

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 V

(pages 847-1102)

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

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

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

BP AUSTRALIA LIMITED
Appellant

NABALCO PTY LIMITED
Respondent

**RECORD OF PROCEEDINGS:
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Exhibit 23 (part)**Letter: Australian Department of Customs to Defendant**

*Exhibit 23 (part)
Letter:
Australian
Department of
Customs to
Defendant
—
21st Feb., 1969*

21st February 1969

Mr. D.G.L. Bean,
British Petroleum Co. of Aust. Ltd.,
MELBOURNE. VIC.

Dear Mr. Bean,

At the conclusion of our last meeting I undertook to write to all parties confirming the decisions taken on various matters relating to the Government's policy on indigenous crude oil.

In order that there should be a clear understanding of the decisions taken at our earlier meetings I am also restating in this letter the information conveyed to you in previous correspondence.

Dealing firstly with the pricing arrangements that will apply to indigenous crude in the period up to 17 September 1970, I re-affirm that the price of Gippsland crude in this period is estimated at Australian \$2.47 per barrel in the early stages of production and \$2.44 per barrel in the third quarter of 1970 to 17 September 1970. These prices are not necessarily final, in that the calculation of the quality differential in accordance with the modified Nelson formula as laid down in the 1965 Tariff Board Report on Crude Oil, is based on assay data made available by the Gippsland producers prior to actual production. It will be necessary to recheck the calculation of the quality differential in this period when final information on the actual crude stream becomes available.

The producers of Gippsland crude have undertaken to make assay data available to buyers.

The point of valuation of Gippsland crude will be f.o.b. Long Island Point in the Customs port of Westernport.

In this same period, crude oil produced from Barrow Island and Moonie will continue to be priced at Australian \$3.24 f.o.b. Kwinana and \$3.14 per barrel f.o.b. Brisbane respectively.

The price of indigenous crude from all three fields will be varied if changes in the composition of the crude stream affects the quality differential component of the price.

Following agreement reached at our meetings, during the five year period commencing 18 September 1970 based on estimated assay data, Gippsland crude will be priced at \$2.06 per barrel f.o.b., Lond Island Point in the Customs port of Westernport. This price is calculated as follows:—

Exhibit 23 (part)
 Letter:
 Australian
 Department of
 Customs to
 Defendant
 —
 21st Feb., 1969
 (Cont'd)

Weighted average posted prices as at 10 October 1968 of principal crudes imported into Australia	\$1.62 per barrel	
less weighted average discounts as at 10 October 1968	<u>26</u> " "	
	\$1.36 " "	
plus weighted average overseas freights as at 10 October 1968	46 " "	
Wharfage and other charges as at 10 October 1968	<u>7</u> " "	10
	\$1.89 " "	
less a deduction for coastal freight	<u>9</u> " "	
	<u>\$1.80</u> " "	

To this fixed base of \$1.80 per barrel is added a sum for quality differential estimated at 26 cents, calculated in accordance with the modified Nelson formula, updated as agreed.

For the five years commencing 18 September 1970 crude from the Moonie field will be priced at \$1.89 per barrel, plus the quality differential, calculated in accordance with the modified Nelson formula updated to the extent agreed, of 26 cents per barrel—a total of \$2.15 per barrel f.o.b. Brisbane.

20

During this period Barrow Island crude will be priced at \$1.89 per barrel, plus a quality differential of 32 cents, a total of \$2.21 per barrel f.o.b. Kwinana.

The Government requires that until September 1980 refineries continue to absorb the maximum possible quantities of indigenous crude and in order to achieve this objective it will be necessary for refiners to provide the plant facilities required to process the maximum quantity of indigenous crude.

In examining the problem of determining the maximum level of absorption for indigenous crude, the Government was aware of the characteristics of the types of Australian crudes so far discovered and the fact that refiners may need some time to become accustomed to the problems of processing larger quantities of this type of indigenous crude and to carry out necessary plant modifications.

30

It was agreed that the proposal put forward by Caltex Oil (Australia) meets the Government's objectives, whilst at the same time catering for the considerations set out above.

Members of the conference are already familiar with the makeup of the formula set out in the Caltex paper of 24th January 1969, i.e.

$$I = F \left(\frac{A}{1-X} \right)$$

where

- (a) I is the minimum quantity of indigenous crude required to be absorbed.
- (b) F is a short term flexibility factor designed to allow users of indigenous crude to adjust to the use of this crude in larger quantities.
- (c) A is the specific slate of products, listed in Category "A" of Appendix 1 of the Caltex proposal.
- (d) X is the weighted average of the fuel oil yield, (expressed as a decimal) from all present producing indigenous fields using the modified Nelson formula.

10

I do not propose to recapitulate our exhaustive discussions of this proposal, but some specific comments should be made.

The products included in Category "A" are those resulting from crude oil refining operations which are sold or consumed in Australia and do not include sales or consumption in the Territory of Papua and New Guinea or Australian external territories. It does, however, include sales in the North and North West regions of Australia.

The Category "A" products are —

- (i) Aviation Gasoline (including international aviation bunkers).
- (ii) Motor Spirit.
- (iii) Power Kerosine.
- (iv) Aviation Turbine Fuel (including international aviation bunkers).
- (v) Lighting Kerosine.
- (vi) Heating Oils.
- (vii) Automotive Distillate.
- (viii) Industrial Diesel Fuel (including marine diesel local and international bunkers).

20

Categories "B" and "C" of the Caltex proposal list the exclusions from the absorption formula. These exclusions may be reconsidered at a later date, particularly if a type of indigenous crude, different from that so far discovered, is found in the future.

30

If any change in any of the categories is contemplated, the matter will first be discussed with industry and reasonable notice will be given the industry of the implementation date of such a change.

*Exhibit 23 (part)
Letter:
Australian
Department of
Customs to
Defendant
—
21st Feb., 1969
(Cont'd)*

Exhibit 23 (part)
 Letter:
 Australian
 Department of
 Customs to
 Defendant
 —
 21st Feb., 1969
 (Cont'd)

At a meeting of the Absorption Sub-Committee there was a difference of opinion as to whether or not international marine diesel and aviation bunkers should be included in Category "A". Consideration will be given to the exclusion from Category "A" of international marine diesel and aviation bunkers only if there is convincing evidence that this trade will be materially lost to Australian refiners because of its inclusion in the absorption formula.

Refiners of bitumens and lubricating oils have raised queries connected with "by product" materials from their imported feedstocks. The Government's intention is that refiners of these products will use feedstocks of a type and quality that will minimise this problem. This should only be a real problem where the production pattern of a particular refinery is heavily oriented towards manufacture of these specialist products at a time when indigenous crude is supplying a major part of total crude requirements. 10

However, I have agreed to examine, on an individual company basis, any case put forward for an adjustment to the absorption, and thus the allocation, formulae on this account.

I turn now to the values to be placed on "F" and "X". It has been determined that "F" will be .95 until 31 December 1970, when the need for a flexibility factor in the formula will be reviewed. The figure for "X" is .145, which is calculated from the weighted average from all fields of the modified Nelson fuel oil yield, expressed as a decimal. 20

This leaves one matter associated with absorption yet to be resolved. This is the proposal by the Shell Company that the absorption formula should incorporate a factor to correct for a possible distortion arising from applying volume rather than weight measures. I understand that Shell is collating industry views on this point.

The Government will announce by 30 September each year the level of absorption for the following calendar year. The absorption calculation will be based on forward estimates of the sales of Category "A" products for the ensuing calendar year. 30

Producers have agreed to supply estimates of production five quarters in advance on a rolling quarterly basis.

Up to 31 December 1969 indigenous crude will continue to be allocated using the present import based formula. From 1 January 1970 allocations will be based on individual company sales of products included in Category "A".

On, or before, 1 July 1969 industry will be advised on an individual basis of the new quotas to apply until 31 December 1969.

The only outstanding question in the allocation area relates to the proposal by Ampol and others that the allocation formula operating after 1 January 1970 should take account of the quantities of fuel oil that could be produced from indigenous crude oil, possibly based on yields according to the modified Nelson formula. 40

It was agreed that individual members of the industry should have more time to study this proposal and would furnish the Government with their views.

I think it appropriate to record our agreed understanding of a number of associated problems not already specifically covered.

Petrochemical feedstocks are excluded from the absorption and allocation formulae. Nevertheless, normal by-law criteria will apply to imports of such feedstocks, i.e. users of petrochemical feedstocks will be required to pay duty on imports, unless they are able to demonstrate that local feedstocks cannot be used for their purpose.

10 It is also the Government's intention that direct imports of petroleum products by end users from sources outside of Australia will attract either a quota of indigenous crude or payment of penalty rates of duty.

I would confirm the advice conveyed in my letter to you of 11 February 1969, that liquids produced in association with natural gas, and included in the stabilised crude stream, will be treated as indigenous crude oil, both for pricing and absorption purposes. In taking this decision the Government had regard for the quantities of condensate which the Gippsland producers estimated would be supplied from this field. In the event that the percentage of condensate included in the stabilised crude stream exceeds the Esso estimates, as set out in my letter of 11
20 February, the Government has undertaken to review the position.

Some refiners have pointed out that as the pricing formula includes a deduction for notional coastal freight, which is calculated as an average, there will be buyers who gain a relative advantage and others who incur costs greater than the average.

The Government recognised that there would be some extra cost over import parity because of the necessity of freighting indigenous crude to the various refineries, but it would wish to see, as far as is possible, this extra cost borne equitably by all buyers of indigenous crude. All companies have undertaken to examine again this problem with the objective of finding a more equitable
30 solution.

The question of credit terms that should be allowed to purchasers of indigenous crude by the Gippsland producers was discussed during our meetings. From information that companies have supplied to me of their present credit arrangements with their overseas suppliers, it is evident that there is a wide range of credit terms in existence for different reasons. In fact, the two present indigenous crude producers give different credit terms.

40 Because any change in practice can cause difficulties, particularly in the period until companies have had time to adjust their affairs to such changed circumstances, the Esso/BHP partners were asked to see if anything more could be done to reduce the possible impact of a shortening of credit conditions upon buyers. The Gippsland crude producers have agreed to bill buyers at the end of the month in which the crude was sold, with a further 30 days interest free credit. This arrangement provides buyers with a minimum of 30 days and a maximum of 60 days interest free credit.

*Exhibit 23 (part)
Letter:
Australian
Department of
Customs to
Defendant
—
21st Feb., 1969
(Cont'd)*

Exhibit 23 (part)
 Letter:
 Australian
 Department of
 Customs to
 Defendant
 —
 21st Feb., 1969
 (Cont'd)

The conference raised the question of new crude oil fields that may be discovered. Government policy is that each new field will receive its share of the guaranteed Australian market.

If future production of indigenous crude exceeds the quantities which can be taken up by the Australian refining and marketing industry, it will be necessary to implement a form of pro-rationing. The Government desires to have the industry's advice on the means by which pro-rationing should be implemented. For this reason a Committee under the Chairmanship of Mr. C.E. LETSCHER of Caltex Oil (Australia) with representation from industry and Government has been set up to study this problem. 10

Intending exporters of indigenous crude will still be required to obtain permits on an individual shipment basis. However, the Government recognises that particularly in the short term refiners may have some difficulty in balancing their crude inputs. It will therefore, subject to normal export criteria, not object to the export of indigenous oil in reasonable quantities, at least until September 1970. The position will then be reviewed after consultation with industry in the light of the circumstances then prevailing.

You will remember that it was also agreed that we should meet again in approximately six months, to review the progress that has been made and to examine any problems that might have arisen. I will, of course, write to you in the meantime on the outstanding matters to which I have referred above. I am anxious that we should maintain maximum consultation in the implementation of the Government's indigenous oil policy. 20

I would like to take this opportunity to thank all members of the industry for their contribution in achieving the decisions outlined above. I am sure that with your help we have attained a satisfactory working basis to implement the Government's policy in this field.

Yours sincerely,

A.T. Carmody

Exhibit 71 (part)
 Record of
 Decisions: Board
 of Direction of
 Gove Joint
 Venture

Exhibit 71 (part)

30

Record of Decisions: Board of Direction of Gove Joint Venture

24th July, 1969

Present:

Representing Swiss Aluminium Australia Pty. Ltd.:

Mr. D. Griffin (in the Chair)

Dr. B. Sorato

Representing Gove Alumina Ltd.:

Sir James Vernon

Mr. B.N. Kelman, Alternate Member for Mr. K.O. Brown

Representing the Manager:

Dr. B. Sorato

Apologies:

Mr. E.R. Meyer

Dr. P.H. Muller

Mr. K.O. Brown

Mr. J.S. Proud

Mr. J.F. Linton

In Attendance:

10 Mr. K. Wolfensberger, Secretary to Board of Direction

Mr. P. Lovell, Secretary, Gove Alumina Ltd.

*Exhibit 71 (part)
Record of
Decisions: Board
of Direction of
Gove Joint
Venture*

—
24th July 1969
(Cont'd)

PART I — PRELIMINARY:

1.1 Confirmation of Record of Decisions:

The record of Decisions of the Seventh Meeting of the Board of Direction held on 30th June, 1969, was confirmed.

PART II — MATTERS SUBMITTED BY THE MANAGER FOR DECISION:

2.1 Contract 8033 — Bauxite Treatment Plant Tankage

The Board of Direction agreed that a letter of acceptance of tender in the sum of \$9,214,230 be issued to Bernard Smith P.D.M. Pty. Limited.

20 2.2 Contract 8032 — Grinding Mills

The Board of Direction agreed that a letter of acceptance of tender in the sum of \$988,638 for Section 'A' of the contract only be issued to John Thompson (Aust.) Pty. Ltd.

2.3 Umbrella Public Liability Cover

30 In addition to the list of Insurance Policies approved by the Board at its meeting of 20th February, 1969, it is resolved to take out Umbrella Public Liability cover for \$10 Mio.; (this cover being additional to the Public Liability Cover already existing under other policies) being an increase of \$5 Mio. above the recommendation from the Administration Division of 15th July, 1969.

A Report setting out all relevant details of this Umbrella Public Liability Cover is to be forwarded to the Participants as soon as final arrangements have been completed with our insurance brokers.

2.4 Fuel Supply — Operations Phase 1972-1981

The Board of Direction approved that Nabalco enter into an agreement with B.P. Australia Limited for the supply of Bunker C, Distillate and Motor Spirit for a period from 1st July, 1972 to 30th June, 1981 on the basis of their tender, for delivery c.i.f. Gove as set out in para. 4.5 of the Report and

*Exhibit 71 (part)
Record of
Decisions: Board
of Direction of
Gove Joint
Venture
—
24th July 1969
(Cont'd)*

Recommendation on Tenders Received for Fuel Supply — Operations Phase 1972-1981.

PART III — MATTERS SUBMITTED BY THE MANAGER FOR INFORMATION

3.1 Contract 8058 — Piping I — Preselection of Tenderers

The Board of Direction noted the information supplied by the Manager.

3.2 Contract 8056 — H.V. Electrical System for Bauxite Treatment Plant — Preselection of Tenderers

The Board of Direction noted the information supplied by the Manager.

PART IV — MISCELLANEOUS

10

4.1 Negotiations with Unions

- Industrial Agreement on Over-Award Wages and Conditions
- Application for the establishment of a Register for Waterfront Section for the Port of Gove.

The Board of Direction noted the information supplied by the Manager.

4.2 Commercial Bills

The Board of Direction appreciated the information supplied by the Manager and noted that the Manager will advise the Participants if and when Interest Rates on Commercial Bills increase.

4.3 Timing of Project

20

The Board of Direction requested that a full report on the slippage of timing of the construction programme as appearing in the Monthly Report of June, 1969 be prepared by the Manager for discussion at the next Board of Direction Meeting.

Confirmed
David Griffin
Chairman

Date: 21-8-69

Exhibit 23 (part)**Letter: Department of National Development Fuel Branch to Defendant**

*Exhibit 23 (part)
Letter:
Department of
National
Development
Fuel Branch to
Defendant
—
10th Sept., 1969*

10 September 1969

The General Manager,
B.P. Oil Supplies Pty Ltd,
MELBOURNE. VIC. 3004

Dear Sir,

MEETING OF OIL INDUSTRY STATISTICAL COMMITTEE

HELD ON 4TH DECEMBER, 1968

10 Replies have now been received from all members to the questionnaire enclosed by the Secretary with the minutes of the meeting of the Oil Industry Statistical Committee held on 4th December, 1968. It is regretted that the results of the questionnaire have not been circulated earlier, but replies have not been finalised until this past week.

The replies received in regard to the proposals made at the meeting, and set out in the questionnaire, have indicated the following:—

Item 3 — Imports of Crude Oil and Other Refinery Feedstock

20 All companies have agreed to the release of quarterly details of crude oil and other refinery feedstock to show details of types imported from each country, providing the information is restricted to members of the Committee. Not all companies agreed to the release of the figures by states, and the figures will therefore be provided for Australia as a whole only. Enclosed is a sheet showing details for each of the four quarters of fiscal year 1968/69.

Item 4(a) — Quarterly Sales of Lubricants by State Marketing Areas

30 All companies have agreed to report lubricant sales quarterly by State marketing areas. The statistics will be in a less detailed form than catered for on the current reporting form for total Australia only. The detailed report for Australia only will still be submitted quarterly in addition to the state marketing area report. Forms have been drawn up for reporting by state marketing areas, and a supply of these is enclosed, if applicable to your company. It is suggested that reporting commence with figures for the quarter ended 30th September, 1969.

Item 4(b) — Further Dissection of Item 3 of Section C on Lubricant Sales Returns

All companies have agreed to the further dissection suggested, as set out in the minutes. New forms have been drawn up for the reporting of lubricant sales, and a supply of these is enclosed, if applicable to your company. It is suggested

Exhibit 23 (part)
 Letter:
 Department of
 National
 Development
 Fuel Branch to
 Defendant
 10th Sept., 1969
 (Cont'd)

that reporting under the new headings commence with figures for the quarter ended 30th September, 1969.

Item 7(a) — Quarterly Dissection of Bunker Deliveries by State Marketing Areas

All companies have agreed to the quarterly dissection of deliveries of oil fuels to ships' bunkers being shown by state marketing areas. Agreement was on the understanding that the distribution of state marketing areas figures be restricted to the oil industry only. (Distribution of bunker dissections has previously been unrestricted). New reporting forms have been drawn up and a supply of these is enclosed, if applicable to your company. It is suggested that reporting by state marketing areas commence with figures for the quarter ended 30th September, 1969. 10

Item 7(b) — Change in Definitions for "Local" and "Overseas" Bunker Deliveries

Not all companies agreed to the suggested alteration to the definitions of "Local" and "Overseas" for the quarterly dissections of deliveries of oil fuels to ships' bunkers. The definitions therefore remain as before, i.e.

"Local" should refer to bunker purchases by Australian companies.

"Overseas" should refer to bunker purchases by Overseas companies.

Item 7(c) — Dissection of Sales of Aviation Fuels Between "Local" and "Overseas." 20

Not all companies were agreeable to providing quarterly figures showing dissection of sales of aviation fuels between "Local" and "Overseas", by state marketing areas.

Item 10 — Statistics of Bitumen Sales by State Marketing Areas

All companies have agreed to the proposal that bitumen sales should be compiled by state marketing areas, instead of for Australia as a whole only. New reporting forms have been drawn up, and a supply of these is enclosed, if applicable to your company. Distribution of state marketing area figures will be restricted to oil industry members only, but total Australian figures will continue to be available for general distribution. It is suggested that reporting by state marketing areas commence with figures for the quarter ended 30th September, 1969. 30

Item 11 — Definition of C.I.F. Contract Sales

All companies have indicated that they wish to continue providing and receiving information on C.I.F. Contract sales, and all have agreed to the suggested definition of C.I.F. Contracts, i.e. that figures provided under the heading of C.I.F. Contracts should consist of:—

- (a) Quantities supplied ex tankship direct into customers' storages.

(b) Quantities supplied ex refineries by pipeline direct into customers' storages.

It has been suggested that this definition be introduced as from 1st January, 1970, and that until then companies should continue to report on the basis on which they have been reporting so far this year.

Item 13(b) — Sales of Petroleum Fuels for Domestic Heating

Not all companies agreed to the suggestion that figures be compiled showing sales for domestic heating of the fuels nominated in the minutes.

Yours faithfully,
W.T. McFADYEN
Chairman,
Oil Industry Statistical Committee

10

Exhibit 23 (part)
Letter:
Department of
National
Development
Fuel Branch to
Defendant
—
10th Sept., 1969
(Cont'd)

Exhibit 23 (part)

Letter: Australian Department of Customs to Defendant

Exhibit 23 (part)
Letter:
Australian
Department of
Customs to
Defendant
—
30th Sept., 1969

30 September 1969

Dear Mr. Bean,

At a meeting held in Canberra on 16th July 1969 to discuss the allocation of crude oil production as from 1 January 1970, the products to be included in Category "A" and the method of accounting for those products was considered.

20 The products included in Categories "A", "B" and "C" are as listed in Appendix 1 of the Caltex proposal dated 24 January 1969. In my letter of 21 February 1969, it was stated, inter alia, that from 1 January 1970 onwards, allocations of indigenous crude would be based on sales in Australia of Category "A" products and would exclude sales or consumption in the Territories of Papua and New Guinea or Australian external territories. There existed, however, the problem of definition of the products in the various categories.

30 Following the earlier decision that allocation would be based on individual companies sales of products included in Category "A" and consideration of the points raised during the meeting held on 16 July, it has been decided that for the purposes of allocation the only products to be excluded from the sales formula are those which are specifically nominated, either by name or end use, in Category "B" and "C".

Exhibit 23 (part)
 Letter:
 Australian
 Department of
 Customs to
 Defendant
 —
 30th Sept., 1969
 (Cont'd)

The products nominated for exclusion are:

Category "B"

- (1) Natural Gas
- (2) Refinery produced sales gas
- (3) Methane
- (4) Ethane
- (5) Propane
- (6) Butane
- (7) L.P.G.
- (8) Naphtha
- (9) Petrochemical feedstocks
- (10) Solvents.

10

Category "C"

- (1) Asphalts
- (2) Lube Basestocks
- (3) Furfural extracts after lube manufacture
- (4) Waxes after lube manufacture.

I recognise that some products listed in Category "B", except for the specific exclusion when for certain end uses, could otherwise be considered to be Category "A" products. Again, even though some Category "A" products are marketed for different end uses (e.g., kerosene as a weedicide), these products are not excluded from Category "A". The only exclusions permitted because of end use are those listed in Category "B".

20

This means that, except for those products in Category "B" with an end use description, e.g., petrochemicals and solvents, end use will not be a criteria for excluding a product from Category "A".

Some products listed in Category "A" may contain additives or are combined with other materials to suit a particular purpose. Irrespective of whether these additives or other materials would or would not qualify in their own right as Category "A" products, no adjustment will be made in respect of these additives if they are combined with products which by volume comprise Category "A" products.

30

Because of the variety of products and their uses, it is possible that there may be some borderline cases. Where necessary, such cases will be discussed with the companies concerned.

Methanol used with aviation fuel is invoiced and sold separately and will not be included in Category "A".

Allocations of indigenous crude for the calendar year 1970 will be normally based on sales of Category "A" products for the year ended 30 September 1969. Sales made in the "normal" accounting months adopted by the various companies, rather than the actual calendar months, will be acceptable.

40

The use of a twelve month period is in accordance with industry consensus of opinion. Should industry, in the future, wish to base allocations on sales made in

other than a full twelve months period, consideration will be given to using a shorter period.

Inter-company sales of Category "A" products between quota holders should be accounted for by the quota holder purchasing the product, unless otherwise agreed to by the parties to the inter-company sale.

*Exhibit 23 (part)
Letter:
Australian
Department of
Customs to
Defendant
—
30th Sept., 1969
(Cont'd)*

10 I wish to use, as far as possible, current industry accounting procedures as a basis for recording sales for the purposes of determining allocations. At present, marketers of petroleum products forward a monthly return of sales to the Fuel Branch of the Department of National Development. With some slight adjustments, in order that all products in Category "A" can be accounted for by the importer/marketer making these sales, it is proposed to use a copy of this monthly return as the standard format for advising sales.

I propose that Mr. H.J. McMahon of this office visit each company to discuss the accounting procedures to be adopted for sales of Category "A" products. Following that visit, companies will be advised of the actual sales to be included in your return and the format of the return.

20 Sales of Category "A" products should be notified to the Department of Customs and Excise (marked for attention, Chief Inspector — Petroleum Products) each month, beginning with sales made during the accounting month of October 1969. This will allow any necessary reconciliations between returns to be carried out progressively. Companies should also continue to send monthly returns to the Fuel Branch of the Department of National Development in the usual manner.

As indigenous crude oil production for the calendar year 1970 will be allocated on the basis of companies' shares of Category "A" product sales for the twelve months ended 30 September 1969 (or the relevant accounting period), companies will need to supply details of sales of those products in that year. It is expected that following Mr. McMahon's visit, companies will be in a position to advise Category "A" sales for the twelve months ended 30 September 1969.

30 You will recall a proposal that the allocation formula after 1 January 1970 should take account of the quantities of fuel oil that could be produced from indigenous crude oil.

40 It is recognised that indigenous crude oil will yield quantities of fuel oil, just as it yields products included in Category "A". However, from data so far available it is also recognised that the recovery of marketable fuel oil from these crudes is small and is not at present easily ascertainable. Taking this into account and the various comments received from the companies on this proposal, it has been decided that allocations for the year 1970 will be based on sales of Category "A" products only. Before allocations are determined for the year 1971 the proposal will be re-examined. It is expected that at that time the proposal can be evaluated against the practical knowledge available from processing large quantities of Bass Strait crude oil.

The formula for determining the maximum level of absorption for indigenous crude was set out in my letter of 21 February 1969. On the data at present available from producers of indigenous crude oil, production during the calendar year 1970 should not exceed the absorption level calculated under the formula.

Exhibit 23 (part)
Letter:
Australian
Department of
Customs to
Defendant

At the conclusion of our last industry conference it was agreed that we should meet again to review the progress that has been made in implementing the Government's indigenous crude oil policy and together examine any outstanding problems. I would like this meeting to take place before the end of this year.

30th Sept., 1969
(Cont'd)

I will, in the near future, write to you again concerning arrangements for that meeting.

Yours sincerely,

A.T. Carmody

Mr. D.G.L. Bean,
 British Petroleum Co. of Australia Limited,
 MELBOURNE, VIC. 3004

10

Exhibit 35 (part)

Exhibit 35 (part)
Loan Agreement:
Gove Alumina
Ltd and
Defendant

Loan Agreement: Gove Alumina Ltd and Defendant

11th June 1970

THIS DEED made the Eleventh day of June One thousand nine hundred and seventy BETWEEN GOVE ALUMINA LIMITED a company incorporated in the State of New South Wales (hereinafter called "Gove Alumina") of the one part AND BP AUSTRALIA LIMITED a company incorporated in the State of Victoria (hereinafter called "the Company") of the other part WHEREAS:

- (A) Nabalco Pty. Limited a company incorporated in the State of New South Wales (hereinafter called "Nabalco") is Manager of the Gove Joint Venture for and on behalf of Swiss Aluminium Australia Pty. Limited and Gove Alumina as Joint Venturers. 20
- (B) By Agreement dated Eleventh day of June 1970 made between the Company of the one part and Nabalco of the other part (hereinafter called "the Supply Agreement") the Company agreed to supply and deliver at Gove to Nabalco and Nabalco agreed to purchase from the Company its requirements at Gove of Furnace Oil, Super Motor Spirit and Diesoleum and so to do for a period of ten (10) years from the date upon which the Company makes the first delivery of Furnace Oil to Nabalco at Nabalco's request.
- (C) The Company's tender to supply as aforesaid included inter alia an offer to lend to Gove Alumina the sum of Nine Hundred Thousand Dollars (\$900,000) (which sum or so much of which as is from time to time outstanding is hereinafter called "the Principal Sum") and so to do on the terms and conditions hereinafter set out. 30
- (D) Gove Alumina has accepted the said offer.

NOW IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:—

Exhibit 35 (part)
Loan Agreement:
Gove Alumina
Ltd and
Defendant
 —
 11th June 1970
 (Cont'd)

1. The Company will lend to Gove Alumina the Principal Sum and will advance the same by three (3) instalments each of Three Hundred Thousand Dollars (\$300,000) payable on the last days of June 1970, July 1970 and January 1971 respectively.

10 2. Gove Alumina will repay the Company in Sydney free of exchange the Principal Sum by thirty six (36) quarterly instalments each of Twenty Five Thousand Dollars (\$25,000), the first whereof to be paid on the last day of March 1973 and thereafter on the last days of the months of June, September, December and March
 PROVIDED HOWEVER that Gove Alumina shall have the right to repay the Company on any of the aforesaid instalment days, in addition to the instalment then payable, any amount being a multiple of One thousand dollars (\$1,000) and interest on any such additional repayment shall be calculated only to the date thereof.

20 3. Gove Alumina will pay the Company interest on the Principal Sum at the maximum rate from time to time charged by Bank of New South Wales in Sydney to its customers in respect of advances on current account. The said interest shall be deemed to accrue daily and commencing on the last day of December 1972 shall be payable on the last days of the months of March, June, September and December in each and every year until the Principal Sum shall be fully paid and satisfied.

4. If —

- (i) Gove Alumina fails to pay any moneys due and payable hereunder within fourteen (14) days after the date fixed for payment, or
- (ii) Gove Alumina goes into liquidation for purposes other than reconstruction or amalgamation or calls a meeting of creditors or makes or attempts to make any composition with or arrangement for the benefit of creditors, or
- (iii) Notice is received by Gove Alumina from the Company that the Supply Agreement has been terminated for any reason

30 then and in any such case the Principal Sum with interest accrued but unpaid thereon shall at the option of the Company be and become due and payable within thirty days from the date thereof.

5. Any notice hereunder to be given or served by either party shall be sufficiently executed if signed on behalf of that party by any Director, its General Manager, Secretary or Solicitors and shall be deemed to have been validly given if posted at any post office in a prepaid letter addressed to the other party at its then registered office. Any notice so sent by post shall be taken to be given at the time when in the ordinary course of posting it would have been delivered to the address to which it was so posted.

*Exhibit 35 (part)
Loan Agreement:
Gove Alumina
Ltd and
Defendant*

*11th June 1970
(Cont'd)*

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

THE COMMON SEAL of GOVE ALUMINA)
LIMITED was hereunto affixed)
pursuant to a Resolution of the)
Board of Directors:)

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

*(Signatures not
reproduced)*

10

*Exhibit 71 (part)
Record of
Decisions: Board
of Direction of
Gove Joint
Venture*

25th June 1970

Exhibit 71 (part)

Record of Decisions: Board of Direction of Gove Joint Venture

Present:

Representing Swiss Aluminium Australia Pty. Ltd.:

Mr. D. Griffin (in the Chair)

Dr. B. Sorato

Mr. J.F. Linton (alternate member for Mr. E.R. Meyer and Dr. P.H. Mueller)

Representing Gove Alumina Ltd.:

Sir James Vernon

Mr. K.O. Brown

Mr. J.S. Proud

Representing the Manager:

Dr. B. Sorato

Apologies:

Mr. E.R. Meyer

Dr. P.H. Mueller

In Attendance:

Mr. B.N. Kelman

Mr. K. Wolfensberger, Secretary to the Board of Direction

Mr. P. Lovell, Secretary, Gove Alumina Ltd.

