto and marked “95”.

SWORN by the Deponent at Melbourne, before me—

J. H. ROWLAND
G. W. SMITH, J.P.

No. 94
Extract from
Australian
Government
Gazette:
5th December
1973
(Annexure 90 to
the Affidavit of
J.H. Rowland)

No. 94
Extract from Australian Government Gazette:
(Annexure 90 to the Affidavit of J. H. Rowland)

Prices Justification Act 1973

20

BP AUSTRALIA LIMITED

Matter No. E73/237

**REVOCATION OF EXEMPTION FROM APPLICATION OF
SECTION 18**

WHEREAS by sub-section (8) of section 18 of the Prices Justification Act 1973 the Tribunal has by resolution authorized me to revoke the exemption given in respect of BP AUSTRALIA LIMITED and published in the Australian Government Gazette No. 138c on the 3rd day of October 1973, NOW I, LINDSAY HALE WILLIAMS, Chairman of the Prices Justification Tribunal, HEREBY REVOKE THE SAID EXEMPTION.

30

Dated this 30th day of November 1973.

L. H. WILLIAMS
Chairman

Prices Justification Act 1973

BP AUSTRALIA LIMITED

Matter No. E73/237

EXEMPTION FROM APPLICATION OF SECTION 18

No. 94
 Extract from
 Australian
 Government
 Gazette:
 5th December
 1973
 (Annexure 90 to
 the Affidavit of
 J.H. Rowland)
 (Cont'd)

WHEREAS by sub-section (8) of section 18 of the Prices Justification Act 1973 the Tribunal has by resolution authorized me to exempt BP AUSTRALIA LIMITED from the provisions of section 18 of the Act, NOW I, LINDSAY HALE WILLIAMS, Chairman of the Prices Justification Tribunal, HEREBY, AND UNTIL FURTHER NOTICE, EXEMPT the said BP AUSTRALIA LIMITED from the application of
 10 section 18 of the Prices Justification Act 1973, in respect of:

1. The prices of goods and services supplied by the Company pursuant to contracts obtained by competitive tender or competitive negotiation where the product concerned qualifies under the Australian Government's formula for an allocation of indigenous crude oil

Provided that:

- (a) any increases in such prices are in accordance with the terms of the contracts concerned;
 - (b) in the case of an existing contract any price increase does not exceed, in
 20 the aggregate, 5 per cent of the price applying under such contract as at 1st November 1973, and
 - (c) in the case of a new contract any price increase does not exceed, in the aggregate, 5 per cent of the price applying under such contract at the date thereof;
2. the prices of other oil products and services supplied by the Company pursuant to contracts obtained by competitive tender or competitive negotiation where any increases in such prices pursuant to rise and fall clauses contained therein are based predominantly on overseas indicators and where the product concerned does NOT qualify under the Australian Government's formula for an allocation of indigenous crude oil

30 Provided that:

- (a) any increases in such prices are in accordance with the terms of the contracts concerned;
 - (b) in the case of an existing contract any price increase does not exceed, in the aggregate, 10 per cent of the price applying under such contract as at the date hereof;
 - (c) in the case of a new contract any price increase does not exceed, in the aggregate, 10 per cent of the price applying under such contract as at the date thereof, and
 - (d) the Company furnishes to the Tribunal details of the rise and fall clauses
 40 contained in each relevant contract and details of any changes in such overseas price indicators as result in increases in the prices of goods and services pursuant to such contracts and
3. prices for the supply of furnace oil, diesel fuel, gas oil, aviation fuels and lubricants to international vessels and international airlines for use primarily outside Australia.

No. 94
 Extract from
 Australian
 Government
 Gazette:
 5th December
 1973
 (Annexure 90 to
 the Affidavit of
 J.H. Rowland)
 (Cont'd)

Provided that as to both 1. and 2. above, where list prices have been established, the prices do not exceed those set out on price lists which have been supplied in advance to the Tribunal.

Dated this 30th day of November 1973.

L. H. WILLIAMS
 Chairman

No. 95
 Letter and
 attachment:
 Defendant to
 Prices Justification
 Tribunal:
 21st January
 1974
 (Annexure 91 to
 the Affidavit of
 J.H. Rowland)

No. 95
Letter and attachment:
Defendant to Prices Justification Tribunal:
 (Annexure 91 to the Affidavit of J. H. Rowland)

10

21st January 1974

The Chairman,
 Prices Justification Tribunal,
 MELBOURNE, 3004.

Dear Sir,

PRICES JUSTIFICATION ACT 1973

We refer to the Exemption from the Application of Section 18 which you granted to us concerning contractual trade and which was gazetted on 5th December 1973 (Matter No. E 73/237). In accordance with the terms of that exemption, we enclose a schedule containing those BP contract accounts whose prices are subject to variation 20 clauses based predominantly on overseas indicators together with a brief description of these clauses and a glossary of definitions to assist in their interpretation.

In addition, we enclose a complete set of our price schedules covering all those products for which we issue list prices.

Yours faithfully,
 BP AUSTRALIA LIMITED
 J. H. Rowland
 Secretary

Extract from Schedule of Contracts

NAME	PRODUCT	PRICE VARIATION PROVISION	30
Nabalco, Gove, N.T.	Furnace Oil, (1) FOB: No variation until May, 1976, at Distillate, which time should the FOB values of Motor Motor Spirit Spirit, Distillate and/or Furnace Oil have sub-		

NAME	PRODUCT	PRICE VARIATION PROVISION
10		<p>stantially altered since the negotiating of agreement, the parties shall consult together to fix new base prices.</p> <p>(2) OCEAN FREIGHT: (a) up to 1st January, 1977, prices vary in accordance with movements in General Purpose A.F.R.A. (Average Freight Rate Assessment) for Motor Spirit and Distillate and Medium Range A.F.R.A. for Furnace Oil for the voyage Aden/Gove on the first day of January and July of each year.</p> <p>(b) on 1st January, 1977, prices vary in accordance with the movement of G.P. or M.R. A.F.R.A. rates (whichever applicable) over the previous twelve months.</p> <p>(c) after 1st January 1977, prices vary in accordance with the movement of G.P. or M.R. A.F.R.A. rates (whichever applicable) when there is more than 25% on either side of the 1976 monthly average.</p>
20		<p>(3) CURRENCY EXCHANGE: In accordance with the London market closing selling exchange rate as published by A.A.P. Reuters Economic Service.</p>
30		<p>(4) REVALUATION: If the parity of the Australian dollar as notified to the International Monetary Fund is changed by five (5) per cent or more the parties to the contract shall consult together to determine appropriate and equitable revision of the base prices.</p> <p>(5) INDIGENOUS CRUDE OIL: Changes in the policy of the Commonwealth Government relating to absorption, allocation and/or price of indigenous crude oil, the Seller may fix a revised base price.</p>

No. 96
Letter and
attachment:
Defendant to
Prices Justification
Tribunal:
31st January
1974
(Annexure 92 to
the Affidavit of
J.H. Rowland)

No. 96
Letter and attachment:
Defendant to Prices Justification Tribunal:
(Annexure 92 to the Affidavit of J. H. Rowland)

31st January, 1974

The Chairman,
Prices Justification Tribunal,
MELBOURNE, 3004

Dear Sir,

PRICES JUSTIFICATION ACT 1973
CONTRACT PRICE INCREASES

10

We refer to our letter, reference WS-MJSC:JR of 21st January, 1974 With the promulgation of new posted prices, freight and other contract variables, applicable as from the 1st January, 1974, it is necessary for us, in the terms of the escalation provisions of the individual contracts, to increase our prices to some of our major contracted accounts. The details of the escalation provisions were registered with the Tribunal under cover of our aforementioned letter.

Since all movements are in excess of the prescribed percentages detailed in Gazettal Notice of the 5th December, 1973, i.e. 5% for category A and 10% for non-category A products, we submit notifications in accordance with the requirements of 20 the Act. The accounts concerned and the movements are shown on the schedule attached to this letter.

It is our understanding that the Tribunal would give prompt attention to this type of notification in order that our accounting and legal obligations associated with the performance of our contracts would not be unduly delayed.

May we ask, therefore, for your early consideration of this matter.

Yours faithfully,
BP AUSTRALIA LIMITED
J. H. Rowland
Secretary

30

Attachment to BP Australia's letter of 31/1/74

ACCOUNT	PRODUCT	AMOUNT OF INCREASE (Per long ton) \$	EFFECTIVE DATE OF INCREASE	
CATEGORY 'A' PRODUCTS				
Dampier Mining, W.A.	Distillate	(A) 3.78	1st Jan., 1974	
M.T.T., Perth, W.A.	Distillate	(A)10.91	"	
Nabalco, Gove, N.T.	Distillate	(A) 3.48	"	
Nabalco, Gove, N.T.	Motor Spirit	(A) 3.47	"	40
W.A.G.R., Perth, W.A.	Distillate	(A)11.71	"	

ACCOUNT	PRODUCT	AMOUNT OF INCREASE (Per long ton)	EFFECTIVE DATE OF INCREASE	No. 96 Letter and attachment: Defendant to Prices Justification Tribunal: 31st January 1974 (Annexure 92 to the Affidavit of J.H. Rowland)
NON-CATEGORY 'A' PRODUCTS				
Nabalco, Gove, N.T.	Furnace Oil	(A) 2.69	1st Jan., 1974	
Savage River Mines, Port Latta, Tasmania	Furnace Oil	(A)24.90	"	
Hobart Gas Co., Tasmania	L.D.F. (Naphtha)	(A)10.56	"	
10 North Shore Gas Co. Sydney, N.S.W.	L.D.F. (Naphtha)	(A)10.66	"	

No. 97
Notification of Inquiry:
Prices Justification Tribunal to Defendant:
(Annexure 93 to the Affidavit of J. H. Rowland)

Prices Justification Act 1973

BP AUSTRALIA LIMITED

Matter No. N74/71

NOTIFICATION OF INQUIRY PURSUANT TO SECTION 18 (5) AND
SECTION 19(1)(a)

20

To BP AUSTRALIA LIMITED,
BP House,
1 Albert Road,
Melbourne.

You are hereby notified that pursuant to the Prices Justification Act 1973 the Prices Justification Tribunal intends to hold an inquiry as to whether the proposed higher prices to be charged by the Company for the supply of goods and services referred to in its notice in writing dated 31 January 1974 are justified.

30

L. H. WILLIAMS
Chairman
For and on behalf of the
Prices Justification Tribunal

DATED 8 February 1974.

No. 97
Notification of
Inquiry:
Prices Justification
Tribunal to
Defendant:
8th February
1974
(Annexure 93 to
the Affidavit of
J.H. Rowland)

No. 98
 Notification of
 Prices:
 Defendant to
 Prices Justification
 Tribunal:
 14th February
 1974
 (Annexure 94 to
 the Affidavit of
 J.H. Rowland)

No. 98
Notification of Prices:
Defendant to Prices Justification Tribunal:
 (Annexure 94 to the Affidavit of J. H. Rowland)

PRICES JUSTIFICATION ACT 1973

Notification of Prices pursuant to Section 18(1)(a)

BP AUSTRALIA LIMITED of 1 Albert Road, Melbourne, Victoria hereby gives the following notifications pursuant to Section 18(1)(a) of the Prices Justification Act 1973:—

- (1) that subject to the operation of paragraphs (2) and (3) below we propose to 10
 increase the prices of products supplied by us as follows:—

Aviation Gasolines	1.3	cents per gallon to posted air-field prices	
Aviation Turbine Fuel	1.3	cents per gallon to posted air-field prices	
Motor Gasoline—Premium	1.3	cents per gallon to all buyers	
Motor Gasoline—Regular	1.3	cents per gallon to all buyers	
Power Kerosine	1.5	cents per gallon to all buyers	
Lighting Kerosine	1.5	cents per gallon to all buyers	
Heating Oil	1.4	cents per gallon to all buyers	20
Distillate	1.4	cents per gallon to all buyers	
Diesel Fuel	\$17.27	per ton to all buyers	
Fuel Oil	\$23.65	per ton to all buyers	
Liquified Petroleum Gas	\$29.20	per ton to all buyers	
Lubricating Oil	12.0	cents per gallon to all buyers	
Grease & Petroleum Jelly	1.2	cents per pound to all buyers	
Bitumen & Bituminous Products	\$21.00	per ton or 9.6 cents per gallon of incorporated Bitumen, to all buyers	

The effect of the above increases of prices is elaborated in Appendix I. 30

- (2) that we propose to increase the prices at which we supply goods pursuant to existing contracts obtained by competitive tender or by competitive negotiation and containing rise-and-fall clauses(s)
- (i) where the product concerned qualifies under the Commonwealth Government's formula for an allocation of indigenous crude oil— in accordance with the terms of such contracts up to the established wholesale list prices (if any) for products of that description as the same may obtain from time to time;
 - (ii) where the product concerned does not qualify under the Commonwealth Government's formula for an allocation of indigenous crude 40 oil—
 in accordance with the terms of such contract.

(In the attachments to our letter of 21st January 1974 to the Chairman of the Tribunal we detailed our contracts in which escalations are predominantly based on overseas indicators. Appendix II sets out

examples of the application of these indicators to Category "A" trade since 1st November 1973 and to all other trade since 5th December (3) 1973.) that we propose to supply goods under any contract obtained by competitive tender or by competitive negotiation into which we may hereafter enter—

(i) where the product concerned qualifies under the Commonwealth Government's formula for an allocation of indigenous crude oil—

in accordance with the terms of such contract (including, as the case may be, any rise-and-fall clause(s) contained therein) up to the established wholesale list prices (if any) for products of that description as the same may obtain from time to time;

(ii) where the product concerned does not qualify under the Commonwealth Governments formula for an allocation of indigenous crude oil—

in accordance with the terms of such contract (including as the case may be, any rise-and-fall clause(s) contained therein).

10

The above interim price increases have become necessary because our costs of imports have risen due to significantly large increases in the price of overseas crude oil since September 1973. Further increases in the price of overseas crude oil are expected, 20 but the effect of those costs already incurred have been so severe that we have no alternative but to propose that an interim increase in prices is justified to offset our cost increases. The proposed price increases have been calculated to cover only those cost increases which have been incurred due to increases in the landed costs of imported crude oils and imported refined products and some of the related costs of such imports.

The increased prices of crude oil which have raised our costs and made this notification necessary are of a provisional nature and should be regarded only as minimum increases. The prices to be charged by producing countries for crude oils already supplied, are still subject to negotiation; the agreed prices may involve further increases and may be applied retrospectively to 1st January 1974, or earlier.

30 We have shown in Appendix III the approach used for the proposed increases in the prices of gasolines, kerosines, distillate, heating oil, diesel fuel and fuel oil which conforms with the traditional Oil Industry submissions to the South Australian Prices Commissioner. In the case of Aviation Gasolines and Aviation Turbine Fuel we have applied the same increase as that applicable to motor gasoline in the submissions to the South Australian Prices Commissioner.

In the case of lubricating oils, Castrol Australia Pty. Ltd. has submitted to the South Australian Prices Commissioner information about costs on which our past increases in price of these products have been based.

40 We propose to increase the price of lubricating oils, grease and petroleum jelly, liquified petroleum gas and bitumen and bituminous products in accordance with the increase in the landed cost of imported crude oil.

J. H. ROWLAND
 Secretary
 for BP AUSTRALIA LIMITED

14th February 1974

No. 99
Notification of
Inquiry:
Prices Justification
Tribunal to
Defendant:
22nd February
1974
(Annexure 95 to
the Affidavit of
J.H. Rowland)

No. 99
Notification of Inquiry:
Prices Justification Tribunal to Defendant:
(Annexure 95 to the Affidavit of J. H. Rowland)

Prices Justification Act 1973

BP AUSTRALIA LIMITED

Matter No. N74/169

**NOTIFICATION OF INQUIRY PURSUANT TO SECTION 18(5) AND
SECTION 19(1) (a)**

To **BP AUSTRALIA LIMITED**
1 Albert Road
Melbourne. Victoria.

10

You are hereby notified that pursuant to the Prices Justification Act 1973 the Prices Justification Tribunal intends to hold an inquiry as to whether the proposed higher prices to be charged by the Company for the goods and services referred to in its notice in writing dated 14 February, 1974 are justified.

L. H. WILLIAMS
Chairman

For and on behalf of the
Prices Justification Tribunal

DATED 22 February 1974.

20

No. 100
TRANSCRIPT OF FIRST HEARING:

*No. 100
Transcript of First
Hearing:
Reading of
Affidavits
26th May 1975*

MR. OFFICER, Q.C., MR. LOCKHART, Q.C., MR. GLEESON, Q.C.
appeared for the plaintiff.

MR. STAFF, Q.C., MR. HORTON, Q.C., MR. CONTI and MR. COLLINS
appeared for the defendant.

(Mr. Officer handed up an amended summons)

HIS HONOUR: I give the plaintiff leave to amend its summons by adding claims
for declarations in terms of pars. 2(a) and 2(b) of the amended summons, which I give
10 the plaintiff leave to file in court.

(Mr. Officer read the affidavit of David Griffin sworn 19th June 1974)

(Photostat copy of agreement handed up)

HIS HONOUR: I have treated the word "seller" where it appears seven lines from
the end of 9(c)(iii) as if it read "buyer".

(Photostat copy of document referred to in declaration 2(b), being a letter dated
24th April 1974 from the plaintiff to the defendant tendered without objection
and marked Ex.A)

MR. OFFICER: That concludes our evidence in chief.

20 (Mr. Staff tendered a file of correspondence between the parties relating to the
declaration of the 2(b) issue: letters dated:

4th April 1974 from plaintiff to the defendant;

19th April 1974 defendant to the plaintiff;

24th April 1974 from plaintiff to defendant;

7th May 1974 from defendant to plaintiff;

16th May 1974 from plaintiff to defendant;

28th June 1974 from plaintiff to defendant;

2nd July 1974 from plaintiff to defendant;

Three letters dated 17th July 1974 from defendant to plaintiff;

Telex of 22nd July 1974 from plaintiff to defendant;

30 Three of 2nd August 1974 from plaintiff to defendant;

14th August 1974 from defendant to plaintiff;

Telex 16th August 1974 from defendant to plaintiff;

Telex 16th August 1974 from plaintiff to defendant;

5th September 1974 from plaintiff to defendant;

Marked without objection Ex.1) subject to Mr. Officer's objection to them in relation to the 2(b) issue)

HIS HONOUR: There is an issue as to whether the notice is effective to determine the contract as to fuel?

MR. STAFF: Yes.

(Affidavit of John William Robert Sutcliffe sworn 13th September 1974 together with a collection of further affidavits and a chronology of events handed up)

(Mr. Officer indicated he had objection only to part of the affidavit of Mr. Pritchard) 10

(Copy of the supplemental Geneva Agreement dated 1st June 1973 referred to in Mr. Sutcliffe's affidavit marked Ex.2)

(Petroleum Concession Agreement dated 23rd December 1934 and Supplemental Agreement dated 19th November 1966, both referred in Mr. Porter's affidavit of 19th September 1974 in relation to Kuwait marked Ex.3 and 4 respectively)

(Copies of the 1954 Consortium Agreement, 1972 Annual Review of the Iranian Operating Company and the 1973 Sale and Purchase Agreement referred to in Mr. Porter's affidavit of 19th September 1974 in relation to Iran marked Exs. 5, 6 and 7 respectively) 20

(Copies of 1925 I.P.C. Convention and the 1938 BPC Concession referred to in Mr. Porter's affidavit of 19th September 1974 in relation to Iraq marked Exs. 8 and 9 respectively)

(Copies of the Concession Agreement dated 17th May 1935 and of the Amending Agreement of 23rd April 1946 and copy of 1973 Annual Review of Q.P.C. referred to in Mr. Porter's affidavit of 19th September 1974 marked Exs. 10, 11 and 12 respectively)

(Copies of Offshore Concession Agreement dated 9th March 1953, Onshore Concession Agreement dated 11th January 1939, 1973 Annual Review of A.D.M.A. and 1973 Annual Review of A.D.P.C. referred to in Mr. Porter's affidavit of 19th September 1974 in relation to Abu Dhabi marked Exs. 13, 14, 15 and 16 respectively) 30

(Copies of printed standard form of Oil Mining Lease and the Crude Off Take Agreement dated 25th August 1964 referred to in Mr. Tottenham Smith's affidavit of 30th September 1974 in relation to Nigeria marked Exs. 17 and 18 respectively)

(Bundle containing Schedules Nos. 25-81 of Bandar Mahshahr Posted Prices and a graph showing cost of Kuwait crude oil referred to in Mr. Miller's affidavit of 4th October 1974 marked Exs. 19 and 20 respectively)

(Copy British Petroleum Company Limited annual report and accounts for the year ended 31st December 1973 referred to in Mr. Price's affidavit of 4th October 1974 marked Ex. 21)

*No. 100
Transcript of First
Hearing:
Reading of
Affidavits
26th May 1975
(Cont'd)*

(Retype of three exhibits, they being portfolio copies, handed up)

(It was agreed that his Honour should leave the bench to read some of the affidavit evidence and resume at 2 o'clock)

10 (Mr. Staff tendered a graph showing the effects of the events which occurred from late 1970 through to 1974 in terms of costs incurred by way of tax which was paid, and burden of participation and total costs which those illustrate. Graph based on figures in annexure 3 to Mr. Miller's affidavit (the cost affidavit) marked Ex. 22)

(Affidavit re Kuwait) of James Hutcheson Porter of 19th September 1974 read)

(Further affidavit of James Hutcheson Porter re Iran of 19th September 1974 read)

(Further affidavit of James Hutcheson Porter of 19th September 1974 re Iraq read)

(Further affidavit of James Hutcheson Porter of 19th September 1974 re Qatar read)

20 (Further affidavit of James Hutcheson Porter of 19th September 1974 re Abu Dhabi read)

(Affidavit of Ralph Norman Tottenham Smith dated 3rd September 1974 re Nigeria read)

(Affidavit of James Holland Eden Webster dated 30th September 1974 read)

(Affidavit of Denis Miller dated 4th October 1974 read)

(Further hearing adjourned until 10 a.m. Tuesday, 27th May, 1975)

SECOND DAY: TUESDAY, 27th MAY, 1975:

(Mr. Staff continued to outline his evidence)

(An affidavit by Richard Arthur Munt dated 4th October, 1974, read)

30 (Letter dated 21st February 1969, from Controller General of Customs to British Petroleum of Australia:

Letter of 30th September, 1969, from the Controller General of Customs to British Petroleum of Australia:

Letter of 27th November, 1970, from the Controller General of Customs to British Petroleum of Australia:

*No. 100
Transcript of First
Hearing
Reading of
Affidavits
26th May 1975
(Cont'd)*

No. 100
 Transcript of First
 Hearing:
 Reading of
 Affidavits
 26th May 1975
 (Cont'd)

Letter of 13th December, 1971, from the Controller General of Customs to British Petroleum of Australia:

Letter from the Department of National Development, Fuel Branch, dated 10th September, 1969:

tendered without objection and marked Exhibit 23)

(Amended Schedule described as being annexure 87A to Mr. Munt's affidavit tendered and marked Exhibit 24)

(Affidavit of Robert Lloyd Pritchard dated 9th October, 1974, taken as read)

(Affidavit of John Howard Rowland of 11th February, 1975, read)

(Copy letter from defendant to the Prices Justification Tribunal dated 14th 10 February 1974 tendered and marked Exhibit 25, incorporated into the collection of defendant's affidavits at p.357A)

(Map of Persian Gulf Oil producing areas handed up for his Honour's information)

(A graph was tendered and marked Exhibit 26. The green line indicating in United States dollars per U.S. barrel of product the tax paid in participation and total cost of crude from January 1969 to May 1974; the blue line indicating the B.P. Trading Limited posted price of light fuel oil in the same period; the red line commencing in April 1974 and continuing to May 1974 indicating the cost excluding freight and insurance of furnace oil purchased from B.P. Trading for 20 delivery to Nabalco in that period; the graph based upon the evidence put before his Honour in schedule form; the arrows indicating some of the prime events which occurred in the middle East; the basis for the red line being the new schedule 87A of Mr. Munt's affidavit.)

MR. STAFF: Subject to a few questions I would seek to ask of the witnesses when they go into the witness box, that is the defendant's case.

(Affidavit of Morris Albert Adelman sworn 6th January 1975, read. Mr. Staff objected to the third paragraph. Objection not dealt with at this stage)

(Short adjournment)

No. 100
 Defendant's
 evidence:
 J.H. Rowland
 Examination:

JOHN HOWARD ROWLAND
Sworn and examined

30

MR. STAFF: What is your name? A. John Howard Rowland.

Q. Where do you live? A. 5 Remon Avenue, Camberwell, Victoria.

Q. You are secretary of B.P. Australia? A. Yes.

Q. You swore an affidavit in this matter earlier this year? A. Yes.

CROSS-EXAMINATION

*No. 100
Defendant's
evidence:
J.H. Rowland:
Cross
Examination*

MR. OFFICER: Q. Would you take your mind to the month prior to 22nd March 1974, the date upon which B.P. Australia gave its notice to Nabalco. During the month prior to that date did B.P.A. supply furnace oil on terms and conditions the same or similar to the Nabalco contract to anyone else at a price of or higher than \$54.44 per metric ton? A. I would not be able to answer that. I am not on the sales side at all.

Q. Who would know? Mr. Munt? A. He possibly may know.

Q. If he did not know, who in the organisation would know? A. Those who
10 conduct the sales division.

Q. Would you name them? A. Mr. Lockery is manager of the sales division.

Q. Is Mr. Lockery in court this morning? A. Yes.

Q. Which is Mr. Lockery? A. (Indicates)

Q. It was you who made the affidavit about the B.P.A.'s notification to the Prices Justification Tribunal? A. Yes.

Q. And I take it prior to 26th June, 1974, the applications are annexed to your affidavit, applications for notification, are the only notifications to the Prices Justification Tribunal from B.P.A.? A. Before June?

Q. Up to 26th June, 1974? A. I should think there were other notifications after
20 those attached to my affidavit.

Q. Were there any other notifications given, and I am speaking about this period up to 26th June, 1974, relating to furnace oil? A. I could not answer that one without reference to the records, copies of letters and so on that were sent to the Tribunal. It is more or less a continuous process.

Q. When you made your affidavit did you look through records and abstract what you thought related to furnace oil or were you told what documents to annex? A. I have looked through the records. The affidavit was prepared on legal advice.

Q. Have you any recollection one way or the other whether there is any other furnace oil notification prior to 26th June, 1974, other than the one annexed? A. I am
30 not sure about the interval after those attached to my affidavit until June.

Q. Are there any facilities available in Sydney for you to ascertain whether any other furnace oil notification was given to the Tribunal? A. I do have a copy of the letters that have been abstracted from the file.

Q. You do have in Sydney a file which contains— A. I have copies of the letters you are directing my attention to.

HIS HONOUR: Q. Do you mean letters which are annexed to the affidavit?
A. No.

Q. Letters other than those? A. I mean letters other than those.

MR. OFFICER: Q. Is it in court? A. Yes.

Q. If you stood down from the witness box could you look and see whether there are any other furnace oil notifications prior to 26th June, 1974? A. Yes.

HIS HONOUR: You may do that.

(Witness left witness box)

MR. OFFICER: We seek an admission that no application prior to 26th June 1974 was ever made to the Prices Justification Tribunal indicating an intention to charge \$54.44.

MR. STAFF: I can give my friend that admission. Agreement to the effect that no application at that period or up to that date was made in respect of supply at the proposed price of \$54.44. 10

MR. OFFICER: May I add, no notification was given to the Tribunal up to that date, 26th June, 1974, to charge for furnace oil \$54.44 or any higher price than \$54.44.

MR. STAFF: I cannot make that admission.

HIS HONOUR: For a case that has been so well prepared beforehand, one in which there has been a great deal of material put on affidavit, is it not possible to resolve this and tell Mr. Officer what the situation is?

MR. STAFF: The difficulty is that there was a notification of intention to charge a 20 price in excess of \$54.44.

HIS HONOUR: Is there a copy of that notification available?

MR. STAFF: Yes.

HIS HONOUR: Is it convenient to show it to Mr. Officer?

MR. STAFF: Yes.

(Shown)

MR. OFFICER: Apparently there is no acceptable admission. The fact can be established readily from Mr. Rowland.

HIS HONOUR: Would it not be possible to say other than as may be contained in a letter dated so-and-so, and tender it? 30

MR. OFFICER: I ask my friend to admit that in relation to the contract the subject of these proceedings no notification was ever given to the Tribunal of B.P.A.'s intention to charge for furnace oil a price per metric ton of \$54.44 or above.

MR. OFFICER: As I understand, your Honour, my friend and I will not be able to reach an acceptable agreement.

MR. OFFICER: Q. Mr. Rowland, I am concerned only with price notifications to the tribunal relating to the supply of furnace oil to Nabalco under the contract the subject of these proceedings. Apart from the notifications that are annexures to your affidavit, was any other notification given to the tribunal relating to furnace oil prior to 26th June, 1974, being a supply of furnace oil under this contract and at a price of \$54.44 or above? A. I am unable to say the price involved. There was a notification in general terms on contracts in May.

*No. 100
Defendant's
evidence:
J.H. Rowland
Cross
Examination
(Cont'd)*

10 Q. This is other than the ones annexed to your affidavit? A. This was a submission in May, 10th May, made in somewhat similar form, that is, paragraphs 1 and 2, paragraph 1 referring to inland trade, paragraph 2 to contracts, and it was a general notification in respect of the product concerned not qualifying under the Government's formula. The notification was in accordance with the terms of the contract but based on movements up to 5th February, 1974, and the relevant indicators in such contracts.

Q. Did it specify a price for furnace oil . . . A. Only in respect . . .

Q. . . . to or covering the supply of furnace oil under this contract to Nabalco?
A. No.

20 Q. That notification that you have just referred to, the May notification, would not have covered the supply of furnace oil to Nabalco. Is that what you are saying?
(Objected to)

HIS HONOUR: Q. Did you compose this document, Mr. Rowland? A. No.

Q. Who did? A. It was sent under cover of a letter which I signed dated 10th May. I see from the initials at the top that it was prepared by one of the Sales Organisation section.

Q. Well, who? A. Mr. Mollett. I believe the initials appear "GAM" and I believe Mr. Mollett is the Administration Manager of the Sales Division.

(Question objected to above allowed)

30 MR. OFFICER: Q. I am leaving on one side always the documents which are annexed to your affidavit . . .

HIS HONOUR: I am sorry, is the question which I have allowed withdrawn or not?

MR. OFFICER: Yes, for the moment.

Q. Leaving on one side the documents annexed to your affidavit, I was asking you about a notification to the tribunal relating to proposed prices for furnace oil under existing, as distinct from new, contracts and you mentioned one of May. Is there any other such notification prior to 26th June? A. I can't be sure in answering that question. We had a list of some twenty or more questions from the tribunal and I am not sufficiently conversant with that to guarantee that there wasn't application of one of

No. 100
Defendant's
evidence:
J.H. Rowland:
Cross
Examination
(Cont'd)

those questions at least to this contract. The answers—I believe the answers were given in March but I am unable to specify the date. I am sorry, 8th April was the letter.

Q. 8th April was what letter? A. The letter to the tribunal sending our answers to Questions 1 - 26 of the questionnaire received under cover of the letter from the Registrar of the tribunal of 22nd March, 1974.

* Q. Apart from the documents annexed to your affidavit and up to 26th June, how many price notifications relating to furnace oil under existing, as distinct from new, contracts appear in that file? A. I have given you that one.

Q. Of May? A. Of May.

Q. What was the date in May? A. 10th May.

10

Q. 10th May. A. On 16th May we wrote to the Chairman of the Prices Justification Tribunal referring to our negotiations then taking place with Nabalco in respect . . .

Q. I am not concerned—Mr. Rowland, did you misunderstand me when I said a moment ago that I was concerned with supplies under existing, as distinct from new, contracts? Did you misunderstand me?

HIS HONOUR: Mr. Officer, that will not take anybody any further. It is obviously a difficult matter to unravel what is here.

WITNESS: Have I a question to answer at the moment?

MR. OFFICER: Yes, please.

20

(Question marked * above read)

WITNESS: There is a general notification enclosed with our letter of 7th June, 1974.

MR. OFFICER: Q. Does that relate to furnace oil or cover furnace oil? A. It covers all products.

Q. That is all products under existing contracts? A. Yes. Again, with the two sections: one to cover increases of listing prices for internal trade; secondly, contracts. Firstly, those under the Government's formula and those not.

Q. So, we have 10th May and 7th June notifications. Are there any others relating to existing contracts up to 26th June? A. My file only goes to 13th June and does not have any other notification. I can't answer after 13th June on available records.

Q. They are the only records you have with you in Sydney? A. Yes, yes.

Q. You could find out, I suppose, during, say, the luncheon adjournment by telephoning your Melbourne office, could you? A. I would expect to be able to, yes.

Q. Mr. Rowland, would you over the luncheon adjournment, if possible, or if not

after four o'clock this afternoon, telephone and find out whether from the end of that file up to 26th June there was any notification such as I have been describing to you? Will you do that? A. Yes, I will do that.

Q. Thank you. Now, may I see the application of 10th May, please, that you have referred to. I am sorry, I don't want to turn to a page other than 10th May. To see the annexures—is that the annexure? A. That is so.

Q. The other one was 7th June I think you have mentioned? A. A date in June. I don't remember the particular day.

Q. Which is further over towards the back? A. Which appears towards the rear,
10 yes.

Q. Would you extract from the file please, Mr. Rowland, those communications of 10th May and 7th June and, of course, the accompanying annexures or matters referred to. Mr. Rowland, before you reassemble your file, with regard to 10th May, was there prior to 26th June a response from the tribunal? 15th May I would suggest? A. I have the 15th May notice. There is also a letter of 15th May.

Q. Would you see if there is a response to 7th June? (No answer)

(Notification of 10th May with enclosure and letter and notice from the tribunal each dated 15th May and notification from the defendant to the tribunal dated 7th June with enclosure tendered and admitted as Ex. B)

20 Q. (Approached) Mr. Rowland, I show you the letter from the company of 7th June to the tribunal. You refer in it first to an appendix of price list reflecting the increases notified? A. Yes.

Q. And then there is a notification attached to the letter of prices pursuant to s.18 of the Act? A. Yes.

Q. And under paragraph numbered 1 of that notification, you list various products and the proposed increase? A. Yes.

Q. And under paragraph (ii) you state you propose to increase the prices, or the company does, for goods pursuant to existing contracts and containing rise and fall clauses, and then you set out on p.2 of the notification two paragraphs of descriptive
30 matter? A. Yes.

Q. There is a document, Appendix 1—Schedule 8, which you handed me which relates to fuel oil. Where does that fit into the scheme of the notification? A. It is mentioned in the letter enclosing the notification.

Q. I am sorry. What is referred to in the letter as Appendix 1—I beg your pardon, your letter encloses a notification and also appendices? A. Yes.

Q. And the appendix relates, what, to the prices which will result from the increases notified in your notification, paragraph 1? A. I am unable to tell you what is the effect of the Appendix 1 or any others; I didn't prepare them.

No. 100
Defendant's
evidence:
J.H. Rowland:
Cross
Examination
(Cont'd)

Q. When you sent it—I am sorry, it was sent on under a letter signed by you, was it not? A. Yes.

Q. Having looked again at these papers that you have handed me, I suggest to you that the document headed Appendix 1—Fuel Oil—Schedule 8 . . . A. Apparently there were many other schedules on other products. That is the only one I have with me.

Q. And that is a buyer classification “all buyers”? A. Yes.

Q. Wouldn't it be the proper interpretation of these documents which you sent on or wouldn't it be your understanding that they were to be read as Appendix 1—Schedule 8, giving the effect in terms of price to all buyers of the fuel oil increase which is notified in the notification, paragraph 1(i)? A. Yes. 10

Q. I take it that—is my understanding correct that in relation to existing contracts not qualifying under the Government's formula for allocation of indigenous and with relation, for example, to fuel oil, there is no price notified to the tribunal as being the price which you proposed to charge under any such contract? A. Not with this notification, no. May I remove any doubt about whether I am submitting everything. You see a reference here to Appendix 4 being sent on subsequently. There was, in fact, a letter of 11th June which was acknowledged. Those are the only two other papers I have in this connection but they, as I say, simply explain that this Appendix 4 was submitted at a later date. 20

Q. Well, have you Appendix 4 with you, a copy of it? A. Yes, it is there, the last page I think.

(Letter of 7th June, 1974, to the tribunal, together with the enclosed notification, Appendix 1—Schedule 8, Appendices 2, 3 and 4 and the letter and communication from the tribunal tendered and admitted as Ex. C)

Q. Am I correct, Mr. Rowland, that your belief is that that bundle of papers contains all that was in or accompanied the communication of 7th June and which related to furnace oil? A. Yes.

Q. Subject to the result of Mr. Rowland's inquiry from Melbourne as to the gap, 13th June to the 26th, that would be all I wish to ask him. 30

RE-EXAMINATION

No. 100
Defendant's
evidence:
J.H. Rowland:
Re-Examination
(Cont'd)

MR. STAFF: Q. (Approached) (Witness shown Ex. C) Mr. Rowland, I just want to show you once again what is described as Appendix 1—Schedule 8. You told my friend that that indicated the all buyers price within the Government allocation category “indigenous”? A. No, he was pointing to the first part of the notification which is inland prices.

Q. Yes, but he referred you to Appendix 1—Schedule 8? A. Yes.

Q. And asked you about the indication “all buyers” under the heading “Buyer” classification which appears there. Do you remember? A. Yes.

Q. Now, there are four prices in that schedule, that is Appendix 1—Schedule 8 and above each price there is an indication of a capital city? A. Yes.

Q. Is that a reference to the price chargeable or intended to be charged in the particular capital cities? A. Yes.

Q. I think the Appendix 1—Schedule 8 is referred to in par. (ii)(a) of the notification, is it not? A. No.

Q. Well, you see the reference to Appendix 1 there? A. Yes, I was having my attention directed to this paragraph and the appendix was the effect of that increase. I see now the appendix is also mentioned as imposing a limit under par. . . .

10 Q. Paragraph 2? A. Paragraph 2(a).

Q. And par. 2(a) is the one which applies to indigenous crude or products produced from indigenous crude? A. That formula, yes.

Q. I think there was, as well, a notification to the tribunal in respect of a proposed supply of goods dated 16th May, 1974, was there not? Would you just have a look at your file. I think you referred to it in passing. A. I have a letter dated 16th May to the tribunal.

Q. That was in respect of the supply of fuel oil, was it, at Gove or proposed supply of fuel oil at Gove? A. Yes.

20 Q. On 4th June did you receive a notice pursuant to s.18(1)(b) of the Act from the tribunal in respect of the notification of 16th May? A. Yes.

(Copies of notification, letter and notice tendered: objected to: admitted as Ex. 27)

(Witness retired and conditionally excused)

RICHARD ARTHUR MUNT
Sworn and examined

MR. STAFF: Q. Mr. Munt, your name is Richard Arthur Munt and you live at 4 Hilton Street, Beaumaris, Victoria? A. I do.

Q. You are an accountant by profession? A. Yes.

30 Q. You are the manager of the Commercial Services Department, Central Planning and Co-ordination Division of B.P. Australia? A. I am.

Q. Now, your functions in that Department are concerned with the supply of bulk petroleum, that is, crude and refined products which are transported by ship to refineries in Australia? A. That is so.

Q. And with the supply of indigenous crude taken by pipe and by tanker or by tanker to refineries in Australia, and you are concerned also with supplies of imported

No. 100
Defendant's
evidence:
R. A. Munt:
Examination
(Cont'd)

products which are delivered directly into installations such as the installation which Nabalco maintain at Gove and the like and somewhat dissimilar installations?
A. Well, I am concerned with the pricing of those.

Q. Of supplies into those? A. I am not with the actual supply itself.

Q. I think your functions also include a general planning function, that is, embracing general corporate policy in the long term, the medium term and the short term? A. Yes, my division is concerned with that, yes, and I would supply information as input into that function.

Q. I think you remember having sworn an affidavit in this matter to which was annexed a document entitled "Cargo No. 87"? A. Yes, that is so. 10

Q. That was a document showing costs in Australian currency per metric ton of furnace oil purchased for delivery to Nabalco excluding insurance and freight?
A. That's right.

Q. Subsequently you caused to be prepared a schedule to be substituted for that one, did you, Mr. Munt? A. Yes, I did. It was very soon after, actually, the next couple of days.

Q. You became aware that an error had crept into the original one? A. I did, yes.

Q. And the corrected schedule or schedule 87A in respect of Cargo 18 changes the cost figure from \$13.83 to \$14. Do you recollect that? A. Yes, I recollect that.

Q. That error was the result of some arithmetical calculation? A. Yes, there were 20 two parcels involved, a large one for Nabalco, and a smaller one, and there were some thirteen calculations necessary to get to those numbers and, as I recall now, it was an allocation of costs between the two parcels which led to that error.

Q. The document 87A also contains some other alterations in respect of cost figures for cargoes numbered 8 - 15. Do you recall that? A. Yes, I recall that.

Q. Can you tell his Honour how those alterations came to be made or why?
A. Well, the calculations in the first schedule were made from the actual invoices as submitted during the year but I overlooked or the people preparing it for me overlooked and I failed to pick it up that there was a credit note in December 1973 which adjusted quite a number of cargoes, as well as Nabalco's supplies, for retrospective 30 price decreases back to 1st January, 1973, and that amended schedule recalculates the actual costs involved.

CROSS-EXAMINATION

No. 100
Defendant's
evidence:
R. A. Munt:
Cross
Examination

MR. OFFICER: Q. You have told us in your affidavit that the inter-company price for fuel oil is based on BPT's Bandar Mahshar posted prices for light fuel?
A. Yes, as I recall.

Q. But subject, you say, to adjustments for special situations and grade and so on. Let me refer . . . A. Would you please . . .

HIS HONOUR: Q. Do you have a copy of your affidavit there, Mr. Munt? A. I have in my case down here, sir.

Q. Well, it might be as well if you had it in front of you? A. Thank you, your Honour.

MR. OFFICER: Q. I think if you look at par. 26, do the discounts for grade—are they constant as compared with the light fuel oil which is the product for which a Bandar Mahshar posted price is paid? A. Well, for certain periods they have been constant—they are in respect of quality—but the discounts have increased as the posted price has increased. In other words, it is more of a percentage discount rather than a constant but it has, for some period—they have not increased or varied constantly with movements in posted prices but there have been discounts. For instance, the discount now is something like 60c a barrel.

Q. The transfer price for furnace oil has always been at a discount for grade less than the posted price for light fuel oil? A. Yes, that is so, because it is a lower quality.

Q. And the market factors that you mentioned in the last line of 26, they are what, merely supply and demand? A. Yes, supply and demand factors.

Q. They are supply and demand as perhaps softening or firming the posted price as an asking price. Is that a correct way of putting it? A. Yes, I think so. In relation to the posted price this is a softening or a firming.

20 Q. Of course, any substantial variation in supply and demand would be reflected by a variation in the posted price? A. That is so, yes.

Q. Now, if you look at your annexure 87—that is the old one—the decrease, and I am not trying to take advantage—I will come to your 87A in a moment, but let's look first at your 87. They were in fact the prices initially charged inter-company, were they not? When I say "initially", later revised, but these were the charges at the time the deliveries were made or "the deliveries" may be ambiguous; at the time BPA bought from BPT this was the agreed price although it was later re-negotiated? A. Yes, that is so.

30 Q. The fall that we observe from shipments 1-8 and then downwards to 9 and on for some period, that coincided, did it not, with some change in currency? Do you recall that? A. Well, there was a change in currency.

Q. Particularly in the value of American currency? A. To the Australian dollar. Well, I would have to check it. It may well be so, but I would have to check that.

Q. There was also, was there not, some over-supply of furnace oil in the world for a time in 1973? A. Yes, to the best of my knowledge there was.

Q. That degree of over-supply would have had an effect, I take it, in pushing down the price, even an inter-company price, transfer price? A. Yes, even that.

40 Q. Of course, if there had been a fluctuation in exchange rates affecting the American dollar, that could have an effect? A. Certainly in a translation to Australian dollars, yes.

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Q. These costs are quoted in Australian currency? A. They are.