Dr. J.F. Sauerlander, Acting Secretary to the Board of Direction.

20

30

PART I — PRELIMINARY

1.1 Confirmation of Record of Decision

The Record of Decisions of the Nineteenth Meeting of the Board of Direction held on 28th May, 1970 was confirmed.

PART II — MATTERS SUBMITTED BY THE MANAGER FOR DECISION

*Exhibit 71 (part)
Record of
Decisions: Board
of Direction of
Gove Joint
Venture*

*25th June 1970
(Cont'd)*

2.1 Accommodation requirements during construction and operations period. Amendment to the Policy indicated in the Feasibility Study.

10 The Board of Direction noted the information supplied by the Manager contained in the report prepared by the Project Division dated 17.6.70, Ref. WL:BL. The steps taken by the Manager in ordering additional accommodation as a result of variations in Contractors' workforce, and as a consequence of difficulties in retaining staff and female personnel on a two bed per room basis, were approved by the Board of Direction. It was also noted that the Manager will endeavour to recover part of this additional expenditure from Contractors whose workforce at Gove exceeds the estimate contained in the tender on which the contract was awarded to them.

PART III — MATTERS SUBMITTED BY THE MANAGER FOR INFORMATION

3.1 Freshwater and Seawater Cooling Systems

The Board of Direction noted the information supplied by the Manager, contained in the Report and Recommendation dated 3.6.70, and Supplementary Technical Report of the same date prepared by the Project Division.

20 The Board of Direction noted that as a result of the Cooling Systems adopted by the Manager, an approximate 2 million gallons of freshwater per day would be saved. This system has mainly been considered as a consequence of the uncertainty of the freshwater supply on site. The Board of Direction also noted that a firm of consultants has been retained by the Manager to assess as accurately as possible the water resources. The result of this study will be known by the end of this year. The study will complement the assessment made during 1969 by the Northern Territory Water Resources Bureau which was incomplete.

3.2 Fuel Supply — Operations Phase 1972-1981

30 The Board of Direction noted that the Supply Contract approved by the Board of Direction at its Meeting held on 24.7.69 with BP Australia Limited had been signed on 11.6.70, and that at the request of BP a two month extension had been granted to BP in providing the third \$1 Mio loan instalment.

3.3 Sydney Cargo Depot

The Board of Direction noted the information supplied by the Manager concerning the proposed Sydney Receiving Depot. It is anticipated that the depot will improve the handling and transportation of cargo to Gove.

3.4 Computer System for Gove

The Board of Direction noted the information supplied by the Manager on the selection of a computer to be installed at Gove during 1971.

*Exhibit 71 (part)
Record of
Decisions: Board
of Direction of
Gove Joint
Venture
—
25th June 1970
(Cont'd)*

3.5 Industrial Situation

The Board of Direction noted the information supplied by the Manager.

3.6 Bauxite/Alumina Berth — Berth Occupancy

The Board of Direction noted the information supplied by the Manager which will be carefully considered by the Participants in their sales programmes.

3.7 Cash Management — Short Term Investments

The Board of Direction noted the information supplied by the Manager, and agreed that the possibility of investing short term funds in associated companies should be investigated by the tax advisors of the two Participants.

The General Manager appreciated the offer by Gove Alumina Representatives that the Investment Officer of the C.S.R. Company would, if requested, give assistance to Nabalco on short term investment opportunities. 10

3.8 Export Credit — Steam Power Station Contract

The Board of Direction noted the information supplied by the Manager. The Manager will invite the Participants, in writing, to take up their percentage share of the abovementioned loan.

PART IV — MISCELLANEOUS

Nil.

Confirmed
Emanuel R. Meyer
Chairman

Date: 23rd Jun 1970

Exhibit 23 (part)**Letter: Australian Department of Customs to Defendant**

*Exhibit 23 (part)
Letter:
Australian
Department of
Customs to
Defendant
—
27th Nov., 1970*

27 November 1970

Dear Sir,

Allocation of Indigenous Crude Oil

As you are aware, the basis for allocating indigenous crude oil production was changed from 1 January 1970 from a formula based on imports to a formula based on relevant sales of Category A products.

10 At the industry meetings held prior to this decision being made, a number of companies had argued that some or all sales of fuel oil should be included with Category A products for the purpose of the allocation formula. This argument was based, essentially, on the fact that indigenous crude oil was capable of producing some fuel oil. However, for reasons which were agreed on at the time, it was decided that the question of the inclusion of fuel oil in the allocation formula would be deferred until refiners had experience in processing Gippsland crude oil, but that the matter would be determined before the commencement of the 1971 allocation period.

On 31 August 1970 an industry committee was asked to examine certain aspects concerning the inclusion of fuel oil in the allocation formula.

20 The Chairman of that committee has now reported the various points of view raised by members. He has advised me that the committee was unable to reach agreement as to whether fuel oil should be included in the formula, and consequently, did not proceed to discuss the other aspects of this question which had been referred to that committee.

In view of the representations made by various parts of the industry and the inability of the committee to reach an agreement on this matter, it has been referred to Ministers. They have decided that since some fuel oil is now being produced from indigenous crude it is appropriate that a proportion of fuel oil sales should be included in the allocation formula.

30 In arriving at the quantities that should be included, there are great difficulties in using the theoretical fuel oil yield set out in the Modified Nelson Formula. This formula, of course, is basically a pricing formula. Similarly, it is not realistic to make decisions based on the actual fuel oil yield from indigenous crude from any particular refinery.

For these reasons, it has been decided that inland sales of fuel oil will be added to Category A sales for the purpose of determining the allocation formula. Whilst these quantities are realistic for the purpose, Ministers also had in mind that this would have a minimum impact on the operations of major export industries.

For the initial 1971 period, the Government will calculate the allocation formula

Exhibit 23 (part)
Letter:
Australian
Department of
Customs to
Defendant
 —
 27th Nov., 1970
 (Cont'd)

based, inter alia, on the statistics of inland sales of fuel oil presently furnished by the industry to the Fuel Branch, Department of National Development.

This decision has an obvious effect on the absorption formula. It seems desirable that allocation and absorption should, if possible, be on the same basis. I propose to take this matter up with industry in the near future.

It is recognised that in following periods there may be some definitional problems in the inland sales area. However, I consider that this problem can be resolved between industry and officials during 1971.

Early in 1971 department representatives will discuss with individual companies any problems in defining inland sales of fuel oil for the purposes of the allocation formula. 10

Yours faithfully,

A.T. Carmody

Mr. D.G.L. Bean,
 Deputy Chairman and Managing Director,
 British Petroleum Co. of Australia Ltd,
 MELBOURNE, VIC. 3004

Exhibit G
Mr Snape's
dissection of
inter-company
price
 —
 26th Feb., 1971

Exhibit G

Mr Snape's dissection of inter-company price

MR. R.H. OSMAN

20

Nabalco Fuel Oil Contract

In answer to your questions of yesterday:—

1. The revised leeways on the Nabalco Fuel Oil business are:—

(All \$A per ton)

<u>1971</u>	<u>1972</u>	<u>1973</u>	<u>1974</u>	<u>1975</u>	<u>1976</u>
-10.50	-6.80	-6.35	-7.30	-4.90	-5.00

These are based on our local estimate of the effect of the OPEC changes, announced last week, on Group costs. Until we have new Group feed data from the next London Macro runs these estimates are the best available.

2. The dissection of the increase in BPT/BPA Invoice Price for fuel oil imports is.

(\$A per ton)

*Exhibit G
Mr Snape's
dissection of
inter-company
price*

*26th Feb., 1971
(Cont'd)*

Date of Quotation (18/9/68)	F.O.B. Value			Freight Cost (MRAFRA)			Total
	30/9/68	24/2/71	Increase	30/9/68	24/2/71	Increase	Increase
18/9/68	8.24	8.24	—	3.69	3.69	—	—
? 71	8.76*	11.71	2.95	2.94**	6.68	3.74	6.69
1972	8.76*	11.71	2.95	2.94	6.73	3.79	6.74
1973	8.76*	12.32	3.56	2.94	6.73	3.79	7.35
1974	8.76*	12.93	4.17	2.94	6.78	3.84	8.01
1975	8.76*	13.54	4.78	2.94	6.87	3.93	8.71
1976	8.76*	14.15	5.39	2.94	6.78	3.84	9.23

* \$US 1.50/bbl minus 5%

** Intascale minus 35

- 10 3. legal position — no comment
4. Comparable sales today. We have no knowledge of any recent sales comparable to Nabalco. We have the impression from London that any sales would be at full posting plus full AFRA freight (at least) and this would give a current quotation at about \$18 per ton with escalations.
- 20 5. It is our opinion that the least cost route of supply to Nabalco will continue to be direct import rather than local production. However there is some degree of doubt about long-term availability from M.E. but it is a fair bet that Nabalco would have first preference (economically) for any availability because of its geographic location and consequent freight position.
6. The effect of the \$3 million loan is to add \$1.77 p. ton to the Group cost although the effect on the Australian books is slight (merely the phasing of interest receipts compared with our cost of borrowing). This economic cost of \$1.77 per ton is included in the leeways quoted in 1.

30 B.C.S.
26/2/71

Exhibit F
Letter:
Defendant to
Plaintiff
—
25th Mar., 1971

Exhibit F**Letter: Defendant to Plaintiff**

25th March, 1971

CONFIDENTIAL

Nabalco Pty Limited,
Sydney, N.S.W. 2000

Attention: Mr E.A. Notter

Dear Sirs,

In our recent discussions we outlined broadly the implications of the recent Teheran OPEC agreement by the major oil importing countries. This affects very significantly the furnace oil price in our contract for the supply of your operational requirements of petroleum products. We summarize below the main points raised and trust that this official confirmation will enable a mutually satisfactory settlement. 10

As a result of the unexpected collaboration by the Middle East/Libyan/Venezuelan oil supply countries to increase their national incomes, the international oil companies were faced with the alternative of higher crude oil prices or complete cessation of supplies. They accepted the former in the interests of the consumer but only after considerable bargaining which achieved a substantial reduction in the original OPEC demands.

Our contract with you, which commences with the first furnace oil shipment in May this year, was entered into at a time of falling world furnace oil prices. Although for a period of ten years, with a price review after five years we, and presumably yourselves, were then satisfied that the fixed f.o.b. five year price, escalating only with international freight rates, would result in a fair average price over the contract period. 20

Because of the unilateral circumstances of the Teheran agreement this will not now be the case. The supply conditions have changed to such an extent that we, BP, are now in an onerous position and unless agreement can be reached to include in the contract an f.o.b. escalation clause we will be required to give notice under clause 9C (iii) to amend the contract price by \$2.53 p.m.t. to apply from three months after the first delivery. This is related directly to the increase in the Bandar Mah-Shahr BP Light Fuel Oil posting which has increased from \$US1.50 per barrel (18/9/68) to \$US1.92 per barrel (15/2/71). 30

Although the magnitude of this rise is significant, it does not include any extra costs associated with the increased tax rate now being applied by the Middle East host countries or the significant reduction in discounts that now apply; in fact we shall still be absorbing this portion of the additional costs.

Resulting from the f.o.b. increase, your furnace oil delivered price, to apply from three months after the first shipment (3rd May 1971) would be around \$15.25 p.m.t. However, it is emphasized that because import parity is in the vicinity of \$18.20

p.m.t. you would still be obtaining the same rebate as was applicable to our original quotation, i.e. quoted price \$9.42 p.m.t. as at 18/9/68, import parity \$12.09 p.m.t. (f.o.b. \$9.06 + freight \$3.03).

*Exhibit F
Letter:
Defendant to
Plaintiff*

*25th Mar., 1971
(Cont'd)*

Under today's marketing conditions our revised price would still be, we feel quite certain, equally as competitive as that previously submitted. In this regard, you may be interested to know that world "spot" furnace oil sales in MR tankers are currently being quoted in the range \$25.00 to \$28.00 p.t. Only this week the "spot" price for furnace oil in Rotterdam has been quoted in Petroleum Intelligence Weekly as \$28.63 p.m.t.

- 10 The view has been expressed — particularly in recent press articles overseas, that, failing further eruptions in the Middle East, international freight rates may well fall from their present peak, especially if the Suez Canal is re-opened. This would, long term, cushion the effects of the increased Government "take" in the Middle East.

To illustrate the world situation now facing the Oil Industry — and consumers, a Special Supplement on the subject was included with the 22nd February 1971 issue of the Petroleum Intelligence Weekly; details contained therein may help to explain the course of action now taken by us.

Yours faithfully,
BP AUSTRALIA LIMITED
20 C. Lockrey
Manager — Wholesale Sales Division

Exhibit 23 (part)

Letter: Australian Department of Customs to Defendant

*Exhibit 23 (part)
Letter:
Australian
Department of
Customs to
Defendant*

13th Dec., 1971

13 December 1971

Dear Sir,

As you are aware new allocation quotas for indigenous oil are to apply as from 1 January, 1972.

Exhibit 23 (part)
 Letter:
 Australian
 Department of
 Customs to
 Defendant
 —
 13th Dec., 1971
 (Cont'd)

It is the practice to base quotas for each calendar year on the basis of each company's share of total sales of specified products for the previous 12 months ended 30 September.

You will recall that I gave industry an opportunity to discuss the question of changing the allocation period at our last industry meeting. As industry did not wish at that time to pursue the subject the allocation period was maintained at 12 months for 1971.

A number of companies have now put forward a proposal that quotas, beginning with quotas to be announced for 1972, should be quarterly based, using the latest sales data available. Thus, if the proposal were to be adopted for 1972, crude allocations for the period 1 January, 1972 – 31 March, 1972 would be based on sales of product made during the third quarter of 1971 (1 July, 1971 – 30 September, 1971). 10

In my opinion the suggestion that the quotas be based on a shorter period and adjusted at more frequent intervals than the present 12 months has a number of advantages. It would provide greater flexibility to the allocation system and also would more accurately reflect fluctuations in each company's market share.

Before making a decision on this matter I would appreciate your early comments on the proposal generally and, should you support a change from the present twelve monthly basis, whether allocation at quarterly interval is appropriate. I might add that I do not see administrative difficulties in adopting a shorter period for the purpose of allocating indigenous crude production, provided the sales period on which allocations is based is no shorter than three months and there is also a lag of one quarter. 20

On 27 November, 1970 I advised that a proportion of fuel oil sales would be included in the allocation formula for 1971. For the initial 1971 period statistics of inland sales of fuel oil as furnished by industry to the Fuel Branch of the Department of National Development were used, inter alia, to determine companies' allocations.

The category 'inland fuel oil sales' excluded c.i.f. and bunker sales and discussions held during 1971 showed that interpretive problems had arisen in the course of compiling the fuel oil sales figures. 30

However, as it is my understanding that most companies have expressed general satisfaction with the definition agreed to by the oil industry statistical committee on 4 December 1968 I propose to adhere to that definition.

In my letter of 27 November 1970 I also referred to the desirability of having absorption and allocation on the same basis.

This aim would be achieved by a formula which equates the absorption level to Category "A" sales plus Inland Fuel Oil Sales.

The present allocation formula incorporates a flexibility factor, now set at .95, the purpose of which was to allow users of indigenous crude time to adjust to the use of this crude in larger quantities. It was never envisaged that this 40

flexibility factor would be used beyond the short term and I now consider it reasonable that the flexibility factor cease to apply from the 1972 allocation year.

It will be necessary for certain sales statistics to be supplied at an early date to allow 1972 allocations to be calculated. The Director, Petroleum Products will be contacting each company within a day or two for this information.

Yours faithfully,

A.T. Carmody

10 Mr J.S. Fox,
Deputy Chairman and Managing Director,
British Petroleum Company of Australia Ltd,
MELBOURNE, VIC. 3004.

Exhibit 23 (part)
Letter:
Australian
Department of
Customs to
Defendant
—
13th Dec., 1971
(Cont'd)

Exhibit 45

Letter and attachment: Plaintiff to Defendant

Exhibit 45
Letter and
attachment:
Plaintiff to
Defendant
—
14th Sept., 1971

14 September 1971

B.P. (Australia) Limited,
30-38 Flinders Street,
ADELAIDE
South Australia 5000

Dear Sirs:

20

SUPPLY AGREEMENT — NOTICES

Now that the Supply Agreement is operative for each of Bunker Fuel, Diesoleum and Motor Spirit, we feel that the time is opportune to establish a Final Notice document to ensure compliance with Clause 5a (i) and (ii) therein.

Accordingly, unless we receive advice from you to the contrary, it is our intention to utilise the standard form of Notification attached hereto.

In due course, we shall be pleased to receive from you the notification required under Clause 5b (ii) which no doubt thereafter will become a standard advice.

Yours faithfully,
NABALCO PTY. LIMITED
D.F. WILSON
Site Supply Manager

30

Exhibit 45
Letter and
attachment:
Plaintiff to
Defendant

14th Sept., 1971
(Cont'd)

To B.P. (Aust.) Ltd.,
30-38 Flinders St.,
ADELAIDE S.A. 5000

From Nabalco Pty. Ltd.,
P.O. Box 21,
GOVE N.T. 5797
Teleph. Darwin 9330 & 9339
Telex AA85000

NABALCO/B.P. AUST. SUPPLY AGREEMENT

Dear Sir:

Fortnightly Notice of stock holding and estimated usage is as follows —

STOCK HOLDING	BUNKER FUEL	DIESOLEUM	PREMIUM MOTOR SPIRIT	
Date:— 13-9-71				
Stock on Hand (I. Gals)	9551691	215049	64062	
Converted at	238 gals/long ton	270 gals/long ton	300 gals/long ton	
Stock on Hand (L. Tons)	40133	796	213	10
EST. CONSUMPTION				
(in Long Tons)				
13-19 Sept 1971	Nil	350	45	
20-26 "	100	480	45	
27 Sept to 3 Oct	200	550	45	
4-10 Oct	650	400	45	20
11-17 "	650	360	47	
18-24 "	650	365	47	
25-31 "	650	370	47	
1-7 Nov	1000	370	47	
8-14 "	1000	375	50	
15-21 "	1000	380	50	
22-28 "	1000	380	50	
29 Nov to 5 Dec 71	1000	380	50	
6-12 Dec	1000	380	50	
13-19 "	1000	390	50	30
20-26 "	1000	390	50	
27 Dec 71 to 2 Jan 72	1000	400	50	

Copies to — B.P. (Aust) Ltd. Melbourne
Nabalco Pty. Limited
Commercial Dept. Sydney

Yours faithfully
D. F. WILSON

SITE SUPPLY MANAGER

Exhibit 49 (part)**Telex: Plaintiff to Defendant**

Exhibit 49 (part)
Telex:
Plaintiff to
Defendant
 —
 23rd Jan., 1974

NABALCO AA20472

TLX NO 766 23.1.74 15.00

ATTENTION: PETER SHAW
 SUBJECT: ADDITIONAL BUNKER "C" OIL STORAGE TANKS AT
 GOVE

10 THE BOARD OF NABALCO DECIDED TO INSTALL TWO ADDITIONAL
 BUNKER "C" OIL STORAGE TANKS AT GOVE. CAPACITY OF EACH
 TANK TO BE APPROX. 20,000 TONNES THUS INCREASING TOTAL
 STORAGE CAPACITY OF BUNKER "C" OIL TO 100,000 TONNES. WE
 ESTIMATE TANKS WILL BE COMPLETED LATE 1974 OR EARLY 1975.

WE WOULD APPRECIATE YOUR CONSIDERATION AND REACTION TO
 THE FOLLOWING POINTS:

1. WOULD BP AUSTRALIA BE PREPARED TO SUPPLY AN ADDI-
 TIONAL 40,000 TONNES OF BUNKER "C" OIL OF SIMILAR SPECIFICA-
 TION AS CURRENTLY SUPPLIED UNDER OUR SUPPLY CONTRACT TO
 FILL THE ADDITIONAL STORAGE TANKS? SUCH FUEL TO BE USED
 AS RESERVE AGAINST POSSIBLE SUPPLY EMERGENCIES.
- 20 2. THE OIL SO SUPPLIED TO BE SUBJECT TO RULING PRICES AT
 THE DATE OF SUPPLY TO NABALCO OR AS AGREED BETWEEN BP
 AUSTRALIA AND NABALCO.
3. SUCH FUEL TO BE SUPPLIED OUTSIDE THE SCOPE OF THE
 NABALCO SUPPLY CONTRACT AND SHALL NOT BE TAKEN INTO
 ACCOUNT FOR THE PURPOSE OF CLAUSE 5(B) IE: THE MINIMUM
 STOCK LEVEL OF 14 DAYS ESTIMATED USAGE.
- 30 4. SHOULD YOU BE UNABLE TO MEET THE ABOVE REQUIREMENT
 WOULD YOU PLEASE ADVISE AS TO WHETHER YOU HAVE ANY
 OBJECTION TO NABALCO NEGOTIATING WITH A THIRD PARTY FOR
 THE ADDITIONAL SUPPLY OF OIL OUTSIDE THE CONDITIONS OF
 THE SUPPLY CONTRACT.

AS WE ANTICIPATE TO AWARD A CONTRACT FOR THE ERECTION
 OF THE TWO TANKS BY THE END OF THIS MONTH WE WOULD
 APPRECIATE RECEIVING YOUR INITIAL REACTION. AT A TIME
 CONVENIENT TO YOURSELF WE WOULD BE PLEASED TO VISIT YOU
 IN MELBOURNE TO DISCUSS THIS SUBJECT IN MORE DETAIL.

REGARDS,
 NOTTER/NABALCO

Exhibit 49 (part)
Telex:
Defendant to
Plaintiff

30th Jan., 1974

Exhibit 49 (part)

Telex: Defendant to Plaintiff

NABALCO AA20472
AUSTBP AA30166

NABALCO SYDNEY CIF — NABALCO.
FROM
AUSTBEEPEE MELBOURNE 30-1-74.

MR E A NOTTER

YOUR TELEX NO.766 STOP ALTHOUGH WE WOULD NORMALLY BE
PLEASED TO COMMIT OURSELVES IN ADVANCE TO THE SUPPLY OF 10
40,000 TONNES OF FURNACE OIL FOR THE INITIAL FILL OF YOUR
TWO ADDITIONAL STORAGE TANKS PRESENT CIRCUMSTANCES
PREVENT US FROM TAKING THIS STEP STOP WE WOULD HOPE
THAT THE SITUATION WILL CHANGE AND THAT WE WILL BE ABLE
TO NEGOTIATE SUPPLY BUT FEEL THAT IT WILL BE UP TO THREE
MONTHS BEFORE WE ARE IN A POSITION TO ADVISE ON THIS STOP
ALTHOUGH WE WOULD BE HAPPY TO DISCUSS THE SUBJECT WITH
YOU AT ANY TIME THE LONGER THIS IS DELAYED THE MORE
LIKELY THAT WE WILL BE ABLE TO MAKE POSITIVE COMMENTS
STOP REGARDS 20

SHAW/INDUSTRIAL FUELS DEPARTMENT.

Exhibit 49 (part)

Telex: Plaintiff to Defendant

Exhibit 49 (part)
Telex:
Plaintiff to
Defendant
—
1st Feb., 1974

AUSTBP AA30166
NABALCO AA20472

TLX NO 782 1.2.74 15.10

ATTENTION: MR PETER SHAW, INDUSTRIAL FUELS DEPT.
SUBJECT: ADDITIONAL BUNKER "C" STORAGE TANKS

THANKS YOUR TELEX 30.1.74.

10 HAVE NOTED YOUR COMMENTS AND UNDER THE CIRCUMSTANCES
ARE PLEASED TO WAIT THREE MONTHS IN ORDER THAT YOU MAY
REASSESS YOUR RESOURCES MORE CLEARLY.

OBVIOUSLY WE WOULD EQUALLY PREFER TO CONDUCT THIS
BUSINESS WITH BP. WE FEEL CONFIDENT THAT A SUITABLE
ARRANGEMENT CAN BE REACHED. IN THE MEANTIME WE SHALL
PROCEED WITH THE CONSTRUCTION OF OUR TWO TANKS.

WE SHALL CONTACT YOU AGAIN EARLY IN MAY 1974 ON THIS
SUBJECT MATTER.

BEST REGARDS

NOTTER/NABALCO

Exhibit 28
Invoices and Bill
of Lading:
"Atlantic
Universe"

15th Feb., 1974

Exhibit 28

Invoices and Bill of Lading: "Atlantic Universe"

MARLOW 15th February 1974

INVOICE OF PETROLEUM PRODUCTS
by BP Trading Limited of Marlow
to BP Australia Limited of Melbourne

to be shipped per "ATLANTIC UNIVERSE" (0.2520.J) loaded at Singapore
31.1.74.

Amended Invoice Number PB.40030
A/P 01

10

Country of Origin	Marks and numbers on packages	Quantity and description of goods	Current domestic values in currency of exporting country (See pars.3 and 4 of certificate)		Selling price to purchaser		
			@	Amount	@	Amount	
Singapore	Bulk Oil	Fuel Oil					
		Long Tons	Barrels		Singapore \$	per Barrel @ Exchange F.O.B.	\$2.318645/£1
		26,703.740	181,018.00		1,399,767.78	\$3.1903	249,069.00
					379755		
		Freight @ \$12.22 per long ton			214582		140,737.00
		Insurance			741		486.00
			595078		£390,292.00		

20

@ Exchange Singapore \$5.62/£1

BT/G50

Exhibit 28
Invoices and Bill
of Lading:
"Atlantic
Universe"

15th Feb., 1974
(Cont'd)

Tank Ship Bill of Lading

The cargo described below has been shipped in apparent good order and condition by BP Singapore Private Limited

in the Tank Ship called the Atlantic Universe
at the port of Singapore

GRADE AND QUANTITY AS FURNISHED BY SHIPPER.

	GRADE	TONS	Gallons at 60°F.	S.G. at 60°F.	Flash Pt.	Av. S.G.	Av. Temp.
10	Fuel Oil F.201	26,703.74	6,330,626	0.9471			
				0.9440			
				0.9450			

This cargo shall be delivered in the like good order and condition at the port of Gove, Australia

unto BP Australia Limited.

or to his or their Assigns or Order,
subject to the following terms and conditions.

CLAUSE PARAMOUNT This Bill of Lading shall:—

20 (1) in relation to the carriage of any goods from any port in Great Britain or Northern Ireland to any other port whether in or outside Great Britain or Northern Ireland have effect subject to the provisions of the Carriage of Goods by Sea Act, 1924, and to the Rules contained in the Schedule thereto as applied by that Act and nothing herein contained shall be deemed a surrender by the Carrier of any of his rights or immunities or an increase of any of his responsibilities or liabilities under the said Act;

30 (2) in relation to the carriage of any goods from any port of shipment in territory in which legislation similar in effect to the Carriage of Goods by Sea Act, 1924, of the United Kingdom is in force, have effect subject to such legislation and to the Rules contained in the Schedule thereto as applied by such legislation and nothing herein contained shall be deemed to be a surrender by the Carrier of any of his rights or immunities under the said legislation or an increase of any of his responsibilities or liabilities under the said legislation; and

(3) in any other case have effect as if the contract of carriage herein contained were a contract of carriage to which the provisions of the Carriage of Goods by Sea Act, 1924, of the United Kingdom applied and the Carrier

*Exhibit 28
Invoices and Bill
of Lading:
"Atlantic
Universe"*
—
*15th Feb., 1974
(Cont'd)*

shall be entitled to the benefit of the privileges, rights and immunities conferred by the said Act and the Rules contained in the Schedule thereto as if the same were herein specifically set out.

If any term of this Bill of Lading be repugnant to the provisions of the said Act or to the said legislation to any extent, such term shall be void to that extent but no further.

LIBERTY. The vessel has liberty to proceed to or to call at any port or ports in any order in or out of or beyond the customary route for any purpose or purposes whatsoever (including, but without prejudice to the generality of the foregoing, loading, landing or discharging cargo or bunkering), to sail without pilots, to make trial trips with or without notice, or to adjust compasses, to tow and be towed and to assist vessels or aircraft in distress or to deviate for the purpose of saving life or property, and any use of the aforesaid liberties shall be deemed to be part of the contract voyage; this clause shall not be considered as restricted by any provision of this Bill of Lading whether express or implied or construed by reference to whether any use of the said liberties would or would not frustrate the object of this Bill of Lading or of the contract evidenced thereby. 10

DISCLAIMER. The weights and/or quantities and grades stated herein are Shipper's weights and/or quantities and grades, accepted by Customs and/or Revenue and/or Harbour and/or Dock Authority, and no acknowledgment is made as to weight, quantity or quality. 20

INCORPORATION. Clauses 1 to 5 inclusive on the reverse side of this Bill of Lading are incorporated herein and form part of this Bill of Lading.

IN WITNESS whereof the Master or Agent of the said vessel has signed 3 (Three) Bills of Lading all of this tenor and date, one of which being accomplished the others will be void.

DATED at Singapore this 2nd day of February 1974

Master or Agent.

CERTIFICATE OF QUANTITY

of cargo loaded into

Pumping Started	2100hrs	31.1.1974	Vessel	Atlantic Universe
Pumping Finished	0215hrs	2.2.1974	Destination	Gove, Australia.
			Consignee	BP Australia Limited.

Grade	Loaded from Shore Tanks Nos.	SHORE MEASUREMENTS			Loading Temperature °F	Specific Gravity @ 60 °F	Gallons @ 60 °F	Tons	Quantity Loaded Tons
		Before	Depth of Oil ft ins						
Fuel Oil	63	Before	25	4 $\frac{3}{8}$	732,213	142	709,295	2,999.32	
		After	2	0 $\frac{3}{8}$	69,985	113	68,564	289.93	2,709.39
Fuel Oil	2	Before	45	8	3,232,870	122	3,156,251	13,302.92	
		After	3	11 $\frac{3}{4}$	321,501	108	315,585	1,330.12	11,972.80
Fuel Oil	3	Before	45	9 $\frac{3}{8}$	3,213,360	122	3,137,203	13,236.58	
		After	4	0 $\frac{3}{8}$	294,753	120	287,974	1,215.03	12,021.55

879

TOTAL QUANTITY LOADED

Grade	Imperial Gallons @ 60 °F	US BBLS @ 60 °F	Long Tons	Ambient. IG
Fuel Oil F.201	6,330,626	181,018	26,703.74	6,492,204
			27,131.000 Tonne	

THE FOREGOING IS A CORRECT STATEMENT OF THE QUANTITY LOADED INTO:

VESSEL Atlantic Universe

at Singapore

Date 2.2.1974

Signature

.....
for BP SINGAPORE PTE. LTD.

Exhibit 28
 Invoices and Bill
 of Lading:
 "Atlantic
 Universe"
 15th Feb., 1974
 (Cont'd)

HARLOW. 12th MARCH, 1974

Exhibit 28
Invoices and Bill
of Lading:
"Atlantic
Universe"

INVOICE of PETROLEUM PRODUCTS

15th Feb., 1974
(Cont'd)

by BP Trading Limited of Harlow
to BP Australia Limited of Melbourne

to be shipped per "ATLANTIC UNIVERSE" (0.2520.J) loaded at Mina Al
Ahmadi 15.1.74

Invoice Number

PB.40160
A/P 02

Country of Origin	Marks and numbers on packages	Quantity and description of goods	Current domestic value in currency of exporting country (See pars.3 and 4 of certificate)		Selling price to purchaser	
			@	Amount	@	Amount
Kuwait	Bulk Oil	KUWAIT HEAVY FUEL OIL			Per Barrel	
		Long Tons Barrels		Dinars	@ Exchange	
		5,117.000 34,071.00		31,878	\$3.1903	\$2.318645
				70 576		£46,879.00
		Freight @ \$12.22 per long ton		40 600		26,968.00
		Insurance		139		92.00
			\$A	<u>111,315</u>		<u>£73,939.00</u>

10

20

@ Exchange 0.68 Dinars/£1

Tank Ship Bill of Lading

The cargo described below has been shipped in apparent good order and condition by BP TRADING LIMITED in the Tank Ship called the S.S. "ATLANTIC UNIVERSE" at the port of MINA AL AHMADI

*Exhibit 28
Invoices and Bill
of Lading:
"Atlantic
Universe"
—
15th Feb., 1974
(Cont'd)*

GRADE AND QUANTITY AS FURNISHED BY SHIPPER

GRADE	TONS	Gallons at 60° F
HEAVY FUEL OIL	5,117	
	Net	

10 This cargo shall be delivered in the like good order and condition at the port of GOVE

unto BP AUSTRALIA LTD.

or to his or their Assigns or Order,
subject to the following terms and conditions.

CLAUSE PARAMOUNT This Bill of Lading shall:—

20 (1) in relation to the carriage of any goods from any port in Great Britain or Northern Ireland to any other port whether in or outside Great Britain or Northern Ireland have effect subject to the provisions of the Carriage of Goods by Sea Act, 1924, and to the Rules contained in the Schedule thereto as applied by that Act and nothing herein contained shall be deemed a surrender by the Carrier of any of his rights or immunities or an increase of any of his responsibilities or liabilities under the said Act;

(2) in relation to the carriage of any goods from any port of shipment in territory in which legislation similar in effect to the Carriage of Goods by Sea Act, 1924, of the United Kingdom is in force, have effect subject to such legislation and to the Rules contained in the Schedule thereto as applied by such legislation and nothing herein contained shall be deemed to be a surrender by the Carrier of any of his rights or immunities under the said legislation or an increase of any of his responsibilities or liabilities under the said legislation; and

30 (3) in any other case have effect as if the contract of carriage herein contained were a contract of carriage to which the provisions of the Carriage of Goods by Sea Act, 1924, of the United Kingdom applied and the Carrier shall be entitled to the benefit of the privileges, rights and immunities conferred by the said Act and the Rules contained in the Schedule thereto as if the same were herein specifically set out.
If any term of this Bill of Lading be repugnant to the provisions of the said Act or to the said legislation to any extent, such term shall be void to that extent but no further.

Exhibit 28
Invoices and Bill
of Lading:
"Atlantic
Universe"
—
15th Feb., 1974
(Cont'd)

LIBERTY. The vessel has liberty to proceed to or to call at or off any port or ports in any order in or out of or beyond the customary route for any purpose or purposes whatsoever (including, but without prejudice to the generality of the foregoing, loading other cargo at any other port or ports for discharge at the port specified in this Bill of Lading or at any other port or ports or bunkering or changing crew), to sail without pilots, to make trial trips with or without notice, or to adjust compasses, to tow and be towed and to assist vessels or aircraft in distress or to deviate for the purpose of saving life or property, and any use of the aforesaid liberties shall be deemed to be part of the contract voyage; this clause shall not be considered as restricted by any provision of this Bill of Lading whether express or implied or construed by reference to whether any use of the said liberties would or would not frustrate the object of this Bill of Lading or of the contract evidenced thereby. 10

DISCLAIMER. The weights and/or quantities and grades stated herein are Shipper's weights and/or quantities and grades, accepted by Customs and/or Revenue and/or Harbour and/or Dock Authority, and no acknowledgment is made as to weight, quantity or quality.

INCORPORATION. Clauses 1 to 5 inclusive on the reverse side of this Bill of Lading are incorporated herein and form part of this Bill of Lading. 20

IN WITNESS whereof the Master or Agent of the said vessel has signed TWO (2) Bills of Lading all of this tenor and date, one of which being accomplished the others will be void.

DATED at MINA AL AHMADI this 16th day of January 1974

Master or Agent

Exhibit E
Defendant's
Details of
Nabalco Fuel Oil
Supply
—
8th Mar., 1974

Exhibit E

Defendant's Details of Nabalco Fuel Oil Supply

NABALCO FUEL OIL SUPPLY

The attached schedule gives details of all fuel oil supplied to Nabalco in terms of supply source, loading date, quantity loaded, invoice price BPT/BPA split into f.o.b. and freight, comparable posted price, selling price BPA/Nabalco freight escalation levels. 30

Summarising the significant features:—

1. Supply Source

Although the contract was originally negotiated with supply from Aden in mind and the oil supplied in 1971 was loaded at Aden, the loss of the contract for supply of the Pasir Panjang Power Station at Singapore resulted in a fuel oil surplus at BP's Singapore refinery. Thus, with the exception of two cargoes supplied by Amoco from Brisbane under exchange for BP supply to Amoco account in Tasmania and one cargo ex Aden due to either quality or availability problems at Singapore, all F201 subsequently has been from Singapore. Total loaded to end 1973 amounted to 406,000 tons of which 72% was ex Singapore, 18% ex Aden, 10% ex Brisbane.

The initial supply of 5,000 tons was the result of a request by Nabalco for a small parcel for commissioning purposes. A special price was agreed for this shipment to take account of the additional costs of supplying the small quantity.

2. Feedstock Type/Product Quality

Although details are not readily available of crudes run at Aden and Singapore from which fuel oil supplied has been produced, we are aware that Kuwait, Qatar and Basra are the predominant crudes run at Singapore. The vanadium restriction of 60 ppm max. precludes the use of Iranian crudes. The calorific value limit of 18,4000 BTU/lb min. effectively limits viscosity of fuel supplied to about 1,500 secs max. Red I at 100°F as against the 3,500 sec limit in the contract; this entails the addition of some 8% gas oil as diluent.

3. Selling Price

The initial selling price was \$9.42 per ton c.i.f. Gove. Although basically a fixed price contract escalation of freight was allowed 6-monthly if freight varied by more than 25% from a median based on the ruling MR AFRA for the voyage Aden/Gove (Intascale -25). As this represented a very depressed freight level, the 6-monthly adjustment in price has resulted in selling prices rising from \$11.16 per ton for the initial full cargo in August 1971 to \$14.21 currently reflecting worldscale levels of 114.7 and 195.8 respectively.

If we take the selling price of \$11.16 per ton and deduct freight BMS/Gove at the ruling MR AFRA (W 114.7), a net back f.o.b. at the PG of \$5.33 results.

4. Invoice Price/Posted Price

As invoice prices are related to Posted Prices, it is of interest to compare crude oil postings over the period mid 1970 to January 1974:

U.S.\$/bbl	31/8/7	15/2/71	20/1/72	1/1/73	1/8/73	16/10/73	1/1/74
Kuwait							
Crude	1.590	2.085	2.373	2.482	2.936	4.903	11.545

Similarly, the posted price for Nabalco fuel oil has risen from \$A 8.67 ruling at the time of the signing of the contract in June 1970 to \$A 59.26 currently.

Exhibit E
 Defendant's
 Details of
 Nabalco Fuel Oil
 Supply
 —
 8th Mar., 1974
 (Cont'd)

5. BP Group Feedstock Availability

Although a table showing feedstock availability to the Group over the period 1970 to 1973 is attached, a more realistic approach to considering availability is to consider what was forecast to be available and itemise the reasons for the reduction in practice:

	Million Tons	
(a) 1971 Forecast availability for 1973	292	
Actual availability for 1973	<u>231</u>	
	<u>61</u>	
(b) Loss made up as follows:		10
Libya (nationalised December 1971)	11	
Iraq (nationalised June 1971)	15	
Kuwait cutbacks pre 16.10.73	13	
Sale of Abu Dhabi Marine Jan 1973	5	
Participation/NIOC Sale	9	
Cuts post 16.10.73	<u>8</u>	
	<u>61</u>	

With the exception of the sale of ADMA, all of the above reductions in availability were beyond the Group's control.

6. OPEC

20

A brief summary of the significant events in OPEC's history is attached.

BS/ET
 PP&S DEPT
 8 MAR 74

Exhibit D

*Exhibit D
Defendant's
Interoffice
Memorandum
—
25th Mar., 1974*

Defendant's Interoffice Memorandum

BP AUSTRALIA LIMITED
TO MARKETING MANAGER — WHOLESALE SALES DIVISION
FROM MANAGER — COMMERCIAL SERVICES DEPARTMENT
OF 25 MAR 74 RAM/ET
3171B — NABALCO-GOVE (N.T.)

Nabalco Contract — Notification of Revised Base Price for F201

We confirm having recommended a revised base price for fuel oil (F201 or similar quality) supplied to Nabalco under the existing contract, viz.

	\$US PLT	\$A PLT	\$A METRIC TON
F.O.B. BMS	67.02	45.15	44.44
Freight BMS/Gove	11.82	7.96	7.83
Insurance	<u>0.10</u>	<u>0.07</u>	<u>.07</u>
	<u>78.94</u>	<u>53.18</u>	<u>52.34</u>

The price recommended has been set at a level deemed sufficient only to cover BP Australia's future purchase costs (so far as they can be estimated) up until the time of the price review in 1976. In estimating future costs, movements in the Bandar Mah-Shahr f.o.b. purchase price likely to arise from increased crude oil participation costs in the Middle East and general inflation were taken into account. The movements were based upon —

(a) The reported (Platts 5/2/74) price for 34° Iranian Light of \$US9.75 bbl f.o.b. port of loading in the Mobil-Shell-BP long term supply agreement with Greece. P.I.W. 11/2/74 considered the updated prices in the agreement to be "an indication — but on the low side — of Middle East crude prices to third-party customers". In our opinion, the price of \$US9.75 would allow for recovery of a substantial part of the additional costs arising from 60% participation, but, in view of the P.I.W. report, \$US0.25 has been added to give a price of \$US10.00 bbl.

(b) An inflation factor of 5%.

(c) A quality differential for F201 of \$US0.60 below the BMS light fuel oil posted price.

The freight is that for March 1974 at the MR AFRA level of WS 189.4 as applied to the world-scale 100 rate of \$US6.24 for the voyage BMS/Gove.

Exhibit D
Defendant's
Interoffice
Memorandum
 —
 25th Mar., 1974
 (Cont'd)

Other bases were considered, such as the March f.o.b. invoice price plus the crude participation cost increase averaged across the barrel of products. These gave f.o.b. prices ranging from approximately \$A1.00 lower to \$A5.00 higher per long ton. However, with the easing of crude supply cut-backs it is expected that the supply of fuel oil will increase, bringing the BMS light fuel oil posting back to near equilibrium with the market price of Iranian Light crude in the longer term.

The possibility of crude price reductions in the longer term was also considered, but was discounted in view of the Middle East nations' ability and apparent determination to keep the supply of oil short enough to ensure maintenance of at least current posted price levels and enforce buy-back prices of around 93% of posted price. 10

Exhibit 1 (part)
Letter:
Plaintiff to
Defendant
 —
 4th Apr., 1974

Exhibit 1 (part)

Letter: Plaintiff to Defendant

April 4, 1974

The Secretary
 BP Australia Limited
 MELBOURNE, VICTORIA 3000

Dear Sir:

SUPPLY AGREEMENT DATED 11TH JUNE 1970
 FOR SUPER MOTOR SPIRIT, DIESOLEUM & FURNACE OIL 20

Your Notice dated 22nd March 1974 was delivered to our office on the 25th March 1974. As you will appreciate the Notice has serious implications for this Company and before the Notice can be properly considered, we will need to have more information.

The information we require is as follows :

YOUR PARAGRAPH (i)

1. What are the "onerous terms"?
2. Is it supplies of crude petroleum or petroleum products which are affected or both?
3. What are your present or now usual sources of supplies and to what extent do they vary from your past sources of supplies? 30

4. What are the present or now usual routes for supplies and to what extent do they vary from your past routes for supplies?
5. To what actions of the OPEC countries do you intend to refer?
6. What was the reason for the rise in FOB cost of \$3.64 between October 1973 and December 1973?
7. What was the reason for the FOB price increase of \$24.92 and why did this come about and by whom was the price increased?

Exhibit 1 (part)
Letter:
Plaintiff to
Defendant
4th Apr., 1974
(Cont'd)

YOUR PARAGRAPH (ii)

- 10 8. What are the "substantial additional costs" to which you refer and how are they calculated?

YOUR PARAGRAPH (iii)

9. How is the revised base price of \$54.44 made up?

As a matter of interest you might also let us know why you consider that the claim made in your Notice is not subject to the restrictions imposed on you by the Prices Justification Act including exemptions thereunder.

20 We need the information requested above so that we can be in a position to properly consider and evaluate your Notice. We must not be taken by you as stating that we will consider your Notice to be in any way valid or for that matter, invalid. However, we really cannot make any firm statement until we have the information for which we have asked in the above.

Looking forward to receiving your early comments.

Yours faithfully,
NABALCO PTY. LIMITED
E.A. NOTTER
Administration Manager

Exhibit 41

Article "The Petroleum Situation"

THE CHASE MANHATTAN BANK

FOR RELEASE: FEBRUARY 28, 1974

HIGHLIGHTS FOR JANUARY, 1974

Averaging 17.6 million barrels per day, the combined consumption of petroleum products in January was 7.1 percent lower than a year ago. That level of consumption, however, should not be confused with the potential demand.

A combination of product availability problems and continued consumer efforts to reduce energy usage resulted in a January consumption level that was well below the potential market demand. Altogether, approximately 2 million barrels per day, or 10.2 percent, of potential demand could not be satisfied. 10

The major transportation fuels again turned in sharply subnormal performances. The gasoline movement fell by 5.5 percent, and kerosine demand plunged 19.7 percent below the year ago level.

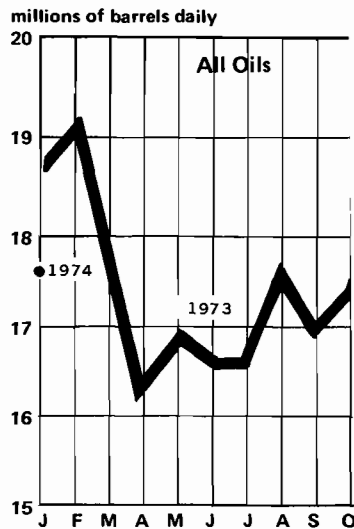
The consumption of distillate and residual fuel oils also failed to equal year earlier levels by 6.4 and 10.1 percent, respectively. Those reductions could be partly traced to weather conditions. In the nation's major heating oil regions the average temperature was 6.2 percent warmer than normal and fractionally warmer than the same month a year ago. 20

Reflecting another substantial loss of crude oil imports, total new supply in January fell to 16.5 million barrels per day — the lowest monthly average since September, 1972. Compared to a month earlier, crude oil imports were lower by 588 thousand barrels per day, indicating the effectiveness of the Arab embargo.

Because of inadequate crude oil supplies, the amount of oil processed in the nation's refineries declined by 615 thousand barrels daily below the December average to an over-all rate of 11.6 million barrels per day. As a result, the utilization of total refinery capacity fell from 92 to 85 percent.

The impact of the embargo was also evident in a comparison of imports with year ago levels. On that basis, total petroleum imports were down by 686 thousand barrels per day, or nearly 12 percent. About one-half of that reduction represented crude oil imports, and it was not surprising therefore that the amount of crude oil refined was also lower than a year ago. 30

Despite the sharp reduction of refinery output, the drawdown of refined product inventories closely approximated the usual seasonal pattern. At the end of the month, refined product stocks were 74 million barrels, or 8.2 percent, higher than a year earlier. Most of the increase was in the form of distillate fuel oil stocks. Stocks of that product were 52 million barrels, or nearly 40 percent, above



the year earlier level. The quantity of gasoline in primary storage, on the other hand, was 7 million barrels, or 3.1 percent, lower than a year earlier. Corrective action is needed to bring the rate of gasoline and distillate supplies into better balance with market requirements.

The change of distillate fuel oil prices in January demonstrated that the basic principles of supply and demand can continue to function even when a severe over-all shortage exists. Reflecting the unseasonable high level of inventories, the price of imported distillate fuel oil in the major wholesale markets declined from 53 to 36 cents a gallon. In contrast, the price of imported cargoes of low-sulfur residual fuel oils nearly doubled, rising from 18 to 35 cents a gallon — an increase that primarily represented higher foreign tax costs.

Retail gasoline prices continued to advance during January, and for the month as a whole they were 37 percent higher than a year ago.

Gregory J. Shuttlesworth

(Note: graph not reproduced)

WORLD OIL

In the last decade or so, the oil industry has been plagued with, and weathered successfully, a number of significant emergencies. In the more recent past, these "crises" seemed to occur in more rapid-fire succession and hardly before one crisis ended, the industry found itself facing yet another even tougher

Exhibit 41
Article "The
Petroleum
Situation"
(Cont'd)

problem. The attitude of the industry became apprehensive and a feeling of "what next" prevailed. However, it was not obvious that anyone was prepared for the latest series of events. First came increasing participation or nationalization of "company" oil production in most of OPEC (Oil Producing Exporting Countries). Then there was the extent and effectiveness of the oil embargo against the United States and other nations considered "unfriendly" because of their political stance vis-a-vis the Israeli-Arab confrontation. Who would have thought that in such a short time frame a barrel of oil might sell for \$20, or that posted prices of oil would triple or quadruple? Should current posted price levels ranging from about \$10 to \$15 per barrel be maintained, undoubtedly, the monetary effect worldwide could be disastrous. Inordinately high prices will most certainly have deleterious effects on individual consuming nations; but particularly hard-hit will be those nations in the developing stage that are completely dependent on imported oil to stimulate economic growth. 10

As of this time, there is still uncertainty as to when the boycott against specific countries will be called off. But even more uncertainty surrounds the question concerning Saudi Arabia's willingness to allow its sharply curtailed oil output to grow at the rate deemed adequate by the major consuming areas. And certainly there is a need for settlement on lower crude oil prices which will be considered more viable in the market place. It is hoped that decisions concerning these and other vital matters can be made rationally, with a view to achieving greater stability in the world oil industry as well as assuring general economic well-being for both producing and consuming nations. 20

Although the near term future continues to be clouded with uncertainty, we can be much more positive about the near term past.

In spite of the cutbacks effected by Arab nations, crude oil production in 1973 in the non-Communist world excluding the United States rose to 37 million barrels per day; that output represented a gain of more than 13 percent over 1972. It is true that this increase occurred after particularly low growth experienced the year before. Prior to mid-October, when the embargo and cutbacks were put into effect, the rate of growth of oil production in the foreign areas was extraordinarily high. There was, in fact, a 17 percent increase through nine months. The increase can be attributed to accelerated growth in foreign demand and greater needs created by declining crude oil production in the United States. 30

Significant gains in crude oil output were achieved in non-Arab producing countries, particularly in Iran, where the annual volumetric increase was the highest recorded for more than a ten year period. Venezuela also showed a gain in output after several years of annual declines. Indonesia produced about 25 percent more crude oil than last year—much of which went to supply the rapidly expanding Japanese energy markets. 40

Production in the United States for the year fell 2.7 percent from 1972 levels and averaged 9.2 million barrels per day.

Although oil produced worldwide (excluding the Communist area) was about 9½ percent higher than in 1972, consumption for the year 1973 is estimated to have been only about 7 percent higher than a year ago—or 49 million barrels per day.

Actual consumption growth was significantly less than the rate of increase in supply. However, the major consuming areas, motivated by fears concerning the future supply situation, instituted a number of voluntary restraints on demand, as well as conservation procedures where possible. These measures served to reduce consumption substantially. In addition, large quantities of oil were put into inventory as part of the plans, both in Europe and Japan, to increase inventory levels and thereby create a larger reserve to be drawn upon in the event of any interruption in the flow of new supplies. These inventories were kept at fairly high levels despite the cutback in flow of oil primarily as a result of the earlier-stated measures to curtail consumption. It should be mentioned that, prior to the production cutback, worldwide demand was growing at better than 10 percent. However, consumption in the fourth quarter was actually about 6 million barrels a day less than demand in the final quarter of 1972. Had there been no fourth quarter crisis, it is conceivable that demand for all of 1973 could easily have been 10 percent more than a year ago. In one way or another, the year was destined to be an extraordinary one.

Carolyn A. Nielsen

THE PRICE OF OIL

Perhaps the most elusive aspect of our economic system is price. This idea is not confined to the oil industry, although it is discussed here in terms of oil. For many years we have had good statistics on oil production, on refining, on transportation by pipeline and tanker, and on consumption by end use. We have never, however, had more than a vague idea of the prices at which oil transactions took place.

This is not the result of a sinister conspiracy. In fact, it should cause no surprise to a thoughtful person. Price, after all, is only one of the factors agreed to in contracts between buyers and sellers. The same commodity may change hands at different prices reflecting the volume involved, the length of the contract, and the urgency of the buyer's or seller's need.

The question "What is the market price of oil today in the Persian Gulf?" is by no means as simple to answer as the questioner usually assumes. In fact, it may be argued that there is no market price, only a monopoly price set by producing country governments. At all events, there are two distinct groups of sellers who are loading oil today. Their circumstances are different and so are their objectives. At the present time, the larger group consists of the international oil companies. The others are agencies or companies representing producer country governments. They are a recent phenomenon, since it is only in the last year or so that they have had anything to sell. Previously, there was no participation by governments in the oil concessions, and, because it was more profitable, governments took their royalty in cash rather than in oil.

The international companies are concerned with supplying their refining affiliates and other long-term customers. They are interested in stability and in maintaining the goodwill of their customers all over the world. They are not fly-by-night organizations out to make a quick buck and disappear the next day. In the days before participation, these companies knew where they stood. Their costs

*Exhibit 41
Article "The
Petroleum
Situation"
(Cont'd)*

were highly predictable and consisted of allowances for the recovery of capital, out-of-pocket operating expenses, and royalty and income tax payments to their host governments. Since they handled all the production from their leases, they knew what market price to aim for, even though competition did not always allow them to achieve it.

Today the situation is very different. Governments are taking some of their royalty in oil and marketing it directly. The participation agreements made additional quantities of oil available to them. By controlling the total oil supply from their countries and thus paralyzing for the moment, the normal supply/demand/price mechanism these governments manipulated the situation so that the marginal amounts of oil at their disposal became very valuable. 10

Thus in December, Iran sold small quantities of oil at prices up to \$17 a barrel. We cannot, however, say that this was the market price of Iranian oil since the great bulk of oil from that country was being shipped by the international companies at half that price. It is interesting to note that there is evidence that the high marginal price of oil has already declined by several dollars a barrel since December. In other words, the supply/demand/price mechanism is beginning to work again. Since supply has not been significantly increased in the last month or so, the inference is that demand has declined, due to a combination of high prices, voluntary restraint, and rationing. 20

Governments are not marketing all of their royalty and participation oil directly. Some of it is being sold back to the international companies. But how much, and at what price? These two key questions have not yet been answered definitively even for oil that was shipped three or four months ago. The companies do not yet know what their costs are for this oil, so they cannot calculate the effect on their overall costs. This makes it very difficult for them to set a market price since customers and consuming country governments are not in the least sympathetic about granting retroactive higher payments for oil. Producing country governments, on the other hand, make every effort to back date agreements as far back as they can get away with. 30

This problem is growing worse as the share of participation oil increases and as the buy-back price rises higher and higher. With no participation and a posted price of \$11.50 a barrel, the international companies operating in that country could afford to sell Kuwait crude at about \$7.75 a barrel. But change the rules to a 60 percent participation with three quarters of the participation oil bought back at 93 percent of the posted price, and the companies need to set a market price closer to \$9.75 a barrel to cover their costs and earn a return. Since the precise situation is different in every producing country, it is no wonder that it is well nigh impossible to say what the market price of oil is today.

This situation is so unstable that it may well have changed before these words are even printed. The world cannot live with \$10 oil. A few countries, including the United States, can live with this price for several years. But there are many countries in the world that cannot live with it for more than a few months. For these countries time has almost run out. Because oil is such a political subject, the likelihood is that political solutions will be applied to the problem. 40

Until political solutions are applied, however, economics will continue to

influence the oil outlook. Outside the United States, current prices for crude oil are about four times higher than they were a year ago. Under these circumstances the demand for oil in 1974 will probably drop below 1973 levels. In the less developed countries, demand will drop below 1973 levels because these countries cannot finance last year's oil imports at today's prices. Even the developed nations face substantial trading deficits and will be economizing in the use of oil to the maximum extent possible. The anticipated drop in demand in 1974 will exert a downward pressure on crude oil prices. And in a free market, they would undoubtedly fall. The world crude oil market is not free however. Many producing countries do not need the revenues generated by today's volumes to sustain their economies. They can, therefore, reduce the volume supplied to maintain price without harming themselves.

Eventually the world will develop other sources of oil and also alternatives to oil. In the meantime, it remains to be seen how far consumption restraints can lower demand and influence price. Since price changes of this magnitude have never occurred before, there is no economic history to draw upon.

In the United States and Canada, the price of crude oil is controlled. The Canadian government has pegged crude oil prices to the producer at around \$4 a barrel—far below world prices. On exports to the United States, the Canadian government is taking for itself the difference between Canadian prices and world prices in the form of an export tax. The rate is currently \$6.30 a barrel, or 15c a gallon. Canada has decided on a policy of mortgaging the future for the present since under the conditions that have been created there, the incentive to invest is dead.

The two tier crude price in the United States is a compromise. Old crude oil, defined as production at 1972 levels, is fixed at \$5.25 a barrel. The price of new crude oil production and production from stripper wells—wells pumping 10 barrels a day or less—is not controlled. It is, therefore, seeking parity with world prices. This is beginning to bother a lot of people who feel that since world prices are not free market prices, U.S. prices should not be influenced by them, and should be rolled back, following the Canadian philosophy.

Before we buy this theory, however, let us consider our long-term objectives. These have been enunciated by both Congress and the Administration as a policy of energy and oil self-sufficiency as rapidly as possible. Such objectives can best be attained by allowing energy prices to remain high, both to discourage wasteful use and to encourage a high level of investment in developing new sources of supply. A rollback of prices would make our life slightly easier now at the expense of postponing self-sufficiency, with all the attendant evils that policy would bring.

40

John D. Emerson

(Note: Summary of statistics not reproduced)

Exhibit T (part)
Letter:
Plaintiff to The
Shell Company
of Australia
—
16th Apr., 1974

Exhibit T (part)

Letter: Plaintiff to The Shell Company of Australia

April 16, 1974

The Shell Company of Australia Ltd.
SYDNEY, NEW SOUTH WALES 2000

ATTENTION: MR. A.S. DENHOLM

Dear Sir:

SUPPLY OF FURNACE OIL, MOTOR SPIRIT AND DIESOLEUM

We refer to our conversation of today's date in which we indicated our interest in discussing with Shell the possibility of a Supply Agreement in respect of petroleum products for Gove. These products are currently supplied by BP Australia Limited under a Contract entered into in June 1970. 10

TERM

We would prefer to enter into a minimum contract period of twelve (12) months desirably at a firm price in respect of furnace oil with the option to renew for a further period of two (2) years. Alternatively, a term of two (2) or three (3) years would be of interest to Nabalco.

PRODUCTS

- Furnace Oil
 - Motor Spirit
 - Diesoleum
- } as per enclosed Specifications 20

A complete range of lubrication products with Nabalco retaining the option to buy alternative brands, if so required.

DELIVERY OF PRODUCTS

Furnace oil, motor spirit and diesoleum maybe delivered in bulk ex tank ships into Nabalco's discharge facilities at Gove.

In respect of furnace oil, shipments are limited to 45,000 metric tonnes until the end of December 1974. As from 1975, shipments of 60,000 to 70,000 metric tonnes maybe delivered only subject to the draft limitation of 47 feet (as low water ordinary spring tide). 30

We assume that both motor spirit and diesoleum will be delivered in bulk from Australian sources in smaller vessels of shipments not exceeding 3,000 metric tonnes in respect of diesoleum and 1,500 metric tonnes in respect of motor spirit.

Lubricants to be supplied FOB Sydney.

All storage tanks with the exception of the ATK tank, are owned by Nabalco.

ESTIMATED QUANTITIES

	Furnace Oil	Diesoleum	Motor Spirit
1974 (July to Dec.)	150,000 tonnes	1,000 tonnes	NIL
1975 onwards	380,000 tonnes	4,500 tonnes	1,500 tonnes

PAYMENTS

Ninety (90) days following receipt of the invoice by Nabalco.

10 We would also appreciate an indication in respect of the anticipated source of furnace oil and as to the index you intend to use for Freight Rate escalation.

We look forward to your early reaction stating as to whether Shell would be prepared in principle, to enter into a Contract with Nabalco in 1974, and at the same time, quoting an indicative price in respect of furnace oil, motor spirit and diesoleum cif Gove.

Should you have any further questions, please do not hesitate to contact the writer.

Yours faithfully,
 NABALCO PTY. LIMITED
 E.A. NOTTER
 20 Administration Manager

*Exhibit T (part)
 Letter:
 Plaintiff to The
 Shell Company
 of Australia
 —
 16th Apr., 1974
 (Cont'd)*

Exhibit T (part)

Letter: The Shell Company of Australia to Plaintiff

17th April 1974
 The Manager,
 Nabalco Pty. Limited,
 SYDNEY. N.S.W. 2000

Attention: Mr. E.A. Notter : Administration Manager

Dear Sir,

Your letter of April 16th, confirming discussions of recent days is acknowledged.

*Exhibit T (part)
 Letter:
 The Shell
 Company of
 Australia to
 Plaintiff
 —
 17th Apr., 1974*

Exhibit T (part)
Letter:
The Shell
Company of
Australia to
Plaintiff
—
17th Apr., 1974
(Cont'd)

As promised, the details have been sent to our Principals in Melbourne and we will contact you just as soon as they are able to advise us on the possibility of any supply proposition we may be in the position to put to your company.

Yours faithfully,

THE SHELL COMPANY OF AUSTRALIA LIMITED.

Exhibit I (part)
Letter:
Defendant to
Plaintiff
—
19th Apr., 1974

Exhibit 1 (part)

Letter: Defendant to Plaintiff

19th April 1974

The Administration Manager,
Nabalco Pty. Ltd.,
SYDNEY, N.S.W. 2000

10

Dear Sir,

re: Supply Agreement dated 11th June 1970
In Super Motor Spirit, Diesoleum and Furnace Oil

On 25th March, 1974, we caused to be delivered to your office a Notice of a revised base price, pursuant to Clause 9 (c) (iii) of the above Agreement. That clause permits you within one month of the receipt of our Notice to give a notice terminating at the expiration of three months your obligation to purchase products whose revised base price is unacceptable.

You have asked for an extension of the time within which your notice may be given. We agree that your notice will be validly given if received by us within 10 days after 25th April, 1974. 20

Yours faithfully,
BP AUSTRALIA LIMITED
C. Lockrey
Manager — Wholesale Sales Division.

Exhibit AJ (part)

Exhibit AJ (part)
Notes:
Mr Lockrey
 —
 23rd Apr., 1974

Notes: Mr Lockrey

Telephone call from E. Notter 23/4/74

NABALCO

They want us to consider through our legal people whether we would regard it as being fair for them to approach the New South Wales Supreme Court since the contract is subject to the laws of New South Wales for a judgement by a judge of the Supreme Court. It is known as a construction summons.