Q. But the quotation made by BPT's Bandar Mahshar prices are quoted in American dollars? A. Yes.

Q. You have given some evidence before about your 87A. Apart from the arithmetical error that crept in in shipment 18 . . . A. I wouldn't even like to call it an arithmetical error. It was a difference in calculation.

Q. Well, that's all right, a difference in calculation, however you want to express it. I want to put 18 on one side. Apart from that, the other items with an asterisk on this page were renegotiated. That was as a result of an approach made by BPA to BPT? A. Yes, it was. 10

Q. Or was it that BPT discovered their posted prices had been too high? A. No, it wasn't that.

Q. So, is this the situation: although BPA were in relation to shipments 9-15 inclusive paying a lower price to BPT than they had prior thereto, and were initially paying still on the same basis of BPT's Bandar Mahshar posted prices, BPA approached BPT for some price lower still? A. Yes, there is a provision in the contract for something called a merchandising fee.

Q. This is a contract between BPA and BPT? A. Well, in the letters annexed to my affidavit, there is a provision there for a merchandising fee and we have in the past utilised that provision to reflect market factors and this was a re-imposition. 20

Q. Was it you who conducted the negotiations on behalf of BPA? A. Not really, no. There was an approach made by BPA.

Q. Was it a written approach or was it a meeting? A. No, I made a telephone call at one stage.

Q. It was as a result of that telephone call that the adjustments were made? A. Yes.

Q. Take shipment No. 9. Originally \$9.62 became \$8.29 and you said a moment ago . . . A. \$9.62?

Q. It was \$9.62; it became \$8.29? A. Yes.

Q. I think you said a moment ago this had relation to a merchandising or 30 marketing factor. What is the marketing factor that produced that reduction? A. I am sorry, I don't quite understand that. There is a merchandising fee provision in the annexures to my affidavit. Are you referring to . . .

HIS HONOUR: Q. What I understood him to mean was that the merchandising fee was used as a means of reducing or raising prices between them from time to time? A. Yes, to take account of market factors.

MR. OFFICER: Q. Of market factors or marketing factors? A. I am sorry, I think I used the term "marketing". No, market factors, I am sorry.

Q. Now, what were the market factors that led to this reduction? Let us still look at shipment 9. What were the market factors that led to that reduction? A. Well, in 1972 there was or it had become apparent that there was an over-supply of fuel oil particularly in relation to Japan which was going over to low sulphur fuel oil and the heavier fuel oils—sorry, the high sulphur fuel oils which the posted price represents were not in so great a demand, so it was apparent that there should be some reduction for that factor.

Q. Is that the factor that explains the reduction as to each of these shipments 9 or 8-15 inclusive? A. Yes, that is so.

10 HIS HONOUR: Q. Were you selling that product yourselves at prices lower than you had anticipated when the consignments were required? A. Selling products to customers within Australia, your Honour?

Q. Yes. A. Well, that was part of the cost of it. There was also the question of fuel oil produced from indigenous crude as well. I very much doubt whether there would have been any immediate or there was any reflection in the prices to our customers within Australia. There would have been a reflection in bunker sales, in sales of bunkers in international bunkers, but not to customers possibly within Australia.

MR. OFFICER: Q. You said that there was over this period—I think you said to me before—some degree of over-supply of furnace oil? A. Yes, that's right.

20 Q. I take it from what you have just recently said, particularly over-supply of furnace oil with a high sulphur content? A. Yes.

(Luncheon adjournment)

MR. STAFF: Mr. Rowland has made the search and inquiry. There is nothing relating to furnace oil or fuel oil after 13th June.

(At this stage Mr. Rowland was excused.)

HIS HONOUR: Q. Mr. Munt, you remain bound by the oath that you took before lunch. Do you understand? A. Yes, your Honour.

MR. OFFICER: Q. The re-negotiation that took place with regard to those shipments—I think 9-15 . . .

30 HIS HONOUR: I think it is actually 8-15.

MR. OFFICER: Q. 8-15? A. Yes.

Q. Were, I think you told me, in part at least due to this over-supply of high sulphur furnace oil? A. Yes, that is so.

Q. Have you been able to check during the adjournment as to whether the drop in prices just before the eighth shipment—I am sorry, from the earlier shipments down to the ninth shipment and onwards for a while were due to currency changes? A. No, Mr. Gleeson, I have not—Mr. Officer, I am sorry, I have not.

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Q. The agreement of BPT so far as it re-negotiated the prices of those shipments was because they accepted the situation that in the marketplace, as it were, the value of high sulphur content furnace oil was, even though perhaps temporarily, depressed?
 A. Well, I couldn't answer for BP, B.P. Trading, in . . .

Q. So far as they did reduce the price, and you have told me to some extent the reduction was due to an over-supply in high sulphur furnace oil . . . A. Yes, this was our understanding from Australia and looking at the various publications and the comparison of our invoice prices then or previous to the reductions and . . .

Q. Previous to the re-negotiations? A. Yes, looking at the prices and comparing them with the prices we were seeing in overseas, in oil journals, reporting prices, that was our understanding of it, yes. 10

Q. Those prices in oil journals would be particularly in things like Platts?
 A. Like Platts; like Petroleum Intelligence Weekly, yes.

Q. They report the prices at which sales have taken place? A. Well, it is very hard to find prices relating to term business of which our business is essentially with B.P. Trading long term.

Q. But they report . . . A. They report information, bits and pieces of information. They certainly report spot price information more readily than term business.

Q. Well, would it be fair to say they have a good coverage on spot sales? A. That is true. 20

Q. So far as new term contracts are entered into, they report them so far as they can obtain the information? A. Yes.

Q. The price paid by BPA to BPT is based on two considerations, is it not. One is the value of the product in relation to BPT's posted prices, and the second is the freight component? A. I am not quite clear on the reference to the term "value", its relationship to the posted price, having regard to the grade of fuel oil which we are purchasing.

Q. Perhaps could I put it a slightly different way. One starts off with the posted price? A. That is so.

Q. And then one adjusts that posted price having regard to grade and market conditions? A. Yes. 30

Q. That is in an attempt to achieve starting from the posted price an assessment of the value of the product that is to be transferred from company to company? A. No, that is an attempt to achieve a price to BPA comparable with term prices in the marketplace, particularly from the Middle East, from where we are buying or from our notional pricing of fuel oil.

Q. But the components of price to be paid are referred to, are they not, inter-company, as being value and freight? A. I don't think the term value is used—I am sorry. If I could refresh my memory from . . .

Q. Would you look at some of the annexures to your affidavit? A. Yes.

Q. Annexure 86 to your affidavit, a letter of 25th January, 1963? A. Yes, I have it.

Q. Now, there are certainly two components in the price—we are agreed in that?
 A. The F.O.B. component I think you are referring to, and the freight.

Q. And the freight? A. Yes.

Q. So far as the F.O.B. component is concerned, it is to be the posted prices for sales of a quality of the product in question? A. Yes.

Q. Delivered F.O.B. Abadan in bulk cargo lots, et cetera? A. Yes, that's correct.

Q. If you would turn to the next letter, 26th February, 1964, there we see that the
 10 F.O.B. component—and this is for basic lubricating oils—is to be an assessed fair market value expressed in terms of a value F.O.B. Gulf of Mexico as agreed between us? A. Yes, that is for lubricating oil.

Q. Yes. The phrase "F.O.B. value" is understood in the trade, is it not? A. I am not sure. We don't use "F.O.B. value" ourselves as far as BPA is concerned to any great extent. I can recall a contract in which it was used in relation to lubricating oil and it was used in the Nabalco contract but, as far as my dealings on prices and the price of product which we purchase from BP Trading in bulk cargo lots, we do not as a general course use the term "F.O.B. value" but I agree that it is used here in this particular letter.

20 HIS HONOUR: Q. Well, it is not used there really, is it, "F.O.B. value". In the paragraph to which you were referred in the second letter, there is a reference to a value and F.O.B.? A. It does talk about F.O.B. component, your Honour.

Q. Oh, yes, and it talks about a value F.O.B. Gulf of Mexico? A. Yes.

Q. But I thought the expression used was "F.O.B. value"? A. I am sorry, yes, it was. I agree. The term here is "Assessed fair market value".

MR. OFFICER: Q. Whose initials, do you know, in 1971 in BPA were "B.C.S."? Do you know? A. B.C.S.? No, I am sorry, I do not. Oh, I am sorry, "E.C.S." or "B.C.S."?

Q. I am sorry, I think it is "B", "B" for Baker, Baker Charlie S? A. Could I see it
 30 in the context? I think that might help me. (Witness shown document) Yes, that looks like "B.C.S.", Mr. Snape.

Q. Snape? A. Yes.

Q. What was his position in February 1971? Are you aware? A. No, I am sorry—1971—yes, he would have been in our market planning section, I believe, in BP Australia.

Q. I think he is still with the company? A. Yes, he is still with the company.

Q. He is, in fact, in Court, is he? A. He is, yes.

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Q. You say you have never, except for the contract with Nabalco, you cannot recall in the company the phrase "F.O.B. value" being used in relation to furnace oil?
 A. I cannot recall, no, I cannot, but then I deal specifically on the side of buying product rather than selling it.

Q. Now, if one were making a dissection of the BPT/BPA invoice price, that would be in your Department, wouldn't it, in the Buying Department? A. That would be so, yes.

Q. I put to you again that a fair description of the components of the inter-company price are—inter-company price in relation to Nabalco fuel oil, are (a) F.O.B. value and (b) freight component? A. Well, I could not agree to that. I could only agree 10
 to F.O.B. component and freight component.

Q. By using the phrase "F.O.B. component" you mean the Bandar Mahshar posted price for the product, however, adjusted for grade and for market conditions?
 A. I do.

Q. Prevailing market conditions at the time? A. Not necessarily prevailing market conditions. I think we still have to realise that the price that we are paying is essentially a term price, that we are in business and are buying from BP Trading over a long period of time, so the price may not reflect and probably should not reflect very short term fluctuations. So, it would not necessarily mean prevailing market conditions if you are talking . . . 20

Q. That is what you said is only another way of saying, is it not, that the price will reflect prevailing conditions provided they are not seen as conditions which will prevail only for a short period? A. Yes, that is a fair comment.

Q. For example, the re-negotiated price between BPA and BPT for those shipments 8-15 did reflect a then prevailing over-supply of high sulphur content furnace oil? A. Yes, that was our understanding from here.

Q. (Approached) This is a document which was produced on discovery by BPA and ignoring that writing in blue ink which has been added to it and the underlining, you observe it is 26th February, 1971? A. Yes.

Q. By Mr. Snape, and it includes what he describes as a dissection of the increase 30
 in BPA/BPT price of fuel oil? A. Yes.

Q. That is a dissection which is based on BPA's local estimate of the effect of the OPEC changes commencing last week, that is, the week before 26th February, 1971?
 A. Yes.

Q. You observe that Mr. Snape has dissected the invoice price and expected invoice prices up to 1976? A. Yes, I see that.

Q. In accordance with two components, as he has described them? A. Yes, I see that.

Q. The first of them being headed "F.O.B. Value"? A. Yes.

Q. Do you adhere to what you have just said, that the appropriate phrase is "F.O.B. component" rather than "F.O.B. value"? A. I do.

Q. In this document the second component listed was freight cost? A. Freight cost, yes. Well, I would call it "freight component" or, indeed, I would call it a freight element and an F.O.B. element but it is purely an element within a price or a component within a price.

Q. If you would look at your affidavit again please and will you read, perhaps to yourself, par. 29. A. Yes, I have read it.

Q. In relation to the revised base price under BPA's notice, it was you who made
10 the recommendation to management? A. I did, yes.

Q. And was that recommendation accepted? A. Yes, it was accepted.

Q. The figure you recommended, was that adopted? A. Yes, it was. It was not the full price of \$54.44 but it was adopted as to the elements or components.

Q. Your recommendation was a little lower than \$54.44? A. Yes, it was, but, again, as to the three elements of freight—sorry, F.O.B., freight and insurance.

Q. Was the matter, after being considered by management, referred back to you for a further recommendation or was it management who merely added the difference between your recommendation and the revised price? A. It wasn't referred back to me for agreement or disagreement. I was consulted as to what was to be added to that.

20 Q. Was the addition over and above your recommendation to reflect some element which you had not reflected or was it merely to increase the reflection of an element that you had reflected? A. It was to reflect an element that I had not included.

Q. What was that element you had not included? A. Well, it was to reflect, as I understand it and as I was told, an amount to cover other costs and some element of return on investment or, as you might call it, profit.

Q. What were the other costs? A. Well, I am not—I don't have an exact list of them but the sorts of things such as . . .

30 Q. I am not asking you about what costs you reflected in your recommendation but you said the addition was to reflect other costs. What were the other costs so far as you know them and you were consulted about that you had not reflected? A. Well, there would be marketing and handling costs associated with . . .

Q. Now, when you say "marketing cost"? A. I am sorry, perhaps I have used the wrong expression, but there would certainly be handling costs and overheads. We have overheads in our business.

HIS HONOUR: Q. But had you not yourself provided for those in what you have done? A. No, your Honour. There are some local costs. I gave a recommendation as to the invoice price from BP Trading comprising the three elements, F.O.B., freight and insurance, as our invoice costs. Then we have certain local costs relating to the delivery

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into Nabalco's installation and certain overheads—my salary, for example, that has to be recovered.

Q. I follow that, but had your recommendation not taken account of those things?

A. No, your Honour, it had not.

Q. Why not? A. Because that is not in my field. It was left to the people in our sales division who were responsible for the final fixing of the price to do so.

Q. And for them to take into account also what profit margin there would be?

A. Yes.

Q. You had not provided any profit margin at all? A. I had not provided any profit margin so far as B.P. Australia was concerned.

10

MR. OFFICER: Q. But Mr. Munt, is it not correct, the task which was entrusted to you was to recommend a new revised price to be paid by Nabalco to BPA? That was the task you were set, was it not? A. Only in relation to my field of responsibility which is the invoice price that we would have to pay for that product, that particular part of our cost.

Q. Mr. Munt, the quantity of furnace oil taken by Nabalco had been in the order of 360,000 tons a year? A. Yes.

Q. (Approached) Mr. Munt, I show you a document, again which was discovered, dated 25th March, 1974. Is that "from" and "to"? A. That is "to" and that is "from".

Q. From the Manager of the Commercial Services Department to the Marketing 20
 Manager, Wholesale Sales Division? A. Yes.

Q. And this document bears your initials, I think? A. Yes, it does.

Q. And it was prepared by you? A. Yes.

Q. In relation to the revised base price that B.P. notified to BPA? A. That's right.

Q. I am sorry, notified to Nabalco? A. I am sorry, yes.

Q. You observe in the first place that it is styled as a recommendation of a revised base price for fuel oil supplied to Nabalco under the existing contract? A. That's right, yes.

Q. It is not styled as a recommendation merely relating to certain components of a revised base price? A. Well, I don't really think I could agree to that because it lists the 30
 components underneath.

Q. Yes, I am sorry. I haven't made myself plain. You have suggested to the court a few moments ago that your recommendation was not intended by you to be a total recommended revised price but was intended to be read as a recommendation as to some components only of what B.P. should fix as a revised base price? A. Well, if I did make that impression, I should not have. What I started to do was to recommend a revised base price, then it was submitted to the marketing people and they said they wished to add something to it and they did.

Q. Marketing or management? A. In this case it was to the marketing manager, Wholesale Sales Division, and this was in respect of the revised base price. You did refer me to the affidavit, section 29, which refers to recommendations to management or senior management officials but this is in relation to the prices to be paid by BPA to BPT. This is another . . .

Q. This is a different sort of exercise? A. A different sort of exercise, yes.

Q. I know. But I gained the impression—was I right or wrong—some ten minutes ago that the addition that was made to what you recommended was an addition which, after consultation with you, was made by management? A. By marketing management.

10 Q. By marketing management? A. Or by the marketing manager, Wholesale Sales Division.

Q. I am sorry, when I used the phrase “management”, I meant the board or top management? A. No, the board or top management at that stage—well, I am not sure. I didn't deal with top management. I dealt with the Marketing Manager, Wholesale Sales Division.

Q. So, when you were consulted about an addition to the figure appearing in your recommendation, you were consulted by the Marketing Manager, Wholesale Sales Division? A. That's right.

Q. Now, the task you performed was to project FOB Bandar Mahshar per metric 20 ton forward to 1976? A. Yes, that is true.

Q. That being the time when BPA became free of the time restraint in cl. 9(c)(i) of the contract? A. Yes.

Q. And you have allowed for what you deem to be movements arising from an increase even above March 1974 in the OPEC countries, oil participation or participation requirements? A. Well, I have said that they were part of the things or they were taken into account, yes. I have said that “in estimating future costs . . . Middle East and general inflation,” were taken into account.

Q. So, you have assessed what the FOB Bandar Mahshar would be looking forward and taking a higher FOB Bandar Mahshar price than the then current price?
 30 A. Yes.

Q. Than the then current posted price? A. Yes.

Q. And then you have added an inflation factor of five per cent? A. Yes.

Q. That is, what, on the basis that your forecast up to 1976 of posted prices might in fact be insufficient? A. No, as part of that assessment. I was taking as the base—well, in the present Bandar Mahshar posted price anyway—I think, to make it clear, I was attempting to forecast the average cost to BPA over this period and I was using the present situation and adding what I deemed to be further increases in that price and part of it was general inflation.

Q. Part of it was a rise in the Bandar Mahshar posted prices? A. Well, it would

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have been factors which would have caused the Bandar Mahshar posted price to have risen.

Q. Let me take you to your FOB Bandar Mahshar \$44.44 a metric ton?

A. That's right.

Q. That was higher than the March 1974 posted price? A. That's true, yes.

Q. And that was because you anticipated that those posted prices would rise?

A. Yes.

Q. Can you recall what was the Bandar Mahshar price per metric ton at this time in Australian dollars? A. No, but it could be checked quickly. It was lower than that. I have some posted price schedules in my bag.

10

Q. Do they give it to you in metric tons? A. No.

Q. You are not returning to Melbourne tonight, are you? A. No.

Q. Well, perhaps overnight could you work out for me what was the present metric ton Bandar Mahshar? A. What was the then, yes.

Q. So, you have anticipated there will be increases up to the review date in 1976?

A. Yes.

Q. In the Bandar Mahshar posted prices? A. Yes.

Q. That, of course, might be an increase due to any number of events? A. Yes, that is true.

Q. Supply/demand changes so far as you could anticipate them? A. Well, yes, so far as I could anticipate them. I am not sure that I could or would have had regard to—no, I am sorry, look, I think you have to read further on.

20

Q. I have read it. You may read it if you wish. A. Well, what I did was to attempt to equate, as I have explained in the letter, the price of fuel oil with the price of Iranian Light and I used that as my indicator and I used then the effects of increased participation costs and the effect of inflation. That, in itself, because it meant had I just extrapolated the FOB Bandar Mahshar posted price for participation costs and the inflation I would have got a higher price than that \$44.44 but I—well, I anticipated, I knew that the Bandar Mahshar posted price at that point in time was higher because of the recent events in the Middle East and the severe supply shortages.

30

Q. Higher than what? A. Higher than it should have been. No, I'm sorry, that's not quite right. Higher than it would normally be in terms of an equilibrium supply/demand situation.

Q. Because this was during the embargo—that is what you mean? A. Well, this was just after.

Q. Just after? A. Yes. Now, in using the Iranian Light crude price I did in fact

allow for some easing in demand or increase in supply or whichever way you like to look at it, so I did allow for that sort of factor.

Q. You also conversely added for an anticipated higher participation cost? A. At that time there was some doubt, as I recall reading from the publications and I do not claim to be an authority on the world scene in any way, but there was a reasonable expectation that the full cost of the participation had not been felt in prices.

Q. In other words, that the OPEC countries might make some further move that would increase the cost of participation such as increasing the buy-back? A. I think they already had made those moves. You know, I am speaking now from memory but I think they already had made those moves and the full effects of those moves were not then known. There was speculation as to what the final effect might have been going to a 60 per cent participation.

Q. You anticipated, however, didn't you, not merely a realisation of crude oil participation costs but increased crude oil participation costs? A. No, I don't believe, looking at it now, and this as I said is 12 months ago, that I allowed for any cost over and above at that time a 60 per cent participation, but those moves had already started or had taken place and the cost situation was not fully apparent. That is my recollection of it. I could go back I think perhaps on working papers but I doubt if I could give you any better explanation of it.

Q. However, we can ascertain that. Would you tell me by 25th March 1974, the latest posting for product Bandar Mahshar would have attempted to allow for all the then foreseeable cost of participation? A. I don't think so but I am not sure again because, again, I went to a price—I am not sure that it is relevant because I went to a price of Iranian Light crude and the posted price, the Bandar Mahshar posted price itself at that time is not really relevant to the exercise.

Q. Not to the exercise on the basis of taking Iranian? A. Yes, of getting to a \$44.44 price. In other words, I did not start with the present posted price of fuel oil.

HIS HONOUR: Did you say \$44.44 or \$54.44?

MR. OFFICER: \$44.44 is the price per metric tonne or the per metric tonne component labelled f.o.b. Bandar Mah-Shar.

HIS HONOUR: Is the price in the notice \$10 even more than that?

MR. OFFICER: Not quite, your Honour because the recommendation, whatever it be intended to cover, transpires from the evidence. Mr. Munt's recommendation was f.o.b., plus insurance \$52.34. In consultation with him it was the Marketing Manager here who added \$2.10.

HIS HONOUR: In fact, the price in the notice is an even \$10 above the Bandar Mah-Shar price.

MR. OFFICER: It would have to be because B.P.A. had to pay, say, the posted price plus freight plus insurance.

HIS HONOUR: I follow that.

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MR. OFFICER: Q. Your inflation factor was just an estimate by you as to what might happen, so far as inflation is concerned, between March 1974 and the date in 1976 when the clause 9 C(1) would be available? A. Yes, that was right.

Q. The shipment to Nabalco, there were two from Aden you recall? A. Yes.

Q. It was contemplated at the time the contract was entered into, I take it, that the product would be brought from the Middle East? A. Yes, so I have been told. I wasn't engaged in the negotiations in regard to the actual source of supply, but I have been told that.