He tells you whether the thing is viable or not. He arbitrates.

- 10 This is sort of an interim step to clear the way and it does not stop us from proceeding but just enables you to determine which course you have got to take.

Are you able to even now to give me the name of your solicitor —

Heron of Dudley Westgarth & Co.
 Telephone : 25 6741

Discussed with J.H.R./I.C.

Heron spoken to — also our solicitor Pritchard. No objection to Nabalco proceeding as they wish above.

Notter informed accordingly by phone 23/4.

Note: Smaller print denotes handwriting.

Exhibit AJ (part)

Exhibit AJ (part)
Telex:
BP Trading Ltd
to Defendant
 —
 23rd Apr., 1974

20

Telex: BP Trading Ltd to Defendant

TO BP AUSTRALIA MELBOURNE C703 23.4.74
 FROM BP LONDON

FOR WHOLESALE SALES FROM JOHNSTON/RWH

NABALCO

THANKS YOUR 180. WE LEARN NABALCO VERY ACTIVE IN PG
 MARKET AND HAVE RECEIVED OFFERS RANGING FROM US

Exhibit AJ (part)
Telex:
BP Trading Ltd
to Defendant

DOLLARS 77.00 PMT CIF TO US DOLLARS 95.00 PMT CIF. LOWEST NETS BACK AT PG US DOLLARS 65.00 PMT.

23rd Apr., 1974
 (Cont'd)

WE UNDERSTAND KAISER CONTEMPLATING METHODS OF IMPROVING ON THESE OFFERS AND THAT NABALCO NOTTER (?) IS SEEKING DISCUSSION OAKLAND CALIF TO THIS END. WHILST THEY OBVIOUSLY CONCERNED AT LARGE DIFFERENTIAL YOUR PRICE YOUR 780 WE BELIEVE THEIR ENQUIRIES ORIGINALLY MADE TO ESTABLISH BARGAINING POSITION AT YOUR NEXT MEETING. HOWEVER KAISER DOES REPRESENT THREAT TO BUSINESS AND WE ATTEMPTING TO MINIMISE BUT DO NOT COUNT ON SUCCESS THIS EFFORT. 10

FURTHER TO THE ABOVE YOU MAY NOW BE ASSURED KAISER NOT IN RUNNING. HAVE FURTHER CONFIRMATION NABALCO SEEKING NEGOTIATING BASIS WITH YOU BUT ALWAYS POSSIBLE THEY MAY UNCOVER ALTERNATIVE SUPPLIER IN WHICH ASPECT WE MUST VIEW KNPC. HOPE ADVISE YOU THEIR REACTIONS NEXT WEEK

Exhibit A and
Exhibit I (part)
Letter:
Plaintiff to
Defendant
 24th Apr., 1974

Exhibit A and Exhibit 1 (part)

Letter: Plaintiff to Defendant

April 24, 1974
 The Secretary
 BP Australia Limited
 MELBOURNE, VICTORIA 3000

20

Dear Sir:

SUPPLY AGREEMENT OF JUNE 11, 1970

We refer to your Notice of March 22, 1974 which was received by us on March 25 and to our letter to you of April 4, 1974 in regard thereto to which no reply has yet been received by us.

As you know Clause 9(C)(iii) of the Agreement requires the buyer to give Notice terminating the Agreement if any Notice given by the seller under the clause claims a revised base price which is unacceptable to the buyer. The buyer must—under the Clause—give its notice within one month of the delivery of the seller's Notice. 30

Whilst appreciating your offer of April 19, 1974 to extend the time for us to give Notice under Clause 9(C)(iii) of the Agreement by ten days, we consider it necessary to give you Notice as follows:

1. The circumstances disclosed in your Notice of March 22, 1974 do not in our opinion, authorise you to give the Notice nor do any other circumstances of which we are aware.
2. We do not accept that your Notice of March 22, 1974 is valid or that you have fixed or were entitled to fix any revised base price pursuant thereto.
3. Should the Notice be valid or be subsequently held to be valid then this letter gives and is to be deemed always to have given your company three months Notice pursuant to Clause 9(C)(iii) of the Agreement to terminate upon the expiration of such Notice our obligation to purchase under the Supply Agreement the furnace oil at the purported revised price which is unacceptable to us.

*Exhibit A and
Exhibit I (part)
Letter:
Plaintiff to
Defendant
—
24th Apr., 1974
(Cont'd)*

We believe it is implicit in the above that the parties to the agreement shall continue to abide by the terms thereof pending the resolution of the matter whether by mutual agreement or legal determination. We assume this will happen.

Without prejudice to our rights we are, of course, quite prepared to discuss with you in a spirit of goodwill and understanding your economic and other difficulties and ours and we trust that conversations between us will lead to an amicable solution of the matter satisfactory, as far as possible, to both of us.

We look forward to a reply to our letter of April 4, 1974.

20 Yours truly,
NABALCO PTY. LIMITED
E.A. NOTTER
Administration Manager

Exhibit AJ (part)

Telex: BP Trading Ltd to Defendant

*Exhibit AJ (part)
Telex:
BP Trading Ltd
to Defendant
—
25th Apr., 1974*

TO BP MELBOURNE 741 25.4.74
FROM BP LONDON

FOR WHOLESALE SALES FROM JOHNSTON

NABALCO

- 30 FURTHER OUR C703 IN PURSUING KNPC REACTION WE LEARN THAT THEY DEFINITELY NOT IN RUNNING, THIS DESPITE SUBSTANTIAL UNFORSEEN AVAILABILITY DUE UNREQUITED CONTRACT WHICH THEY SELLING SPOT DOWN TO NET BACKS US DOLLARS 60.00 MT PG. UNDERSTAND THEIR DISINTEREST YOUR MARKET STEMS

Exhibit AJ (part)
Telex:
BP Trading Ltd
to Defendant
—
25th Apr., 1974
(Cont'd)

FROM ALLEGED ATTEMPT TO INFLUENCE IMPORT PRICES. ONLY EXPLANATION WE CAN ADVANCE THIS ATTITUDE IS THAT IT MAY ARISE FROM SOME ILLSTARRED GOVERNMENT TO GOVERNMENT NEGOTIATION. DO YOU KNOW ANYTHING?

CKD
JDD

Exhibit 58
Notes
Mr Lockrey:
(two sets)
—
26th Apr., 1974

Exhibit 58

Notes: Mr Lockrey: (two sets)

NABALCO

Items for discussion with E. Notter 26/4/74
(Per telephone)

10

1. Tell Nabalco we acknowledge their letter of the 24th April. We believe that our notice is valid and therefore we accept the Nabalco letter as being a valid notice of termination of our contract.
2. Legal advice is that Nabalco's letter of the 4th April and the questions therein relate to the contract which is now being terminated and therefore we should not answer these questions.
3. However, these questions may be considered in relation to and provided a new contract is signed.
4. To ensure continuity of supply a new contract must be entered into for 20 supplies commencing 28th July 1974.
5. Without prejudice we too would be prepared to discuss in the proper spirit mutual economic and other difficulties in-so-far as they apply to the new contract to be negotiated.

These items were discussed with Notter who will revert next week. He was informed that we shall not be answering his letter of 24th April.

CL:JR
26 APR. 74

LONDON TELEX
FOB Aust. Cont.
\$US62 — 41.75 — 54.61 incl. all components
\$US64 — 43.10 — 56.01 incl all

C.L. 12.15 pm

30

Robert Pritchard
221 2822

1st 5 yrs project viability assessed on fixed prices — any increases whole project in jeopardy.

Eddie N.

Note: Smaller print denotes handwriting.

Copy for Legal Dept.
J.R.

NABALCO

Items for discussion with E. Notter 26/4/74
(Per telephone)

Exhibit 58
Notes:
Mr Lockrey:
(two sets)
—
26th Apr., 1974
(Cont'd)

1. Tell Nabalco we acknowledge their letter of the 24th April. We believe that our notice is valid and therefore we accept the Nabalco letter as being a valid notice of termination of our contract.
- 10 2. Legal advice is that Nabalco's letter of the 4th April and the questions therein relate to the contract which is now being terminated and therefore we should not answer these questions.
3. However, these questions may be considered in relation to and provided a new contract is signed.
4. To ensure continuity of supply a new contract must be entered into for supplies commencing 24th July 1974.
5. Without prejudice we too would be prepared to discuss in the proper spirit mutual economic and other difficulties in so far as they apply to the new contract to be negotiated.

20 CL:JR
26 APR 74

These items were discussed with Notter who will revert next week. He was informed that we shall not be answering his letter of 24th Apr.

C.L. 12.15 pm

Note: Smaller print denotes handwriting.

Exhibit 42

Notes: Mr Notter

Exhibit 42
Notes:
Mr Notter
—
26th Apr., 1974

26/4

C. Lockrey

- 30 Receipt of letter
- Discussed letter with legal advisers
- Because they think their notice is valid they must accept our notice under clause 9(c)iii expiry 28/7/74
- also happy to discuss matters.
- The regard old contract as finished
- But understand that if notice is subsequently as invalid contract continues.
- Reply not necessary to April 24 74

Exhibit 72

Record of Decisions: Board of Direction of Gove Joint Venutre

26th Apr., 1974

Present:

Representing Swiss Aluminium Australia Limited:

Mr. E.R. Meyer (Chairman)

Dr. P.H. Mueller

Dr. B. Sorato

Sir David Griffin

Representing Gove Alumina Limited:

Mr. B.N. Kelman

Mr. J.S. Proud

Mr. R. Wilkinson (Alternate for Mr. R.G. Jackson)

General Manager of Nabalco Pty. Limited:

Mr. A.G. Coogan

Apologies:

Mr. R.G. Jackson

In Attendance:

Mr. A.G. Powell

Dr. F. Schnorf

Mr. J.F. Linton

Mr. M. Chate

Mr. P. Lovell

10

20

PART I — PRELIMINARY

1.1 Confirmation of Record of Decisions

The Record of Decisions of the Fifty-Seventh Meeting of the Board of Direction held on 26th March, 1974 were confirmed.

PART II — MATTERS SUBMITTED BY THE MANAGER FOR DECISION

2.1 Increase of Total Overall Budget Expenditure

The Board of Direction having considered the Manager's Report Item 2.1, Ref. AGC/KJD/PJB, 11th April, 1974, on bringing the Bauxite Treatment Plant to a constant production level consistent with the design capacity of 1 Mio. t.p.a. and in the light of a possible subsequent debottlenecking as per Item 2.2A of the Agenda for this meeting unanimously approved as a Change in the Project an increase in the total overall budget expenditure for the completion of the project from \$303,287,000 as per page 6 of the Nabalco Monthly Report dated December 1973 to \$312,000,000 plus such amount as may be agreed by the Board of Direction for additional housing.

30

Included in the figure of \$312,000,000 is the sum of \$1,000,000 to cover escalation in respect of Items 6, 7, 8 and 9 as set out on page 10 of the Gove Joint Venture Board of Direction papers for 26th April, 1974.

40

Gove Alumina Limited will not be obliged to contribute in excess of its 30% share of the said \$312,000,000 (plus such amount as may be agreed by the Board of Direction for additional housing) except in respect of the

figure of \$1,000,000 referred to in the previous paragraph increasing owing to established escalation beyond the 10% provided in the Manager's estimate.

The Manager will subsequently report to the Board of Direction if it is established that escalation is likely to exceed the said sum of \$1,000,000.

*Exhibit 72
Record of
Decisions: Board
of Direction of
Gove Joint
Venture
—
26th Apr., 1974
(Cont'd)*

2.2 The Debottlenecking of the Gove Bauxite Treatment Plant

10 The Board of Direction having considered the Manager's Report Item 2.2A with the target of eliminating remaining "bottlenecks", requested the Manager to study technical, economic and other considerations in order to allow the Board of Direction at its 61st Meeting in July 1974 to evaluate the proposed expenditure called for. Such expenditure, if approved, will be considered as added to the approved estimated cost of the project, as per Item 2.1 of \$312 Mio.

The Board of Direction approved an allocation of \$30,000 to cover the cost of the study to allow the Board to evaluate the proposed debottlenecking programme.

2.3 A proposal for the construction of an additional 50 houses at Nhulunbuy and a method of financing this project

20 The Board of Direction approved in principle, the construction of an additional 50 houses and authorised the Manager to negotiate with selected insurance companies and/or banks as to the possibility of financing the project.

The Board of Direction requested the Manager to investigate the possibility of using a cheaper method of construction than used hitherto and to consider the possibility of importing pre-fabricated aluminium houses of suitable design.

The Manager was also requested to report to the Board of Direction at the Meeting in July, 1974 on methods of financing this project and associated matters.

30 PART III — MATTERS SUBMITTED BY THE MANAGER FOR INFORMATION

3.1 Re-Estimate to Completion No.6

The Board of Direction in considering this item had regard to the resolution carried under 2.1 of these minutes.

3.2 Revised Production Estimated for Alumina 1974

40 The Board of Direction noted the revised production estimate for 1974 of 720,000 tonnes of alumina and further noted that whilst the carrying out of the urgent programme to replace heat exchange units on the Calcination kilns would involve substantial kiln downtime these would, when completed, bring about significant savings in furnace oil arising from the modifications.

*Exhibit 72
Record of
Decisions: Board
of Direction of
Gove Joint
Venture
—
26th Apr., 1974
(Cont'd)*

3.3 Report on the BP Fuel Oil Contract

In addition to the comments provided in the Board papers the Manager orally informed the Board that:

- Nabalco's legal advisers are of the opinion that BP's Notice of 25th March, 1974 claiming a price increase fo \$A54 C.I.F. per tonne is invalid and recommend that Nabalco take the case forthwith to the Supreme Court of New South Wales. It could be expected that either party would appeal the decision of the Supreme Court, probably as far as the Privy Council.
- Nabalco intend to submit the case to the Court and BP have been advised accordingly. 10
- BP has indicated its willingness to enter into an interim supply contract whilst the legality of the contractual situation was being determined. Prices mentioned were in the order of \$40 per tonne F.O.B. equivalent to \$47 C.I.F. Gove as compared to \$54 claimed by BP in its Notice. Details of the proposed contract would be resolved as soon as possible.
- Enquiries from other major oil companies to date e.g. Shell and Mobil Oil, had revealed that supply from an alternative reliable source was unlikely in the foreseeable future.
- In view of the vital necessity of maintaining an assured supply of furnace oil to Gove, Nabalco was of the opinion at this stage that the best prospect for the future appeared to lie in continuing with a major producer such as BP. Accordingly Nabalco would endeavour to maintain the current cordial relations with them. However every effort would be continued to seek a reasonably attractive alternative source of supply. 20
- The Board will be kept informed as to significant matters in relation to fuel oil supply.

3.4 Preliminary Report on the Study of Alternative Sources of Energy for the Gove Project

The Board of Direction noted Nabalco Engineering's preliminary report submitted by the Manager on alternative sources of energy for the Gove Project. 30

It was agreed by the Board that the best prospect for an alternative fuel was the use of coal and that a study on this subject should be further pursued.

The Board having considered the report requested the Manager, together with the Alusuisse Technical Department, to continue to study the availability of alternative fuels with the emphasis on coal and submit a further report.

As a guide to the Manager it was agreed that:—

- The installation of gas producers to make gas from coal was technically undesirable. 40

- Consideration be directed to oil in the calcination kilns and coal in the steam power station.
- Consideration be given to evaluating a mixture of coal and oil as a source of steam power station fuel.
- Preliminary investigations be carried out to seek an assured independent supply of coal either in the form of participation in a mine or a long term contract.
- The Manager was requested to pursue preliminary enquiries from Australian coal producers, preferably in Queensland, regarding the evaluation of coal sources.

*Exhibit 72
Record of
Decisions: Board
of Direction of
Gove Joint
Venture
—
26th Apr., 1974
(Cont'd)*

10

Confirmed:
EMANUEL R. MEYER
Chairman: Date: 26th July, 1974

Exhibit Y

Extract from Telex: Plaintiff to A.G. Coogan and A. Powell

*Exhibit Y
Telex:
Plaintiff to A.G.
Coogan and A.
Powell
—
26th Apr., 1974*

52487A ALU CH
NABALCO AA20472

XSG01097 26.4.74 5.45
ATTENTION: MESSRS. COOGAN/POWELL

20 URGENT

2. REPLY BY BP

OUR LETTER 24TH APRIL WAS HAND DELIVERED TO BP. THEY REPLIED TODAY BY PHONE CONFIRMING RECEIPT OF OUR LETTER. THEY HAD DISCUSSED IT WITH THEIR LEGAL ADVISERS. BECAUSE THEY THINK THAT THEIR NOTICE DATED 22ND MARCH, 1974 IS VALID THEY ACCEPT OUR NOTICE CONTAINED IN LETTER 24TH APRIL CLAUSE 9 (C) (iii) AND CONSIDER SUPPLY CONTRACT WITH NABALCO WILL EXPIRE 28TH JULY, 1974. WHILST ON ONE SIDE REGARDING THE OLD CONTRACT AS FINALISED THEY UNDERSTAND THAT IF SUBSEQUENT LEGAL ACTIONS CONFIRM THEIR NOTICE AS INVALID THEN THE OLD CONTRACT WILL STILL APPLY. IN THE MEANTIME THEY ARE PREPARED TO WRITE A NEW CONTRACT WITH NABALCO AT A NEGOTIABLE PRICE AROUND DLR\$40 PER TONNE PENDING

30

Exhibit Y
Telex:
Plaintiff to A.G.
Coogan and A.
Powell
 —
26th Apr., 1974
(Cont'd)

RESULT OF LEGAL ACTION UNDER OLD CONTRACT. THEY WILL NOT REPLY TO OUR LETTERS APRIL 4 AND 24.

IN ESSENCE THEY FEEL THEY CAN BREAK THE OLD CONTRACT BUT ARE KEEN TO WRITE A NEW CONTRACT WITH NABALCO AT LESS THAN THE SUGGESTED NEW BASE PRICE. THEY ARE ALSO PREPARED TO FOLLOW LEGAL DETERMINATION OF OLD CONTRACT. THIS I CONSIDER DESIRABLE AND FAIR TO BOTH PARTIES. IF OUR QC'S OPINION IS RIGHT WE WILL CONTINUE TO PAY THE CURRENT CONTRACT PRICE UNTIL MAY 16.

BEST REGARDS,
 NOTTER

10

Exhibit T (part)
Letter:
The Shell
Company of
Australia to
Plaintiff
 —
1st May, 1974

Exhibit T (part)

Letter: The Shell Company of Australia to Plaintiff

1st May, 1974

The Manager,
 Nabalco Pty. Limited,
 SYDNEY, N.S.W., 2000
 Attention: Mr. E.A. Notter,
 Administration Manager

Dear Sir,

Re: Supply of Furnace Oil, Motor Spirit and
 Distillate

20

We now confirm the decision which was discussed with you in some detail at the time, relative to Shell's position in response to your originating letter of April 16th.

As you know, we are unable to take up your offer of consideration of a supply contract to your Gove establishment and we very much regret present circumstances are such that we cannot develop a trading relationship between our respective companies.

As we have explained, Shell are deeply involved in contractual supply arrangements with major operations such as at Bougainville, Green Vale Nickel, Hamersley Iron, etc. to name a few, and we are certain you will appreciate our prime responsibilities clearly lie with our existing and valued customers. 30

It is an unfortunate fact that product availability is not yet in such balance as to allow us to make additional supply demands to your order, without putting into jeopardy the very large tonnages to which we are already committed.

Exhibit T (part)
Letter:
The Shell
Company of
Australia to
Plaintiff
 —
1st May, 1974
(Cont'd)

In thanking you Sir, for the opportunity given us in this regard, we also register sincere appreciation of your comments on our prompt response to the enquiry at the time and your favourable recollection of the Shell image from previous negotiations.

We certainly hope that some time in the future Shell will indeed have the privilege of supply to your company.

10 Yours faithfully,

THE SHELL COMPANY OF AUSTRALIA LIMITED

Exhibit 47

Notes: Mr Notter to Mr Coogan

Exhibit 47
Notes:
Mr Notter to Mr
Coogan
 —
2nd May, 1974

2/5/74

TO: A.G. COOGAN

BP OIL SUPPLY CONTRACT SITUATION
 — AS AT 10.00 AM, MAY 2, 1974

20 Mr. Herron rang and advised that BP's solicitor in Sydney, Mr. Pritchard, complained that he could not get clear instructions from BP Melbourne. Mr. Pritchard suggested that Nabalco should proceed in accordance with their intentions.

Whilst Mr. Ellicott is still interested in the Brief he indicated that as a result of his political involvement he may not always be available to attend the conferences, court hearings, etc.

30 I, therefore, asked Mr. Herron to thank Mr. Ellicott but to tell him that the case is of such importance that we must have the uninterrupted attention of a Senior QC. I, therefore, arranged with Mr. Herron for him to brief and appoint Mr. Forbes Officer (top notch) QC, as Senior Counsellor. Mr. Lockhart will be retained as Junior QC. I understand it is essential that when a QC is appointed, a Junior Barrister must also be appointed, hence, Mr. Murray Gleeson, Barrister, will also be added to the roll-call.

The instructions to Mr. Herron are that he should appoint, as above, and instruct the QC's to prepare the issue of a Summons for declaration by the Supreme

Exhibit 47
Notes:
Mr Notter to Mr
Coogan

2nd May, 1974
(Cont'd)

Court of New South Wales as to whether the Notice (BP) was valid or is invalid. The Court should be asked to advise before June 26, 1974.

In the meantime, Mr. Lockhart advised that whilst we proceed with BP on the subject of the new Contract, strictly and without prejudice, our dual actions under this Contract should not have any affect on the legal situation of the current Contract.

The QC's will require approximately fourteen days to prepare the Summons and likewise, BP will take fourteen days to prepare the 1st draft of the new Contract hence, there should be no real action during my absence.

E.A. NOTTER

10

cc: DFW
PB
JER

Exhibit AJ (part)
Telex:
Defendant to BP
Trading Ltd

2nd May, 1974

Exhibit AJ (part)

Telex: Defendant to BP Trading Ltd

TO BP LONDON 370 2.5.74
FROM AUSTBEEPEE MELBOURNE

FOR JOHNSTON/ RWH
FROM WHOLESALE SALES DIV

NABALCO

20

FURTHER OUR EXCHANGE RESTING WITH YOUR 741 OF 25/4 FOLLOWING HAS OCCURRED:

AYE: WHILE INDICATING THEY WISHED NEGOTIATE SETTLEMENT (OUR 180 REFERS) NABALCO (NOTTER) SENT LETTER CONTAINING SERIES OF QUESTIONS ON BACKGROUND OF OUR "ONEROUS TERMS" CLAIM STOP WE HAD ANSWER READY BUT DELAYED DESPATCH PENDING LEGAL ADVICE ON WHETHER WE SHOULD DESPATCH IN VIEW OF POSSIBLE COURT ACTION STOP IF CASE CAME TO COURT WE DID NOT WISH TO HAVE GIVEN NABALCO GRATUITOUS INFORMATION ON OUR ARGUMENTS IN ADVANCE OF LITIGATION STOP

30

BEE: ON 24TH APRIL NABALCO SERVED FORMAL NOTICE OF TERMINATION OF THEIR CONTRACT WITH US STOP IN CONFORMITY WITH CONTRACTUAL PROVISIONS NOTICE WAS SERVED ON 24/4 AND WE HAVE THEIR AGREEMENT THAT EFFECTIVE DATE OF TERMINATION IS 28TH JULY 1974 STOP IN THEIR

NOTICE THEY REJECTED OUR RIGHT TO INVOKE CLAUSE 9 (C) (iii) AND SAID THAT IF IT SHOULD SUBSEQUENTLY BE HELD TO BE VALID THEY WANTED NOTICE TO BE DEEMED GIVEN THAT DAY IE 24/4 STOP THUS THEY IMPLIED THEY WERE PREPARED CONTEST OUR RIGHT TO INVOKE 9 (C) (iii) AND WE SATISFIED THAT THEIR LETTER CONSTITUTES NOTICE OF TERMINATION SINCE WE BELIEVE OUR NOTICE OF PRICE RISE DATED 22ND MARCH WAS PERFECTLY VALID STOP.

Exhibit AJ (part)
Telex:
Defendant to BP
Trading Ltd

2nd May, 1974
(Cont'd)

10 CEE: WE DISCUSSED NOTICE WITH NABALCO ON 26/4 AND ADVISED THEM (1) THAT WE ACCEPTED THEIR LETTER OF 24/4 AS VALID AND EFFECTIVE NOTICE OF TERMINATION (11) THAT SINCE THEIR EARLIER LETTER OF 4/4 CONTAINING QUESTIONS ON BACKGROUND OUR "ONEROUS TERMS" CLAIM (PARA AYE ABOVE REFERS) CONCERNED CONTRACT NOW OFFICIALLY UNDER NOTICE OF TERMINATION WE DID NOT INTEND TO REPLY STOP

20 EEE: FURTHER DISCUSSION WERE HELD 30/4, AND WE HAVE AGREE SOLICITORS FOR BOTH SIDES SHOULD MEET TO DISCUSS LEGAL QUESTIONS CONCERNING HEARING OF SUIT TO RULE ON INTERPRETATION OF CONTRACT

(Note: part of this telex was claimed as privileged and not produced in evidence)

30 EFF: WE BELIEVE THAT IN ANY NEW AGREEMENT NABALCO WILL WANT TO PROTECT THEIR POSITION VIS A VIS THE OLD CONTRACT, SO THAT IN THE EVENT OF THE COURT FINDING IN THEIR FAVOUR AND OUR BEING FOUND TO HAVE ACTED INCORRECTLY IN RAISING THEIR CURRENT PRICE THEY WOULD BE ABLE TO REVERT TO THAT CURRENT PRICE AND TO THE CURRENT CONTRACT STOP HOWEVER OUR RESPONSE WILL BE THAT COMPLETION OF A FRESH CONTRACT WILL BE CONDITIONAL UPON NABALCO ACKNOWLEDGING THAT CURRENT CONTRACT IS AT AN END FOR ALL PURPOSES ALTHOUGH WE DOUBT NABALCO WOULD WEAR THIS AND THEREFORE A NEGOTIATED PRICE WITH SACRIFICE TO BOTH SIDES MIGHT BE PREFERABLE STOP

40 GEE: IN CONSIDERING NEW CONTRACT PRICE OF DOLLARS(A) 54.44 PMT AS SUBMITTED IN OUR NOTICE OF 22/3 WE WERE CONSTRAINED BY POSSIBLE NEED TO MAINTAIN FIXED PRICE FOR 2 YEARS TO MAY 1976, AND THEREFORE INCLUDED ELEMENTS REPRESENTING ADDITION OF DOLLARS (US) 0.25 BARREL TO PRICE OF CRUDE AND INFLATION ELEMENT OF 5 PERCENT AS WELL AS ELEMENT FOR PROFIT STOP IF WE HAVE NEW CONTRACT WEF 28/7 WITH FULLY VARIABLE PRICE PROVISIONS WE WOULD ANTICIPATE WE COULD OFFER PRICE LOWER THAN DOLLARS (A) 54.44 PMT AS INITIAL PRICE STOP PRELIMINARY VIEW HERE IS THAT WE MIGHT OFFER DOLLARS (A) 50.79 PMT AS INITIAL PRICE STOP ALTERNATIVELY WE WOULD BE IN A POSITION TO NEGOTIATE A PRICE WHICH

Exhibit AJ (part)
 Telex:
 Defendant to BP
 Trading Ltd
 —
 2nd May, 1974
 (Cont'd)

MIGHT BE ACCEPTABLE TO NABALCO, THUS AVOIDING UNCERTAINTIES OF LITIGATION ALTHOUGH FALLING SHORT OF WHAT WE MIGHT NORMALLY ACCEPT, IN FACT WE REGARD THIS AS THE BETTER ROUTE STOP GRATEFUL YOUR VIEWS OF LEVELS OF PRICE TO WHICH YOU CONSIDER WE SHOULD NEGOTIATE STOP NOTTER FLYING TO ZURICH 2/5 AND WILL RETURN NEXT WEEK AND WE SHOULD LIKE TO BE ABLE TO INITIATE NEW CONTRACT DISCUSSION ON HIS RETURN STOP WE ARE ALSO TALKING WITH LEGAL COUNSEL AND WILL HAVE TO MAKE CLEAR THE DEGREE TO WHICH WE INTEND PRESSING OUR CLAIM STOP THEREFORE WE SHOULD WELCOME YOUR VIEWS AS QUICKLY AS POSSIBLE STOP

10

FINALLY WE PLEASED RECORD THAT RELATIONSHIP WITH NABALCO HAS REMAINED CORDIAL THROUGHOUT RECENT WEEKS STOP THEY GENUINELY EMPHASISE AND VALUE OUR PAST ASSISTANCE AND EFFICIENCY AND WISH CONTINUE DEALING WITH US IN FUTURE STOP

Exhibit AJ (part)
 Telex:
 BP Trading Ltd
 to Defendant
 —
 2nd May, 1974

Exhibit AJ (part)

Telex: BP Trading Ltd to Defendant

TO BP MELBOURNE C852 2/5/74
 FROM BP LONDON

20

FOR WHOLESALE SALES FROM JOHNSTON/RWH

NABALCO

YOUR 370 PLEASE TO NOTE YOU HAVE GOOD RELATIONS AND HOPE NOTTER RETURNS FROM ZURICH BETTER GRASPED ON FACTS OF LIFE THAN WHEN HE LEFT. IN ADDITION TO OUR EARLIER ADVICE ON ELIMINATED COMPETITORS WE NOW ADVISE THAT AS SHELL, MOBIL AND ESSO CURRENTLY IN MARKET FOR H.O. SUPPLIES WE DO NOT THINK THEY WILL PRESENT YOU WITH ANY PROBLEMS, AS YOU HAVE QUITE RIGHTLY ACCEPTED NOTICE OF TERMINATION WE BELIEVE NABALCO HAVE NO ALTERNATIVE TO NEW CONTRACT WITH YOU FROM 28TH JULY AND YOU HAVE DONE MUCH TO SECURE THIS WITH YOUR UNDERTAKING ON CONTINUITY.

30

WE DO NOT KNOW WHAT EXPLANATION YOU AFFORDED WHEN YOU SERVED NOTICE UNDER 9(C) (iii) ON 22ND MARCH. IF NOTHING

10 WAS PROVIDED THEN IT IS NOT SURPRISING THEY WISH TO TEST
 "ONEROUS". SUGGEST THAT SOMETHING ON LINES MY 275 OF 26/3
 RE QAL WOULD PROMOTE UNDERSTANDING OR YOUR POSITION.

Exhibit AJ (part)
Telex:
BP Trading Ltd
to Defendant

2nd May, 1974
(Coni'd)

WE SUGGEST YOUR BEST COURSE IS:—

10 AYE INSIST THAT TERMINATION GIVEN AND RECEIVED EFFECTIVE
 28TH JULY.

BEE YOUR NOTICE UNDER 9(C) (iii) APPLIES FROM 22ND JUNE. YOU
 SHOULD GIVE JUSTIFICATION SUGGESTED PARA. TWO ABOVE AND
 NEGOTIATE DOWN TO SAY US DLRS 62.00 FOB PG LEVEL FOR
 10 ACCEPTANCE. IF THEY STILL WISH TO TEST AND IN UNLIKELY
 EVENT DECISION GOES AGAINST YOU YOU ONLY IN FOR DIFFEREN-
 TIAL IN PERIOD 22ND JUNE TO 28TH JULY.

20 CEE NEGOTIATE NEW CONTRACT WHICH MUST HAVE ALL ESCALA-
 TION/REVIEW/FM WE HAVE DISCUSSED ADN ADVISED. IT MUST
 HAVE NO CONNECTION WITH OLD CONTRACT WHICH EXPIRES
 TOTALLY ON TERMINATION DATE. WE WOULD PREFER DURATION
 ONE YEAR BUT AGREE TO 3 YEARS IF AND ONLY IF ALL ABOVE
 CONDITIONS APPLY. SUGGEST YOUR NEW BASE PRICE IS US DLRS
 64.00 FOB PG. THIS MAY BE DIFFICULT TO NEGOTIATE AS NOTTER
 WILL NO DOUBT HAVE PICKED UP EUROPEAN BUYER. RESISTANCE
 WHICH EXISTS AT PRESENT. HOWEVER THERE IS DISTINCT LACK
 OF COMPETITIVE BIDDERS AND WE ANTICIPATE SUBSTANTIAL
 MARKET HARDENING 4Q74/1075. LET US KNOW IF WE CAN HELP

Exhibit T (part)

Letter: Mobil Oil (Australia) to Plaintiff

Exhibit T (part)
Letter:
Mobil Oil
(Australia) to
Plaintiff

3rd May, 1974

May 3rd, 1974

Mr. E.A. Notter,
 Nabalco Pty. Ltd.,
 SYDNEY N.S.W. 2000

30 Dear Mr. Notter,

Since our discussions with you in this office on April 18th regarding the
 possibility of supplying your requirements of petroleum fuels at Gove, we have
 reviewed our supply capabilities in relation to current demands and the present
 world availability of product to your specification.

We regret that due to the current situation with product availability we are unable
 to supply your requirements at this time.

Exhibit T (part)
Letter:
Mobil Oil
(Australia) to
Plaintiff

3rd May, 1974
(Cont'd)

Should this situation change, we would hope to be able to further discuss this matter. However, it is with regret that we must decline to provide any offer to supply.

Yours very truly,
J.C. Olsen
Manager — National and
International Accounts

Exhibit 66 (part)
Telex:
Defendant to BP
Trading Ltd
3rd May 1974

Exhibit 66 (part)

Telex: Defendant to BP Trading Ltd

TO BP LONDON 412 3.5.74
FROM AUSTBEEPEE MELBOURNE

10

FOR SPP/RSB
SPP/ASB
SPP/PRODUCTS/EKEBLAD
SPP/COS/PLUMBLY
RWH/WARR
RPT BP SINGAPORE 560 FOR S AND P
BEPEFINERS PERTH 734 FOR TECHNICAL
BRITPET MELBOURNE 287 FOR PRODUCTION
FROM P P AND S

20

STOCK EXERCISE FOR MAY JUNE AND JULY

FIRSTLY : KWINANA

AYE. IMPORTS

	MAY	JUNE	JULY
1. CRUDE			
BARROW	—	122	99
BASRA	—	102	90
IRANIAN HEAVY	—	—	42
KUWAIT	85	90	68
DATAR	—	—	34
KUWAIT SPIKE	93.8		

30

2. REFORMER FEED NIL

3. NOMINATIONS

3/5	LONG PHOENIX	48.8	KUWAIT SPIKE
3/5	POLYCASTLE	45.0	KUWAIT SPIKE
18/5	BRANDON PRIORY	34	KUWAIT
18/5	BR LIGHT	34	KUWAIT
26/5	SEA SWALLOW	17	KUWAIT

	3/6	SOLEN	61	BARROW
	4/6	LONG PHOENIX	48	KUWAIT
	7/6	BR AVIATOR	34	BASRA
	11/6	SOLEN	61	BARROW
	14/6	BR COMET	34	BASRA
	16/6	HALYCON SKIES	42	KUWAIT
	23/6	VENTURE	34	BASRA
	5/7	BP ENDEAVOUR	17	BARROW
	6/7	LONG PHOENIX	48	BASRA
10	8/7	SOLEN	61	BARROW
	9/7	BR ARCHITECT	34	KUWAIT
	13/7	BR PRESTIGE	42	BASRA
	18/7	HALYCON SKIES	48	KUWAIT SPIKE
	18/7	BR COMET	34	QATAR
	29/7	BR ENDEAVOUR	19	BARROW
	LATE/7	TBN	34	KUWAIT/BASRA

Exhibit 66 (part)
Telex:
Defendant to BP
Trading Ltd
—
3rd May 1974
(Cont'd)

4. PRODUCTS/COMPONENTS

		MAY	JUNE	JULY
	M98	4.7 (A)		
	K29	7.8 (A)		17.0 (E)
20	KHFO	20.0 (B)	35.0 (D)	
	FO		20.0 (C)	
	AF850			20.0 (F)

A IS KZ 346 BR CORMORANT ETA 5/5
B IS SEA SWALLOW ETA 26/5
C IS TBN EARLY JUNE
D IS TBN LATE JUNE
E IS KZ 349 TBN ETA 8-15/7
F IS TBN ETA 1-31/7

		MAY	JUNE	JULY
30	BEE: EXPORTS			
	ATK	10.0 (A)		6.5 (C)
	G21	1.5 (A)		5.5 (C)
	LUBES	3.6 (B)		5.0 (C)
	F182			19.0 (D)

A IS KZ 346 BR CORMORANT ETA 6/5
B IS BOT CHEMIST TO MALAYSIA ETD 24/5
C IS KZ 349 TBN ETD 8-15 /7
D IS TBN 1-15/7 FOR JAPAN

		MAY	JUNE	JULY
40	CEE:— CRUDE USAGE			
	IRANIAN HEAVY			42
	BARROW	71	100	102
	KUWAIT SPIKE	92	—	—
	KUWAIT	78	105	122
	BASRA	—	67	120
	DRF	6	5	4
	CRF	5	0	6

DEE: PLANT USAGE (PERCENT)

	CDU	84	75	98
	CDU SPARE (000 TONS)	41	101	8
	CR	67	97	100
50	HF	68	43	100
	CC	100	100	100

Exhibit 66 (part) Telex: Defendant to BP Trading Ltd — 3rd May 1974 (Cont'd)	EEE: WORKS FUEL/FLARE/LOSS MAY WORKS FUEL — GAS 4.9 — LIQUID 11.5 FLARE 0.6 LOSS 7.6	JUNE 3.8 16.3 0.6 6.5	JULY 5.3 15.9 0.6 6.8
--	--	-----------------------------------	-----------------------------------

EFF: PLANT SHUTDOWNS

CC 17/6 - 16/8
 CR2 7 DAYS JUNE
 CDU1 13 DAYS MAY
 CRI 21 DAYS MAY

10

GEE. COMMENTS

AYE. WE HAVE ASSUMED CRUDE NOMINATIONS AS ADVISED IN SEPARATE TELEX. THIS AFFECTS LONG PHOENIX 4/6, HALYCON SKIES 18/7 AND TBN LATE /7.

BEE. IMPORT K29 ON KZ 349 ADJUSTED TO 17.0 WITH ELIMINATION OF M98. ALSO ETA NOW 8/7 EARLIEST. SEPARATE TELEX REFERS

CEE. COULD ACCOMODATE 20.0 ADDITIONAL FUEL OIL IN EARLY JULY IF REQUIRED. YOU MAY WISH TO TIE THIS IN WITH F 182 EXPORT REQUESTED

20

SECONDLY:— WESTERNPORT

AYE: IMPORTS

1. CRUDE	MAY	JUNE	JULY
GIPPS PUMPOVERS	180	180	158
KUWAIT	37A		

A IS MALWA 11/5

2. REFORMER FEED- DIRTY NIL

3. PRODUCTS/COMPONENTS	
AM 270	7B

B IS KZ 347 BR ESK 30/5

30

BEE: EXPORTS

F198	37C	19E	19I
		19F	32J
G21	6D	10G	3.6H
LDF	1D	1G	
M98		7G	2.7H

G76

ATK (EX GEELONG)		8.0H
K29 (EX GEELONG)	3.5G	6.0H
	2.0G	

C IS MALWA
 D IS KZ 347 BR ESK
 E IS ATRIA
 F IS TBN
 G IS KZ 348 BR ESK

12/5 TO JAPAN
 31/5 TO NZ
 12-18/6 TO JAPAN
 18-28/6 TO JAPAN
 13/6 TO NZ

40

H IS BR ESK 1-5/7 TO NG/SPORE
 I IS TBN 1-15/7 TO JAPAN
 J IS TBN 28/7-4/8 TO JAPAN

Exhibit 66 (part)
 Telex:
 Defendant to BP
 Trading Ltd
 —
 3rd May 1974
 (Cont'd)

CEE: CRUDE USAGE	MAY	JUNE	JULY
GIPPSLAND	187	197	163
KUWAIT	NIL	NIL	NIL
DRF	NIL	NIL	NIL
CRF	5.1	7.0	NIL

DEE: PLANT UTILISATION (PERCENT)

	MAY	JUNE	JULY
10 CDU	80.0	84	70
RFS	100	100	90
CR	83	83	80

RFS/CR MAXIMUM TPUT REDUCED TO 19200/16000 BPD WHILE MAKING LDF2

EEE: NO SHUTDOWNS

EFF: WORKS FUEL

GAS	5.7	6.0	5.0
LIQUID	2.6	3.0	2.0
LOSS FLARE	1.2	1.3	1.2

20 GEE: 1. REFORMER FEED STOCKS DOWN TO MIN OPS BY END MAY AND WILL THEREFORE NEED TO KEEP CRUDE RUN UP IN ORDER MAINTAIN NECESSARY MAKE OF MOTOR SPIRITS /LDF

2. DUE ABOVE WE NEED FOLLOWING F198 EXPORTS TO JAPAN

1. MALWA 37.5 LOADING 14/5
2. ATRIA 19.0 LOADING 12-18/6
3. TBN 19.0 LOADING 18-28/6 SEE ONLY VESSEL AVAILABLE AS FIVE VALLEYS EX C931
4. TBN 19.0 LOADING 1-15/7 SEE ONLY VESSEL AVAILABLE EX MELBOURNE C957
- 30 5. TBN 32.0 LOADING 25/7-5/8 PRESUME YOU WOULD WISH UTILISE CHEAPER MR VESSEL EX PT LATTA/BELL BAY/MELBOURNE REQUESTED FOURTHLY ITEM 11

WE APPRECIATE THIS BRINGS ALL 90 F198 EXPORT SHOWN OUR 3Q74 SOLUTION INTO LATE JUNE/JULY/EARLY AUGUST PERIOD BUT LIGHT DISTILLATE REQUIREMENTS ARE DICTATING CRUDE RUN. PLEASE CONFIRM ACCEPTABLE

THIRDLY : SINGAPORE

- WE HAVE NOT YET SEEN SPORE STOCK EX SO FO LOADING IN FOURTHLY EDUCATED GUESSES.
- 40 WE HAVE SHON A TRANSFER WESTERNPORT TO SINGAPORE OF 8.0 G76 6.0 ATK ON BR ESK ETD 1-5/7

Exhibit 66 (part)
Telex:
Defendant to BP
Trading Ltd
3rd May 1974
(Cont'd)

FOURTHLY: IMPORTS TO INSTALLATIONS

NO	CARGO	VESSEL	ETA	DESTINATION	GRADE	000TON
1	C919	BR VINE	13/5	MILK RUN	K44 LAWS 115/145 100/130 80/87	3.6 3.5 0.9 8.0 3.5
2	C929	BDR CHIEFTAIN	11/5	GOVE	F201	19.5
3	C928	ATRIA	14/5	SYDNEY	F60	18.8
4	C927	ANNIKEN	19/5	MELBOURNE	F102	18.3
5	C930	BDR FALCON	2/6	PT LATTA ADELAIDE	F102 F102	6.5 12.5
6	C934	ATRIA	13/6	SYDNEY	F60	19.0
7	C931	FIVE VALLEYS	19/6	PT KEMBLA NEWCASTLE	F60 F60	8.0 11.0
8	C932	TBN	15/6-2/7	GOVE	F201	32.0
9	C953	TBN	1-5/7	CHRISTMAS IS	G21 F102	3.2 7.5
10	C957	TBN	1-7/7	MELBOURNE	F102	19.0
11	C954	TBN	21-28/7	PT LATTA BELL BAY MELBOURNE	F102 F204 F102	6.5 4.0 21.5
12	C955	TBN	21-28/7	SYDNEY NEWCASTLE	F60 F60	12.0 7.0
13	C956	TBN	20/7-8/8	GOVE	F201	32.0

WE SEE SINGAPORE LOADING 2, 6, 8, 9 AND 13

FIFTHLY : EXPORTS FROM OTHERS

1. KZ 348 BR ESK 16/6 EX SHELL GEELONG ATK 3.5
K29 2.0
2. C937 BR ESK 2/7 EX SHELL GEELONG DPK 0.4 TO NEW GUINEA 30
AND 6.0 ATK TO SINGAPORE

SIXTHLY : GENERAL COMMENTS

1. ASB TELEX 824 OF 1/5 RE EXTRA FUEL OIL IMPORT FLEXIBILITY. THE ONLY PLACE WE CAN TAKE MORE FO IS AT KWINANA WHERE ALL EXTRA GP IS ACCEPTABLE. THE COASTAL INSTALLATIONS ARE FULL
2. ON ABOVE PLAN WE WILL GO THROUGH FULL PERIOD WITH MODERATE TO HIGH GAS OIL AND FUEL OIL STOCKS AT KWINANA AND WESTERNPORT. IN ABOVE SITUATION IS THERE ANY CHANCE OF SELLING A GAS OIL OR DIESEL CARGO TO JAPAN 40

CCN FIRSTLY AYE 1. READ QATAR RPT QATAR

Exhibit 1 (part)

Exhibit 1 (part)
Letter:
Defendant to
Plaintiff

Letter: Defendant to Plaintiff

7th May, 1974

7th May 1974

The Administration Manager,
 Nabalco Pty. Ltd.,
 SYDNEY, N.S.W. 2000

Dear Sir,

SUPPLY AGREEMENT OF JUNE 11, 1970.

We formally acknowledge receipt of your letters of 4th and 24th April 1974.

- 10 As emphasised in the writer's telephone conversation on 26th April 1974 our Company adheres to the view that it is entitled to give you notice fixing a revised base price for furnace oil and it does not accept your assertion that the notice served on 25th March 1974 is in any way invalid.

Our present supply situation was explained in some detail at the conference between us on 17th April 1974 and we do respectfully suggest that the terms of your request for information contained in your letter of 4th April 1974 are not appropriate in the present circumstances and it is therefore not proposed to deal with them in this letter.

- 20 The fact is that our formal notice has been given and, in our view, is fully justifiable in terms of the Supply Agreement and the events which have happened. We therefore must also accept as a fact that you have elected, by virtue of your letter of 24th April 1974, to terminate the Supply Agreement so far as the purchase of furnace oil is concerned, effective as from 24th July 1974.

Between now and the expiration of the three months period expiring on 24th July 1974 we remain available to discuss, if you so desire, a new contract for the supply of furnace oil with a view to ensuring continuity of supply.

Yours faithfully,
 BP AUSTRALIA LIMITED
 C. Lockrey,

- 30 Manager — Wholesale Sales Division.

Exhibit AJ (part)
 Telex:
 BP Trading Ltd
 to Defendant
 —
 9th May, 1974

Exhibit AJ (part)

Telex: BP Trading Ltd to Defendant

TO: BP AUSTRALIA MELBOURNE C985 9.5.74
 FROM: BP LONDON

FOR WHOLESALE SALES FROM JOHNSTON/RWH

NABALCO

YOUR 466 WE HAVE LITTLE TO ADD TO OUR C852 WHICH WE
 CONSIDER OUTLINES YOUR BEST AND SAFEST COURSE.
 WE DEAL WITH YOUR POINTS BELOW.

AYE.

WE FEEL IT ESSENTIAL THAT YOUR FORMAL NOTICE OF ACCEPT-
 ANCE OF TERMINATION SHOULD BE MADE WITHOUT DELAY AND
 BEFORE YOU PROCEED FURTHER UNDER 9 (C) (iii).

BEE.

WE STILL BELIEVE THAT IN INVOKING 9 (C) (iii) SOME JUSTIFICA-
 TION OF "ONEROUS" WAS CALLED FOR AND THAT HAD THIS BEEN
 PROVIDED YOU MIGHT HAVE AVOIDED LITIGATION.

HOWEVER YOU WILL NO DOUBT WISH TO BE GUIDED BY YOUR
 LOCAL LEGAL ADVICE BUT WE ASSUME YOUR BEST INTEREST IS
 STILL TO AVOID LITIGATION AND THAT THIS CAN BE DONE BY
 NEGOTIATING DOWN TO US DOLLARS 62.00 FOB PG WITH EXPLANA-
 TION OF SITUATION AS ADVISED.

CEE.

IN NEGOTIATION FOR NEW CONTRACT WE ADVISE THAT THREE
 POINTS ARE ESSENTIAL.

- (1) IT HAS NO RELEVANT TO PREVIOUS CONTRACT.
- (2) YOUR SUPPLIERS ARE NOT SIGNING CONTRACTS IN EXCESS OF
 ONE YEAR AND IT IS WITH UTMOST RELUCTANCE THEY
 PREPARED CONSIDER EXCEPTION IN NABALCO CASE TO THREE
 YEARS.
- (3) ALL PROTECTIVE CLAUSES AS ADVISED MUST BE INCLUDED
 WITHOUT EXCEPTION OR MODIFICATION.

FAILING THE ABOVE THE TERMINATION OF THE EXISTING CON-
 TRACT WILL OPERATE IN FACT AND YOU ARE UNABLE TO OFFER
 CONTINUITY BEYOND THIS DATE EXCEPT ON SPOT BASIS.
 THEY MUST UNDERSTAND THAT THEY HAVE TO COME TO TERMS
 BEFORE 28TH JULY.

DEE.

REFERENCE IS ROWETT, LEAKY AND CO. LTD. V SCOTTISH
 PROVIDENT INSTITUTION (1927) 1 CH. 55 PER WARRINGTON L. J. AT
 PP 71, 72.

EFF.

WE QUITE AGREE WHICH IS WHY WE WISH TO SEE TERMINATION
 ACCEPTED AND CONFIRMED AS SOON AS POSSIBLE.

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GEE.

WE MUST BE PREPARED TO ACCEPT NABALCO LEGAL CHALLENGE AND IMPLICATION IS NOT TOO SERIOUS PROVIDED WE HAVE TERMINATION WHICH WILL SET LIMIT ON RECOVERY OF DIFFERENTIAL IF COURT SO RULES.

YOU WILL BE ABLE TO COST MEETING DECISION AGAINST GOING ALL THE WAY TO THE PRIVY COUNCIL.

10 FIGURE YOU QUOTE OF A DOLLARS 45.88 CIF APPEARS TO US TO NET BACK AT US DOLLARS 56.42 FOB PG WHICH IS FAR TOO LOW AGAINST EXISTING POSTING MFO US DOLLARS 57.96 FOB BMS WHICH IN ANY EVENT DOES NOT REFLECT MARKET RECOVERY. WE WISH TO SEE MARKET VALUE REPRESENTED IN YOUR BASE PRICE AND FOR THIS REASON WE RECOMMEND US DOLLARS 64.00. IT IS NOT APPROPRIATE TO BASE PRICE ON POSTING SINCE THESE DO NOT EITHER REFLECT MARKET VALUE OR THE FULL EXTENT OF 1 APRIL CRUDE INCREASE.

YOU MAY BEAR IN MIND LATITUDE DOWN TO US DOLLARS 62.00 BUT PLEASE REFER BEFORE IMPLEMENTING.

Exhibit AJ (part)
Telex:
BP Trading Ltd
to Defendant
9th May, 1974
(Cont'd)

Exhibit B (part)

20 **Letter and Notification of prices: Defendant to Prices Justification Tribunal**

10th May 1974

The Registrar,
Prices Justification Tribunal,
10 Queens Road,
MELBOURNE. 3004

Dear Sir,

Notification of Proposed Price Increases

30 We attach our notification under the Prices Justification Act 1973 which describes our intention, as an interim measure, to increase the prices of products supplied by BP Australia Limited.

Yours faithfully,
BP AUSTRALIA LIMITED

J.H. Rowland
(Secretary)
Enc.

Exhibit B (part)
Letter and
Notification of
prices:
Defendant to
Prices
Justification
Tribunal
10th May, 1974

Exhibit B (part)
 Letter and
 Notification of
 prices:
 Defendant to
 Prices
 Justification
 Tribunal
 —
 10th May, 1974
 (Cont'd)

PRICES JUSTIFICATION ACT
 NOTIFICATION OF PRICES

BP Australia Limited of 1 Albert Road, Melbourne, Victoria hereby gives further notice under Section 18 (3) (a) of the Prices Justification Act. The previous notice given on 14th February 1974 is to have effect as if there were substituted for the paragraphs (1) & (2) specified in that notice the paragraphs (1) & (2) specified in this further notice, and as if paragraph (3) in that notice were deleted:—

- (1) that subject to the operation of paragraph (2) below we propose to increase the prices of products supplied by us as follows:—
- | | | |
|--|--|----|
| (a) Aviation Gasolines | 1.0 cents per gallon to
posted airfield prices | 10 |
| (b) Aviation Turbine Fuel | 1.0 " " " " | |
| (c) Motor Gasoline — Premium | 1.0 cents per gallon to
all buyers | |
| (d) Motor Gasoline — Regular | 1.0 " " " " | |
| (e) Power Kerosine | 1.2 " " " " | |
| (f) Lighting Kerosine | 1.2 " " " " | |
| (g) Heating Oil | 1.1 " " " " | |
| (h) Distillate | 1.1 " " " " | |
| (i) Diesel Fuel | \$13.82 per ton to all buyers | 20 |
| (j) Fuel Oil | \$14.00 " " " " | |
| (k) Liquefied Petroleum Gas | \$14.00 " " " " | |
| (l) Lubricating Oil | 9.6 cents per gallon to
all buyers | |
| (m) Grease & Petroleum Jelly | 1.0 cents per pound to
all buyers | |
| (n) Bitumen and Bituminous
Products | \$15.16 per ton of incorporated
Bitumen, to all buyers. | |
- (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 clause(s) 30
- (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 Government's formula for allocation of indigenous crude oil — in accordance with the terms of the contract but based on movements up to 5 February 1974 in the relevant indicators in such contracts. However the maximum amounts of such increases shall be 20 per cent less than the increases which would otherwise have been payable pursuant to movements in the indicators between 10 October 1973 and 5 February 1974, unless the increases pursuant to the contracts are covered by the terms of exemptions granted by the Tribunal and current as at the date of this notification.

Exhibit B (part)
Letter and
Notification of
prices:
Defendant to
Prices
Justification
Tribunal
 —
 10th May 1974
 (Cont'd)

10 As will be apparent from our notification of 14th February 1974, and other submissions to the Tribunal, the above prices will not fully recover our increase in costs. In view, however, of the Tribunal's Report on Matter No. 74/42 and because of the large increase in our costs and the extreme burden placed upon us with any further delays in our recoveries, we have reluctantly made the above amendments to our notification of 14th February 1974. Accordingly we inform you of our intention to bring before you at a later date certain matters of disadvantage to us under this notification.

10th May 1974

20 J.H. Rowland
 Secretary
 for BP Australia Limited

Exhibit AJ (part)

Telex: Defendant to BP Trading Ltd

Exhibit AJ (part)
Telex:
Defendant to BP
Trading Ltd
 —
 13th May, 1974

TO BP LONDON C556 13.5.74.
 FROM AUSTBEEPEE MELBOURNE

FOR JOHNSTON/RWH
 FROM WHOLESALERS SALES.

NABALCO: FURTHER YOUR 985

30 FIRSTLY.
 WE HAVE FORMALLY ACCEPTED ON 7 MAY NABALCO'S TERMINATION OF CONTRACT EFFECTIVE 24 JULY (AND NOT 28 JULY AS CONTAINED IN PARA DEE OUR 370 WHICH WAS BASED ON A SUPERCEDED LEGAL INTERPRETATION).

Exhibit AJ (part)
 Telex:
 Defendant to BP
 Trading Ltd
 13th May, 1974
 (Cont'd)

SECONDLY:

NOTTER'S RETURN HAS BEEN DELAYED AND WE EXPECT FIRST DISCUSSIONS ON NEW CONTRACT 17/5 EARLIEST. WE HOPE TO PRESENT FOR DISCUSSION THEN TERMS OF OFFER BASED ON 64 DLRS US PMT FOB WITH FULL ESCALATIONS.

THIRDLY:

AS BACKGROUND AND TO ASSIST IN NEGOTIATION GRATEFUL ANY INFORMATION YOU CAN PROVIDE ON SUPPLY AND PRICE POSITION OF OTHER ALUSUISSE OPERATIONS. OBVIOUSLY NOTTER WILL BE FULLY BRIEFED ON THESE IN ZURICH. NABALCO HAVE CONTINU- 10
 ALLY EMPHASISED THE NECESSITY OF SUPPLY SECURITY AND IF PRICE HIKES AND PRO-RAU CUTBACKS HAVE BEEN APPLIED AT ASSOCIATED PLANTS OUTSIDE AUSTRALIA OUR NEGOTIATING POSITION IS STRENGTHENED.

FOURTHLY:

YOUR 985 CEE :(G). WE INTEND INCLUDING FOLLOWING CLAUSES RELATIVE TO PRICE VARIATION.

AYE)

FOB VARIATION AGAINST LOWEST BMS POSTING LFO.

BEE)

SECTIONS 9 AND 10 OF CONDITIONS OF SALE PETROLEUM PRO- 20
 DUCTS C.I.F. ATTACHED TO YOUR LETTER OF 23 APRIL 74.

CEE)

FREIGHT VARIATION AS IN EXISTING CONTRACT.

DEE)

CURRENCY REVALUATION.

EEE)

INDIGENOUS CRUDE OIL.

FFF)

BUYERS LIABILITY (NEW AND INCREASED LOCAL TAXES TO 30
 BUYERS ACCOUNT)

GRATEFUL YOUR CONFIRM THESE ARE THE CURRENT SUITE FOR ACCOUNT OF THIS NATURE....

Exhibit B (part)**Letter and Notice: Prices Justification Tribunal to Defendant**

*Exhibit B (part)
Letter and
Notice: Prices
Justification
Tribunal to
Defendant*

15th May, 1974

15th May 1974 Melbourne

Our Reference: 044/N74/169
Your Reference: WS—GAM:JR

Mr J.H. Rowland,
Secretary,
BP Australia Limited,
MELBOURNE VIC. 3001

10 Dear Sir,

I refer to your communication of 10 May 1974 relating to Aviation Gasolines, Turbine Fuel, Motor Gasoline etc.

The Tribunal does not now propose to hold a public inquiry, as to whether the prices referred to in the Company's notice are justified. The Company may therefore proceed to implement the proposed prices with effect from the date of receipt of the Notice enclosed or from such later date as the Company may determine.

Yours faithfully,
N.F. BROWN
Registrar
Prices Justification Tribunal

20

PRICES JUSTIFICATION ACT 1973

B.P. AUSTRALIA LIMITED

Matter No. N74/169

NOTICE PURSUANT TO SECTION 18 (3)

To
B.P. AUSTRALIA LIMITED
1 Albert Road,
MELBOURNE VIC. 3000

30 WHEREAS by notice in writing dated 14 February 1974 the above Company gave notice to the Prices Justification Tribunal in accordance with Section 18(1) (a) of the Prices Justification Act 1973 of proposed higher prices to be charged by the Company for the supply of goods and services referred to therein AND WHEREAS on 22 February 1974 the Tribunal notified the Company that it intended to hold an inquiry as to whether the proposed higher prices were

Exhibit B (part)
Letter and
Notice: Prices
Justification
Tribunal to
Defendant
 —
15th May, 1974
(Cont'd)

justified AND WHEREAS by further notice dated 10 May 1974 the Company stated that the previous notice was to have effect as if there were substituted for the prices referred to in such notice the lower prices specified in the further notice THE TRIBUNAL HEREBY WITHDRAWS the notice of 22 February 1974 previously served on the Company and HEREBY NOTIFIES the Company that it does not intend to hold an inquiry as to whether the proposed prices referred to in the Company's notice in writing dated 10 May 1974 are justified.

DATE 15 May 1974

L.H. Williams
 Chairman
 For and on behalf of the
 Prices Justification Tribunal

10

Exhibit 27 (part)
Letter:
Defendant to
Prices
Justification
Tribunal
 —
16th May, 1974

Exhibit 27 (part)

Letter: Defendant to Prices Justification Tribunal

The Chairman,
 Prices Justification Tribunal,
 MELBOURNE 3004.

16th May, 1974

Dear Sir,

PRICES JUSTIFICATION ACT 1973

20

We hereby give notice that we are about to commence negotiations with Nabalco Pty. Ltd for a new contract to supply their furnace oil requirements at Gove, Northern Territory, currently 370,000 tons per annum. Our existing supply arrangements with Nabalco terminate on 24th July, 1974.

As this is a non-Category A product it does not attract an allocation of Australian crude oil. We are therefore obliged to import the total requirement at international prices. Although the base price on today's conditions would not exceed \$A56.52 per metric ton, it will be above the Tribunal's current recommended maximum price.

Furthermore, to reflect the changing international costs of crude oil and products, any contract with Nabalco will have price escalation provisions for variations in F.O.B., Freight, and exchange rates. There will also be provision for price

30

variation should there be any change in the seller's costs. A glossary of the above terms is attached.

We will advise you of the agreed price when negotiations are completed.

Yours faithfully,
BP AUSTRALIA LIMITED
J.H. Rowland
Secretary.
Enc.

Exhibit 27 (part)
Letter:
Defendant to
Prices
Justification
Tribunal
—
16th May, 1974
(Cont'd)

Exhibit P

10

Telex: Plaintiff to Dr Sorato

Exhibit P
Telex:
Plaintiff to Dr
Sorato
—
16th May, 1974

52487A ALU CH
NABALCO AA20472

XSGO1137 16.5.74 1630

ATTENTION: DR. B. SORATO, GENERAL MANAGER — CONFIDENTIAL
SUBJECT: FURNACE OIL FOR GOVE

20

A. AS PREVIOUSLY DISCUSSED, IN SEEKING A SOLUTION TO THE BP CONTRACT WE HAVE ESTABLISHED THE FOLLOWING PRIORITIES:—

- (i) MAINTAIN AN ASSURED SUPPLY OF FURNACE OIL TO THE GOVE PROJECT
- (ii) PROTECT AS FAR AS POSSIBLE WITHOUT COMPROMISING PRIORITY (i) ANY LEGAL RIGHTS WE MIGHT HAVE UNDER THE BP CONTRACT
- (iii) KEEP FUTURE FURNACE OIL COSTS AS LOW AS POSSIBLE WITH FULL REGARD TO PRIORITY (i)

B. FOLLOWING IS A SUMMARY OF THE CURRENT POSITION:—

30

- 1. OUR LEGAL ADVISERS HAVE EXPRESSED THE FIRM VIEW THAT THE NOTICE SERVED ON US BY BP INCREASING THE PRICE OF FURNACE OIL TO DLRS54 PER TONNE C.I.F. IS INVALID AND THEY RECOMMEND THAT THE MATTER BE NOW REFERRED TO THE SUPREME COURT OF NEW SOUTH WALES TO TEST THE VALIDITY OF THEIR OPINION AND THE NOTICE. THIS WOULD BE A FIRST STEP ONLY AS BP WOULD

Exhibit P
Telex:
Plaintiff to Dr
Sorato
—
16th May, 1974
(Cont'd)

UNDOUBTEDLY APPEAL IF THE DECISION WERE FAVOURABLE TO US AND EQUALLY, WE WOULD PRESUMABLY ALSO APPEAL IF WE WERE UNSUCCESSFUL. ANY SUCH APPEAL COULD FINALLY END IN THE PRIVY COUNCIL AND EXTEND OVER A PERIOD OF 1-2 YEARS.