MR. OFFICER: I tender, your Honour, the document which the witness had identified as his report dated 25th March, 1974—"The Marketing Manager, Wholesale Sales Division from Manager, Commercial Services Department described as Nabalco contract, inclusion of revised base price for F201. 10

MR. OFFICER: Q. F201 is the code for furnace oil? A. Yes, that specification.

MR. STAFF: I have no objection but I drew your Honour's attention to the second sentence.

(Above document tendered and marked Ex. D)

MR. OFFICER: Then we know from the annexures to your affidavit that the bulk of the shipments thereafter came from Singapore except for one more from Aden, shipment No. 9 and two from Brisbane, 6 and 7. I think it is annexure 84 to your affidavit? A. Yes. No. 9 was from Aden and Nos. 6 and 7 from Brisbane. All the rest were from Singapore. 20

Q. Nos. 6 and 7 were exchange shipments with Amoco? A. Yes.

Q. From, is it Amoco's Refinery at Brisbane? A. I presume so. I am not sure as to the actual source. They were shipped from Amoco's Refinery in Brisbane, whether they were manufactured there or whether Amoco, it was some fuel oil imported by Amoco, I understand they were shipped from Amoco's Refinery in Brisbane.

Q. Are you concerned only, Mr. Munt, with pricing of—apart from special tasks lime that last exhibit—pricing inter-company transfers or are you concerned also with supply under contracts? A. My direct responsibility is pricing and all its ramifications overseas bulk pricing, international pricing from B.P.A. I am in the supply part of the organization and I have a fair bit of knowledge about the supply side of it. I am not directly responsible for it. 30

Q. Looking at shipment 18, that one was drawn in Singapore from two refineries, was it not? A. No, it could have been. I am sorry, I haven't got the details of it here. Are they in my affidavit?

Q. Mr. Munt, you can take it that Mr. Pritchard wrote to my instructing solicitors saying that cargo No. 18 was uplifted from two loading points. The weighted arithmetic average of the two parcels had been recalculated at \$14 instead of \$13.83? A. Yes. That was the one, I remember now.

Q. What were the two loading points, do you know? A. Not off-hand. I would have to refer to the invoices. I am sorry, I know one parcel was very small.

Q. Were either of the parcels exchanged? A. Exchanged?

Q. Exchanged parcels with another company? A. Well, they could have been. I don't really know. Sorry.

Q. At the moment you do not know one way or the other? A. No. I would have to look at the refinery from where they were drawn.

Q. But the particulars would be available to you? A. They may not be available directly from the invoice, but they would be available in Melbourne, yes.

10 Q. (Approaches). In what department were you in 1971? A. I had a title called Group Finance Planner. I was doing much the same work as I am now only the title has changed with other duties thrown in.

Q. Could you identify for me those initials B.S./E.T. A. The B.S. the initials are one of our, is the Manager, Production Programming & Supplies Department; his name is Selligman, and the E.T. is the typist.

Q. Would you read—and this document is dated 8th March, 1974—the document which was produced on discovery. Would you read the paragraph numbered 1? A. Yes, I have read it.

20 Q. I am not concerned with the changes that are referred to, but you have heard, have you not, of the reason there set out for the change from Aden to Singapore as being the originating point for the product? A. Yes; I have heard of that reason given.

Q. And you have no reason to doubt that that was the reason for the change? A. No, I haven't reason to doubt.

MR. OFFICER: Perhaps it might be read on to the notes rather than tendered.

MR. STAFF: I do not know what the document is that my friend is looking at and I do not know what it says. I would object to it being read on to the notes in the state of the evidence without having seen it. Perhaps there will be no quarrel about it.

HIS HONOUR: Show it to Mr. Staff as if it were tendered.

30 MR. STAFF: I would not object if my friend tenders the document. The method he proposes is not a permissible method to read a bit of somebody's document on to the notes.

MR. OFFICER: I have no objection. I was merely seeking to tender only the bit the witness was looking at.

HIS HONOUR: It will have to be dismembered, I am afraid.

(Document dated 8th March, 1974 headed "Nabalco Fuel Oil Supply" and comprising six numbered paras. dealing with supply source, type of product,

quality, selling price, invoice price, posted price, feedstock availability and O.P.E.C. tendered and marked Ex. E).

HIS HONOUR: Which is the paragraph you wanted to read on to the notes?

MR. OFFICER: About the first four or five lines of the paragraph numbered 1.

HIS HONOUR: Very well.

MR. OFFICER: Q. Mr. Munt, you recall an occasion when B.P. sought to have inserted into the contract an f.o.b. escalation clause? A. No, I'm sorry.

Q. This is after the contract was executed? A. Which contract are we talking about, Mr. Officer?

Q. B.P.A. Nabalco? A. No, I am sorry, I don't. I was not connected with it that I 10 recall.

Q. Are you aware of B.P.A. having in 1971 protested to Nabalco that costs had gone up because of actions of O.P.E.C. countries? (Mr. Staff objected. Counsel addressed on the objection. Question allowed).

Q. Mr. Munt, you are broadly speaking aware from time to time because of their impact on prices of the actions of the O.P.E.C. countries? A. Yes, I am.

Q. You were made aware, were you not, in early 1971 of certain Teheran agreements? A. Yes, I was.

Q. The entry into those agreements was at the instigation, as you understand it, of the O.P.E.C. countries? A. Yes, as I understand it. 20

Q. And am I right, from your observation of prices, that prices rose shortly thereafter? A. Yes, prices of products.

Q. Or probable crude and product? A. Yes.

Q. Am I right, you have little doubt that the rises were the result of the Teheran agreements extracted by the O.P.E.C. countries? A. Little doubt, yes.

Q. Were the rises substantial? A. Yes, they were in terms of . . .

Q. Perhaps . . . A. In relation to the price before.

Q. They might now be regarded as insubstantial, but they were at the time. A. Yes, regarded as substantial.

Q. The increases thus caused, as you saw it, were increases that reflected on 30 product posted prices? A. Yes. They reflected, as I understand it.

Q. And they also were reflected in higher prices for spot sales from the journals you have described? A. I couldn't be sure about that. I have no doubt spot sales, well, spot sales as I have said, are more volatile than term prices. I don't know to what extent

the increases would have been reflected in spot sales because of the then prevailing market conditions may well have prevented the fuel increase.

Q. The increase in posted prices, B.P. posted prices, for fuel oil were substantial, were they, percentage-wise to what had been charged, posted before? A. Well, the increase was about three thousand U.S. in about—this is just the order of cents—30 cents in the dollar, fifty, say.

Q. When these increases in the posted prices for fuel oil, as it were, came through to you, were you asked to give consideration as to whether there was anything that could be done under the Nabalco contract? A. I didn't think in these terms, I was certainly aware of its effect on not only the Nabalco contract, but other contracts. That was a matter for the then manager or Wholesale Sales Manager in the Sales Division. I don't think I would have been consulted as to the mechanism, for example, of going to Nabalco for a price increase, but I certainly would have been asked for, in fact, I would have communicated these increases and their effects to people who should have the information and one of those people being the Wholesale Sales Manager.

Q. You are at least not presently aware of what course was taken, if any, at the time? A. Well, only from what I have been told about it. I wasn't personally involved.

Q. Are you aware that B.P. proposed that the contract should be varied? A. Yes.

(Mr. Staff objected and counsel addressed on the objection. Counsel further addressed in the absence of the witness. Mr. Staff also asked that Mr. Webster go outside. Question allowed).
(Letter from B.P. Australia to Nabalco dated 25th March 1971 tendered and marked Exhibit F)

MR. OFFICER: Q. Coming to the events of 1973/1974, it is part of your function for the purpose of advising the appropriate authorities in B.P.A. to observe not only B.P.T.'s posted prices for products in the Gulf but posted prices for other concession holders in the Gulf? A. Yes.

Q. And I take it they have moved more or less in parallel with B.P.T.'s posted prices for products? A. Yes. More or less.

Q. It is also part of your function to observe the information as to spot sales that there are reported in Platts and other trade publications? A. No, I do not normally communicate those as a matter of course. If people ask me I will tell them.

Q. I am sorry, it is part of your function for you to make yourself familiar with them? A. Yes.

Q. I take it, since the events of 1973/1974, they have increased very very greatly? A. Yes.

Q. How would you describe them? Enormously? A. I would say, allowing for the events just after, the movements in spot prices were very large; the events after the October war and leading into the end of 1973 were very large.

Q. So it is said that the embargo was lifted in March 1974? A. Yes.

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Q. The other actions of the OPEC countries in 1973 and the beginning of 1974 still have an effect, do they not, in that spot prices are still greatly above what they were in, say, 1972? A. We are talking about products generally, are we?

Q. Yes. A. Yes, I think it would be fair to say that.

Q. And still greatly above 1972 or the beginning of 1973 spot prices for furnace oil in the Gulf? A. Yes, that would be so.

Q. I suppose you also read as reported in these Trade Journals the prices so far as they are able to be reported by the editors of these publications of new term contracts entered into? A. I cannot bring any specifically to mind.

Q. And you do look at what appears in the Trade Journals relating to spot prices not only in the Gulf but at other places, being world or free world oil trading points? A. Yes.

Q. Such as Rotterdam? A. Yes.

Q. Are there any other particular ones? A. Singapore for one, Venezuela.

Q. And you look at what information appears with regard to those? A. Yes.

Q. You would agree the actions of the OPEC countries have had a dramatic effect on product prices at these other places such as Rotterdam, Venezuela and Singapore? A. Yes, I think it would be fair to say that.

RE-EXAMINATION

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R.A. Munt:
Re-Examination

MR. STAFF: Q. You gave an answer to my learned friend a few questions back. Expressed generally, the question was in relation to the level of product prices in early 1974 as compared to 1972. You may recall you assented to the question which suggested they were greatly above the 1972 levels? A. Yes, I think I remember. 20

Q. You were speaking generally in respect of product prices? A. Yes.

Q. Is there one exception to be made to the general statement that you can think of, to that answer? A. In respect of a particular product?

Q. In respect of a large group of products. May I suggest: should there be a qualification to your answer in respect of Australian produced—that is products produced from indigenous Australian crude—refined products? A. Yes, there should be an exception in regard to that. I thought we were talking about imported products. 30

Q. Or a foreign product? A. Yes.

Q. I think the question was asked in that context but I thought it fair to make the qualification. You were asked some questions also about Exhibit D, the document that sets out your recommendation or your remarks about your recommendation in respect of the fixing of a revised posted price for fuel oil. Do you remember those questions? A. Yes.

Q. Do you recall that you produced, as you said as a price set at a level deemed sufficient only to cover B.P. Australia's future purchase costs the figure of \$52.34?

A. Yes.

Q. Which is Australian dollars? A. Yes.

Q. With the benefit of hindsight are you able to tell us whether in relation to the supply of such products at the present time your assessment has proved realistic, conservative, accurate or how it has turned out? A. At the present time it has turned out rather on the conservative side. In fact, some calculations have been done which I haven't with me but my recollection is that the price now the cost to B.P. Australia
 10 would be above that \$54.44 or, indeed, above the \$52.34.

Q. Can you tell us approximately the extent to which they would be above? A. I think it was \$2, or \$3 or \$4 a tonne, somewhere in that order.

Q. You were asked some questions about the way in which prices payable by B.P. Australia to B.P. Trading Limited were determined and the way in which discounts and management fees and the like play their part. In approaching the fixing of these prices and agreeing to prices on behalf of B.P. Australia, as I gather you do, do you bear in mind certain leading principles of objects which have to be accomplished so far as they may be? A. Yes.

Q. Can you tell his Honour shortly what they are? A. Simply that the prices that
 20 we pay to B.P. Trading shall be representative of term market prices; the prices for the sort of business that we conduct with B.P. Trading and we have to bear in mind the necessity to justify these prices to external authorities such as the Taxation Department and the Prices Justification Tribunal and so on as part of our costs.

Q. And Customs as well? A. Indeed the Custom from a statistical point of view. I'm sorry, the Department of Minerals and Energy now in relation to exports not as to imports.

(Witness retired and excused)

(Further hearing adjourned until 10am, Wednesday, 28th May, 1975.)

THIRD DAY: WEDNESDAY, 28th MAY, 1975

30 By consent Mr. Staff's statement immediately after the luncheon adjournment on 27.5.75 to be taken as an admission.

Mr. Officer: Might it be noted that I object to par. 2 of Mr. Pritchard's affidavit.

JAMES COLIN EDEN WEBSTER
Sworn and examined

MR. STAFF: Q. What is your full name? A. James Colin Eden Webster.

Q. Do you live at 19 Fabert Road, London? A. Yes.

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Q. Are you the assistant general manager of the supply department of BP Trading Limited? A. Yes.

Q. You swore an affidavit last year in this matter? A. Yes.

CROSS-EXAMINATION

MR. OFFICER: Q. Mr. Webster, I would like to go back to the 1950s and with the exception of Iran would you agree, and speaking otherwise generally of the Gulf countries, the government take consisted of two imposts. One was a royalty per barrel? A. Yes.

Q. And the other was a tax, being a stated percentage of the concession holder's income from the concession? A. I am not very familiar with all the details of the 10 arrangements in the 1950s.

Q. Is that your understanding of the situation? A. I believe it was, yes.

Q. And the income for purposes of calculation of that tax was the difference between the posted price for crude and the cost of production? A. Yes.

Q. At that time the royalty per barrel was allowed as a straight deduction from the calculated tax? A. Yes.

Q. I think it has emerged already but may I put to you: In 1960 there was imposed a restraint on the lowering by the companies of their posted crude prices? A. I believe that the situation was that the States concerned objected very strongly to the reduction of posted prices and though the companies said it was within their power to do so in 20 order to bring it into line with market levels I believe thereafter they did not reduce it.

Q. That was an attitude which was forced against their will on the oil companies? A. I think it was an attitude that they adopted in protection of what they considered were their concession arrangements. They believed it was politically wise to accept this.

Q. I am not suggesting they wanted to accept it, but they accepted it under the threat that if they did not something worse might happen? A. Yes.

Q. At times thereafter that resulted, for example, in the tax being calculated on a somewhat fictitiously high income? A. Yes.

Q. I am not speaking of the nationalisation of Iran concessions but at least that move in 1960 was a move by the producing countries in breach of the contracts, terms of the concession, then existing? A. I do not believe that it was construed as a breach of 30 the contracts. I believe the oil companies simply did not lower the posted prices thereafter, but I cannot be sure. I am not very familiar with this.

Q. Some at least of the oil companies claimed the right previously and exercised the right to vary posted prices? A. Yes.

Q. Prior to this date in 1960 the fixing of a posted price for crude had been wholly the right, whether consultation had taken place or not, of the concession holder? A. Yes.

Q. Then in 1965 a change took place by which the royalty, instead of being as theretofore a straight deduction from the calculated tax, was made one of the elements in the calculation of cost of production? A. Yes.

Q. And that was brought about as a result of the expensing agreements or royalty expensing agreements of 1965? A. I cannot recall the date.

Q. But approximately the mid-1960s? A. Yes.

Q. That was brought about as a demand on the part of the host countries to which the oil companies submitted, reluctantly maybe but they did submit? A. They agreed to the arrangements.

10 Q. They agreed because they thought to refuse would lead to consequences more dire? A. I think that you have to look at the development of these things over a number of years as partly starting with the producer company offers to improve the settlements. I do not think at that stage that these agreements that were entered into were designed to forestall something dire. I think they were to forestall a lengthy argument, possibly some constraint and so on and so forth, but not entirely dire. They seem to be realistic of the very much more competitive oil industry in the 1960s.

Q. Perhaps "dire" was a bad word for me to select. There was a fear, was there not, that if you did not reach an agreement for the expensing of royalties, something somewhat worse might happen? A. Yes.

20 Q. And the expensing agreement with Kuwait for 1965 or 1966 included a provision which foreshadowed what might be called "leapfrogging"? A. I am not aware of the provision you talk about.

Q. It included a provision broadly on these lines: If more favourable terms were granted to any other Gulf country by any other oil company than was provided in the agreement with BP and Kuwait, that Kuwait reserved the right to adopt those more favourable terms? A. I am sorry, I am not aware of these. I simply do not know.

Q. I show you Ex. 35, BP's affidavits, and that I think you recognise as being the BP-Kuwait expensing agreement? A. Yes.

30 Q. And you observed at the end of article 1(c) a provision on the lines that I indicated to you a moment ago? A. Yes.

Q. You recall, do you not, that the 1968 OPEC resolutions enunciated this doctrine of what has been referred to as changing circumstances? (Question objected to; allowed). A. Here again, I am not familiar with the particular title of this agreement.

Q. With the title? A. Yes, changing circumstances.

Q. I did not say that was its title. I was suggesting the OPEC resolution enunciated a doctrine on the part of the OPEC countries which has been referred to as a doctrine of changing circumstances? A. Yes. I have not heard that expression.

HIS HONOUR: Q. You mean until Mr. Officer used it? A. Yes.

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MR. OFFICER: Q. I show you Annexure 6 to Mr. Sutcliffe's affidavit and you may take it that it was the 1968 OPEC resolution? A. Yes.

Q. You observe the references on the first page of that exhibit to the statement by the OPEC countries that their resources are limited and exhaustible and to the right of all countries to exercise permanent sovereignty over the resources? A. Yes.

Q. You observe on p. 2, the clause numbered 2, that though they under certain circumstances would as it were accept help in the development of their resources, they were to seek to retain the greatest measure possible of participation and control over operations? A. Yes.

Q. And that the terms and conditions of the contracts should be open to revision 10 at predetermined intervals as justified by changing circumstances? A. Yes.

Q. Such changing circumstances should call for the revision of existing concession agreements? A. Yes.

Q. And under Participation that where provision for government participation had not been made the government concerned may acquire a reasonable participation on the ground of the principle of changing circumstances? A. Yes.

Q. And under the heading on p. 3 of Relinquishment you observe what is said there? A. Yes.

Q. And under the heading of Posted Prices it stated the posted prices are to be determined by the government concerned? A. Yes. 20

Q. Would you agree therefore that prior to 1970 the OPEC countries had, notwithstanding the terms of existing concessions, brought pressure to bear on the oil companies to agree upon matters about which the oil companies were initially loth to agree? A. Yes.

Q. And it was apparent that the OPEC countries would no longer continue under all circumstances to observe without variation the terms of concessions? A. Yes, they certainly said that is what they intended to do.

Q. And in some respects by 1970 they had done it? A. To some extent.

Q. And they had claimed the right to do it in future as they thought appropriate? A. They had claimed it, yes. 30

Q. One could not therefore as at 1970 be assured that for the future there would not be imposed upon the oil companies changes in the terms of their concessions? A. No, one could not be assured.

Q. I should perhaps have dwelt for a moment longer on the portion of the Kuwait expensing agreement I showed you. Similar provision to that which I showed you was, I think, introduced into the expensing agreements with the other countries, was it not? A. I do not know.

Q. The phrase "government take" is a phrase used in the industry? A. Yes.

Q. And it is a phrase intended to comprehend what comes to the government from the totality of the measures which it adopts with that in mind? A. Yes.

Q. For example, in the 1950s the government take would refer to both royalty and tax? A. Yes.

Q. And it now refers in addition to what flows to the government by way of the buy-back agreements? A. I do not think it has been used recently in that sort of context, but it may have been.

Q. Participation was another method by which the host government did increase its revenue? A. Yes.

10 Q. And the unilateral fixing of crude posted prices was merely another method by which the government increased its revenue? A. It was, yes.

Q. And adopted for that purpose, was it not? A. It was adopted for that purpose, yes.

Q. Not to put too fine a point on it, and I am not being critical, it is the situation in which the oil companies found themselves: once the OPEC countries started increasing their revenue, then short of being expelled from the host country there was little that a concession-holder could do to resist government demands? A. I think that there was, and I think this characterised all the negotiations that led up to the crisis in 1973. For
 20 example, the participation agreements which were negotiated over a very long time included phase-out provisions and this sort of thing which enabled an oil company to avoid buying back oil, and the original buy-back was asked for by the oil companies to permit a smooth transition into it. All these agreements were negotiated. They were extremely complicated. So I would have thought that they indicated a certain amount of commercial pressure or indicated that it existed and that the oil companies could transfer or reduce production from the country that charged too much.

HIS HONOUR: Q. I suppose these negotiations would have had a certain nice balance about them because the OPEC countries would not want to have seen you go at once? A. I think that is true.

Q. And they would have wanted to feel you out for what they thought they could
 30 get out of you without making it so uneconomical for you that you would want to go? A. I think that was a characteristic.

Q. At least until their own expertise was built up to a point where they could do it for themselves? A. Yes, expertise and economic strength in their ability to form a cartel. I think these things all changed the picture. Until this happened there appeared to be a balance that could be found on commercial grounds and the reference to market prices and participation agreements would suggest that.

Q. You will agree that though there were some overriding commercial considerations, the host countries were in a position and irrespective of the wish of the oil companies the host countries were in a position to squeeze the oil companies as much as, to
 40 use the phrase, the traffic would stand . . .

HIS HONOUR: You may not be familiar with that phrase.

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WITNESS: I am sure I get the general gist. I think they were in a position to squeeze us because quite clearly it was difficult for us with our big investments to make any sudden departure. There was not any free exit from this type of operation. By the same token, we had some strength and they considered that we had too much.

MR. OFFICER: Q. I am aware they did originally. Perhaps that is a debate which history will resolve. Certainly it would be right to say by 1970 that though the extent of the imposition which the host countries later placed upon you were un contemplated in degree, the situation had become by 1970 fluid to this extent that the OPEC countries had commenced to exert their bargaining power? A. Yes.

Q. And no one knew by 1970 what would be the limit to which they would try to assert their bargaining power? A. I do not know whether you mean by that question that people accepted there was no limit. I think people, on the contrary, accepted there were very definite limits to what they could achieve. I think their attempts at exerting cartel-like pressure on the oil companies had been fairly negligible or they had come to nothing in the 1960s, so I do not think it would be fair to say that the industry thought there was no limit to their power. No one could foresee exactly what would happen but there was certainly no feeling there was no limit.

Q. I withdraw that phrase. This would be the situation: They had by 1970 indicated they would not necessarily be bound by existing contracts? A. Yes.

Q. The extent to which they would attempt to put further impositions on the oil companies was indefinite, indeterminate? A. Yes, these were their declarations.

Q. Prior to 1968 they had taken some steps by way of exerting pressure on the oil companies? A. Yes.

Q. May we turn to the situation of BP as a group. Your accounting years are up to 31st December each year? A. Yes.

Q. For the year ended 31st December, 1973, BP's product sales in terms of volume increased, did it not, except for two special events, the withdrawal from Italy being one? A. Yes.

Q. And the fact that one large consumer had switched over to buying crude rather than product? A. Yes, I do recall this. I cannot remember the name of the company.

Q. Apart from those two special, unusual, events . . . A. I would think that was so.

Q. In 1974, for your financial year, due to the increase in cost of both crude and of product and due to some onset of a fairly general economic recession, the volume of sales fell off, did it not? A. Yes. I think there were other factors but the volume of sales fell off.

Q. When you say "other factors", that is other factors which restrained the consumption? A. Yes, that is right. These included an abnormally mild winter, though we had had mild winters for two or three years this was abnormally mild. Some consumption was lost forever as a result of some government measures, although these were very small, like prohibition of motoring on certain days of the week, but these were small; but the cold weather was a factor—the warm weather.

Q. The result of what occurred in the Middle East from October 1973 to, say, March 1974, had a severe curtailing effect on the extent to which BP could give effect to its sales aspirations? A. Yes.

Q. It would be correct to say it did not have to reduce supply to any consumer who, at the prices, wanted it? A. I think that it certainly did in the early part of the crisis over late October, November, December, taken as a whole. It had to then because it meant the demand at the prices that they required was certainly higher than our availability and we had to introduce a rationing scheme to our associates. Thereafter the price rise plus the factors we have mentioned took away the demand.

10 Q. It was for the first couple of months of the embargo period that there was some dislocation and some rationing had to be imposed? A. Yes.

Q. I take it that was in part because of the dislocation which the embargo caused to the industry? A. Yes. I think there were two things or three things: there was the price rises, there was the reduction in production that took place, and there were the embargoes, and these were of various sorts and changed. One was an embargo on the United States, another on Holland, and gradually lists grew of enemy countries or bad countries and other lists grew of friendly countries and there was an intermediate type of list, but these were the embargoes.

20 Q. Australia was not classified as unfriendly—it may not have been classified at all? A. I can't recall exactly where Australia came in. The lists grew up some time after December as they tried to sophisticate their ideas.

Q. There were friendly, non-friendly and in between? A. In between.

Q. Japan was an in between? A. I can't recall offhand what Japan was.

Q. One result of the embargo was that companies had to completely re-route their oil from supply points to the consumer countries? A. Yes.

Q. So that the Netherlands would be supplied otherwise, principally, than from the Middle East? A. No, it was supplied with Iranian oil. That was the principal oil.

Q. Iran did not join in the embargo? A. Only the production cuts.

30 Q. As to imports into the United States, you had to re-route so that no Middle East non-Iranian oil went to the United States? A. We have only a very small quantity of oil delivered to the States and it was not in any case oil other than Iranian at any time. I do not know about the rest.

HIS HONOUR: Q. Does America take oil from South America? A. The United States takes a lot of oil from Venezuela.

Q. Was not that one of the OPEC countries? A. It was one of the OPEC countries but it was not one of the countries that applied embargoes, though I believe they did say, but here again I could be wrong, I seem to recall they did say they would not increase production to help out anybody.

MR. OFFICER: Q. Those who imposed the embargo were the Arab countries,

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who regarded themselves as being at war or at least hostile to Israel? A. Yes.

Q. And that accounts for the fact that Iran did not join in the embargo, Iran not being an Arab country? A. Yes.

HIS HONOUR: Q. And Venezuela? A. Yes, and Nigeria.

MR. OFFICER: Q. We have detail in the affidavits filed by BP of actions taken in certain of the OPEC countries, Middle East OPEC countries, and there is some reference to Nigeria? A. Yes.

Q. And I am speaking of the whole period up to and including March 1974? A. Yes.

Q. You will agree that all the OPEC countries in varying ways took steps towards 10 the same end as the host countries, the events which are covered by BP's affidavits? A. There were no exceptions, if that is what you mean. All the OPEC countries acted.

Q. For example, Venezuela also moved in the same way of increasing posted prices and introduced participation? A. I am afraid I do not know what the Venezuelan provisions are. I believe they are extremely complicated but the fact was to raise the price of oil.

Q. And to raise it by way of increasing the Venezuelan Government revenue or take? A. Yes.

Q. Apart from the Middle East countries, BP's affidavits cover Nigeria? A. Yes.

Q. And you have now told us Venezuela moved much to the same effect? A. Yes. 20

Q. And in the non-Communist world the other major producers would be Algeria? A. Yes.

Q. I think Algeria nationalised, did it not? A. It has already nationalised now, I think.

Q. And had done so by March 1974? A. I believe so, yes. We were not involved in Algeria.

Q. And the steps taken in Algeria resulted virtually in the cost of getting crude from Algeria being roughly the same as anywhere else? A. Yes.

Q. And the other oil-producing country of any size is Indonesia? A. Yes.

Q. If I add Indonesia to those covered by BP's affidavits, then Algeria plus 30 Venezuela, I have covered the OPEC countries or the major producers within OPEC? A. Yes.

Q. Steps were also taken in Indonesia to increase the government revenue? A. I believe so.

Q. Again with the result that the cost of getting crude or product was much the

same as elsewhere? A. Yes—I am sorry, as the other countries you mentioned, not as elsewhere.

Q. All members of OPEC have more or less—though by different measures—marched in line in the extent of the impositions they have placed upon persons requiring crude? A. Yes.

Q. Do you recall that the first two shipments under the Nabalco contract, the product came from Aden? A. I have been told they do but when we ship the oil it is for BP Australia, from BP Trading.

Q. But it came from Aden? A. Yes, I believe so.

10 Q. I assume that was Middle East crude that was refined in Aden? A. Yes.

Q. What country in the Middle East does the crude for Nabalco, the crude used for the Nabalco contract, come from? A. Well, I do not think I can tell you that precisely. A number of grades are run at each of our refineries apart from the Kuwait refinery which runs entirely on Kuwait, but Aden refinery might run on three or four different crude oils and clearly one or two of them may not be entirely suitable for the particular grade but any fuel oil might come from the residues of two or three crudes or even more.

20 Q. You recall up to the first couple of shipments—either recall or now are aware—that succeeding shipments, except for an odd occasion of exchange, have come from the Singapore refinery? A. Yes.

Q. That is a BP refinery in Singapore? A. That is a BP refinery in Singapore.

Q. Has BP one only refinery in Singapore? A. We have one only. It is very small, too.

Q. To supply Nabalco from Singapore, Nabalco taking about 360,000 tons a year, would take the bulk of the furnace oil available from Singapore refinery? A. I would have thought if it were 350,000 it would have taken about sixty per cent of the fuel output at the time.

30 Q. There was a note which was put in evidence yesterday and it would correctly record the situation that the switch to Singapore as the refinery from which the Nabalco product was drawn was because the Singapore refinery had a surplus, BP having lost a supply contract for a power station. (Objected to; withdrawn).

Q. You are aware that the Singapore refinery was for some time used for the supply of furnace oil to a power station? A. Yes.

Q. And BP lost the contract for the supply of that? A. Yes.

Q. That produced a surplus capacity qua furnace oil in the Singapore refinery? A. That was one possibility, yes, but not the only one. We could have reduced throughput at the refinery and reduced the quantity of fuel oil produced.

Q. That would have been somewhat uneconomic from the point of view of the

refinery? A. It would depend. In this particular case it would have meant importing distillates from Aden or Abadan and obviously we were not keen to reduce throughput.

Q. It was good business from the overall BP point of view to switch to Singapore as the source of the Nabalco product? A. Indeed.

Q. The crude that was refined in the BP Singapore comes partly from Indonesia?
 A. No, none at all.

Q. Still drawn from the Gulf? A. Still drawn from the Gulf.

Q. You have mentioned the Aden refinery can run crudes from different Middle East countries? A. Yes.

Q. Can the Singapore refinery also do so? A. Yes.

10

Q. Is crude refined in the Singapore refinery drawn from different Middle East countries or from one only? A. No, from different ones. The crudes—there may be two or three run at a time one after the other perhaps, and there have been changes.

Q. BPA in 1974 increased its purchase of Middle East crude? A. In 1974?

Q. I am sorry, its rate of purchase of Middle East crude. A. I am afraid I simply do not know but I am sure the fact is easy to discover, but I am afraid I am not aware.

Q. You have seen the ports or refineries of the origin of the different shipments—Mr. Munt has sheets with numbers of shipments that have taken place to Nabalco and which give the port of origin? A. Yes, I have only glanced briefly at it.

Q. Does the Singapore refinery ever obtain exchange crude and refine it? A. I don't think so. It is certainly most unusual if it has.

Q. Would there have been any exchange product drawn for Nabalco from Singapore? A. Here again I do not know of any but that is not impossible.

Q. Shell have a refinery in Singapore? A. Indeed.

Q. Are there any other companies which have refineries there? A. A number of them have them in the area. I believe Mobil have one in Singapore and Mobil and Esso and Shell have them in Malaysia and that general area.

Q. There is mentioned in the affidavit that in spite of what you have referred to as some curtailment of supply to all consumers, BPT were able to arrange that BPA were not rationed at all over the embargo period qua Nabalco. Were they rationed at all?
 A. I do not believe my affidavit says qua Nabalco. I refer to BP Australia. They were rationed in the sense that we applied to all associates the same rationing of supplies against an estimated programme that had been established before the crisis.

Q. Did BPA receive during the embargo period less oil, less crude or product, than they wanted? A. During the embargo period, as I stated, by the end of it we were able to return them to their pre-crisis estimate. I would like to explain the amount of imported oil for BP Australia is only in the region of thirty per cent of their total

supplies and the rationing had the effect of cutting supplies by fifteen per cent, so the net effect was a five per cent reduction in their programme. By the end of the first quarter and some time into the second quarter when we measured the amount of oil that had actually reached BP Australia we found that for one reason or another their supplies had not been cut by this five per cent. However, by then the need for rationing had departed or had ended, so we did not insist on a reduction in supplies in the latter period.

10 Q. It would be right to say, taking 1973 as a totality, that BPA obtained from the Middle East much more furnace oil than it had in 1972? A. I am not aware of all the details, I am sorry.

Q. However, you have said that though a cut may have been planned in fact the cut was never imposed, you subsequently discovered? A. Subsequently discovered it was never imposed on BP Australia.

Q. If I were to suggest to you that during January and February of 1974 BPA drew furnace oil from the Middle East at a rate in excess of the average rate for 1973, would that surprise you? Not necessarily. The cuts in fact in Australia were imposed on crude oil. We had various ways of applying it. It was imposed on crude oil and programming requirements might have insisted that for two months at any time the rates might be higher but that is by itself not very indicative.

20 Q. You have told us, I think, that the action of all the OPEC countries meant that the prices of crude or product from those countries went up as a result of what they did? A. Yes.

Q. And you would agree that prices in fact rose as a result of what occurred in the OPEC countries, not merely in the OPEC countries, but also in the non-Communist world? A. Yes, there were certain countries that imposed cost freezes or some other thing but as a generality that is so.

30 Q. The phrase "F.O.B. value" you would understand as meaning a free on board price but adjusting the price to any special factor that might have varied the price, such as terms of payment, long terms of payment or something of that sort? A. No, we would not term—when we are looking at the price of oil that is loaded on F.O.B., that would be the price. To a third party customer we obviously might have a cost built up when we are thinking about the price but we would not build up the price in precisely the way I think you are suggesting.

Q. I am not suggesting anything sinister about your activities. I am only suggesting if you saw two prices for the same grade of oil, those two prices differing slightly in the same grade of oil at the same place and in the same quantity, might it be accounted for—there may be other reasons as well—by some difference in the terms of payment? A. Maybe.

40 Q. They might be accounted for by the fact that one buyer might be more in need, more over the barrel, for his supply than another? A. It might have turned out that is why he paid the higher price.

Q. In order to find out in the general marketplace what is the value of a particular

grade of oil at a particular place you might need to look at the terms of contract if possible to see if the differences were explained by different factors? A. Yes.

Q. So it would be right to say that F.O.B. values will be close to but not necessarily identical with the mere unadjusted price at which sales take place? A. I am sorry, I have lost that question. Could you repeat it? (Question read). I do not understand the question?

Q. If you were asked what was the F.O.B. value of a certain grade of oil at any particular place you like, you would first look in an endeavour to see the price being paid for that oil at that place F.O.B.? A. Yes.

Q. Then you would also, having asked the value, endeavour to ascertain whether there were any special features about the sales you are looking at that reflected particular features as between that particular buyer and that particular seller? A. Yes. 10

Q. So value would be close to but not necessarily identical with price? A. That particular price, yes.

Q. It was always contemplated, I take it, that this Nabalco contract would be serviced by Middle East crude? A. Yes. We have no other crude in that part of the world apart from the Gulf crude.

Q. It would have been BP's contemplation that Middle East crude would be used for the product delivered to Nabalco? A. Certainly.

Q. And that was one reason why the contract stipulates for freight escalations having regard to the AFRA rate Aden Gove? (Question objected to; withdrawn). 20

Q. Does BP have any standing exchange agreement with Shell? A. Yes, we have a number of exchange agreements with Shell.

Q. I am not talking about just an ad hoc agreement but a standing agreement that you will exchange products. A. Yes.

Q. That would apply amongst other things to Singapore? A. It applies to bunkers in Singapore.

Q. Would it apply to furnace oil in Singapore? A. It could apply to furnace oil in Singapore.

HIS HONOUR. Q. When you say it could, do you mean you do not know whether it does or not? A. I do not know whether it does or not. 30

MR. OFFICER: Q. I am reading a part of a letter from Mr. Pritchard relating to shipment No. 18: "Due to the fact that cargo No. 18 was uplifted from two loading points, the weighted arithmetic average of the two has been recalculated." 18 was picked up from Singapore. What would be the two loading points from which it was picked up? Would one be the Shell refinery? A. It might be. I am fairly surprised but I cannot think of another explanation.

Q. Does Shell refine Indonesian crude in Singapore? A. I do not know.

Q. You mentioned a moment ago your exchange agreement with Shell applied to bunkers. What is the difference between bunkers and furnace oil? A. There is not in quality. What I implied is that it is a different type of—it requires specialist equipment and they supply bunker business in Singapore under exchange.

Q. Different equipment for loading? A. Different equipment for loading. The quality of the oil should be similar.

Q. The two loading points you have mentioned, one you would assume would be BP's refinery? A. Yes.

Q. BP would have only one loading point in Singapore? A. I think so, yes. I
10 believe it has only one loading point.

Q. Do you have exchange agreements with regard to any product operative in Singapore with a company other than Shell? A. Yes.

Q. Would this be right—I am not criticising you, is it the best you could do by way of explanation—you would have thought the reference to two loading points means that some came from the refinery other than BP? A. I would think that is the most likely explanation.

Q. But which other refinery you would not know? A. I would not know.

Q. You know from Mr. Munt that the prices at which BPA buy from BPT furnace oil are the Bandar Mah-shahr posted prices for light fuel oil adjusted for grade and for
20 market conditions? A. Yes, I heard him say so.

Q. I would be right in thinking that the BPT posted prices for product, if they be regarded as the asking prices, are a fair market asking price? A. We believe they are, that our posted prices are fair prices for term business.

Q. For term business? A. Yes, this is what they are intended to reflect.

Q. In relation to a spot sale, and I assume BP makes spot sales? A. Yes.

Q. The posted prices would be the asking price? A. Not in the case of a spot sale.

Q. What is the reference point there which you would start at with a spot sale?
A. The market price for spot sales.

Q. For term sales the posted prices are the fair asking prices? A. This is our
30 intention.

Q. And it is your belief it is? A. Yes.

Q. I take it the variations from the posted prices that Mr. Munt referred to are designed to achieve a fair market price for the product sold at the price so adjusted? A. I have no personal knowledge of the adjustments Mr. Munt talked of. I cannot really comment except to suppose that they probably were, having said that to be an attempt to achieve a fair price.

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 Defendant's
 evidence:
 J.C.E. Webster:
 Cross
 Examination
 (Cont'd)

Q. I take it the posted prices set by BP are in line with the posted prices for the same product from other oil companies? A. They are broadly in line.

Q. And the sort of prices that BPA pays BPT would be the sort of price that any supplier from another oil trading company would be expected to pay? A. A supplier to or buyer?

Q. If a subsidiary of another company were in the situation of BPA and buying from the other company? A. From its parent company?

Q. Yes, its associated company; you would expect the prices to be much the same as those paid by BPA to BPT? A. Yes.

RE-EXAMINATION

10

No. 100
 Defendant's
 evidence:
 J.C.E. Webster:
 Re-Examination

MR. STAFF: Q. You spoke of exchange arrangements with relation to bunkers with Shell? A. Yes.

Q. So that we are all clear, what are bunkers, or what is that method of supply? A. Bunkers is the fuel used in ships and it is for that reason we have an arrangement with Shell in Singapore.

Q. They having special facilities for loading oil on to ships? A. Yes.

Q. And it is for propulsion of the ship? A. Yes.

Q. Are you familiar with the expression "F.O.B. value" as an expression used customarily in the industry or not? A. No, I do not think that it is one that is used customarily in the industry.

20

Q. Prior to recent times can you recall having heard the expression "F.O.B. value" in relation to oil products or crudes used to any extent or at all? A. No. I think in technical language within the industry we would talk about the F.O.B. influence or the F.O.B. price or the F.O.B. element or the F.O.B. component. Obviously the word "value" could be used internally, but that is all.

Q. In relation to what you describe as spot sale market prices, in your experience are there only small variations between posted prices and spot sale market prices, or what is the extent of variation that may occur from time to time? A. The variation can be very, very large, either very much below or very much above.

Q. Can you express that in terms of a percentage, just roughly as a guide? A. Of course posted prices move up with it, but in December of 1973 the spot prices at Rotterdam, if you took the barrel, reached about \$130 per ton whereas the posted price of products say in Abadan if one had them freighted up around to Northwest Europe would, I would have thought, at that time not been much above \$60 or \$70, but it can be quite huge.

Q. The variation depends upon prevailing market conditions and tanker rates? A. Yes.

Q. Tanker rates being something of an important element? A. Yes, tanker rates being something of an important element, in Northern Europe or in Australia particularly.

Q. You were asked about two loading points in Singapore and the possibility of one load being picked up at the Singapore refinery and one being picked up at another loading point. I show you two invoices and I ask you to look at them. They are in respect of the ship the Atlantic Universe. You see the notation "Loaded at 15th January, 1975." It shows some long tons of bunker oil. If you look at the other it seems to be in respect of the same ship loading at Singapore on 31st January. It picked up a quantity of long tons, fuel oil. Looking at those invoices are you able to express any explanation of such a ship having picked up at two loading points other than that they were two in Singapore? A. Yes.

Q. What occurs to you in relation to that matter? A. This would indicate that it took on a small quantity of fuel oil at Kuwait and kept that on board—it may have been segregated in the tank and topped up at Singapore; or it may mean it loaded a full cargo at Kuwait and discharged only part at Singapore and then topped up and came on.

(Two copy invoices tendered and marked Ex. 28)

ROBERT LLOYD PRITCHARD
Sworn and examined

No. 100
 Defendant's
 evidence:
 R.L. Pritchard:
 Examination

MR. STAFF: Q. Mr. Pritchard, your name is Robert Lloyd Pritchard. You are a solicitor of this Court and you live at 11 The Outpost, Northbridge? A. Yes, Mr. Staff.

Q. You have had the conduct of this matter since virtually its commencement? A. Yes, I have.

Q. Do you recall not long after Mr. Munt's affidavit was sworn writing a letter to the plaintiff's solicitor in which you referred to Cargo No. 18 for shipment by the "Atlantic Universe" to Gove of fuel oil as having been loaded at two loading points? A. Yes, Mr. Staff.

Q. Could you tell us where you obtained that information? A. It was furnished to me by telephone from an officer of the company from the head office in Melbourne. It was a matter of probability only two or three days after the affidavit had been sworn in my office in Sydney.

Q. And were you told what the loading points were? A. No, I was not told at the time.

Q. Did you subsequently make some enquiry as to what the loading points were? A. Well, I did enquire. I can't be certain that my memory is correct, Mr. Staff, but to the best of my recollection, the two loading points were Kuwait and Singapore.

MR. OFFICER: No questions.

(Witness retired)

(Close of Case for the Defendant)

CASE FOR THE PLAINTIFF

(Mr. Snape's dissection of inter-company price dated 26th February, 1971, referred to on p. 17 of the transcript tendered and admitted as Ex. G)

MORRIS ALBERT ADELMAN
Sworn and examined

MR. OFFICER: Q. Your full name, professor, is Morris Albert Adelman?
 A. Yes.

Q. You live at 83 Nehoiden Road? A. Yes.

Q. Waban? A. Yes.

Q. Massachusetts in the United States. You are a Professor of Economics? 10
 A. Yes.

Q. You are a Professor of Economics at the Massachusetts Institute of Technology? A. Yes.

Q. At Cambridge, Massachusetts, and you have for some twenty-six years been in the professorial grade? A. Yes.

Q. You are a member and have been for two or three years of the Steering Committee of the Energy Laboratory of that Institute? A. Yes.

Q. Now, the Energy Laboratory is a research group of the Institute? A. Yes.

Q. That studies all forms of energy? A. Yes.

Q. You are a former member of the American Petroleum Institute Co-Ordinating 20
 Committee on Economics and Statistics? A. Yes.

Q. Now, that Institute is a trade association of United States petroleum companies? A. Yes, it is.

Q. And the Co-Ordinating Committee consists of the heads of committees of various committees of the Institute; for instance, on reserves and marketing, and so on?
 A. That is correct.

Q. They are corporation members? A. They are corporate personnel, yes.

Q. But it also includes two public members and you are one of those? A. I was one of those because the committee was terminated in 1974.

Q. That co-ordinating committee, did it deal with, in its interest in economics, 30
 with the prices of crude and oil products? A. Directly, no, except in the marketing aspects; indirectly, yes. Particularly on matters like reserves, because the subject is so pervaded with prices that you cannot make a statement about reserves unless you say in the customary phrase "in the light of prevailing economic conditions" which means prices and costs.