2. ALTHOUGH ALL NECESSARY LEGAL STEPS HAVE BEEN TAKEN SO THAT THE MATTER CAN BE QUICKLY REFERRED TO THE COURT, WE DO NOT YET HAVE A FIRM INTERIM SUPPLY CONTRACT WITH BP AND WE DEFERRED LEGAL ACTION UNTIL SUCH A CONTRACT IS NEGOTIATED. WE CONSIDER IT ESSENTIAL TO THE GOVE PROJECT THAT THERE BE AN ASSURED SUPPLY OF OIL. UNTIL THIS IS AVAILABLE ANY LEGAL ACTION AGAINST BP COULD AFFECT THEIR ATTITUDE IN NEGOTIATING A NEW CONTRACT. 10
3. THERE IS NO POSSIBILITY OF OBTAINING AN ALTERNATIVE SOURCE OF SUPPLY IN AUSTRALIA AND FOLLOWING HIS VISIT NOTTER CONFIRMS THAT SUPPLIES ARE NOT AVAILABLE FROM THE MIDDLE EAST ON AN ASSURED BASIS. UNLESS ALUSUISSE CAN OFFER AN ACCEPTABLE LONG TERM SUPPLIER, WHETHER WE LIKE IT OR NOT OUR IMMEDIATE FUTURE OIL SUPPLY MUST LIE WITH BP. 20
4. MESSRS. COOGAN AND NOTTER WILL BE VISITING BP IN MELBOURNE ON FRIDAY 17.5.74 WITH THE PURPOSE OF ESTABLISHING A BASIS FOR A NEW SUPPLY CONTRACT.
5. IT NOW APPEARS THAT BP ARE OFFERING A NEW CONTRACT ON THE BASIS THAT WE TERMINATE THE OLD CONTRACT WITHOUT ANY FURTHER LEGAL ACTION.
6. THIS IS A MAJOR ASPECT TO BE INITIALLY NEGOTIATED ON FRIDAY AND IT MAY BE THAT THIS IS THE BEST SOLUTION WE CAN OBTAIN, ALTHOUGH OBVIOUSLY WE WOULD PREFER TO HAVE AN INTERIM SUPPLY CONTRACT WITH BP, OR ANY OTHER ASSURED SOURCE, WHILST OUR POSITION UNDER THE OLD CONTRACT IS BEING DETERMINED BY THE COURT. 30
7. HOWEVER, IF WE ARE UNSUCCESSFUL IN OBTAINING BP'S AGREEMENT TO AN INTERIM CONTRACT PLUS COURT PROCEEDINGS AND ALUSUISSE ARE UNABLE TO OFFER AN ALTERNATIVE SUPPLIER, WE WOULD EXPECT THAT ANY NEW CONTRACT WHICH REPLACES THE OLD CONTRACT WOULD BE NEGOTIATED WITH BP AT PRICES SUBSTANTIALLY BELOW DLRS54 PER TONNE AND WILL CONTAIN A RISE AND FALL CLAUSE (WHICH COULD ACT IN OUR FAVOUR IF THE GENERALLY EXPRESSED VIEW THAT OIL PRICES WILL TEND TO DROP PROVES TO BE CORRECT), PLUS A TERMINATION CLAUSE IF BP PROVES AT A LATER TIME TO BE UNECONOMIC COMPARED TO OTHER SUPPLIERS. 40

- 8. DEPENDING ON YOUR AVAILABILITY WE WILL ENDEAVOUR TO TELEPHONE YOU FRIDAY 8 P.M. SYDNEY TIME TO ADVISE OF THE RESULTS OF THE DISCUSSIONS WITH BP, OR IF YOU ARE NOT AVAILABLE, WILL TELEX ACCORDINGLY.
- 9. PLEASE TELEX BY RETURN IF YOU WOULD LIKE TO MAKE ANY COMMENTS BEFORE THE MEETING.

Exhibit P
Telex:
Plaintiff to Dr
Sorato
 —
16th May, 1974
 (Cont'd)

REGARDS,
 COOGAN/POWELL

Exhibit Q

Exhibit Q
Telex:
Plaintiff to Dr
Sorato
 —
20th May, 1974

10

Telex: Plaintiff to Dr Sorato

52487A ALU CH
 NABALCO AA20472

XSGO1139 20.5.74 1800

ATTENTION: DR. B. SORATO, GENERAL MANAGER — CONFIDENTIAL
 SUBJECT: FURNACE OIL — BP AUSTRALIA

FURTHER TO OUR TELEPHONE DISCUSSION WE CONFIRM AS
 FOLLOWS:—

- 1) LONDON HAVE CLEARLY TAKEN OVER THE FURNACE OIL MATTER AND ARE DIRECTING BP AUSTRALIA IN THE LATTER'S NEGOTIATIONS WITH US.
- 2) BP ARE DETERMINED TO END THE OLD CONTRACT.
- 3) THEY HAVE STATED THAT IF WE INITIATE COURT PROCEEDINGS TO TEST THE VALIDITY OF THEIR NOTICE AND FROM WHICH APPEALS COULD GO ON FOR UP TO TWO YEARS, SUPPLY UNDER THE OLD CONTRACT WILL BE TERMINATED ON JULY 24TH AND HENCEFORTH WE WOULD BE ON A SPOT BASIS, BOTH AS TO DELIVERY AND PRICE, FOR OIL.
- 4) BP FREELY ACCEPT THAT THEY HAVE A RESPONSIBILITY TO MAINTAIN OIL SUPPLIES TO GOVE.
- 5) THEY ARE PREPARED TO WRITE A NEW CONTRACT FOR ONE YEAR AT DLRS53.96 C.I.F. OR ALTERNATIVELY A THREE YEAR CONTRACT AT DLRS56.52 C.I.F. THE LATTER PRICE PENALTY, ON THEIR STATEMENT, IS TO COVER THEM FOR "UNKNOWN'S" OVER THE LONGER PERIOD.

Exhibit Q
 Telex:
 Plaintiff to Dr
 Sorato
 —
 20th May, 1974
 (Cont'd)

- 6) WE HAVE PROTESTED STRONGLY AGAINST THE PRICE PENALTY FOR THE THREE YEAR CONTRACT. BP AUSTRALIA SAY THEY AGREE WITH US AND WILL REFER THIS ASPECT BACK TO LONDON.
- 7) AS YOU WILL SEE FROM THE TEXT OF THE DRAFT CONTRACT DOCUMENT M SUBMITTED TO US AS SET OUT BELOW, THEY ARE COVERED IN SO MANY WAYS THAT A PENALTY ON A LONGER TERM CONTRACT IS QUITE UNJUSTIFIED AND DOES NOT AGREE WITH THEIR EXPRESSED ATTITUDE OF BEING FRANK AND FAIR IN NEGOTIATIONS — AS THEY HAVE BEEN TOLD. 10
- 8) YOU WILL OBSERVE THAT THE CONTRACT IS A RISE AND FALL AGREEMENT AND TO THIS EXTENT IS AN ADVANTAGE OVER THE PRESENT CONTRACT WHICH ALLOWS FOR INCREASES ONLY.
- 9) BP HAVE NO OBJECTION TO ALUSUISSE TAKING UP THIS MATTER DIRECTLY IN LONDON AND WOULD PROVIDE INTRODUCTIONS TO THE NECESSARY PEOPLE. HOWEVER, UNLESS YOU FEEL THERE COULD BE PRACTICAL BENEFIT IN THIS BECAUSE OF SOME ALREADY EXISTING RELATIONSHIPS, IT MAY BE THAT WE ARE BETTER OFF DIRECTING OUR NEGOTIATIONS THROUGH BP MELBOURNE. 20
- 10) DUDLEY WESTGARTH — FOR NABALCO — AND BILL LINTON — FOR AUSTRASWISS — ARE EXAMINING THE CONTRACT DOCUMENT.
- 11) WE HAVE NOT BEEN ABLE TO PROCURE ALTERNATIVE SUPPLIES ON AN ASSURED BASIS FROM A SUBSTANTIAL SOURCE, TO BECOME EFFECTIVE AS FROM AUGUST 1974. IT MAY BE POSSIBLE TO NEGOTIATE ALTERNATIVE SUPPLIES, SAY, WITHIN ONE YEAR. 30
- 12) SUCH ALTERNATIVE SUPPLIES WOULD NOT HELP US TO MAINTAIN OUR LEGAL POSITION, AS A DECISION ON WHETHER TO TAKE BP TO COURT MUST BE MADE IN THE NEAR FUTURE AND IN OUR VIEW THIS CAN ONLY BE DONE IF WE HAVE A CONTRACT WITH AN ALTERNATIVE SUPPLIER.
- 13) IF IS CONFIRMED THAT ANY AGREEMENT WITH BP WOULD BE SUBJECT TO YOU BEING SATISFIED WITH THE CONTRACT DOCUMENT, ALTHOUGH BP STATED VERY FIRMLY THAT THEY WOULD NOT ACCEPT ANY VARIATION WHATSOEVER IN THE CLAUSES SET OUT BELOW. TO THESE CLAUSES WOULD BE ADDED THOSE COVERING (A) THE TERM OF THE CONTRACT AND (B) MINIMUM AND MAXIMUM QUANTITIES AND (C) OTHER ROUNDING-OFF LEGAL STATEMENTS. 40
- 14) WITH DUE REGARD TO ALL THE FACTORS INVOLVED WE

RECOMMEND THAT WE CONTINUE WITH BP AS OUR SUPPLIER AND ENDEAVOUR TO OBTAIN A THREE YEAR CONTRACT ON FAIR TERMS OR ALTERNATIVELY A ONE YEAR CONTRACT.

Exhibit Q
Telex:
Plaintiff to Dr
Sorato

BELOW IS THE DRAFT CONTRACT DOCUMENT SUBMITTED TO NABALCO BY BP AUSTRALIA.

20th May, 1974
(Cont'd)

PRICE SUBJECT TO THE OTHER PROVISIONS OF THIS AGREEMENT THE BASE PRICE TO BE PAID BY THE BUYER TO THE SELLER SHALL BE ADLRS PER METRIC TON AND SUCH BASE PRICE IS SUBJECT TO VARIATION AS FOLLOWS:—

10 (A) F.O.B. BY ADDING TO OR SUBTRACTING FROM IT (CONFORMABLY) WITH THE RISE OR FALL IN THE POSTED PRICE (HEREINAFTER MENTIONED) THE AMOUNT BY WHICH THE LOWEST POSTED PRICE FOR LIGHT FUEL OIL (CONVERTED TO AUSTRALIAN CURRENCY PER METRIC TON) POSTED BY A COMPANY REGULARLY POSTING A PRICE AT BANDAR MAH-SHAHR FOR THAT GRADE OF FUEL AS AT THE FIFTEENTH DAY OF THE IMMEDIATELY PRECEDING MONTH DIFFERS FROM AN INDEX OF DLRS(A) PER METRIC TON.

20 (B) FREIGHT. BY ADDING TO OR SUBTRACTING FROM IT (CONFORMABLY WITH THE RISE OR FALL IN THE M.R. AFRA RATE (HEREINAFTER MENTIONED) THE AMOUNT BY WHICH THE OCEAN FREIGHT RATE ON THE DATE DISCHARGE COMMENCES FOR THE VOYAGE BANDAR MAH-SHAHR/GOVE CALCULATED FROM THE ASSESSMENT KNOWN AS MEDIUM RANGE AFRA (CONVERTED TO AUSTRALIAN CURRENCY PER METRIC TON) DIFFERS FROM AN INDEX OF DLRS(A) PER METRIC TON.

30 (C) FOR THE PURPOSES OF SUB-CLAUSES (A) AND (B) OF THIS CLAUSE CONVERSION TO AUSTRALIAN CURRENCY OF AMOUNTS EXPRESSED IN U.S. CURRENCY SHALL BE AT THE RELEVANT SELLING RATE OF EXCHANGE FOR TELEGRAPHIC TRANSFER AS PUBLISHED BY THE RESERVE BANK OF AUSTRALIA ON THE DATE DISCHARGE COMMENCES OR IF THERE IS NO SUCH PUBLICATION RELATIVE TO THAT DAY THEN SUCH PUBLICATION MADE IMMEDIATELY PRIOR TO THE DATE.

(D) COST INCREASES

40 (I) THE SELLER SHALL HAVE THE RIGHT TO INCREASE THE PRICE PAYABLE HEREUNDER BY THE FULL AMOUNT OF ALL INCREASES IN THE COST TO THE SELLER OF MAKING AVAILABLE THE PETROLEUM PRODUCTS DELIVERABLE HEREUNDER:

(A) RESULTING FROM ANY INCREASE IN THE SELLER'S

Exhibit Q
 Telex:
 Plaintiff to Dr
 Sorato
 —
 20th May, 1974
 (Cont'd)

TAX PAID COST PER BARREL OF CRUDE PETRO-
 LEUM. FOR THE PURPOSES OF THIS SUB-CLAUSE
 (D) "THE SBLBR SELLER'S TAX PAID COST PER
 BARREL OF CRUDE PETROLEUM" SHALL MEAN
 THE TOTAL, EXPRESSED AS AN AMOUNT PER
 BARREL, OF THE SELLER'S AND THE SELLER'S
 SUPPLIERS' COST OF ANY KIND WHATSOEVER
 INCURRED IN OBTAINING DELIVERY AT THE
 LOADING TERMINAL OF THE GRADES OF CRUDE
 PETROLEUM USED BY THE SELLER OF THE SEL- 10
 LER'S SUPPLIER FOR THE MANUFACTURE OF PET-
 ROLEUM PRODUCTS, INCLUDING (WITHOUT LIMI-
 TATION TO THE GENERALITY OF THE FOREGOING)
 PRODUCTION, LOADING AND OPERATING COSTS,
 ROYALTIES, DUTIES, INCOME AND OTHER TAXES,
 PAYMENTS AND BENEFITS OF ANY KIND WHATSO-
 EVER PAYABLE OR ACCRUING TO ANY GOVERN-
 MENT OR AGENCY THEREOF OR ANY GOVERNMEN-
 TAL, LOCAL OR PORT AUTHORITY, AND THE COST 20
 OF PURCHASED OIL UNDER PARTICIPATION OR
 OTHER ARRANGEMENTS OF WHATSOEVER
 NATURE, OR

(B) RESULTING FROM THE IMPOSITION BY ANY GOV-
 ERNMENTAL LOCAL OR PORT AUTHORITY OF ANY
 NEW OR INCREASED DUTIES, TAXES, FEES OR
 OTHER SIMILAR CHARGES UPON THE PETROLEUM
 PRODUCTS SUPPLIED HEREUNDER, OR UPON
 THEIR PRODUCTION, MANUFACTURE, STORAGE,
 EXPORT, IMPORT, OWNERSHIP, USE, HANDLING,
 SALE, DELIVERY OR TRANSPORTATION, OR 30

(C) RESULTING FROM THE SELLER BEING UNABLE (OR
 ABLE ONLY ON ABNORMAL TERMS), DUE TO
 CIRCUMSTANCES BEYOND ITS CONTROL, TO OB-
 TAIN SUPPLIES OF CRUDE PETROLEUM AND/OR
 PETROLEUM PRODUCTS FROM ITS NORMAL
 SOURCES AND BY THE NORMAL SOURCES AND BY
 THE NORMAL AND RECOGNISED ROUTES FOR
 SUCH SUPPLIES, PROVIDED THAT ANY PRICE
 INCREASE PURSUANT TO THIS SUB-SECTION (C)
 SHALL APPLY ONLY FOR SO LONG AS SUCH 40
 CONDITIONS CONTINUE.

(II) THE SELLER'S RIGHT UNDER SUB-CLAUSE (D) (I)
 ABOVE SHALL BE EXERCISED BY THE SELLER GIVING
 TO THE BUYER WRITTEN NOTIFICATION OF THE PRICE
 INCREASE IN QUESTION WHICH SHALL APPLY INT
 RESPECT OF ALL SHIPMENTS THE LOADING OF WHICH
 SHALL HAVE BEEN COMPLETED ON OR AFTER EFFEC-
 TIVE DATE OF THE RELATED INCREASE IN THE
 SELLER'S COST. IF AT THE TIME OF GIVING SUCH

NOTIFICATION THE SELLER IS UNABLE TO SPECIFY THE ACTUAL AMOUNT OF THE INCREASE TO BE APPLIED SHALL BE THE SELLER'S BEST ESTIMATE OF SUCH AMOUNT AND ANY NECESSARY ADJUSTMENT SHALL BE MADE AS SOON AS POSSIBLE THEREAFTER.

Exhibit Q
Telex:
Plaintiff to Dr
Sorato
20th May, 1974
(Cont'd)

10 (III) THE SELLER SHALL ALSO HAVE THE RIGHT TO INCREASE PRICE PAYABLE UNDER THE AGREEMENT TO TAKE ACCOUNT OF ANY INCREASE IN THE SELLER'S TAX PAID COST PER BARREL OF CRUDE PETROLEUM, AS SUCH COST IS DEFINED IN SUB-SECTION (D) (I) (A) ABOVE, WHICH THE SELLER HAS REASON TO BELIEVE WILL BE INCURRED BY THE SELLER OR THE SELLER'S SUPPLIERS, PROVIDED THAT IF THE PRICE HEREUNDER IS INCREASED PURSUANT TO THIS SUB-SECTION (III) THE NECESSARY ADJUSTMENT SHALL BE MADE BETWEEN THE SELLER AND THE BUYER WHEN THE ACTUAL AMOUNT AND EFFECTIVE DATE OF THE RELATED INCREASE (IF ANY) IN THE SELLER'S TAX PAID COST PER BARREL OF CRUDE PETROLEUM ARE KNOWN THE SELLER'S RIGHT UNDER THIS SUB-SECTION (III) SHALL BE EXERCISED BY THE SELLER GIVING TO THE BUYER WRITTEN NOTIFICATION OF THE PRICE INCREASE IN QUESTION WHICH SHALL APPLY FROM THE DATE OF SUCH NOTIFICATION.

20 (IV) IF THE BUYER IS UNWILLING TO PAY ANY SUCH INCREASED PRICE SHALL NEVERTHELESS TAKE EFFECT AS AFORESAID BUT THE BUYER SHALL HAVE THE RIGHT, TO BE EXERCISED WITHIN 15 DAYS OF THE DATE OF SELLER'S NOTIFICATION OF THE INCREASE, TO GIVE THE SELLER NOT LESS THAN 15 DAYS' NOTICE IN WRITING OF TERMINATION OF THIS AGREEMENT.

30 (V) THIS SUB-CLAUSE (D) SHALL NOT APPLY IN RESPECT OF ANY COST INCREASE PROVIDED FOR ELSEWHERE IN THIS AGREEMENT.

40 (E) CHANGE IN SELLER'S CIRCUMSTANCES. IF AT ANY TIME THERE IS A CHANGE IN OR DEPARTURE FROM EXISTING CONCESSIONAL OR OTHER ARRANGEMENTS UNDER WHICH THE SELLER OF THE SELLER'S SUPPLIER CARRIES ON ITS BUSINESS OF TRANSPORTING CRUDE PETROLEUM AND MANUFACTURING, ACQUIRING AND SUPPLYING PETROLEUM PRODUCTS, THEN THE SELLER MAY NOTIFY THE BUYER OF THE MODIFICATIONS TO THE AGREEMENT WHICH THE SELLER DEEMS APPROPRIATE AND EQUITABLE IN THE CHANGED CIRCUMSTANCES.

IF WITHIN 15 DAYS OF THE DATE OF THE SELLER'S NOTIFICATION THE BUYER SHALL NOT HAVE NOTIFIED

Exhibit Q
 Telex:
 Plaintiff to Dr
 Sorato
 —
 20th May, 1974
 (Cont'd)

THE SELLER IN WRITING OF BUYER'S ACCEPTANCE OF THE MODIFICATIONS PROPOSED, THE AGREEMENT SHALL TERMINATE ON THE 35TH DAY AFTER THE DATE OF THE SELLER'S NOTIFICATION.

(F) IF AT ANY TIME AFTER THE DATE OF THIS AGREEMENT THERE SHALL BE A VARIATION IN THE COST TO THE SELLER OF SUPPLYING FURNACE OIL HEREUNDER RESULTING FROM:—

(I) THE REFIXING BY THE COMMONWEALTH GOVERNMENT OF THE ABSORPTION FORMULA, THE ALLOCATION FORMULA AND/OR THE PRICE PER BARREL OF INDIGENOUS CRUDE OIL (EXCEPTING ANY REFIXING OF THE PRICE PER BARREL AS A RESULT ONLY OF A CHANGE IN THE ASSAY OF AN INDIGENOUS CRUDE OIL BLEND) UNDER THE COMMONWEALTH GOVERNMENT'S POLICY RELATING TO INDIGENOUS CRUDE OIL, OR 10

(II) A VARIATION OR VARIATIONS AGGREGATING NOT LESS THAN TWO PER CENTUM IN THE LONDON CLOSING SELLING RATE OF EXCHANGE FOR TELEGRAPHIC TRANSFER OF UNITED STATES DOLLARS OR AUSTRALIAN DOLLARS PUBLISHED BY AAP REUTERS ECONOMIC SERVICES COMPARED WITH THE RELEVANT CLOSING SELLING RATE OF EXCHANGE FOR TELEGRAPHIC TRANSFER APPLYING ON THE DATE OF THIS AGREEMENT OR AS THE CASE MAY BE THE RELEVANT RATE OF EXCHANGE AS AFORESAID APPLYING AT THE TIME OF THE IMMEDIATELY PRECEDING VARIATION OF THE PRICE PURSUANT TO THIS SUBSECTION (II) THEN THE SELLER MAY, BY WRITTEN NOTICE TO THE BUYER, VARY THE PRICE PAYABLE HEREUNDER FOR FURNACE OIL. 20 30

IF WITHIN 30 DAYS OF THE DATE OF THE SELLER'S NOTIFICATION THE BUYER SHALL NOT HAVE NOTIFIED THE SELLER IN WRITING OF THE BUYER'S ACCEPTANCE OF THE VARIED PRICE THE AGREEMENT SHALL TERMINATE ON THE 35TH DAY AFTER THE DATE OF THE SELLER'S NOTIFICATION.

(G) PRICE CONTROL/PRICES JUSTIFICATION. IF AT ANY TIME DURING THE CONTINUANCE OF THIS AGREEMENT THE PRICE FOR FURNACE OIL ESTABLISHED PURSUANT TO THE PROVISIONS HEREOF SHALL BE GREATER THAN THE PRICE AT WHICH SALES OF FURNACE OIL AT GOVERNED BY THE SELLER HAS BEEN JUSTIFIED PURSUANT TO THE PRICES JUSTIFICATION ACT OR IS GREATER THAN THE HIGHEST PRICE AT WHICH THE SELLER MAY SELL FURNACE OIL AT 40

GOVE UNDER ANY PRICE CONTROL LEGISLATION THEN THE SELLER SHALL HAVE THE RIGHT TO TERMINATE THIS AGREEMENT BY GIVING TO THE BUYER ONE MONTH'S NOTICE IN WRITING TO THAT EFFECT.

Exhibit Q
Telex:
Plaintiff to Dr
Sorato
 —
 20th May, 1974
 (Cont'd)

WE WILL TELEPHONE YOU ON TUESDAY 21.5.74 AT 5 P.M. SYDNEY TIME FOR YOUR COMMENTS.

KIND REGARDS,
 NABALCO/COOGAN

Exhibit AJ (part)

Exhibit AJ (part)
First Telex:
BP Trading Ltd
to Defendant
 —
 16th May, 1974

10

First Telex: BP Trading Ltd to Defendant

TO BP MELBOURNE 102 16.5.74
 FROM BP LONDON

FOR WHOLESALE SALES FOR O/B 17/5. FROM JOHNSTON RWH
 NABALCO

YOUR C556 AND 619 THANKS CONFIRMATION YOUR FIRSTLY.
 EFFECTIVE DATE NOTED.

20 YOUR THIRDLY WE HAVE NO FORMAL CONTRACT WITH ALUSUISSE
 OF SIMILAR NATURE TO NABALCO CONTRACT. VOLUMES ARE
 MUCH SMALLER AND MOSTLY WHITE AND WE SUPPLY APPROXI-
 MATELY ONE THIRD DEMAND. PRICE IS FIXED AT TIME OF
 ORDERING. YOU MAY BE ASSURED THAT ALL POST OCTOBER
 CHANGES HAVE BEEN REFLECTED IN THESE PRICES AS AND WHEN
 THEY APPLIED. THERE HAS BEEN NO PRORATIONING AS FAR AS
 WE AWARE AND SUPPLY HAS NOT BEEN CONSTRAINT IN SWITZER-
 LAND.

YOUR FOURTHLY ALL AGREED EXCEPT CEE FREIGHT. EXISTING
 CONTRACT HAS BANDED FREIGHT REVIEWED AT FIVE YEARS
 WHICH OBVIOUSLY NOT APPLICABLE IN THREE YEAR CONTRACT.
 WE WILL REVERT.

30 REVERTING TO ACTION UNDER 9 (C) (III) WE RESTATE OUR VIEW
 THAT YOU SHOULD SEEK AVOID LEGAL ACTION BY EXPLANATION
 ON LINES ADVISED AND NEGOTIATION DOWN TO US DOLLARS 62.00
 FOB AS NOTWITHSTANDING OUR JUDGEMENT VALIDITY OF AC-
 TION STRANGE THINGS HAPPEN IN COURT. HOWEVER IF NABALCO
 DO PERSIST THEN WE MUST ENDEAVOUR WIN ACTION BY CON-

Exhibit AJ (part)
First Telex:
BP Trading Ltd
to Defendant
 —
16th May, 1974
(Cont'd)

VINCE PRESENTATION/REPRESENTATION. IN WHICH RESPECT WE TRUST YOU NOT BRIEFING SAME QC WHO GAVE ORIGINAL NEGATIVE OPINION AS HE IS SCARCELY LIKELY TO BE SUFFICIENTLY CONVINCED AND HAS BUILT IN EXCUSE FOR FAILURE.

Exhibit AJ (part)
Second Telex:
BP Trading Ltd
to Defendant
 —
16th May, 1974

Exhibit AJ (part)

Second Telex: BP Trading Ltd to Defendant

CONFIDENTIAL

TO BP MELBOURNE C113 16.5.74
 FROM BP LONDON

FOR WHOLESALERS SALES FROM JOHNSTON
 QAL

10

FOR YOUR INFORMATION WE LEARN THAT KNPC HAVE NOW CHANGED THEIR MIND ON SUPPLYING AUSTRALIA AND HAVE SOLD 50,000 TONS TO AMPOL AT US DOLLARS 60.00 FOB. FREIGHT PER GIMLE FIXED AT WS120. WE BELIEVE THIS GIVES CIF US DOLLARS 66.40. AMPOL ON SELLING TO QAL AT 18 CENTS GAL WHICH GIVES AROUND US DOLLARS 100 PER TON.

Exhibit 1 (part)
Plaintiff to
Defendant
 —
16th May, 1974

Exhibit 1 (part)

Letter: Plaintiff to Defendant

May 16, 1974

20

The Manager
 BP Australia Limited
 1 Albert Road
 MELBOURNE, VICTORIA 3000

Dear Sir:

SUPPLY AGREEMENT OF JUNE 11, 1970

We refer to your letter of the 7th May the contents of which are noted. Dealing with each paragraph in turn — commencing with the second paragraph we comment as follows:

Exhibit 1 (part)
Plaintiff to
Defendant
 —
16th May, 1974
(Cont'd)

1. Clearly there are fundamental issues to be resolved between us on the question of the validity of your Notice and your entitlement to fix a revised base price in the terms of that Notice. Those issues must in our view and as a matter of extreme urgency be placed before an appropriate Court for determination.
2. The conference of the 17th April 1974, was expressly stated and agreed by those present to be "without prejudice". However, your statement that your "present supply situation was explained in some detail" is not correct. In fact, you stated only that your available resources were presently sufficient to allow you to continue to meet present obligations to your customers. You further stated that the reason you sought a revised base price under the Agreement was that the OPEC Price increases have made the fixed price under the Agreement commercially unacceptable to you.
3. Our letter of 24th April clearly conditioned the termination of the Supply Agreement—so far as the purchase of furnace oil is concerned—on the validity of your Notice of the 25th March 1974. For so long as any dispute continues between us on this point the Contract in all of its terms continues to bind the parties. It is for this reason that the immediate resolution of that dispute by an appropriate Court is vital.
4. We remain willing to discuss the possibility of any amicable solution to the matter.

Yours faithfully,
 NABALCO PTY. LIMITED
 A.G. COOGAN
 General Manager

Exhibit AH

Defendant's Memorandum (Exhibit S with notation)

Exhibit AH
Defendant's
Memorandum
(Exhibit S with
notation)
 —
17th May, 1974

POINTS FOR DISCUSSION WITH NABALCO ON 17th MAY 1974

1. To give you continuity of supply we are prepared to negotiate a new contract for the supply of furnace oil. (Period 1 or 3 years if all pricing conditions accepted.)
2. The old contract will expire on 24th July 1974 (at least so far as furnace oil is concerned).
3. We are not prepared to consider any extension of the old contract beyond 24th July 1974. (So far as we are concerned it has been terminated by you.)
4. You have disputed our notice of a revised base price. You have even disputed

Note: Smaller print denotes handwriting.

*Exhibit AH
Defendant's
Memorandum
(Exhibit S with
notation)*

*17th May, 1974
(Cont'd)*

the validity of your own election to terminate consequent on it. Under no circumstances will we enter into a new contract whilst you continue that dispute.

5. In any new contract we would require you to acknowledge the termination of the old contract so far as it relates to furnace oil.
6. The commencement date of any new contract would be from 24th July 1974.

*Exhibit S
Mr Lockrey's
Memorandum*

17th May, 1974

Exhibit S

Mr Lockrey's Memorandum

POINTS FOR DISCUSSION WITH NABALCO ON 17TH MAY 1974

1. To give you continuity of supply we are prepared to negotiate a new contract for the supply of furnace oil. 1 yr but 3 yrs normally if all terms met. 10
2. The old contract will expire on 24th July 1974 (at least so far as furnace oil is concerned).
3. We are not prepared to consider any extension of the old contract beyond 24th July 1974. So far as we are concerned it has been terminated by you.
4. You have disputed our notice of a revised base price. You have even disputed the validity of your own election to terminate consequent on it. Under no circumstances will we enter into a new contract whilst you continue that dispute.
5. In any new contract we would require you to acknowledge the termination of the old contract so far as it relates to furnace oil. 20
6. The commencement date of any new contract would be from 24th July 1974.