Q. You were also a member from 1971 to 1973 of the Energy Advisory Panel of the National Committee on Materials Policy? A. Yes.

Q. Was that a Governmental committee? A. That was a committee convoked by the Government but consisting predominantly of non-governmental people.

Q. Was part of the function of that committee to examine prices of crude and product, both present and prospective? A. Directly, no; indirectly, yes, because, as I said before, when you talk about resources and reserves, you cannot escape talking about prospective prices.

10 Q. Now, for the last—this is additional, wholly additional, to what is in the affidavit, your Honour—for the last year and a half have you been a member of the Energy Policy Group of the Massachusetts Institute? A. Yes, about a year.

Q. Was that Policy Group set up at the request of the Secretary of State? A. No.

Q. Of the Government? A. No, at the request of the then Secretary of the Treasury, but it has reported essentially in an open fashion, that is to say, what it writes becomes public.

Q. Was it set up to make an appraisal on energy self-sufficiency for the U.S.A.? A. Yes, that was the title of the report that we brought out about a year ago.

20 Q. I think two reports have been brought out? A. One report has not yet been made public but it has already been delivered and that was completed about March, I would say. It will be published pretty soon.

Q. Are prices—and whenever I say “prices”, I am referring to both crude and product—are prices a relevant matter to the deliberations of that group? A. Yes, we are very much concerned with them.

Q. Was there one aspect of price with which, as a member of that group, you were particularly concerned? A. International prices.

30 Q. Then in April of this year did you become a member of a group formed by the Institute of Technology and for which the Institute had received a grant? A. Yes, I think you are referring to a research project which is being funded by the National Science Foundation in the United States and it is concerned with the international oil industry.

Q. There are four members involved in that research? A. There are four senior faculty members and a number of research assistants.

Q. And you are one of the four? A. Yes.

Q. Professor, you have testified to committees of the United States House of Representatives and of the Senate? A. Yes.

Q. And on one occasion to a joint committee? A. That's right.

Q. Of both houses. You have testified approximately six times before such com-

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Plaintiff's
evidence:
M.A. Adelman:
Examination
(Cont'd)

mittees? A. I have testified about four or five times this past academic year. I have testified in the past but on petroleum matters recently, yes.

Q. Have those petroleum matters included pricing? A. Yes.

Q. And have they included international pricing of crude and of product?
A. Yes, and indeed principally international.

Q. Were you a member from 1971 to 1974 of a panel considering nuclear merchant ships? A. Yes.

Q. Was that a panel set up by the National Academy of Science? A. Of Sciences.

Q. Of Sciences? A. Yes, it was.

Q. And were you a co-author of the Panel Report? A. Yes, I was. 10

Q. Did you prepare in relation to that report an appendix, Appendix C, which dealt with the past and future pricing of residual fuel oil? A. Yes, I did.

HIS HONOUR: Q. What is meant by "residual fuel oil" in that context? A. Your Honour, in the United States, we have various names for what you call "furnace oil": Residual fuel oil, No. 6 fuel oil, Bunker C fuel oil. There really is no settled terminology here.

MR. OFFICER: Q. Then, professor, you have been the author of various publications which have been referred to in your affidavit? A. Yes.

Q. Might I mention one, the publication, "The World Petroleum Market" published in 1972? A. Yes. 20

Q. Did that include considerable material as to international pricing of, amongst other things, furnace oil? A. Furnace oil particularly, or, as I call it, heavy fuel oil, that being still another title.

Q. Now, professor, in relation to these tasks as committeemen, as witness and as author of publications, have you been concerned to observe from sources, and I will ask you about those in a moment, prices and the movement in prices? A. Yes, I have.

Q. Are there publications which report prices of crude and of product? A. Yes, there are.

Q. We have had reference to one earlier—Platts? A. Yes.

Q. Is that a monthly or weekly journal or what is it? A. Platts is daily, five times a 30 week.

Q. And does it report spot prices—I am sorry, prices for spot sales? A. It does report prices for spot sales, yes.

Q. Does it report them in relation only to one place in the world or to several centres? A. In relation to a number of centres.

Q. Some being the Gulf or, rather, one such area being the Gulf? A. Yes, in fact, it has a number of prices reported at the Persian Gulf.

Q. Does it also have prices for spot sales at other centres—Rotterdam, for one?
A. Particularly for Rotterdam, yes.

Q. And at some other centres in the world? A. A large number of other centres. I should say, however, that for some places, particularly Rotterdam, particularly the East Coast, West Coast and Gulf Coast of the United States, it will have daily reports on spot sales. For other places like the Persian Gulf, it will not have daily reports.

10 Q. Does it report weekly or at greater intervals than that with regard to the Persian Gulf? A. With regard to the Persian Gulf, they will have frequent reports but not daily reports.

Q. Does Platts give information with regard to prices other than for spot sales?
A. Yes, it does.

Q. Are they term contracts entered into? A. Yes, they include term contracts. As with spot sales, they publish daily figures for the U.S. and they will publish occasional figures as they come to know of them for all other parts of the world.

Q. If one were seeking to ascertain what prices were in the oil world, would Platts be a recognised source to which one would look? A. Yes, it would.

20 Q. Are there other publications which contain similar information to Platts?
A. There are other publications with similar information, probably none as complete or comprehensive, but I, for one, would want to look at all of them.

HIS HONOUR: Q. For what purpose? A. To see, your Honour, whether there may be some discrepancies.

Q. You mean, if you wanted to know the price at a particular time or for a particular commodity, you would want to look not only at Platts but at others? A. Yes, your Honour. One of them might have information particularly on non-recurring sales which the other might not be as enterprising in finding out and printing.

30 MR. OFFICER: Q. Now, professor, if you were asked in relation to a particular grade of product, “Have values changed?”, how would you set about the task? A. I would want to write down such price information as I had and, regarding them, see whether there was any movement that characterised all of them or the bulk of them.

HIS HONOUR: Q. Are the expressions “price” and “value” synonymous to you in that context? A. Not quite, your Honour.

Q. Well, you did use the word “price” and Mr. Officer did use the word “value”, that’s all? A. Value, your Honour, would be a deduction or conclusion drawn from a host of particular price observations and bearing in mind that they do not all move at the same rate or even in the same direction at all moments of time, I would try to sum them up by saying that values did change—they went higher; they went lower—or I would say, there isn’t any change to be discerned over this time interval in values.

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Plaintiff's
evidence:
M.A. Adelman:
Examination
(Cont'd)

MR. OFFICER: I think, in fairness to the professor, your Honour, my question that preceded was how would he set about the task and he was just giving the starting point of his process.

Q. Now, if one were comparing FOB values in relation to a particular contract where would you look to discern the point of the FOB, the free-on-board? A. That would depend on the place where the delivery was expected.

Q. But the FOB, of course, precedes the shipment or whatever it is? A. That is correct.

Q. Now, in par. 3 of your affidavit—would you read to yourself par. 3? (Objected to: allowed) 10

HIS HONOUR: Q Do you have a copy, professor? A. No, your Honour, I don't. (Witness handed copy of his affidavit)

MR. OFFICER: Q. Now, would you forget about the words in which par 3 stand. Will you express to the Court what you had in mind in adopting those words? (Objected to)

Q. You have told us, professor, of the relation such as you have described it between price and value. Now, I want to ask you, between 1970 and March 1974, had prices increased in furnace oil? (Objected to)

Q. Could you tell us between June 1970 and late March 1974 has there been a movement in prices of products? A. There has been more than one movement—there 20 have been several—but the net resultant has certainly been substantially upward.

Q. Now, has the substantial or net movement upwards been more or less gradual throughout the period or has it been more accelerated at one time than another? A. It has been quite abrupt at some times and much more gradual at others.

Q. Could you describe in relation to that period, June 1970 to March 1974, the periods during which it has been gradual, in broad terms, and the periods during which it has been abrupt? A. I would say that from June 1970 through the end of the year, it was gradually upward; it was very substantially and abruptly upward early in the year 1971. During 1971 and 2, it was not uniform; there were times when it rose and times when it declined. It again was abruptly upward at the time of the outbreak of the 30 October 1973 War and went to unheard of heights for a while. It declined thereafter in 1974 and has fluctuated irregularly and within a fairly small relative range down to the present time.

HIS HONOUR: But it has not returned to anything like the price before the October War, has it? A. No, your Honour, it has not.

Q. It has been maintained at a price or value which is nearer what it was after that incident than anything which it approached before? A. That is correct.

MR. OFFICER: And has that been the trend—I am sorry, you have told us the trend and the periods of peak and non-peak with regard to product generally. With regard to furnace oil, have prices followed the same or a different pattern? A. They 40

follow the same general pattern. When movements are as strong as they have been here, the basic reason being the increase in the price of crude oil, the disparities among types of products tend to be relatively the insignificant. Where you have a period of time which is free from these extreme movements, this need not be the case because furnace oil will, indeed, must be expected to move in an opposite direction from the values of the lighter products.

HIS HONOUR: Q. Is the reason for that that people will otherwise use crude instead of furnace oil? A. No, your Honour, the direct burning of crude oil is a minor phenomenon; outside of Japan it is almost unknown, and it came into existence only
 10 because the Persian Gulf was peculiar in having furnace oil prices above crude oil prices. This is not true anywhere else in the world. The basic reason for that phenomenon is that if there is an improvement, say, in the prices of light ends, light ends meaning petrol, as you call it, and home heating oil, it becomes attractive to refiners to run larger amounts of it. In so doing, they turn out willy nilly larger amounts of furnace oil. Therefore, the furnace oil tends to decrease in price as a result of the higher prices of the light ends.

Q. That being, in effect, an over supply. Is that right? A. Yes, it would be correct to say that.

Q. But is that the reason why the prices move to a degree inversely to the prices of
 20 the other products, a greater quantity produced and therefore, an over supply which has to be got rid of? A. A greater supply produced in response to the higher prices and, therefore, greater attractiveness of the light products leads to an over supply of the heavy.

MR. OFFICER: Q. I think you have told us, professor, what you have just been mentioning to his Honour is what occurs if there are minor fluctuations—I am sorry, if there are fluctuations in price but minor as compared with what has occurred in the last couple of years? A. That is correct.

Q. Now, you mentioned that in 1971 there was a distinct movement upwards in prices? A. Yes.

30 Q. Was that movement upwards restricted to one particular market place for oil? A. No, that was world wide. The question must almost invariably be answered that way because there is such a thing as a world wide market and, therefore, price movements, particularly strong price movements in one place will be matched by corresponding movements in all other places.

Q. From your researches what caused the 1971 upward movement? A. The increase in government take at the Persian Gulf and in other OPEC countries.

Q. Of the OPEC countries, did they all move simultaneously or were there, as it were, leaders and followers? A. They did not move quite simultaneously, but I think that it would be fair to say that they moved at about the same time.

40 Q. Now, would you come to the increase which you have described as having taken place from the commencement of the October War. What caused that increase? A. There was a temporary surge of sheer panic which subsided fairly rapidly. There was a production cut back which lasted from approximately mid-October to mid-

March and what is of permanent significance, because these two other things I have mentioned were only temporary, there was a very large increase in Government take at the Persian Gulf and in other OPEC countries.

Q. Professor, you, a moment ago, used the phrase "government take" A. Yes.

Q. So that we can know what is to be comprehended by your evidence, what do you classify as the components of government take? A. The components of it today are royalty payments, income tax payments, so called, and payments due to a government in respect of buy-back production and these added together come to a certain sum per barrel produced and that is government take.

Q. From your studies, the introduction of participation in the Middle East was 10 introduced with what object? A. There are two ways of answering that. The announced objective is a very rhetorical one. There have been many announced objectives and I won't try to summarise them. The substance of it is to increase government take.

Q. To increase revenue, in other words? A. To increase revenue.

Q. You said a moment ago that, in effect, things that happened in the Middle East or in the OPEC countries produced reactions throughout the world in price elevation? A. Yes.

Q. What do you mean geographically when you say "throughout the world"? A. I mean at all important points of shipment of crude oil and products throughout the world and I would include in that also the Communist countries to the extent that they 20 are suppliers.

Q. What has happened in that regard? What has happened as a result of OPEC action so far as Communist prices are concerned. A. They have gone up along with the rest and they have given rise—I am thinking particularly of contracts negotiated by the Soviet Union—where they have increased prices in accordance with what I would call the current FOB values and where the increase has been resisted by their non-communist customers. Less is known of course about relations between them and their eastern European customers.

Q. So far as the Soviet Union is concerned—you have indicated that some customers resisted a price increase—have there been contracts written at increased 30 prices? A. I believe there have, yes.

Q. That belief arises from what source? A. The ones that I mentioned earlier—the trade press.

HIS HONOUR: Q. Is there a substantial export of oil by Russia to the west? A. Yes, your Honour, it is quite substantial. Crude—rather more products than crude and furnace oil is a large component of that.

Q. To Western countries I mean? A. To Western countries. Particularly to Western Europe, of course, and some to Japan.

MR. OFFICER: Q. Lastly, professor, it is suggested in some of the affidavits that the B.P. have filed or maybe suggested that what occurred in 1973/74 was wholly 40

unforeseeable. Have you a view to express with regard to that? A. I would say that the extent of the increase in government take and, therefore, in price, because government take is now upwards of 95 per cent of price, the extent was unforeseeable and, as far as I am aware, it was unforeseen. The fact of increase in government take and, therefore, in price, was foreseeable and I think it was foreseen.

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Q. When you say it was foreseeable, what were the factors which, for example, in mid-1970—I am sorry, I withdraw that. In mid-1970, would some increases have been in your opinion foreseeable? A. In mid-1970 you say? That would have been a matter for dispute I think. There were reasons for supposing it would occur and reasons for
10 supposing it would not, but recent events—I am speaking now of the middle of 1970—would have made it more likely than it had been let us say a year earlier.

(Paragraph 3 of Professor Adelman's affidavit not read.)

CROSS-EXAMINATION

MR. STAFF: Q. Professor, I think your book that we have heard about, "The World Petroleum Market", was published in 1972? A. That's correct.

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Q. Indeed, in 1972 Mr. Sam Schurr wrote the foreword to that? A. Yes.

Q. I think you wrote your acknowledgements about July, 15, 1971. A. That is correct.

Q. That book had been long in preparation before its publication, had it? A. Yes.

20 Q. I think you had been through a number of drafts before it got to publication?
A. Yes, I had.

Q. In the course of preparation of those drafts over a period of years, you, I suppose, sought to acquire all the information you could about the likely trends and movements in the oil industry and in the world which might affect the oil industry?
A. Yes.

Q. You, I think, went to very considerable lengths to consult and obtain the commentary of various people who were known to you as well versed in various aspects of the industry and its activities in order to obtain their assistance? A. Yes.

30 Q. Amongst them were some of the most distinguished people working as consultants and economists and commentators in relation to economics generally and world problems affecting the oil industry and the oil industry? A. Yes.

Q. Amongst those people, of course, were Mr. Walter Levy? A. Yes.

Q. A very well known consultant in the industry or to the industry? A. Yes.

Q. And Dr. Edith Penrose? A. Yes.

Q. Another acknowledged world expert in relation to Middle East politics and economics in particular? A. Yes.

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Q. Mr. Jack Hartshorn, another very highly regarded oil industry consultant?
A. Yes.

Q. I think an associate of Mr. Levy's? A. That is right.

Q. And others such as Mr. Wallace Lovejoy and Mr. Stephen McDonald, Mr. Page, Mr. Steel, to mention only a few? A. Yes.

Q. And Mr. Thomas, now Doctor, Stauffer? A. Yes.

Q. All of whom I think you said had left their mark on your work? A. Yes.

Q. In Britain, Mr. John D. Ritchie whose contributions were everywhere in it?
A. That's right. He is now in the United States and he advises me that he is a Scot.

Q. And another, Dr. Paul Frankel—I think he is Dr. Paul Frankel, is he? A. A 10
Doctor in the Continental sense.

Q. And I think of his contribution you said he had been teaching you oil
economics with varying success for years? A. Yes.

Q. Without going through them all, many others who you felt had a contribution
to make in enabling you to foresee what was going to happen in the industry? A. Yes.

Q. And to assess the state of the industry? A. Yes.

Q. Indeed, I think you were so generous to say that others along with Dr. Penrose
who had created a tradition of petroleum economics often nailed a mistake for you?
A. Yes.

Q. So that you had, in reaching your conclusions and making your predictions, 20
the aid and assistance and the benefit of the views of really practically all those who
might be said to be experts in relation to the industry? A. I wouldn't say practically all.

Q. Well, very many of them? A. Very many, yes.

Q. Your prediction made prior to publication of the book was that crude oil
prices would go on declining to about a dollar a barrel at the Persian Gulf? A. That
was in 1963, Mr. Staff, and the prediction was of a real, that is, inflation adjusted price
and it was a correct prediction because the inflation adjusted price did actually go
somewhat below \$1 in 1963 values by 1970. It certainly was not a good prediction
more than seven years out.

Q. You, of course, repeated, in effect, the prediction in your book published in 30
1972, didn't you? A. No, sir.

Q. You did, did you not, say or conclude in your book that right through to the
swing of 1970 from 1957 oil prices had gone down? A. That's correct, they had.

Q. They had declined from 1957 right through to the Spring of 1970? A. That is
right.

Q. And your book echoed your prediction of a further decline from the Spring of 1970, didn't it? A. No, it did not.

Q. Did you write the chapter to which I am referring in the Spring of 1970?
A. Which chapter are you referring to?

Q. The chapter I am particularly referring to is Chapter 6, Professor, and the material in particular I am looking at is at pp. 190 to 191. Do you recall the Chapter which includes at pp. 190 to 191 . . . A. Yes, that is a summary of oil prices from 1957 to about 1970.

Q. Well, I think the heading to the Chapter was "Oil Prices, 1957-1969", was it not? A. Yes.

Q. Does that recall to you that you probably wrote the chapter or most of it in its final form about 1969 or early 1970? A. Oh, that was rewritten quite a number of times. I would be hard put to it to say when it was written in its final form.

Q. Well, you agree that it contains an evaluation of market price in oil crudes particularly and in fuel oil, first of all for the period 1957 to 1967? A. Yes.

Q. And your conclusion was that the trend of prices was obviously down but the rate of decline was mild and variations great? A. That is true.

Q. I think during that period you concluded that the arms length price of 31 degrees or equivalent crude at the Persian Gulf varied from \$1 to \$1.25 per barrel and 20 Libyan crudes were in that range allowing for freight and quality difference? A. Yes.

Q. Then, at the end of the chapter is added some material under the heading "epilogue: 1967-1970". A. Yes.

Q. Am I right in supposing that that was written subsequently to the earlier material? A. Of course.

Q. And really as an addendum to update your earlier conclusions? A. Not so much to update, Mr. Staff. You see, what happened after the 1967 War was a considerable disturbance in the tanker market. Now, this meant that I could not do for years after that what I had done for previous years. In previous years I had been able to make an independent check between two bodies—excuse me, I should say I had been able to 30 make a check between two bodies of independent data and where you can show that these coincide fairly well, the confidence in any estimate is much greater. Now, these two bodies of data were respectively crude oil prices mostly at the Persian Gulf and product prices mostly at Rotterdam. From the Rotterdam prices could be subtracted or netted out transport cost. Now, subsequently, I could not do that second calculation and, therefore, I could not in the same kind of detail explore the subject as I had done it for previous years and, therefore, the Epilogue was a very brief summary of some not so brief appendices but it did not have nearly as much to say.

Q. What I was seeking to get from you was your recollections as to the point of time at which the Epilogue was written rather than why or how it came to be written. 40 Can you help us with that? A. It was put into final shape like everything else in the

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book during 1970, essentially, but that would be true, I must add, Mr. Staff, of everything else in the book.

Q. At any rate, the Epilogue, you say, was written in pretty much its final shape, at any rate, during 1970? A. Yes.

Q. Indeed, it must have been written after the Spring of 1970, mustn't it? A. Yes, certain of the observations I believe come after that.

Q. Well, may I refer you to the last sentence on p. 191 where you said "The downward price movement begun in 1957 carried all the way through the Spring in 1970 with only occasional and temporary reversals." A. That is right.

Q. That had been really the theme of the whole chapter, hadn't it? A. Well, that was the fact and I was reporting it. 10

Q. It was your view around the middle of 1970 at all events that there had been a steady though only gradual decline in crude prices at the Persian Gulf from 1957 right through to 1970? A. That is correct.

Q. Was it not your view, publicly expressed, that that decline which had occurred right through till the middle of 1970 or thereabouts would go on in the coming years? A. In mid-1970?

Q. Yes. A. I had to be very agnostic about the matter.

HIS HONOUR: Q. I am not sure what you mean by "agnostic"? A. Saying that I didn't know, your Honour. 20

MR. STAFF: Q. Do you say you did not express the view about mid-1970 that prices would go on declining, that is, crude oil prices at the Persian Gulf would go on declining as a general trend? A. That depends on the time period which you have in view.

Q. Well, in the early seventies—let's take the early seventies as the time period from let us say, round about the middle of 1970 through the next few years of the 1970s. A. That's correct. I thought they would continue on that trend.

Q. Downwards? A. Downward.

HIS HONOUR: Q. Is there any discussion of that period in the book? A. No, your Honour. 30

Q. Is this statement that Mr. Staff read, so to speak, the last word on trends? A. Well, the statement that Mr. Staff read was a statement of what had happened.

Q. It was not a projection? A. No, as your Honour can see, it simply sums up what happened through the Spring of 1970 and I am being asked to reconstruct my ideas at that time and I am trying to do so.

Q. Well, you were asked about this by Mr. Officer and you indicated that it would be appropriate to have two views about it? A. Yes, that is true, your Honour.

Q. Is that sort of discussion to be found in the book or not? A. No, it is not, except in a different time context. The book was written, as Mr. Staff has indicated—the last of it was written in the middle of 1971 and I gave my views as best I could as of that time but Mr. Staff, I believe, is asking about the middle of 1970 and I am trying to recall my opinions then.

Q. But you say we won't find, as you recollect it, any material in the book about your views on that matter? A. In the middle of 1970 I don't think so.

MR. STAFF: Q. We have, Professor, I think, your 1970, say, mid-1970 view, that during the succeeding or during the ensuing few years of the seventies crude oil prices at the Gulf would decline? A. Mr. Staff, I had to . . .

Q. Would you just—I think we will get on much quicker—I don't want to cut you off but would you not agree that that was the view which you had formed by the middle of 1970 as to the future of crude oil prices at the Gulf for the next few years? A. I told you a few minutes ago that I did expect a gradual decline.

Q. You had in mind when you formed that view the existence of some things which could conceivably produce a different result, I suppose? A. Yes, I did.

Q. But you, as it were, discounted the probabilities of the occurrence of those particular matters? A. That is correct.

Q. And you, along with everybody else of whom you knew their views in the industry, also discounted it? A. That is correct. We set the probability of them lower than actually it was.

Q. Of course, very much lower than it turned out to be? A. Of course.

Q. Indeed, of the nature of the discount you have written in fairly recent times that "I said they would fall as competition slowly worked, and they did throughout the sixties. It took a newly-formed cartel to turn the market around and I failed as badly as anyone to predict it."? A. I don't remember, Mr. Staff, where I said that but it would certainly express my thoughts.

Q. You remember writing a letter to the editor of The Economist in July 1973 to that effect? A. I don't remember writing him the letter but I would certainly believe that I said those things.

Q. Perhaps might I ask you to look at the photocopy which the officer will hand you, the first letter reproduced on what appears to be page 4. Looking at it, do you recall that as a copy of the letter which you wrote for publication in that? A. Yes.

Q. Apparently it was provoked by something which had been written about your earlier predictions about oil prices. I don't want to go into it but that was the circumstance in which it came to be written? A. Yes.

Q. Your view, I think, changed, of course, markedly, after the Teheran and Tripoli agreements? A. Of course. May I amend that in one small respect. I felt by the middle of 1970 that I might have to suspend judgment or, as I said before, be agnostic in view of what had happened in Libya which might or might not be important. It

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turned out to be extremely important, and indicated by the events leading up to and including Teheran in early 1970.

Q. Now, of course, the real impact of the Libyan situation first became apparent in September of 1970, didn't it? A. The changes that came about in 1970 were in my opinion the least important part of the matter.

Q. But it was on 1st September of 1969, was it not, that, do you recall, the Revolutionary command Council seized power? A. Yes.

Q. It was not until, I put to you, first September of 1970 that Libya demanded increased posted prices and the increase in tax? A. Oh, no, Mr. Staff. They had made those demands in January of that year.

10

Q. Which year? A. 1970.

Q. Now, you are confident that your date is right, are you? I don't want to mislead you? A. I may be wrong by a month but the demands had been made from early in the year and there was a good deal of discussion in the trade press as to the nature of the demands and the reactions to them.

Q. The demands I am talking about are the demands for increased posted price and tax? A. That is correct.

Q. Not the threats of Libyan cutbacks? A. There were no actual threats. There was, however, a cutback in May of 1970.

Q. Now, do you recall that you added at p. 254 of your book, apparently after the writing of the chapter had concluded, a footnote numbered 12. Perhaps if you would turn to it and look at the footnote? A. Yes, I have.

Q. Do you recall that you there wrote, "I testified in March 1969: 'In company-government disputes . . . the obvious tactic of host governments would be to stop all production in order to avoid being bargained down at a time. Host governments may also pressure the companies' home governments by the threat to cut off oil supplies.'" and that was before a committee of the United States Senate, was it? A. Yes.

Q. Your comment on that testimony is "This is not far from what actually happened but it was not a forecast, only a warning, made also in 1967 that a concerted shut down was likely enough to warrant some insurance against it. During early 1971 there were many public statements to the effect that the OPEC action had often been predicted by American Oil. An examination of examples offered in the trade press shows them all to be vague talk of pressures, demands, etc." Your comment is "if the demands were dollars we could all be rich but certainly I was much mistaken in thinking that the chance of a threatened cut off was small." That reflected your view at the time you wrote it, I suppose? A. Yes, it did.

30

Q. So that would you not agree that prior really to the Teheran agreements you foresaw no real probability of cut backs, that is, production cut backs, embargoes and unilateral price postings of the character that occurred? A. Well now, Mr. Staff, you have mentioned a number of things.

40

Q. Well, let me take them one by one? A. Would you please.

Q. You saw no real probability, I put to you, prior to Teheran that production cut backs of any significant character would have any real impact on the price of crude oil at the Persian Gulf? A. I think it would be best if you simply took that testimony itself which I referred to very briefly there. I said the probability was small. It was not so small that one should not take out insurance against it as one took out insurance against other unlikely calamities and so much for the probability of a concerted cut back.

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10 Q. Your assessment of the probability of a concerted cut back being made in the Arab countries, the Gulf countries, was certainly no greater than that which was known to you to exist in other quarters in the industry? A. Are you saying that my opinion of the probability of a cut back was that it was no higher than what other quarters in the industry considered?

Q. Yes. A. That is correct.

Q. Indeed, in the footnote I referred you to, you were conveying in the latter few lines, were you not, that people in 1971 in America with the aid of hindsight were seeking to ascribe to them a more accurate degree of prediction of what had happened than they had held in the earlier year? A. Yes.

Q. I suppose something that is not unusual with the aid of hindsight? A. Nothing is more common.

20 (Luncheon adjournment).

HIS HONOUR: Q. Professor, you remain bound by the oath you took this morning. Do you understand? A. Yes, your Honour.

MR. STAFF: Q. You recall that in your publication "The World Petroleum Market", you included what is entitled Introduction and Plan of the Study. It goes on to state a summary of the book. You remember that? A. Yes.

30 Q. And you expressed on the first page of that Introduction as the conclusion of the book in these words your then opinion, did you not, "but the conclusions of this study are that crude oil prices will decline because supply will far exceed demand even at lower prices and because of a separate issue there will continue to be enough competition to make price gravitate towards cost however slowly."? A. That is correct.

HIS HONOUR: Q. I suppose one should have in mind the quote which begins the chapter? A. Thank you, your Honour.

MR. STAFF: Q. At p. 8, right at the foot of the page, going over to p. 9, you wrote, did you not, "Were there only the companies and host governments to consider, I would without hesitation forecast a continued and accelerated rate of decline in crude and product prices." You wrote that? A. Yes, of course I wrote that.

40 Q. You then went on to say, "But the action of consuming-country governments will over the next decade tend to slow down the price decline. Consuming-country governments, for a variety of reasons, want high oil prices. Protection of high-cost coal was long the most important reason; as coal is eased out, it is replaced, especially in

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Britain, by high-cost nuclear energy needing protection from oil." That expressed your view at the time you wrote this summary or introduction? A. Yes, it expressed my view.

Q. And that was your view notwithstanding the occurrence of the Teheran agreements early in 1971? A. If anything, Mr. Staff, they reinforced it. You observe I did not say from what level the decline would take place. That was left for the book itself.

Q. But at any rate this was written and was an expression of your view at a time not long after the Teheran Agreements? A. Oh, it is an expression of my view today.

HIS HONOUR: Q. I am sorry, I don't really want us to drift into irrelevancy but I don't think I quite understand. After the statement you say on p. 9 "consuming 10 country governments, for a variety of reasons, want high oil prices. Protection of high-cost coal was long the most important reason; as coal is eased out, it is replaced, especially in Britain, by high-cost nuclear energy needing protection from oil." Well, I take it that what you mean is that consuming country governments, for example, in Britain, would maintain the price of oil because they would also wish to use coal and they would not want the difference between the two sources to be too great. Is that right? A. That's right, your Honour.

Q. But would that necessarily affect the price of oil at its source? say, in the Persian Gulf, or would it only mean that oil would be taxed in the consumer country to make sure that its price was maintained? A. It would mean both. My reason for 20 thinking that eventually there will be a price decline is exactly along the lines at which you have hinted now, that consuming country governments will come to a somewhat more sober appraisal of the situation and while they still continue to protect indigenous supplies, will no longer be either passive as they have been in the past or actually co-operate to some degree with the producing governments to maintain high oil prices.

Q. I just wondered if there were—I suppose the fact that that were done would mean that the demand would not be as great of the oil producing countries as it would have been had there been this disparity of price in the home countries? A. That certainly is true.

MR. STAFF: Q. In 1971, shortly after the Teheran agreements, was it your view 30 that if one only had to consider the future in terms of the oil companies and the host-governments probable conduct you, without hesitation, then thought there would be a continued and accelerated rate of decline in crude and product prices from the then existing price level? A. Not from the then existing price levels, Mr. Staff, because if you were to turn to the later part of the book where these thoughts were elaborated, you can see that I expected that host-government take and with it prices would be repeatedly increased, as has indeed been the case, and I was trying to look past these events and take the somewhat longer perspective and, in that longer perspective, once those higher price levels have been achieved, and I did not know how high they would go, to ask what would be the result of the producing governments taking complete 40 control of the market, as they had not yet done at the time and indeed have not yet done, I was assuming then and I said that they would disregard all previous commitments and agreements that had been obvious for quite some time. The question is how much could they accomplish in concert? I thought they could accomplish a good deal but the final question, "how long would that achievement last,?" and I gave my opinion as to the chief determinants.

Q. You were writing this page, at any rate, at pp. 8 to 9 not long after Teheran?
 A. That is right.

Q. You said, whatever you meant to convey, did you not, that "Were there only the companies and host governments to consider, I would without hesitation forecast a continued and accelerated rate of decline in crude and product prices."? A. Yes, I would do so today.

Q. You say you did not mean to convey what that literally said? A. Well, it was an invitation, if you wish, for somebody to read the book.

Q. What do you say you meant by that is, is it, was that there would not be a continued and accelerated rate of decline from the then existing prices but they would be vastly increased before they started to decline? A. That they would be increased. I do not wish to pretend having foreseen that they would vastly increase.

Q. You envisaged, did you, that there might be a relatively small increase of a gradual character? A. No, I envisaged, as you can see if you turn to the relevant pages, some fairly large increases.

Q. I see. What, 50 per cent—that sort of increase? A. No, much more.

Q. What, 500%? A. I said that I was unable to say. I said several times could be the possibility of an increase because that was the point at which they would begin to lose a good deal of custom. That is what restrains any monopolies. I couldn't see how far toward that upper limit they could get. For that matter, I can't foresee it today either.

Q. You certainly did not foresee shortly after Teheran, for example, the tax paid cost rising anywhere near the level to which it went, did you? A. No, I said it might be increased several times and I did not say whether it was going to.

Q. But you expected, as increases took place, a pattern of erosion of price to stay in doubt? A. Well, that is exactly what has happened, that prices are raised because of the increase of government take. There is an erosion of prices, as happened, say, in 1971/1972, and then prices are raised again, as they were in 1973, and then there has been an erosion since then and this is no bar—indeed, it is almost an invitation to an additional increase in price in the near future.

Q. You do not suggest there has been any erosion of any substantial character except in the very short term, do you, between 1970 and 1975? A. I stated that there had been two increases and that there had been some erosion after each one.

Q. (Approached). I want you to look at what I think is exhibit 26. It is a graph, and just don't worry about the red line for the moment. Do you see the green line and blue line? The green line represents the tax paid participation burden and total cost of crude to British Petroleum or the B.P. Group, that is of Persian Gulf crude in the period January 1969 to May 1974? A. May 1974?

Q. Yes. A. Yes, that is an average as I understand it.

Q. Looking at the movement indicated by the graph over the whole period, would

you agree that it looks to you to be approximately of the order of crude oil price movements from the Persian Gulf over that period? A. Yes, it is not as precise as it should but it is a reasonably good representation.

Q. Looking at the blue line, but before I ask you that, I suppose . . . A. I beg your pardon, Mr. Staff. I may have answered wrongly. You asked me to comment on No. 1 or No. 2?

Q. No. 1, the green line? A. Yes, thank you. That is what my answer was directed to.

Q. The second line, the blue one, represents the level of B.P. Trading posted price list for light fuel oil in the same period, January 1969 to 1974. I am not asking you to agree with precision but does that look to you to represent approximately or reasonably the level of those posted prices as you recall them. A. Approximately, except that they do not show the erosion that took place in 1972 which was, I will grant you, quite mild. Obviously it ends in 1974, so it cannot show anything after that. 10

Q. Well, posted prices, of course, did not erode in 1972, did they? A. No.

Q. So that you would not expect that erosion to show up in the posted price graph? A. No, posted prices are essentially asking prices.

Q. Going back to the green line, the crude cost, if I may summarise it by that restriction, you see it about the middle that—say the beginning of November or thereabouts 1970, there is an appreciable increase which roughly might be said to be reflected in the post price of line No. 2. A. Yes, the posted price of light fuel oil, if I may say so, the title is a bit misleading. I realise it is a correct quotation from the price list that B.P. issues but light fuel oil is what everybody else would call heavy fuel oil, residual, bunker, or whatever. 20

Q. I think it is simply a customary description “B.P. Trading has used until recent times. A. That is correct.

Q. Now, again you see early in 1971 a fairly marked lift both in crude prices and in posted price? A. Yes.

Q. Would you agree that that represents the increases that occurred more or less following the Teheran agreements? A. Yes. 30

Q. I think you described those movements in furnace oil or fuel oil and crude product prices in your evidence earlier as abrupt increases? A. Yes.

Q. They were, if looked at in stages over the preceding five months, of the order of about 50 per cent over the October 1970 prices? A. Yes.

Q. I suppose you would call that substantial in anyone's language? A. Yes.

Q. And the movement upwards was very quick? A. Yes.

Q. Virtually in two stages? A. Yes.

Q. Then, over the next couple of years, two and a half years, the rises, although occurring, were of less than the order of a further 50% or something in that order. Would you agree? A. Yes. You see, there were some further increases in government take during this time and each time that it happened.

Q. It was reflected upwards? A. It was reflected upwards, correct.

Q. Then one comes to round about September/October, 1973 and one finds first of all a very much sharper lift than ever before until the end of 1973 and then November 1973 or December 1973 what you would agree was an enormous increase? A. Yes.

10 Q. Both in crude cost and product prices? A. Yes.

Q. Whilst you are looking at it, the red line represents the cost of furnace oil purchased from B.P. Trading by B.P. Australia for delivery to Nabalco in the same period and at the end of 1971 the red line shows a drop in price of furnace oil? A. Yes.

Q. That is one of the marked erosions in price that you referred to earlier, I think, in the 1972 period? A. It would agree with my impression.

Q. Again, one sees it falls away again in early 1973 before it rises towards the end of 1973? A. Yes. So that I do not misunderstand "cost of furnace oil purchased from B.P. Trading Limited for delivery to Nabalco Pty. Limited", is that an FOB price or is that a delivered price as it is shown here?

20 Q. It is, I think, we can say, virtually an FOB price. It excludes insurance and freight? A. Thank you.

Q. You would, I gather, agree that the graph shown in Exhibit 26, the three lines of that graph, are your mind a fairly reasonable approximation of the way in which costs of fuel oil prices goes? A. Yes, that is a good representation of what I mean by FOB values rising, bearing in mind that we always have a structure of prices rather than a single point.

Q. Demonstrates of course, does it not, an increase in crude costs between the beginning or between about the middle of 1970 to the beginning of 1974 in the order of about 900 per cent? A. Between what dates?

30 Q. The middle of 1970—let's take June 1970? A. Yes.

Q. A bit under a dollar? A. Yes.

Q. And by January of 1974 it is over the \$9 mark? A. Yes, that's right.

Q. Incidentally, Professor, by the way, you did, I think at p. 177, of your book to which I have previously referred, indicate the view that fuel oil prices could not go appreciably above the price of crude oil under competitive circumstances? A. That is correct.

Q. The reason which you gave was that if it did consumers would burn the crude entire? A. Yes.

Q. And that was your then view? A. And still is.

Q. So that the crude price, as it were, provides certainly in the medium and long term situations virtually a maximum furnace oil price? A. Yes, that's right.

Q. In general terms? A. In general terms, yes.

Q. There may, of course, be exceptions in particular places and in particular conditions for a short time? A. Well, even for a prolonged period, and I examined the Persian gulf as an outstanding exception.

Q. I think you indicated that the technical problems associated with burning of crude entire had really been overcome, at any rate for land installations, by 1970? A. Yes.

10

Q. Now, I think it was your view after Teheran, that is, early in 1971, that the pattern during the early 70s would be, and I read from p. 252 in the middle of the page, "From time to time, either in pursuance or in violation of the Tehran-Tripoli agreements, the tax is increased, whereupon prices increase as much or more, but then tend to erode as the companies compete very slowly at the crude level and less slowly at the products level." That was then your view? A. Yes.

Q. And you went on, "Thus over the near term prices increase, in steps, yet at any given moment there is a buyer's market—i.e., more is available than is demanded at that price." It was for that reason that you thought there would be an erosion of each increase as it occurred. A. That's correct. Again, I never foresaw the enormous excess of supply over demand that we observed today. I thought it would exist. The extent I did not foresee.

Q. You went on at p. 253 to express your view that "The higher crude oil and product prices have no connection with world supply and demand for crude oil. They reflect no scarcity of crude oil present or foreseen." That was then your view following the Teheran-Tripoli agreements? A. Yes. I think it is a fact as of 1974 and 1975. We have a huge glut of supply.

Q. Not as of late 1973, of course? A. No, but it would be difficult as of that time to make any intelligible statement.

MR. STAFF: Q. You went on to express your further view that supply and demand are as irrelevant to the future price as to the past. This is towards the end of p. 253. The reason I think which you give is expressed:

"A price set by supply equalling demand means a price in the neighbourhood of incremental cost, which in crude oil is chiefly the return on the new investment."

A. Yes.

Q. And in the face of that you went on to say:

"The only thing that matters is whether the current market control, which explains the enormous margin, will flourish or fade. As will be seen later, theory and experience both suggest that if and when the United States becomes a large importer, the effect will be to lower prices."

40

A. Yes.

Q. And that was your view in early 1971. Of course the margin you were speaking about as "enormous" was the margin between what you have described as incremental cost and the amount of the Government take, if I may so describe it, from time to time, plus the oil companies' profit. A. That is right.

Q. Or the oil companies' margin? A. That is right.

Q. You went on to indicate at p. 254 near the top that:

"The important new fact (and this is after Teheran I gather) is the active co-operation of the producing nations."

10 and you say:

"Nobody foresaw the extent to which they would act together and threaten to withhold supply if their terms were not met."

A. That is correct.

Q. Indeed your view had been that any attempted concerted action by OPEC countries acting as it were as a cartel was virtually doomed to failure because they were not held together for any sufficiently long period of time, wasn't it? A. That is right. I didn't think that acting together, that their attempt to act together would long be successful. You must distinguish their attempt to act together and control the whole market and the price in it. You must distinguish this from their control in any given
 20 place where they recognise—and indeed where they recognise no limits to their control and were not bound by anything they had signed in the past.

Q. Whilst you after Teheran could see the signs and the flags waving in the breeze, perhaps we can call them, indicating that you might get a cutback in one country or some action in one country, you did not think that all the producing countries would act together sufficiently unitedly for a sufficiently long period of time to achieve any really substantial result, did you? A. That is right, I did not think so before Teheran.

Q. And indeed even after Teheran you did not think that they would continue to act together for long enough to achieve anything like the results that they achieved at the end of 1973 to the beginning of 1974, did you? A. I said nothing at all about it
 30 because I did not feel capable of predicting it with any degree of precision.

Q. Indeed it was your view, was it not, about the time the first Libyan cutbacks were decreed, that the United States could have easily prevented the Libyan Government achieving the ends which it did in fact achieve? A. It was my view. I would have expressed myself more strongly had I known then some of the documents which have come to light since.

Q. Anyway it was your view that the appropriate action taken by the United States when the first Libyan cutbacks were decreed, could have prevented at any rate what then happened and really stretched OPEC unity? A. Yes, I think so.

Q. And indeed you pointed at p. 254 to the fact that:

40 "A month after the November (and I suggest 1970) agreements with Libya, a

special OPEC meeting in Caracas first resolved on 'concrete and simultaneous action' but this had not been explained or translated into a threat of cut-off even as late as January 13 (and I suggest 1971)."

A. Yes, that is correct.

Q. You go on to say:

"The turning point came on January 16, when the companies submitted their proposals for higher and escalating taxes."

That was your view of what you called the turning point? A. Yes, in the light of new evidence I might reconsider that. One might say the turning point came a few months earlier but I don't know that this would interest you particularly. 10

Q. But at any rate at that time you thought the turning point came around January 20 or 16 of 1971? A. That is right.

Q. You then go on at p. 254 going over to p. 255 to point out that there was no doubt at any rate to your mind that the American representatives, and the oil companies who were present at the Paris OECD meeting held in January 1971, all assured the other governments that if they offered no resistance to higher oil prices, they could at least count on five years' supply at stable or only slightly rising prices? A. That is correct.

Q. And that was the general view as you understood it throughout the whole of the industry and people associated with it? A. Yes. 20

Q. Even so late as that time. Indeed I think a little further down p. 255 you go on to say, an expression of your view:

"Before January 20, an open threat by the OPEC nations would have carried little credibility in view of the previous failure of even mild attempts at production regulation. After the capitulation, threats were credible and were made often, culminating in a resolution passed on February 7 by nine OPEC members, including Venezuela, but not Indonesia, providing for an embargo after two weeks."

A. That is correct. There is no other way to describe the events of that time.

Q. Those events produced a remarkable change in conditions surrounding the 30 conduct of commercial activity arising out of oil production and the oil industry?

A. Yes, they did.

Q. And you described the change as, "This was a world away from Caracas"?

A. Yes.

Q. And you cited a remark by the Iranian Finance Minister, Dr. Amouzegar:

"There is no question of negotiations or resuming negotiations. It is just the acceptance of our terms."

A. Yes, I thought that was a very concise summary of what was going on, that negotiations were meaningless.

Q. And this was, if I may use an expression from your country, Professor, this was a whole new ball game for the whole industry? A. Not a whole new ball game but some of the rules had certainly been changed.

Q. The basic rules had changed dramatically, hadn't they? A. It depends, Mr. Staff, what you mean by the basic rules. Country to country, they had not changed at all because it had been evident for a decade or more that the so-called agreements with the governments were worthless; that the governments would take what they wanted any time that they thought they could get it. The difference came in the ability of the governments to act in concert, and this was a new and very important fact.