Exhibit 57

Exhibit 57
Notes:
Mr Shaw
 —
 17th May, 1974

Notes: Mr Shaw**MEETING WITH NABALCO REPRESENTATIVES****IN BP HOUSE ON 17TH MAY 1974**

Present — for BP:

Messrs. C. Lockrey (Chairman)
 J.H. Rowland
 B.C. Snape
 G.D.G. Shaw
 10 R.J. Skillen (part-time)

— for Nabalco:

Messrs. A. Coogan
 E.A. Notter

1. Recognition of BP problems
2. BP position outlined. Old contract terminated. We couldn't enter a new deal without clean break. Attitude defined against background of losses incurred already.
3. Preliminary provisions of new contract outlined.
 20 (a) 3-year period possible. \$56.52 per Tonne
 (b) 1-year period possible. \$53.96 per Tonne
 (c) Prices to vary. Provisions outlined.
4. EAN — comparison with bunker prices in Europe and Australia.
5. AC — ? rationale behind higher price for 3 years than for 1.
 — revert to old contract with notice. (Acknowledgement of further potential employment of 9(C)(iii).) Disappointed at high level of new price.
 JHR — impossible to reinstate old contract.
6. CL — Approach London to use first price (\$53.96) for 3 years — or
 30 JHR — Don't bank on too much coming out of reimbursement.
7. EAN — We are in effect offering a spot-price contract. (One-sided view of benefits available).
 P.J.T. element.
 Freight — BMS/Gove v Singapore/Gove + BMS/Singapore.
8. AC/JHR Sole supplier position. Maximum/minimum quantities with Nabalco having a second supplier.

Exhibit 57
Notes:
Mr Shaw
—
17th May, 1974
(Cont'd)

- 9. AC/CL PJT — price freeze by Government. ? payment outside Australia by Alusuisse. No — taxation. ? we supply f.o.b. S'pore or elsewhere. We would have to be very careful not to be seen to be circumventing national legislation.
- 10. EAN — Queried rates of crude price-rise and product-rise.
- 11. AC — Summarised 3 options. First indication from Nabalco possible in a week.

Exhibit 40
Notes:
Mr Notter
—
17th May, 1974

Exhibit 40

Notes: Mr Notter

- 19 Meeting BP Aust in Melb. 10
- Present: BP —
 - C. Lockrey
 - B. Snape
 - Rowland (Co. Secretary)
 - G. Shaw
 - R. Skillen
 - W. Johnstone (G.M.)
 - A.G. Coogan
 - E.A. Notter
- BP part
(Lunch)
Nabalco
- Without prej." 20

Notes

Current Contract (ex 1970) to be terminated, no legal action ect. as from 24-7-74 before BP prepared to write a New Contract with N. Strang London control — little in Aust.

BP.losing	up to April 74	4.2 mio
	April — July	3.0 mio

e.g. 1 mio per month on present M.E. prices. (? incl. profit)

C.L. outlines New Contract

U.K. says only 1 year — but B.P.A. pushed for 3 year

<u>Price</u>	1 year	<u>\$53.96</u>	p.t.		30
	3 "	<u>\$56.52</u>	p.t.		

(plus rise and fall ? as per BP's clause

e.g. this means:

Exhibit 40
Notes:
Mr Notter
 17th May, 1974
 (Cont'd)

- Offer of base price ex notice 22/3 is no longer open (N cancelled Contract if Notice is invalid)
 If we can't go to Court then notice is invalid!!
- New price for Bulk deliveries 20 - 45,000 t is same as Bunker price in Nth Australia in lots of 500 - 1000 t by lighter
 Same oil as us ex Singapore BP notice objection and will check with London.
- BP are No doubt recovering 7 mio less in 1st year of Contract.

10 BP submitted New Rise & Fall Price Clause.

To be accepted by N. without any amendmants — otherwise No contract!

Nabalco to advise intention by 24 or 27 May. But need Board approval.

AGC summary of situation:

20	if: Court Action on old Contract	No New contract Poss spot sale
	Old Contract is cancelled (No action for damages by Nabalco)	1 year or 3 y New Contract at above prices and Rise & Fall.

Exhibit R
 Telex:
 Defendant to BP
 Trading Limited
 17th May, 1974

Exhibit R

Telex: Defendant to BP Trading Limited

078
 C73 2015/17
 TO BP LONDON C650 17-5-74
 FROM AUSTBEEPEE MELBOURNE
 FOR JOHNSTON/RWH
 FROM LOCKREY/WS.
 REPTD RENDLE CARE OF RUSSETT RWH.

NABALCO:

10

AT TODAY'S MEETING FOLLOWING POINTS EMERGED:

AYE:

NABALCO ARE NOW CONSIDERING THREE POSSIBILITIES:—

FIRSTLY TO LITIGATE ON OLD CONTRACT THROUGH ALL POSSIBLE COURTS AND WEF 24/7 TO BUY ON SPOT BASIS WITH NO FORMAL CONTRACT.

SECONDLY ACCEPT A NEW ONE YEAR CONTRACT AT DLRS AUS 53.96 PMT CIF WITH FULL ESCALATIONS.

THIRDLY ACCEPT A 3 YEAR CONTRACT AT DLRS AUS 56/52 PMT CIF ALSO WITH FULL ESCALATIONS

20

BOTH SECONDLY AND THIRDLY ARE CONDITIONAL ON COMPLETE TERMINATION OF EXISTING CONTRACT.

BEE:

OUR COMMENTS ON ABOVE ARE SERIATUM:

FIRSTLY THIS APPEARS UNLIKELY AS NABALCO ARE FULLY AWARE OUR POSITION AND RECOGNISE SUPPLY DANGERS AND TEMPORARY NATURE OF CURRENT PRICE ADVANTAGE OF SPOT MARKET (REFER YOUR 113). THEY DID CANVASS THE POSSIBILITY OF THEIR ACCEPTING OUR EARLIER NOTICE OF 22/3 FOR CURRENT CONTRACT. WE STRONGLY REJECTED THEIR OPTION ON CONTRACT WE MAINTAIN IS FORMALLY TERMINATED.

30

SECONDLY THIS PRICE IS BASED ON 64 DLRS US PMT FOB PLUS ELEMENT FOR OUR WORKING CAPITAL AND OVERHEADS. THEY MAKE POINT THIS PRICE IS ABOVE CURRENT INTERNATIONAL BUNKER PRICE. WE EMPHASISED EFFERVESCENT NATURE OF BUNKER PRICES BUT POINT HAS VALIDITY. THEY STILL RELUCTANT TO CONSIDER SHORT TERM (IE 12 MONTHS SUPPLY.)

THIRDLY WE BELIEVE THIS REPRESENTS THE BEST AVENUE FOR MUTUAL ACCOMMODATION. WE DELIBERATELY PITCHED THE INITIAL PRICE HIGH AND SHALL BE PREPARED TO NEGOTIATE DOWN IF NECESSARY AS DISCUSSIONS DEVELOP. AT THIS STAGE WE HOPEFUL OF MAINTAINING YOUR 64 DLRS US FOB LIMIT.

40

CEE WE NOW BELIEVE FINAL DECISION WILL BE BETWEEN LITIGATION AND 3 YEAR CONTRACT. THEY INDICATED THEY WERE EXPECTING A FAVOURABLE PRICE FOR NEW CONTRACT IN EXCHANGE FOR WAIVING RIGHTS TO LITIGATION STOP WE WILL

AWAIT THEIR INITIAL RESPONSE BEFORE DECIDING WHETHER A TRADE OFF IS NECESSARY BUT OUR IMPRESSION IS THAT THEY EXPECT A COMPROMISE ON OUR PART TO GIVE A PRICE OF AROUND DLRS AUST 48 TO 50. PER TON

DEE:

OTHER POINTS COVERED DURING THIS INITIAL ROUND INCLUDED:—

- 1) SPECIFIC QUANTITIES RATHER THAN SOLE SUPPLIER.
- 2) SPECIFICATION. WOULD RELAXATION GIVE LOWER PRICE. WE ARE CURRENTLY STUDYING THIS WITH CP AND C.
- 3) SHIP SIZE STOP WHEN NEW TANKS ARE COMMISSIONED LATER THIS YEAR THEY WILL HAVE 100,000 TONS FURNACE OIL STORAGE. THIS WILL PERMIT LRI CARGOES.

EEE:

WE HAVE GIVEN NABALCO DRAFT OF PROPOSED ESCALATION CLAUSES ETC AND THEY WILL REVERT WITHIN ONE WEEK AND WE WILL KEEP YOUR ADVISED.

FFF:

- 20 YOUR 112 SUGGESTING USE OF INDEPENDENT LONDON BROKERS 1 YEAR T/C AWARD. CENTRAL PLANNING HERE ARE CONCERNED THAT THIS COULD UNDERMINE THEIR EFFORTS TO ENSURE CONTINUED ACCEPTANCE OF AFRA BY TAX AND PRICES JUSTIFICATION AUTHORITIES. THEY STRONGLY RECOMMEND USING AFRA. ASSUME YOU HAVE CONSULTED MILLER PRI.

Paragraph GEE of this telex was claimed as privileged and was deleted.

Exhibit T (part)

Letter: Plaintiff to Sumitomo Shoji (Australia)

Exhibit T (part)
Letter:
Plaintiff to
Sumitomo Shoji
(Australia)
—
17th May, 1974

May 17, 1974

30 Assistant Manager
Chemicals, Plastics & Fuel Dept.
Sumitomo Shoji (Australia) Pty. Ltd.,
SYDNEY, NEW SOUTH WALES 2000

ATTENTION: MR. K. NISHIMORI

Dear Sir:

SUPPLY OF FURNACE OIL, MOTOR SPIRIT & DIESOLEUM

We refer to our conversation yesterday in which we indicated our interest in discussing with Sumitomo the possibility of a Supply Agreement in respect of

Exhibit T (part)
Letter:
Plaintiff to
Sumitomo Shoji
(Australia)
 —
17th May, 1974
(Cont'd)

petroleum products for Gove. These products are currently supplied by BP Australia Limited under a Contract entered into in June 1970.

TERM

We would prefer to enter into a minimum contract period of three (3) years with options to renew to be exercised by both parties.

PRODUCTS

- Furnace Oil (as per Specifications handed to Mr. Nishimori during our discussion yesterday.)
- Motor Spirit (Specifications for these two products will be forwarded under separate cover on Monday, May 20, 1974.)
- Diesoleum

10

DELIVERY OF PRODUCTS

Furnace oil, motor spirit and diesoleum may be delivered in bulk ex tank ships into Nabalco's discharge facilities at Gove.

In respect of furnace oil, shipments are limited to 45,000 metric tonnes until the end of December 1974. As from 1975, shipments of 60,000 to 70,000 metric tonnes may be delivered only subject to the draft limitation of 47 feet (as low water ordinary spring tide).

We assume that both motor spirit and diesoleum will be delivered in smaller vessels of shipments not exceeding 3,000 metric tonnes in respect of diesoleum and 1,500 metric tonnes in respect of motor spirit.

20

Alternatively, Nabalco would reserve its right to purchase both diesoleum and motor spirit from sources other than Sumitomo should it so desire.

Nabalco also assumes that it will continue to purchase lubrication products independently.

All storage tanks, with the exception of the ATK tank, are owned by Nabalco.

ESTIMATED QUANTITIES

	Furnace Oil	Diesoleum	Motor Spirit
1974 (July to Dec)	150,000 tonnes	1,000 tonnes	NIL
1975 — onwards	380,000 tonnes	4,500 tonnes	1,500 tonnes

30

PAYMENTS

Ninety (90) days following receipt of the invoice by Nabalco.

We would also appreciate an indication in respect of the anticipated source of furnace oil and as to the index you intend to use for Freight Rate escalation.

We look forward to your early reaction stating as to whether Sumitomo would be prepared in principle, to enter into a contract with Nabalco in 1974, and at the same time, quoting an indicative price in respect of furnace oil and if possible, motor spirit and diesoleum on basis cif Gove.

Yours faithfully,
NABALCO PTY. LIMITED
 for E.A. NOTTER
 Administration Manager

Exhibit T (part)
Letter:
Plaintiff to
Sumitomo Shoji
(Australia)
 —
17th May, 1974
(Cont'd)

Exhibit O

Exhibit O
Mr Coogan's
notes
 —
20th May, 1974

10

Mr Coogan's notes

20.5.1974
 AGC:BL

DISCUSSIONS* WITH BP (AUST.) IN MELBOURNE, 17TH MAY, 1974

For NABALCO:
 Messrs. A.G. Coogan
 E.A. Notter

BP (AUSTRALIA):
 Messrs. C. Lockrey
 B. Snape
 R. Skillen
 J. Roland
 G. Shaw

20

Summary

- The Nabalco furnace oil matter has very obviously been taken out of the hands of BP (Aust.) by BP London.
- BP London are very determined to achieve a totally new concept of oil supply to us.
- BP-A quoted figures showing losses on the current contract since its inception to April '74 of \$4 million, and anticipated losses between April and 24th July of \$3 million — i.e. now approximately \$1 million per month.
- Frequent reference was made to the chaotic conditions in the oil countries (e.g. BP fields being taken over by Kuwait).
- It was clear that if BP could get out of their supply obligation to Gove they would be very pleased to do so as the oil could be sold to greater advantage elsewhere e.g. price/demand associated with cold European winter.

30

Exhibit O
Mr Coogan's
notes
—
20th May 1974
(Cont'd)

- If the Australian Government does not allow BP a fair price, through the P.J.T., on their furnace oil they simply would cease importing it into Australia for all customers — e.g. would not tender to the S.E.C. of Western Australia and others — Darwin?
- They are virtually in daily contact with all other majors and are well aware that we have no prospects in that area.

* All discussions preceded by “without prejudice”

COPIES: AGP., EAN., PJB.

- BP-A confirmed that the prices quoted to us were the genuine going rates applicable to all bulk customers. 10
- Nabalco made the point that the prices quoted were more linked to ships bunkers in small quantities relative to our intake of 30,000 t. to 60,000 t. (later) cargoes and we should benefit from this larger scale. BP-A will study this and refer to London.
- BP Australia freely accept that they have an obligation to supply Gove and state that although they were under great pressure from London and elsewhere to divert cargoes in November-January, they, BP-A, insisted that Nabalco be serviced.
- BP-A and the other majors are not satisfied with the prices set by the P.J.T. and are urgently preparing further submissions. 20
- BP-A consider that spot cargoes could be maintained — but within the conditions of spot purchases.
- A contract, however limiting to us, would give us priority over other customers not so covered and the emphasis was that all future contracts would be limited in number and term.
- A remark was made by BP-A that Shell considered them ‘crazy’ to even write a one-year contract.
- Nabalco would appear to have very little room to move within our stated objectives — particularly our clear necessity to take all efforts to ensure a continuous supply of oil to Gove. 30
- Our chances of maintaining our legal opportunities appear slim.
- Our chances of obtaining any substantial price concessions if we drop legal proceedings under old contract are nil.
- There was evident goodwill in all BP executives involved in discussions, i.e. Messrs. Lockrey, Snape, Skillen Roland

W.D.Johnstone, General Manager

- OPTION 1 Continue with present contract by accepting notice as valid at \$54.44.
- 1.1 No doubt will be followed by a further notice(s) increasing price.
- 1.2 Not possible because in admitting it as valid it automatically exercises our notice to BP of termination.
- 1.3 Do BP have right to terminate supply whether notice valid or not?
 No.
- 1.4 BP are determined to terminate contract on 24th July.
- OPTION 2 Take BP to court to determine if notice valid.
- 10 2.1 BP would terminate contract on 24th July.
- 2.2 Would not write new contract.
- 2.3 Would supply only on a spot basis whilst we are in court and if they win would probably not offer new contract.
- 2.4 BP have taken advice from --
 — Sydney Counsel
 — Melbourne Counsel (leading Q.C., now Chief Justice of Victoria)
 — London Counsel
 — "Another Source".
- 20 2.5 Are determined not to get caught again legally as they were on previous occasion. Appear as confident as we are in their legal position.
- OPTION 3 To write a one year contract at \$53.96 CIF per tonne as per draft contract submitted — includes rise and fall and currency clauses.
- 3.1 Price-wise, draft contract appears to cover every eventuality of price increases.
- 3.2 BP will not accept any variations to their contract terms regarding price whatsoever.
- 30 3.3 The contract can include min./max. supply tonnages and would not be exclusive beyond the nominated quantity.
- 3.4 BP states that majors, e.g. Shell, are not nowadays writing even one-year contracts.
- OPTION 4 3-Year supply contract at \$56.52 CIF per tonne.
- 4.1 BP say the loading on the 3 year price is to cover "the unknown".

Exhibit O
Mr Coogan's
notes
 —
 20th May 1974
 (Cont'd)

- 4.2 London were most reluctant to go beyond one year but BP Australia say they pressed for a longer period resulting in London "agreement but at the penalty rate".
- 4.3 Nabalco protested the penalty rate stating —
- would BP refund the difference between \$56.52 and \$53.96 if the 'unknown' did not occur during the term of the contract;
 - as presumably \$53.96 allowed for a satisfactory profit margin, this profit would be unfairly increased by the additional loading;
 - this was especially true as they were so widely covered in their new contract conditions. 10

BP Australia freely accepted our point and will refer it back to London. Reference was made to "over-reaction in London" following their experiences with M.E. oil countries.

It may be possible to get a 3-year contract at lower than \$56.52.

A.C.

Exhibit T (part)
Letter:
Plaintiff to
Caltex Oil
(Australia)
 —
 20th May, 1974

Exhibit T (part)

Letter: Plaintiff to Caltex Oil (Australia)

May 20, 1974

The Manager
 Caltex Oil (Australia) Pty. Ltd.
 SYDNEY, NEW SOUTH WALES 2000

20

ATTENTION: MR. A. BRODIE

Dear Sir:

SUPPLY OF FURNACE OIL, MOTOR SPIRIT & DIESOLEUM

We refer to our telephone conversation with yourself and your Mr. Anderson in which we indicated to you our interest in discussing with Caltex Oil the possibility of a Supply Agreement in respect of petroleum products for Gove.

As you will recall, we did discuss a Supply Agreement with you in 1968/69 but ultimately the contract was awarded to BP (Australia) Limited on a competitive basis. At present, all petroleum products including lubricants, are supplied by BP Australia. 30

CONTRACT

We would preferably enter into a Supply Contract with Caltex Oil for all petroleum products required at Gove. Alternatively, should the tonnage, particularly in respect of furnace oil, be excessive then we would equally be interested to receive from you a proposal for part delivery, say 50% of our requirements.

Exhibit T (part)
Letter:
Plaintiff to
Caltex Oil
(Australia)
 —
20th May, 1974
(Cont'd)

TERM

10 As you may recall, our Alumina Plant at Gove is supported by a Community of some four thousand people. The enclosed summary of the Gove Project may assist in demonstrating our involvement in Gove.

Gove is totally dependent upon a reliable oil supply source since no alternative forms of energy are available either at present or within the immediate future. We envisage a Supply Contract for not less than one year but preferably, three years.

SPECIFICATIONS

Detailed specifications in respect of furnace oil, motor spirit and diesoleum are enclosed.

QUANTITIES

The following estimated annual quantities are required:

	Furnace Oil	Diesoleum	Motor Spirit
20 1974 (July to Dec.)	150,000 tonnes	1,000 tonnes	NIL
1975 — onwards p.a.	380,000 tonnes	4,500 tonnes	1,500 tonnes

DELIVERY OF PRODUCTS

Furnace oil, motor spirit and diesoleum may be delivered in bulk ex tank ships into Nabalco's discharge facilities at Gove.

In respect of furnace oil, shipments are limited to 45,000 metric tonnes until the end of December 1974. As from 1975, shipments of 60,000 to 70,000 metric tonnes may be delivered only subject to the draft limitation of 47 feet (as low water ordinary spring tide).

30 We assume that both motor spirit and diesoleum will be delivered in smaller vessels of shipments not exceeding 3,000 metric tonnes in respect of diesoleum and 1,500 metric tonnes in respect of motor spirit.

A full range of lubrication products would also be required which Nabalco currently purchases free on wharf Sydney.

All storage tanks with the exception of an Aviation Turbine Kerosene Tank, owned by BP Australia, are owned by Nabalco.

Exhibit T (part)
Letter:
Plaintiff to
Caltex Oil
(Australia)

20th May, 1974
(Cont'd)

As indicated to your Mr. Brodie this afternoon, we would appreciate the courtesy of an early reaction, ie as to whether Caltex Oil can supply in principle and if so, as to whether the supply obligation will be for 100% or 50% of our requirements.

In turn, we would favour you with an early decision and a speedy conclusion of contract details.

We now look forward to receiving your reaction and hopefully, a quotation in respect of furnace oil, motor spirit and diesoleum which, no doubt, will include a "rise and fall" clause.

Thanking you for your understanding.

Yours faithfully,
NABALCO PTY. LIMITED
E.A. NOTTER
Administration Manager

10

Exhibit AJ (part)
Telex:
BP Trading Ltd
to Defendant
21st May, 1974

Exhibit AJ (part)

Telex: BP Trading Ltd to Defendant

TO BP AUSTRALIA MELBOURNE 180 21/5/74
FROM BP LONDON

FOR WHOLESALE SALES FROM JOHNSTON/RWH

NABALCO

YOUR 656 WE HAVE LITTLE TO ADD TO OUR 102 STOP SO FAR AS WE
AWARE ALL SUPPLIERS TO ALUSUISSE HAVE REFLECTED PRICE
MOVEMENTS STOP YOUR C650 YOUR AYE ALL THREE POSSIBILITIES
WOULD SEEM TO DEPEND ON TERMINATION OF CONTRACT WHICH
HAS IN FACT BEEN DONE

(handwritten — ?Yes)

STOP HAVE YOU MADE OFFER ON LINES SECONDLY? STOP WHILST
WE NOT AVERSE

ONE YEAR CONTRACT IF THIS REFLECTS US DLRS 64 PMT FOB
PRESUMABLY THIRDLY REFLECTS US DLRS 66 PMT FOB STOP IS
THIS BASIS FOR

(handwritten — ?Yes)

YOUR/NEGOTIATION? STOP

YOUR BEE FIRSTLY WITH TERMINATION FORMALLY ACCEPTED
THERE CAN

(provided we right — handwritten)

30

BE NO RECOURSE BY NABALCO TO OPTIONS UNDER OLD CONTRACT STOP

YOUR THIRDLY WE AGREE THIS BEST BASIS STOP

YOUR CEE WE STILL FEEL ISSUE OF CURRENT CONTRACT SHOULD BE KEPT OUT OF COURT IF POSSIBLE STOP THEREFORE IF YOU FEEL DURING NEGOTIATION THAT THIS CAN BE ACHIEVED BY SHAVING PRICE PLEASE ADVISE STOP

10 YOUR DEE 1 AND 2 NO COMMENT STOP 3 WE CAN ACCOMMODATE CHANGE IN VESSEL SIZE IN AFFREIGHTMENT IF THIS IS APPROPRIATE AT LATER STAGE STOP

YOUR EEE THANKS STOP

20 YOUR FFF DO NOT THINK YOU SHOULD OBJECT TO USE OF T/C AWARD IN CASE OF ARMS LENGTH CIF CUSTOMER STOP IT IS AN INTERNATIONALLY RECOGNISED METHOD OF ASSESSING FREIGHT AND EMPLOYMENT OF BROKER IS A GUARANTEE OF ITS INDEPENDENCE STOP SEE NO REASON WHY WE SHOULD TREAT CUSTOMER IN SAME MANNER AS ASSOCIATES STOP IN CASE OF LATTER WE ARE PREPARED TO TAKE THE ROUGH WITH THE SMOOTH BUT EXPECT TO RECOVER MARGINAL COSTS FROM 3RD PARTY CUSTOMER STOP HOWEVER AS ALTERNATIVE TO PROCEDURE PROPOSED IN OUR 112 WE WOULD ACCEPT A SINGLE BROKERS ASSESSMENT AT SAY 1/7/74 OF 3 YEAR T/C WHICH WOULD ONLY BE SUBJECT TO REVISION FOR CHANGES IN PORT COSTS AND BUNKERS STOP

WE PROPOSED 6 MONTHLY RE-ASSESSMENT SINCE WE FELT THIS WOULD BE LESS LIKELY TO RESULT IN ONE PARTY OR THE OTHER FEELING IN THE EVENT OF SIGNIFICANT CHANGE IN THE MARKET DURING CONTRACT PERIOD STOP FOR YOU INFORMATION OUR IDEA OF 3 YEAR T/C IS AROUND W240 STOP

30 YOUR GEE WE CONTENT VIEW CHANGE OF HEART REASON FOR WHICH WE CAN ONLY SPECULATE THAT EXCUSE FOR FAILURE NOW REMOVED STOP WE HOPE IT WILL NOT BE PUT TO TEST STOP

Exhibit AJ (part)
Telex:
BP Trading Ltd
to Defendant
 —
21st May, 1974
(Cont'd)

Exhibit AJ (part)
 Telex:
 Defendant to BP
 Trading Ltd
 23rd May, 1974

Exhibit AJ (part)

Defendant to BP Trading Ltd

TO BP LONDON C736 23.5.74
 FROM AUSTBEEPEE MELBOURNE

FOR JOHNSTON/RWH
 FROM WHOLESALERS SALES
 C O N F I D E N T I A L

NABALCO

TO AVOID ANY MISUNDERSTANDING WE SET OUT CURRENT
 POSITION

10

AYE WE HAVE GIVEN NABALCO NOTICE ON NEW PRICE OF
 DOLLARS AUSTRALIAN 54.44 PMT EFFECTIVE 26/6 UNDER CLAUSE
 9C(II) OF EXISTING CONTRACT

BEE THEY HAVE DISPUTED OUR ABILITY TO DO SO BUT HAVE
 GIVEN US NOTICE OF TERMINATION EFFECTIVE 24/7 IF OUR NOTICE
 IS PROVED VALID STOP ALTHOUGH WE HAVE FORMALLY ACCEPT-
 ED THEIR NOTICE EFFECTIVE 24/7 THEY STILL DISPUTE THE
 VALIDITY OF OUR NOTICE AND HENCE THE TERMINATION.

CEE ON 17/5 WE OFFERED THEM SUPPLIES UNDER A NEW
 CONTRACT TO COMMENCE 25/7 PROVIDED THEY AGREE COMPLETE
 TERMINATION EXISTING CONTRACT AND WAIVING ANY RIGHTS TO
 LITIGATION UNDER IT BY EITHER PARTY

20

DEE THE PRICES OFFERED WERE:

ONE YEAR 53.96 DLRS A PMT

THREE YEARS 56.52 DLRS A PMT

BOTH SUBJECT TO FULL ESCALATION STOP WE HANDED THEM A
 DRAFT COPY OF OUR PROPOSED TERMS AND CONDITIONS

EEE THEY ARE NOW CONSIDERING THEIR POSITION AND COOGAN
 (GENERAL MANAGER) PHONED TODAY TO SAY THEY WILL RE-
 SPOND EARLY NEXT WEEK

30

EFF THEY ARE EXPECTING SOME PRICE CONCESSION IN EVENT
 THEIR WAIVING RIGHTS TO LITIGATION AND WE AGREE YOUR
 COMMENT THIS WOULD BE PREFERABLE COURSE STOP HOWEVER
 COST OF COURT ACTION WOULD NOT BE SIGNIFICANT (ESTIMATE
 LESS THAN 50,000 DOLLARS) PROVIDING WE AVOID ANY GROUNDS
 FOR CONSEQUENTIAL DAMAGES TO THEM (E.\$ BY REDUCTION IN
 SUPPLY) STOP THERE IS THEREFORE NOT MUCH TO 'TRADE OFF'

GEE WE ARE DETERMINED TO SECURE A FAIR PRICE FOR THE NEW

CONTRACT AND FEEL CONFIDENT THIS WILL BE ACHIEVED STOP
 HOWEVER (AS MENTIONED IN OUR 650) THEIR FIRST REACTION TO
 OUR INITIAL PRICES BASED ON 64 DOLLARS US FOB PLUS MR AFRA
 WAS TO NOTE THEY WERE ABOVE INTERNATIONAL BUNKER PRICES
 STOP WE DETECT FROM VARIOUS SOURCES THAT P G FUEL OIL
 PRICES ARE WEAKENING AND ALTHOUGH THIS COULD BE A
 SEASONAL SITUATION IT WILL MAKE OUR NEGOTIATIONS MORE
 DIFFICULT STOP WE ARE QUITE SURE WHEN THEY REVERT NEXT
 WEEK NABALCO WILL BE FULLY ARMED WITH DETAILS OF
 10 CURRENT MARKET STOP THEREFORE WE SHOULD BE GRATEFUL IF
 YOU COULD CONFIRM THAT AROUND 64 DOLLARS US P L T F O B IS
 STILL A REALISTIC PRICE FOR THIS BUSINESS AND ANY SUPPORT-
 ING DATA WOULD BE APPRECIATED

Exhibit AJ (part)
Telex:
Defendant to BP
Trading Ltd
 —
23rd May, 1974
(Cont'd)

CCN EFF (E.G. BY REDUCTION IN SUPPLY) ETC..

Exhibit 59

Exhibit 59
Notes:
Mr Lockrey
 —
23rd May, 1974

Notes: Mr Lockrey

Telephone Conversation with Mr. J. Coogan —
 23rd May 1974

Mr. Coogan rang to advise as follows:—

- 20 1. He was endeavouring to get hold of two more directors to come to grips with the problem.
2. Our proposals are being studied by both Zurich and C.S.R.
3. A 3 year contract is strongly favoured by Nabalco and would be the best palliative for their shareholders in the circumstances of our negotiations. He referred to the fact that our terms and conditions were all BP's way, which I confirmed.
- 30 4. Mr. Coogan enquired as to whether we had considered the other points that he had made and I said that we have received advice on the freight aspect and that if all aspects of our requirements were met, i.e. complete disengagement from the old contract and any rights relating thereto, entering into a new contract could possibly result in a shaving of the 3 year price quoted. However, this was not definite at this stage since the whole matter was still under examination here, etc.
5. Mr. Coogan indicated that he expected to communicate with me again early next week.

CL:JR
 23 MAY 74

Exhibit U
Telex:
Kaiser Trading
Co. to Plaintiff
 23rd May, 1974

Exhibit U**Telex: Kaiser Trading Co. to Plaintiff**

NABALCO AA20472
 KTA AA20717

SYDNEY 23RD MAY 74 1810 HRS
 FOR MR E A NOTTER
 RDL-176
 Q0031 FUEL OIL FOR GOVE

1) FURTHER VARIOUS MEETING/DISCUSSIONS WE SHOULD LIKE TO RECONFIRM OUR EXTREME INTEREST IN WRITING A CONTRACT WITH YOU FOR 100PC OF YOUR REQUIREMENTS INITIALLY DURING THE YEAR COMMENCING AUG 1 1974 AND ENDING JULY 31 1975. 10

2) WE ARE CONFIDENT THAT WE CAN PROVIDE YOU WITH A COMPETITIVE ALTERNATIVE SOURCE OF SUPPLY (WE EVEN MANAGED TO OFFER YOU 3 X 20000T JULY/SEPT AT TWO DAYS NOTICE) BUT IN VIEW OF THE MAGNITUDE THINK WE NEED APPROX 10/12 DAYS BUT WE SHALL DOING WHAT WE CAN TO DEVELOP FULLY EARLIER 3 WE SHALL KEEP YOU POSTED.

REGARDS,
 LONGSTAFF
 KAISERTRADCO

20

Exhibit 60
Notes:
Mr Lockrey
 27th May, 1974

Exhibit 60**Notes: Mr Lockrey**

Telephone Conversation with Mr. E. Notter on 27th May.