10 Q. But without the ability to act in concert, each host country or government was really only in a position to negotiate some new terms, maybe in a tough negotiating way, but it was still a matter of negotiation, wasn't it, professor? A. Not at all. It was a matter, as Dr. Amouzegar says, of promulgating terms and the companies had to accept them.

Q. But this was after the ability to act in a concerted way had become apparent? The question I was putting to you was before that? A. Before that, with the governments unable to act in concert, the most that they could get from the companies was set by the conditions of the market which were relatively competitive. It was after that time that the market was changed to a more monopolistic form, so that what they could get
 20 was much larger, but they didn't need anybody's agreement to get from the companies. It is not a question, you see, of company-government relations. It is a question of the market and the individual units in it.

Q. Professor, I think we were at cross-purposes there. A. I'm sorry.

Q. No doubt my fault for not making myself clear. What I was putting to you was that it was really Teheran and Tripoli that demonstrated really for the first time clearly that the producing nations had found a capacity to act together in a way which gave them a completely changed set of rules? A. No, that would not be correct. They had demonstrated this ability as far back as 1960 when they made clear in concert that posted prices could not be lowered and therefore the take could not be lowered. They
 30 had collectively, collusively if you will, put a firm floor under prices. That was a very important achievement and it came in 1960.

Q. When there were five members of OPEC? A. I beg your pardon?

Q. When there were five members of OPEC? A. It is not clear what number you put on them at that moment because it was an organisation with an expanding membership. The difference came, and I may have spoken too loosely before, not in collective action itself which had been accomplished previously, but in moving from a floor to prices to jacking-up the floor. Now that was a very important change.

Q. And had very important and perhaps almost crippling effects on world trade? A. Very important effects; crippling, no. I think too much is made of dramatic events.
 40 The world doesn't come to an end because of them.

Q. In any event before January 20th, 1971, it was your view that an open threat by the OPEC nations would have carried little credibility, is that right? A. An open threat of a production cutback?

Q. Yes, and that was in view of the previous failure of even mild attempts at production regulations? A. At production regulation, again that is an attempt to control total output in the market, not output in any one given country where I think there had previously been no limits to their effective power.

Q. But it was your view that open threats in the pre-January 20th, 1971, period would have carried little credibility? A. Threats of what? Of the expulsion of a given country? They would have carried plenty of credibility and they did. Of concerted regulation of output, they would have carried little or no credibility, but these are two separate points.

Q. You did not of course make separate points of them at p. 255 of your book, 10 did you, professor? A. No, but I did elsewhere.

Q. And can you tell me where you have made that distinction elsewhere in your book? A. I can't remember the page but I remarked that they had the physical force on the spot and they would not be held back, as Shakespeare said, "by inky blots and rotten parchment bounds". But I can't tell you the exact place where I wrote that.

Q. But it was your view anyway that after January 20th, 1971, whatever the credibility of threats the OPEC nations might make or might not make, the game had changed from one where previously they had talked in terms of negotiation and had now come to talk in terms of "It is just the acceptance of our terms"? A. Previously a number of them had said that they could legislate changes, and their most important 20 spokesman, Sheik Yamami, had said quite plainly in 1968 that they could legislate changes but they didn't want to do it.

Q. As you pointed out in your book they had not in fact legislated changes rather than negotiated them between Sheik Yamami's announcement and Teheran? A. Oh, they had conformed to the appearance of negotiations and indeed they continued to do so right through to the end of 1973, when, as I remember, an American oil man said, "They are bored with the charade of negotiations". This was in October and I think this was an accurate characterisation.

Q. But as you pointed out they announced that as early as January 20th, 1971, it was not a matter of negotiation but just the acceptance of their terms henceforward, 30 didn't they? A. I don't see where anybody says, "Henceforth".

Q. Isn't that the sense of what you are saying and seeking to convey in the middle of p. 255 when you said:

"This was a world away from Caracas. Dr. Amouzegar, the Iranian Finance Minister, who in effect was chief of the producing nations' team, said, 'There is no question of negotiations or resuming negotiations.' It is just the acceptance of our terms'."

A. I have continued to read. I don't grasp your question.

Q. In writing those words, that is the quotation from the Iranian Finance Minister and expressing your comment, "This was a world away from Caracas," weren't you 40 intending to convey that what had been made clear now was that henceforward there was no question of negotiation; it was for the companies to accept whatever the producing governments said they wanted? A. No, if you would look at the preceding

sentences you can see that I am drawing a distinction between talk of production regulation previously where it carried little credibility, and after February 7th when it carried much credibility, and as I said this was a world away from Caracas. Now Dr. Amouzegar is taking in a bit more territory there than I am.

*No. 100
Plaintiff's
evidence:
M.A. Adelman.
Cross
Examination
(Cont'd)*

Q. Of course it had been your view that the basic reason why, unless united action by the OPEC countries was successful in production cutbacks, there was little or no chance of any of the individual countries raising substantially taxes or enforcing participation or the like, wasn't it? Perhaps you have lost me or I lost myself? A. I am afraid I have.

10 Q. Professor, you had held the view around 1971 that unless the OPEC countries could by united action enforce production cutbacks, their power of achieving very much in the way of increased take was relatively limited? A. Yes, I am glad you say "their power to achieve very much" because there was still room for increasing the take in any given instance where it might be out of line.

Q. But it was your view that it could not be effectively increased by any greatly significant amount unless they could, by concerted action, enforce their demands in a unified way by production cutbacks, wasn't it? A. Unless they could enforce their demands by concerted action, they could not raise the general level of Government take by any large amount, that is right.

20 Q. This was primarily because the Middle East was almost awash with oil, reserves of oil? A. No, if anything it was in spite of the fact that they were awash with reserves. Their achievement, and it is a notable one, is to have done this even while sitting on all of these reserves.

Q. I think again we are at cross-purposes, professor. What I was meaning to put to you was that your reason for believing that unless they could act in a concerted way together they could not achieve very much individually, was that one country simply could not afford to hold out on his own because his neighbours had so much oil to replace his? A. Perhaps I can best answer that by means of a fairly recent example, the events in Abu Dhabi where, as doubtless you know, BP is an important producer. Abu
30 Dhabi was compelled recently to lower its take by well over 50 cents a barrel. This was not negotiated because there are no longer negotiations. It was merely that the companies producing in Abu Dhabi cut back their production quite drastically from December through about March, from about one and a half million barrels daily to about three-quarters of a million, whereupon Abu Dhabi lowered the take. There was no negotiation, if you please, but I would say that there was more of the reality of it in these last few months than there had been in previous years when they pretended to be negotiating at Teheran and other places.

Q. I think I follow your point but just in short, professor, Saudi Arabia I think, if you go back a few years anyway, had something like 50 per cent of the reserves of Gulf
40 Oil? I do not want precise figures? A. If you go back a few years . . .

Q. Go back to about 1970, 1971. A. You know, it is really impossible to answer that question unless we spent a good deal of time which I am sure you are not willing to do, defining what we mean by "reserves."

Q. I do not think it is perhaps worth taking the time, professor, but it was your

view, was it not, and perhaps still is, that the weakness of the cartel operations, potentially at least, is that each nation or some of them have so much oil which, if they sell more, if they increase their sales, will give them an increased take? A. Yes, I should say an increased revenue.

Q. I am sorry, an increased revenue, and that some of them are likely to succumb to the temptation to increase revenue by lowering take and increasing production?
 A. That is the constant pressure on a cartel and that has been the nemesis of cartels.

Q. I think it is fair to say, is it not, that that has been a view that you have held in relation to the possible success or otherwise of cartel action in the oil industry on the part of the OPEC nations? A. Certainly it is but it takes no study of an industry to hold that view. The really important and interesting question is how great is the pressure and how great is the counter-pressure. 10

Q. And the ultimate question: how long will the cartel last? A. Yes sir.

Q. However, is it fair to say that after Teheran and Tripoli you formed the view that the events which led to them and there occurred in relation to the agreements negotiated, if that is the word, had then wrought an irreversible change? A. Yes.

Q. And that was an irreversible change in your view in general conditions applicable to the oil industry? A. Yes.

Q. I think you went on to say at p. 257, "Oil supplies are now much less secure than ever before"? A. Yes, unfortunately. 20

Q. "In order to keep and extend their gains, the producing nations must keep the consuming countries insecure"? A. Yes.

Q. And you went on to say, "The genie is out of the bottle, the producing countries have been extremely successful in using the weapon of a threatened concerted stoppage, and they cannot be expected to put it away"? A. Yes.

Q. "What we must expect from the nations, singly and then jointly, are such actions as new tax increases, insistence on retroactive payments, and penalties for violating real or fancied regulations. The producing nations may refrain from raising posted prices, thus observing the letter of the agreement; but even so there is a conflict between the Teheran-Tripoli agreements and the OPEC 1968 resolution which make any fiscal arrangement subject to change because of 'changing circumstances'." And you concluded, "Taxes and prices will be raised again, and again". A. Yes, sir, and they have been. 30

Q. That of course was the view which you formed after Teheran and Tripoli?
 A. Yes.

Q. And reflects your then view of how conditions in the market and in the oil industry generally had altered enormously from what they had previously been. At p. 262, professor, I think it is the end of what is really the last substantive chapter in your book, chapter 8 headed, "Conclusions—the Teheran-Tripoli Agreements of 1971", at the bottom half of p. 262 under the heading, "A Summing-Up" you express some conclusions in summary form and may I take it that those conclusions represented your views as at the time you wrote them? A. Yes. 40

Q. And that would have been some time probably during 1971? A. Yes, that was in early 1971.

Q. And at that time in the second paragraph of the summing-up you wrote:

“Host government revenues per barrel will at first be stable but then will decline almost cent for cent with prices, as these governments in fact, and later in form, emerge as the owners.”

That was your prediction as at 1971 for the future? A. Oh yes, but remember what the time perspective on that is. The time when the cartel begins to buckle. Indeed it is a mathematical necessity for host government revenues per barrel to decline almost cent
10 for cent with prices when they are in fact so much of prices.

Q. You were then predicting that the cartel agreement, if we may so describe it, would gradually buckle because you thought companies and governments would evade it and, to use your words, “find loopholes, chisel and cheat”? A. That is correct.

Q. And with that chiselling and cheating and discovery of loopholes you thought host government revenues per barrel, after being at first stable, would then decline almost cent for cent with prices? A. Yes.

Q. May we take it then that at the time you wrote that you, with all your sources of information as to the future, with all your knowledge of the history of the industry and your consultation with distinguished persons, could see no straw in the wind that
20 anything like the increases that occurred in the last quarter of 1973 and the beginning of 1974 would occur? A. I did say that prices could be increased several times. I said that taxes and prices would be all raised again and again. They have been.

HIS HONOUR: Q. When you say “several times” do you mean on several occasions or several times what the base price was in 1971? A. Several times the base price because the limit to that would be the response of customers which depended on their alternatives, and I indicated briefly why their alternatives were limited, and the nearest available alternatives were several times as expensive as oil at the then ruling prices. But I took some care to say I did not know just where those limits were, only that they were very high.

30 MR. STAFF: Q. I think from what you have told us with all your sources of information it never in your wildest dreams occurred to you that what in fact happened in the three months from, say, the beginning of October 1973 to the beginning of January 1974 would in fact occur, did it? A. If you are asking whether I predicted how high prices would go, the answer is no. If you are asking whether I predicted that prices would go much higher, the answer is yes.

Q. Of course this was a prediction after Teheran wasn't it? A. Yes, but at a time when various persons including those in the industry . . .

HIS HONOUR: Q. I think what Mr. Staff wants to know is as you recall, looking at the matter back in 1971 at some point after Teheran, did you foresee at that time that
40 the price by the end of 1973 would be as high as \$9? A. No, I named no figure, your Honour.

Q. I know that but did it occur to you, and this may be a difficult question for you

to answer now because it means you have got to cast your state of mind back four years—don't answer it unless you can but did you foresee a price as high as \$9 or higher by the end of 1973? A. Your Honour, I didn't know, and I had to say that I simply didn't know how high in fact the price would in fact go. The best I could do was to look at the possible upper limits. I didn't try to do any more.

Q. But the possible upper limit was what, or didn't you come to a conclusion about that? A. I thought there about \$13 a barrel in Europe.

Q. For crude? A. No, for products.

Q. For products? A. For products, but I make no pretence of having predicted that. 10

Q. What products? A. No, this was for a composite barrel of products.

MR. STAFF: Q. But when you say "a composite barrel of products" I suppose you are talking in United States dollars first of all, are you? A. That is correct.

Q. And you are talking about a delivered barrel of crude, broken down into some representative proportion of products? A. Yes.

Q. Refined? A. That is correct.

Q. And that is with Persian Gulf sourced crude I take it? A. It wouldn't make a great deal of difference.

Q. And you did tell us this morning of course, professor, in answer to a question my learned friend Mr. Officer asked you, that the extent of the increases in Government 20 take and in product price was, as at June 1970, unforeseeable and unforeseen? A. That is true.

Q. And you pointed to the extent of the increase in Government take as being something like 95% of the price? A. That is what it is today, or more.

Q. But are you saying that you came at some point of time after Teheran to think that the extent of the increase which in fact occurred was probable or likely? A. I didn't hazard a prediction because I thought then, and I think now, that the essence of a cartel is the uncertainty of its reactions.

Q. So you found yourself, after Teheran at any rate, quite unable to make any prediction that you thought was satisfactory to you? A. Shall we say precise, yes. I found 30 myself quite unable to do that.

Q. You told his Honour that the Russian exported oil was substantial? A. Yes.

Q. In fact it is about five per cent of the world trade, isn't it? A. It is about 2,000,000 barrels a day.

Q. The world trade is running around 40,000,000, isn't it, pretty well? A. Yes, that is correct.

Q. Five per cent? A. Yes.

Q. And it has been in that order or percentage for some years? A. Yes, it has.

Q. It has not increased much in recent years? A. No.

Q. Certainly not increased in response to the shortage or the shortage that occurred at the end of 1973? A. The higher prices have kept Russian exports I think at a higher level than they otherwise would have been. I think they would have declined otherwise.

Q. The only other matter is you were asked some questions this morning about spot and term prices at the Persian Gulf and at Rotterdam. (Approached witness)
10 Would you just look at the graph which I show you which purports to plot Persian Gulf crude at Rotterdam spot prices and compares—the dotted line indicates Bandar Mahshar light fuel oil posted prices; the red line, tax paid, Kuwait crude, and the other line, the unbroken black line, the Persian Gulf spot price at Rotterdam? A. It could not be the Persian Gulf spot price at Rotterdam. It would have to be the Persian Gulf spot price at Bandar Mahshar or Mina Al Ahmadi or Ras Tanura.

Q. What I want to put to you is that the graph illustrates the way in which in late 1973, early 1974, spot prices escalated very much above crude oil prices? A. Yes, that was the panic.

Q. That was the panic you spoke of, and in effect spot prices went something like
20 60% above term prices? A. Yes.

Q. Wherever you really tested them, Bandar Mahshar or Rotterdam or anywhere else? A. Yes.

Q. And the graph is to your mind a reasonably good reflection of the way in which spot prices went way out of line with term prices? A. To my recollection, yes.

(Graph admitted without objection and marked Ex. 29)

RE-EXAMINATION

MR. OFFICER: Q. Professor, you were asked to express some views as to the prospect, standing as at the date your writing of your booklet was completed, the prospect of concerted action in cutbacks. I want to ask you, standing as at the same
30 date, did you foresee a possibility of concerted action for price increases? A. That would be the primary reason for production cutbacks, price increases.

Q. But could you foresee action, could you or could you not foresee action towards price increases which would be effective without the actual imposition of a cutback? A. Yes, indeed, it did not require a cutback to make them effective.

Q. And assuming that there were little chances of a concerted cutback, could price increases be extracted—was it your view that at the time of the book that prices could be increased by dint of an individual threat of cutback, individual to a particular country? A. No, it would have to be a concerted effort, though the action would consist of a number of statements, decrees or what have you in individual countries.

No. 100
Plaintiff's
evidence:
M.A. Adelman:
Cross
Examination
(Cont'd)

No. 100
Plaintiff's
evidence:
M.A. Adelman:
Re-Examination

Q. You referred in answer to my learned friend to some statements in your book about the prospect of price increases, and you were referred to some portions on p. 257. I think you were referred to the second paragraph commencing, "The Teheran and Tripoli events" down to the end of that paragraph? A. Yes.

Q. I think the first paragraph on that page also expresses some views which you then held with regard to the power of the OPEC nations to increase prices? A. Yes.

HIS HONOUR: If you want that in, you should read it on the transcript.

MR. OFFICER: Q. The passage I had in mind was as follows?

"The OPEC nations still have great unexploited power because price can be greatly increased without provoking a loss in sales and in total revenue. Therefore they are likely to try again soon. Yet, with no prorationing system in sight they cannot control the level of output and allocate markets." 10

A. Yes.

Q. "Their market power can only be exercised through brinkmanship"? A. Yes sir. By that I meant, as I said before, that they needed the co-operation of the consuming country governments and could secure it by scaring them badly, and that this was the way to do it.

HIS HONOUR: Q. In this discussion we have had this afternoon we have left out of account, of course, the impact if any of the October war? A. Yes, your Honour.

Q. That, to a lay person such as myself, seems to have been the trigger or the incident which really started all this as from October 1973? A. I wouldn't think so, your Honour, no. 20

Q. I was led to raise this matter with you because of your use of the word "brinkmanship" in the passage which Mr. Officer has just read. But that situation surely added another ingredient into the matters which are discussed in your book? A. I wouldn't think so, your Honour. I think it supplied an occasion. I think essentially it collapsed time.

Q. I am sorry? A. It collapsed time. What might otherwise have taken years was accomplished in a matter of months but I don't think that it took any political objective to raise prices. It is in the interests of these nations to raise it as high as they can and they have, contrary to some impressions, shown quite a good deal of care and prudence. They raise the price and look for the reaction. It is favourable; they don't lose trade, they don't provoke political reactions. Therefore they try again. Now some events may intervene which force the price up much more rapidly which furnish an occasion for them to do things and push the price up more rapidly than otherwise. But I think that this does not have any great long run importance. 30

Q. But, you see, I am concerned here with a contract that had an initial period of five years to run from about May 1971. No doubt there are many other contracts which were term contracts in that period or thereabouts which, if it had not been for the October war, might well have run the gauntlet of the brinkmanship and the other matters through a period of a contract such as that, without this very substantial—I apologise to Mr. Staff for using the word—increase in price? A. I think your Honour is 40

correct. Prices, I am sure would have increased during that time. I don't think that the world price level, because we are talking about that, would have increased so much so fast.

*No. 100
Plaintiff's
evidence:
M.A. Adelman:
Re-Examination
(Cont'd)*

Q. If it had not been for what happened in Israel in October? A. That is correct. But this is a world price level that we are talking about and the ability of all the nations or most of them to stand together is what permits them to sustain it.

Q. I am just wondering whether the oil companies perhaps because of the attitude of the governments of the countries in which they have their headquarters, were not able themselves to act as they might otherwise have done if it had not been for the very
10 dangerous international situation which had come about because of the hostilities?
A. The oil companies it seems to me acted in a way that does them considerable credit in re-allocating supplies, essentially diverting . . .

Q. I did not mean that kind of action. I meant their action in negotiating and resisting the claims which were made and the unilateral acts which were taken? A. I don't think that there was any ground for them to stand on by that time. I would have said as of early 1970 even, in the light of all that had happened, the 1968 resolutions, other events in Libya as well, I don't think that by 1970 they had any ground to stand on in negotiating with any particular government. The only limit on the governments' freedom of action was how high could they push the general price level. Within those
20 limits it seems to me they had asserted and maintained complete control of what was happening in their respective countries.

Q. I think what I am really putting to you is that the October war, occurring in 1973, made it possible for them to do that earlier and more quickly than might otherwise have been the case? A. I would certainly agree with that.

MR. OFFICER: Q. Professor, if one tried to look at the situation as it is for example now, and can one, apart from the timing of the events, can one eliminate the effect of the October war? Are the effects of the October war now spent so far as price increases are concerned except for the possible effect that war had on the introduction of the restrictions then rather than later? (Objected to; allowed)

30 Q. We have, from the answer you have given to his Honour, the fact that the October war may have enabled the OPEC countries or did enable them to introduce their increases in Government take earlier than they might otherwise have done?
A. Yes.

Q. Apart from the war having that effect, did it have any other effect on the increase in government take? A. No, I can't see any effect that it had otherwise, but it is possible I don't fully understand the question.

Q. Perhaps could I elaborate again . . .

HIS HONOUR: I think Mr. Officer means, whether the war had taken place or not, wouldn't the take have been just the same? A. I don't believe the take would have
40 been the same, I think the take would have been higher. Conceivably, since those events after all came about 18 months ago, conceivably it would have been raised as far and as fast as it has—I beg your pardon, conceivably it would have been raised as high as it is today in several steps, but I can't say whether it would or not. It could have happened.

No. 100
 Plaintiff's
 evidence:
 M.A. Adelman:
 Re-Examination
 (Cont'd)

* MR. OFFICER: Q. Apart from the October war, putting that on one side, would you have contemplated a lesser degree of government take than has occurred?

MR. STAFF: I object to that.

HIS HONOUR: Again I feel responsible, Mr. Staff.

MR. STAFF: May I only say this: It asks the witness to put aside something that has happened.

HIS HONOUR: The witness has been prepared to do that in his answers to me and say, "If that had not occurred, what has occurred would have happened but perhaps at a different time and in a succession of stages rather than in one hit".

MR. STAFF: I would submit it does not permit my friend to embark upon a complete speculation which has no factual basis. 10

HIS HONOUR: The whole thing is speculative, surely.

MR. STAFF: If it has no more value than that, it is not worth objecting to, I suppose.

(Question allowed; question marked * read)

WITNESS: I would have contemplated a lesser degree over the 18-odd months that have elapsed since then.

MR. OFFICER: Q. Is that related to what you said to his Honour, that you would have expected staging rather than a sudden impost? A. Yes, that is correct.

(Witness retired and excused)

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MR. OFFICER: That is all our evidence.

(Counsel outlined their addresses)

(Further hearing adjourned to 10 a.m. on Thursday, 29th May, 1975)