Notter rang to advise —

1. Nabalco General Management had submitted our proposals and the implications for Nabalco to their Board.
2. Although in the past Nabalco Management here and in Zurich have avoided discussions on any subject relating to Australian fuel supply with BP London, Nabalco Chairman, Sir David Griffin, felt that he should make personal representation to our Mr. M.R. Rendle with whom he has common external board affiliations. 30

3. Notter suggested in effect that the Board was checking up on the General Management presentation — and understandably so alongside the magnitude of the Nabalco liability.
4. Apparently Sir David Griffin wishes to speak with Mr. Rendle at around 11.00 a.m. Tuesday, London time, and Nabalco were displaying courtesy by informing us first. I indicated we had no objection to the call being made and that we would inform London to expect it.

Exhibit 60
Notes:
Mr Lockrey
—
27th May, 1974
(Cont'd)

CL:JR
27 MAY 74

10

Exhibit AJ (part)

Exhibit AJ (part)
Telex:
Defendant to BP
Trading Ltd
—
27th May, 1974

Telex: Defendant to BP Trading Ltd

TO BP LONDON C785 27.5.74
FROM AUSTBEEPEE MELBOURNE

FOR RENDLE C/- RUSSETT/RWH
REPEAT.. RUSSETT/JOHNSTON/RWH
FROM LOCKREY/WSALES

20 C O N F I D E N T I A L AND URGENT FOR OPENING BUSINESS 28/5
SINCE OUR MEETING WITH NABALCO ON 17/5 (REPORTED IN OUR
650) WE HAVE HAD SEVERAL CONVERSATIONS WITH THEM STOP
THE CURRENT POSITION WAS SUMMARISED IN OUR 736 (23/5) STOP

IN A TELECON THIS MORNING WE LEARNED THAT COOGAN
(GENERAL MANAGER) HAD PUT THE WHOLE POSITION BEFORE THE
NABALCO BOARD STOP THEY ARE SO CONCERNED WITH THE
ENORMITY OF THE INCREASE THAT THE CHAIRMAN OF NABALCO
(SIR DAVID GRIFFIN) WISHES TO SPEAK WITH RENDLE (WHO HE
KNOWS PERSONALLY) WHILE HE IS IN LONDON TO GET CONFIRMA-
TION OF THE NABALCO GENERAL MANAGEMENT PRESENTATION
OF THE INTERNATIONAL BACKGROUND AND CURRENT FUEL OIL
MARKET POSITION, ETC (STOP)

30 I UNDERSTAND RUSSETT KNOWS SIR DAVID IN HIS CAPACITY AS
DEPUTY CHAIRMAN OF OIL SEARCH STOP THEREFORE THE
CONVERSATION COULD BE WITH EITHER YOURSELF OR RUSSETT
AND I ADDRESS THE REMAINDER OF THIS TELEX ACCORDINGLY

WE SHOULD BE PLEASED IF YOU TOOK AN EVEN HARDER LINE
THAN OURSELVES STOP WE FEEL WE HAVE BEEN MORE THAN FAIR
WITH NABALCO, NOT ONLY OVER THE PRICE, BUT ALSO WITH
MAINTENANCE OF SUPPLIES STOP

Exhibit AJ (part)
Telex:
Defendant to BP
Trading Ltd
—
27th May, 1974
(Cont'd)

POINTS YOU MAY WISH TO MAKE ARE:—

1. BPA HAVE INSULATED NABALCO FROM THE SUPPLY CRISIS AS THEY WOULD HAVE BEEN CUT BACK IF THEY WERE BUYING ON THE INTERNATIONAL MARKET STOP
2. THE DELIVERED PRICES QUOTED BY BPA FOR A NEW CONTRACT ARE REASONABLE IN TODAY'S MARKET.
(REFER OUR TELEX 650

1 YEAR 53.96 DOLRS A PMT
3 YEAR 56.32 DOLRS A PMT)

3. THEY ARE VERY FORTUNATE TO GET AN OFFER OF 3 YEAR SUPPLY STOP 10
4. ANY DEAL IS DEPENDENT ON COMPLETE CANCELLATION OF FUEL OIL IN OLD CONTRACT AND ANY LITIGATION RELATED THERETO.

IN CONCLUSION WE FEEL WE HAVE MADE GOOD PROGRESS WITH NABALCO GENERAL MANAGEMENT AND WITH YOUR SUPPORT WE HOPE THIS MOVE BY THE CHAIRMAN WILL HELP FOCUS THE BOARD'S MIND ON THE BENEFITS OF QUICKLY ACCEPTING OUR OFFER STOP

SIR DAVID INTENDS PHONING FROM SYDNEY AT 1100 HOURS LONDON TIME TUESDAY 28/5 STOP 20

Exhibit 66 (part)
Telex:
Defendant to BP
Trading Ltd.
—
28th May, 1974

Exhibit 66 (part)

Telex: Defendant to BP Trading Ltd.

V
TO BP LONDON 800 28-5-74.
FROM AUSTBEEPEE MELBOURNE

FOR SPP/ASB
RPTD BP SPORE 594 FOR S AND P
BRITPET MELBOURNE 312 FOR PRODUCTION
BEPEFINERS PERTH 839 FOR TECHNICAL 30

FROM PP AND S.
RESULTS SUMMARY FOR ASLAM AUG/SEP 74. PLEASE CONFIRM ACCEPTABLE BY RETURN.

INPUT	FLEXIBILITY	KWINANA	W'PORT	SPORE	INST	
CRUDE	250-400	161.7		87.0	—	
BASRA		16.7	1.7		—	
IRANIAN HEAVY			9.6		—	
KUWAIT	130-265				—	
QATAR	0-40	39.7			—	
SPIKED KUWAIT	SEE KUW	119.4		39.7	—	40

	FLEXIBILITY	KWINANA	W'PORT	SPORE	INST
(KGO IN SPIKED KUWAIT)	17.5-55	(17.9)		(9.1)	
BARROW		134.3			
GIPPSLAND			362.0		—
TOTAL CRUDE		471.8	373.3	126.7	—
COMPONENTS					
CRF KLD	0-20				—
KHFO	40-80	75.2	4.8		—
AF850		97.6			—
10 TOTAL COMPONENTS		172.8	4.8		
PRODUCT IMPORTS					
M98 EXCH				8.4	
M85 EXCH				1.6	
ATK EXCH				5.8	
V8 BMS		1.0			
K29 ADEN		13.6			
F60 ADEN		5.0			38.0
F102 ADEN					57.0
F201 ADEN	0-65				8.9
20 ATK BMS	0-16				
G77/G21 ADEN	0-14				
TOTAL IMPORTS		19.6		15.8	103.9
TOTAL INPUT		664.2	378.1	142.5	103.9
OTHER FLEXIBILITIES					
FUEL EX ADEN	100-150				
(EXCEPT F201)					
FUEL EX BMS	60-120				
MS EX BMS	0-30				
DEMAND					
30 LIGHT DISTILLATE		151.7	132.4	11.7	18.5
MIDDLE DISTILLATE		178.4	71.3	80.1	30.0
RESIDUALS		286.6	7.0	23.4	206.2
STOCK CHANGE					
LIGHT DISTILLATE		-30.0			
MIDDLE DISTILLATE		21.0	-8.0	-17.0	
			15.0	-15.0	
TOTAL DEMAND		607.7	207.7	83.2	227.7
EXPORTS					
40 NZ PMS		7.4	3.1		—
G21			0.7		—
ATK		4.0	(6.0 EX GEELONG)		
JAPAN					
LDF	15-45			17.5	—
F182	0-20	20.0			
F199	0-40		40.0		
TOTAL EXPORTS		31.4	43.8	17.5	
INTER REFINERY TRANSFERS					
M89		4.2	-4.2		
ATK		5.3	-5.3		

Exhibit 66 (part)
Telex:
Defendant to BP
Trading Ltd.
—
28th May, 1974
(Cont'd)

Exhibit 66 (part)
Telex:
Defendant to BP
Trading Ltd.
—
28th May, 1974
(Cont'd)

	FLEXIBILITY	KWINANA	W'PORT	SPORE	INST	
G76			4.7	-4.7		
G77	2.3		2.9	-5.2		
GIPPSLAND KERO	-13.0		13.0			
LGO	-3.1		3.1			
HGO	-10.7		10.7			
RES	-14.9		14.9			
KUWAIT WGO	-1.1		1.1			
KERO	-0.9		0.9			
INSTALLATIONS EX REFINERY	7.7		61.0	55.1	-123.8	10
WORKS FUEL AND LOSS (+FLARE)	50.6		18.5	2.6		
TOTAL OUTPUT	665.5		378.1	143.2	103.9	

VALUES ON IMPORT RESTRICTIONS (NEGATIVE INDICATES SAVING ON
1 TON MORE)

	DLRS AUST PER	AFTER TAX	
MINIMUM BASRA CRUDE	0.51		
MINIMUM SPIKED KUWAIT TO KWINANA	-1.47		
MINIMUM FUEL EX ADEN	0.45		
MAXIMUM KHFO	0.23		
MAXIMUM G77/G21 AT LOWEST VALUE	-6.71		20

DEE:

VALUES ON EXPORT RESTRICTIONS (NEGATIVE INDICATES SAVING OF
1 TON MORE)

MAXIMUM F182	-3.00
MAXIMUM F199	-4.66

EEE:

UNIT UTILISATION (PERCENT UTILISED EXCEPT WHERE 100 PERCENT WHEN
VALUE IN DLRS AUST/TON AGAINST CAPACITY UNDERLINED)

	KWINANA	W'PORT	SPORE	
CRUDE DISTILLATION	92	83	3.55	30
VACUUM DISTILLATION	58	3	—	
CAT REFORMER	59	80	—	
CAT CRACKER	3.92	—	—	
HYDROTREATER	—	73	—	
HYDROFINER	88	—	—	
KERO TREATER	—	—	17.68	

PRODUCT VALUES DLRS (A) PER TON

	AFTER TAX		WITHOUT TAX	
	KWINANA	W'PORT	SINGAPORE	
LDF/NAPHTHA	58.66	58.45	102.99	40
M98	57.77	57.74	98.96	
M89	53.50	55.52	110.53	
ATK	50.67	—	86.42	
G3 5	47.37	41.79	—	
G20	43.03	—	—	
G21/77	42.50	39.52	69.23	
G74	—	—	69.23	
D15/16	39.26	39.43	—	
F60	31.48	—	47.56	
F160	—	—	47.56	50

	AFTER TAX		WITHOUT TAX SINGAPORE
	KWINANA	W'PORT	
F182	26.90	—	—
F199	—	37.48	—
BITUMEN			
85/100	25.13	32.55	—
G76	42.92	39.76	—
G44	—	—	—
10 KEW	46.06	—	—
F61/163	31.48	—	—
F208	35.54	—	—
F102	31.48	34.20	47.77
F175	31.48	—	—
F215	29.48	—	—
F129	29.24	—	—
NZG21	42.63	42.54	—

Exhibit 66 (part)
Telex:
Defendant to BP
Trading Ltd.
—
28th May, 1974
(Cont'd)

INSTALLATIONS SUPPLY PATTERN:

	PRODUCT	INST	AFTER TAX		WITHOUT TAX (IMPORT)
			KWIN (EXREFINERY)	W'PORT SPORE	
20	PMS	ADELAIDE		9.8	
	RMS	"	6.7		
	LDF2	NSW	1.0	1.0	
	G76	ADELAIDE		3.0	
	F199	WHYALLA		35.2	
	F199	MELBOURNE		12.0	
	F102	MELBOURNE			38.0
	F102	TASMANIA			19.0
	F60	NSW			38.0
	F201	GOVE		55.1	8.9

30 HHH:

COMMENTS:

1) SINGAPORE ATK EXCHANGE IS AS REPRESENTED IN GRAM. IF A FIRM EXCHANGE CANNOT BE ARRANGED THE EXTRA REQUIRED COULD BE MADE AVAILABLE EX AUSTRALIA.

2) G77/G21 EX ADEN WAS REPRESENTED AS 0-14 AT 83.57 US DLRS PER TONNE AND ANY ABOVE THAT AT 93.35. THE RESULT WAS SUPPLY OF ALL BUT 0.7 OF NZ G21 REQUIREMENT.

40 3) YOUR 250 OF 24 MAY. TOGETHER WITH LIMITS ON FO EXPORTS WE REDUCED THE LOWER LIMIT ON BASRA IMPORT TO 250. WITH THE UNCONSTRAINED EXPORTS AND BASRA MINIMUM OF 300 THE MARGINAL VALUE ON THE MINIMUM WAS 0.94 COMPARED WITH 0.51 NOW. YOU WILL NOTICE THE HIGH VALUES ON FO EXPORTS. IN THE LIGHT OF THESE COULD THE RESTRICTIONS BE EASED. ON AVERAGE OVER APRIL TO END JULY WE HAVE HAD OR HAVE PROGRAMMED 2 GP CARGOES OF F199 PER MONTH. GIVEN THAT JULY HAS A GP AND AN MR AUG/SEP COULD BE EXPECTED TO 3 GP'S. IS THIS POSSIBLE....

Exhibit V
Telex:
Kaiser Trading
Co. to Plaintiff

28th May, 1974

Exhibit V

Telex: Kaiser Trading Co. to Plaintiff

NABALCO AA20472

KTA AA20717
SYDNEY 28TH MAY 74 1600HRS

FOR MR E A NOTTER

RDL-228
Q0031 FUEL OIL

(1) FURTHER TO LAST FRIDAY EVENING'S DISCUSSIONS OUR PEOPLE IN OAKLAND INFORMED ME OVER THE WEEKEND THAT THEY FULLY EXPECT TO BE ABLE TO PROVIDE AN OUTLINE OF A PROPOSITION EITHER TOMORROW OF THURSDAY. 10

(2) IN THESE CIRCUMSTANCES WE COMMEND TO YOU THE VIEW THAT SOME DELAY IN MAKING A FINAL IRREVOCABLE COMMITMENT TO B.P. WOULD BE IN YOUR COMPANY'S INTEREST AND LOOK FORWARD TO DISCUSSING THIS MATTER WITH YOU DURING THE COURSE OF THIS WEEK.

(3) IN THE MEANTIME IT WOULD HELP US IN OUR EFFORTS TO OVERCOME THE VANADIUM PROBLEM SO FAR AS FUEL FOR THE CALCINING KILNS ARE CONCERNED TO HAVE MORE DETAIL REGARDING YOUR STORAGE ARRANGEMENTS TO SEE WHETHER SEGREGATION OF LOW VANADIUM OIL IS POSSIBLE. 20

REGARDS,
LONGSTAFF
KAISERTRADCO

Exhibit 61
Notes:
Mr Lockrey

29th May, 1974

Exhibit 61

Notes: Mr Lockrey

Following receipt of London cable from Mr M.R. Rendle I spoke with E. Notter this morning. He and General Manager Coogan, expected to hear from Sir David Griffin during the morning. 30

I explained that I was concerned that Sir David may have gained the impression

that there was plenty of time to talk over our mutual problem and that he may have got the impression that we were prepared to change our stand. It was emphasised that we could not in any way alter our position and that if Nabalco contemplated entering into a new agreement this should be done without delay.

*Exhibit 61
Notes:
Mr Lockrey
—
29th May, 1974
(Cont'd)*

On the other hand, if they wish to operate on a spot purchase basis this intention also should be conveyed to us without delay since we were currently involved in the precision planning of our August shipping programme and delays at this stage could react very much against Nabalco.

10 Notter thoroughly agreed with my reasoning and stated "they" were not easy about Sir David Griffin's role and that the Nabalco General Management would push for a speedy resolution of the whole matter.

Notter is leaving for a school in Fontainebleau, France in June and would like to see a new contract written up without delay.

CL:JR
29 MAY 74

Exhibit 66 (part)

Telex: BP Trading Ltd. to Defendant

*Exhibit 66 (part)
Telex
BP Trading Ltd.
to Defendant
—
29th May, 1974*

20 TO AUSTBP MELBOURNE 307 29/5/74
CC BP SINGAPORE 939 (FOR S AND P)
FM BP LONDON

FOR PP AND S FROM SPP/ASB

ASLAM AUG/SEPT REOPT AS SUMMARISED YOUR 800 THIS IS TO CONFIRM THAT SOLN IS ACCEPTABLE BASIS FOR STOCK EXERCISE AND PROGRAMMING. PROVIDED QATAR CRUDE RUN FOR BG13H PRODUCTION.

PLEASE CONFIRM. AT PRESENT CANNOT INCREASE OUR COMMITMENT TO BE ABLE TO ALLOW HIGHER SALES OF LSFO TO JAPAN BUT WILL BEAR IN MIND THAT ANOTHER GPF199 IS LIKELY TO BE AVAILABLE.

30 WILL REVERT ON DEVELOPMENTS CONCERNING SINGAPORE EXCHANGES WHEN SITUATION CLEARER. YOUR COMMENT I NOTED

Exhibit N

Draft Clauses of New Contract with Mr Notter's notes thereon

- (a) F.O.B. By adding to or subtracting from it (conformably with the rise or fall in the Posted Price hereinafter mentioned) the amount by which the lowest Posted Price for Light Fuel Oil (converted to Australian currency per metric ton) posted by a company regularly posting a price at Bandar Mah-Shahr for that grade of fuel as at the fifteenth day of the immediately preceding month differs from an index of \$(A) per metric ton. 10
- (b) Freight. By adding to or subtracting from it (conformably with the rise or fall in the M.R. AFRA rate hereinafter mentioned) the amount by which the ocean freight rate on the date discharge commences for the voyage Bandar Mah-Shahr/Gove calculated from the assessment known as Medium Range AFRA (converted to Australian currency per metric ton) differs from an index of \$(A) per metric ton. 10
- (c) For the purposes of sub-clauses (a) and (b) of this clause conversion to Australian currency of amounts expressed in U.S. currency shall be at the relevant selling rate of exchange for telegraphic transfer as published by the Reserve Bank of Australia on the date discharge commences or if there is no such publication relative to that day then such publication made immediately prior to that date. 20
- (i) The Seller shall have the right to increase the price payable hereunder by the full amount of all increases in the cost to the seller of making available the petroleum products deliverable hereunder:
- (A) resulting from any increase in the Seller's tax paid cost per barrel of crude petroleum. For the purposes of this sub-clause (d) "the Seller's tax paid cost per barrel of crude petroleum" shall mean the total, expressed as an amount per barrel, of the Seller's and the Seller's suppliers' costs of any kind whatsoever incurred in obtaining delivery at the loading terminal of the grades of crude petroleum used by the Seller or the Seller's supplier for the manufacture of petroleum products, including (without limitation to the generality of the foregoing) production, loading and operating costs, royalties, duties, income and other taxes, payments and benefits of any kind whatsoever payable or accruing to any government or agency thereof or any governmental, local or port authority, and the cost of purchased oil under participation or other arrangements of whatsoever nature; or 30
- (B) resulting from the imposition by any governmental, local or port authority of any new or increased duties, taxes, fees or other similar charges upon the petroleum products supplied hereunder, or upon their

production, manufacture, storage, export, import, ownership, use, handling, sale, delivery or transportation; or

*Exhibit N
Draft Clauses of
New Contract
with Mr Notter's
notes thereon
(Cont'd)*

? onerous

(C) resulting from the Seller being unable (or able only on abnormal terms), due to circumstances beyond its control, to obtain supplies of crude petroleum and/or petroleum products from its normal sources and by the normal and recognised routes for such supplies, provided that any price increase pursuant to this sub-section (C) shall apply only for so long as such conditions continue.

10 (ii) The Seller's right under sub-clause (d) (i) above shall be exercised by the Seller giving to the Buyer written notification of the price increase in question which shall apply in respect of all shipments the loading of which shall have been completed on or after the effective date of the related increase in the Seller's cost. If at the time of giving such notification the Seller is unable to specify the actual amount of the increase in question, the increase to be applied shall be the Seller's best estimate of such amount and any necessary adjustment shall be made as soon as possible thereafter.

20 (iii) The Seller shall also have the right to increase the price payable under the Agreement to take account of any increase in the Seller's tax paid cost per barrel of crude petroleum, as such cost is defined in sub-section (d) (i) (A) above which the Seller has reason to believe will be incurred by the Seller or the Seller's suppliers, provided that if the price hereunder is increased pursuant to this sub-section (iii) the necessary adjustment shall be made between the Seller and the Buyer when the actual amount and effective date of the related increase (if any) in the Seller's tax paid cost per barrel of crude petroleum are known. The Seller's right under this sub-section (iii) shall be exercised by the Seller giving to the Buyer written notification of the price increase in question which shall apply from the date of such notification.

30 (iv) If the Buyer is unwilling to pay any such increased price the increased price shall nevertheless take effect as aforesaid but the Buyer shall have the right, to be exercised within 15 days of the date of the Seller's notification of the increase, to give the Seller not less than 15 days' notice in writing of termination of this Agreement.

(v) This sub-clause (d) shall not apply in respect of any cost increase provided for elsewhere in this Agreement.

40 (e) Change in Seller's Circumstances. If at any time there is a change in or departure from existing concessional or other arrangements under which the Seller or the Seller's supplier acquires crude petroleum, or a change in the circumstances in which the Seller or the Seller's supplier carries on its business of transporting crude petroleum and manufacturing, acquiring and supplying petroleum products, then the Seller may notify the Buyer of the modifications to the Agreement which the Seller deems appropriate and equitable in the changed circumstances.

If within 15 days of the date of the Seller's notification the Buyer shall not have notified the Seller in writing of the Buyer's acceptance of the modifications

*Exhibit N
Draft Clauses of
New Contract
with Mr Notter's
notes thereon
(Cont'd)*

proposed, the Agreement shall terminate on the 35th day after the date of the Seller's notification.

(f) If at any time after the date of this Agreement there shall be a variation in the cost to the Seller of supplying furnace oil hereunder resulting from:—

(i) the refixing by the Commonwealth Government of the Absorption Formula, the Allocation Formula and/or the price per barrel of indigenous crude oil (excepting any refixing of the price per barrel as a result only of a change in the assay of an indigenous crude oil blend) under the Commonwealth Government's policy relating to indigenous crude oil or

(ii) a variation or variations aggregating not less than two per centum in the London closing selling rate of exchange for telegraphic transfer of United

A\$—US or A\$ (indiscipherable)

States Dollars or Australian Dollars published by AAP Reuters Economic Services compared with the relevant closing selling rate of exchange for telegraphic transfer applying on the date of this Agreement or as the case may be the relevant rate of exchange as aforesaid applying at the time of the immediately preceding variation of the price pursuant to this sub-section (ii)

then the Seller may, by written notice to the Buyer, vary the price payable hereunder for furnace oil.

If within 30 days of the date of the Seller's notification the Buyer shall not have notified the Seller in writing of the Buyer's acceptance of the varied price the Agreement shall terminate on the 35th day after the date of the Seller's notification.

(g) Price Control/Prices Justification. If at any time during the continuance of this Agreement the price for furnace oil established pursuant to the provisions hereof shall be greater than the price at which sales of furnace oil at Gove by the Seller has been justified pursuant to the Prices Justification Act or is greater than the highest price at which the Seller may sell furnace oil at Gove under any price control legislation then the Seller shall have the right to terminate this Agreement by giving to the Buyer one month's notice in writing to that effect.

Note: Smaller print indicates handwriting.

*Exhibit W
Draft Supply
Agreement*

Exhibit W

Draft Supply Agreement

AGREEMENT made day of 1974 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:

*Exhibit W
Draft Supply
Agreement
(Cont'd)*

- Definitions For the purposes of this Agreement:
- M.R. Tankship shall be deemed to be a tankship which has a cargo carrying capacity of between 25,400 and 45,720 metric tons.
 - Furnace Oil shall be deemed to be a product complying with the specifications set forth in Schedules 2 hereof.
 - Metric Ton shall be deemed to equal 0.9842 of a Long Ton.
 - Barrel shall be deemed to equal 0.1468 metric tons.
- 10
- Term 1. THIS Agreement shall commence on the 27th day of July 1974 and shall continue for a period of three (3) years therefrom subject always to the other terms and conditions of this Agreement.
- Products 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 not less than 320,000 metric tons of Furnace Oil in each year during the continuance hereof PROVIDED ALWAYS that the Seller shall not be required by the Buyer to supply hereunder in any such year more than 400,000 metric tons of Furnace Oil.
- 20 Provision of Equipment by Buyer 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.
- 30
- (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 the receipt of Furnace Oil hereunder as will for the time being be sufficient to store 35,000 long tons plus three (3) 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 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.
- 40
- Delivery to Buyer 4. (a) Delivery of Furnace Oil shall be made in bulk ex tankships into the Buyer's ships Furnace Oil discharge hose at Gove.

*Exhibit W
Draft Supply
Agreement
(Cont'd)*

- (b) The Seller will ensure that the discharge temperature of Furnace Oil delivered hereunder from tankships is not less than 125 degrees Fahrenheit.
- Buyer's Requirements
5. (a) The Buyer shall give to the Seller at its office at Adelaide
- (i) Notice in writing at fortnightly intervals of its stock holding of Furnace Oil,
 - (ii) Notice in writing on or before the first day of each month of its estimated usage of Furnace Oil for that month and each of the following three (3) months,
 - (iii) Notice in writing on or before the first day of each month of each programmed delivery into the Buyer's said storage tanks during each of the following three (3) months of Furnace Oil purchased by the Buyer from another supplier. 10
- (b) (i) Subject to the Buyer's port facilities and port usage of the relevant time the Seller will arrange its tankship programme to enable it to replenish the Buyer's stocks of Furnace Oil so that the Buyer's stocks of Furnace Oil for the time being (taking into account the programmed deliveries mentioned in sub-clause 5(iii) hereof) do not fall below fourteen (14) days' estimated usage given by the Buyer to the Seller under sub-clause 5(a) (iii) hereof. 20
- (b) (ii) The Seller will notify the Buyer each month of its shipping programme hereunder for the ensuing month and of its then anticipated shipping programme hereunder for each of the next succeeding two (2) 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 endeavours to rearrange such programme. 30
- Risk and Measurement
6. THE property in each delivery of 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 measurements. 40

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 of duly completed

form or forms shall be sent by the Buyer to the Seller at its office at Adelaide.

Product
Specifi-
cations

7. THE quality of the Furnace Oil to be delivered hereunder shall not be inferior to the specifications set out in Schedule 2 hereto unless otherwise

Price

8. SUBJECT to the other provisions of this Agreement the base price to be paid by the Buyer to the Seller for Furnace Oil shall be \$A per metric ton and such base price shall be adjusted as follows:

10

(a) F.O.B. By adding to or subtracting from it (conformably with the rise or fall in the posted price hereinafter mentioned) the amount by which the lowest price posted at Bandar Mah-Shahr for Medium Fuel Oil on the fifteenth day of the immediately preceding month (converted to Australian currency per metric ton) by a company regularly posting a price at Bandar Mah-Shahr for that grade of fuel differs from an index of \$A per metric ton.

20

(b) FREIGHT By adding to or subtracting from it (conformably with the rise or fall in the M.R. AFRA rate hereinafter mentioned) the amount by which the ocean freight rate on the date discharge at Gove commences for the voyage Bandar Mah-Shahr/Gove calculated from the assessment known as Medium Range AFRA (converted to Australian currency per metric ton) differs from an index of \$A per metric ton.

30

(c) For the purposes of sub-clause (a) and (b) of this clause conversion to Australian currency of amounts expressed in United States currency shall be at the relevant selling rate of exchange for telegraphic transfer published by the Reserve Bank of Australia as applying on the date discharge at Gove commences or if there is no such publication relative to that day then at the relevant selling rate of exchange for telegraphic transfer published by the Reserve Bank of Australia as applying immediately prior to that day.

(d) COST INCREASES

(i) The Seller shall have the right to increase the price per metric ton payable hereunder by the full amount of all increases (converted to an amount per metric ton) in the cost to the Seller of making available the Furnace Oil deliverable hereunder:

40

(A) resulting from any increase in the Seller's tax paid cost per barrel of crude petroleum. For the purposes of this sub-clause (d) "the Seller's tax paid cost per barrel of crude petroleum" shall mean the total, expressed as an amount per barrel, of the Seller's and the Seller's suppliers' costs of any kind

whatsoever incurred in obtaining delivery at the loading terminal of the grades of crude petroleum products, including (without limitation to the generality of the foregoing) production, loading and operating costs, royalties, duties, income and other taxes, payments and benefits of any kind whatsoever payable or accruing to any government or agency thereof or any governmental, local or port authority, and the cost of purchased oil under participation or other arrangements of whatsoever nature; or

10

(B) resulting from the imposition by any governmental, local or port authority of any new or increased duties, taxes, fees or other similar charges upon the Furnace Oil supplied hereunder, or upon its production, manufacture, storage, export, import, ownership, use, handling, sale, delivery or transportation; or

(C) resulting from the Seller being unable (or able only on abnormal terms), due to circumstances beyond its control, to obtain supplies of crude petroleum and/or petroleum products from its normal sources and by the normal and recognised routes for such supplies, provided that any price increase pursuant to this paragraph (C) shall apply only for so long as such conditions continue.

20

(ii) The Seller's right under sub-clause (d) (i) above shall be exercised by the Seller giving to the Buyer written notification of the price increase per metric ton which shall apply to all shipments the loading of which shall have been completed on or after the effective date of the increase in the Seller's costs. If at the time of giving such notification the Seller is unable to specify the actual amount of the increase per metric ton in question, the increase per metric ton to be applied shall be the Seller's best estimate of such amount and any necessary adjustment shall be made as soon as is practicable thereafter.

30

(iii) The Seller shall also have the right to increase the price per metric ton payable hereunder to take account of any increase in the Seller's tax paid cost per barrel of crude petroleum, as such cost is defined in sub-section (d) (i) (A) above, which the Seller has reason to believe will be incurred by the Seller or the Seller's suppliers, provided that if the price hereunder is increased pursuant to this sub-section (iii) the necessary adjustment shall be made between the Seller and the Buyer when the actual amount and effective date of the related increase (if any) in the Seller's tax paid cost per barrel of crude petroleum are known. The Seller's right under this sub-section (iii) shall be exercised

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by the Seller giving to the Buyer written notification of the price increase in question which shall apply from the date of such notification.

10 (iv) If the Buyer is unwilling to pay any such increased price the increased price shall nevertheless take effect as aforesaid but the Buyer shall have the right, to be exercised within fifteen (15) days of the date of the Seller's notification of the increase, to give the Seller not less than fifteen (15) days' notice in writing of termination of this Agreement.

(v) This sub-clause (d) shall not apply in respect of any cost increase recovered by the Seller under any other provision of this Agreement.

20 (e) CHANGE IN SELLER'S CIRCUMSTANCES If at any time there is a change in or departure from existing concessional or other arrangements under which the Seller or the Seller's supplier acquires crude petroleum, or a change in the circumstances in which the Seller or the Seller's supplier carries on its business of transporting crude petroleum and manufacturing, acquiring and supplying petroleum products, then the Seller may notify the Buyer of the modifications to the Agreement which the Seller deems appropriate and equitable in the changed circumstances.

If within fifteen (15) days of the date of the Seller's notification the Buyer shall not have notified the Seller in writing of the Buyer's acceptance of the modifications so notified by the Seller this Agreement shall terminate on the 35th day after the date of the Seller's notification.

30 (f) If at any time after the date of this Agreement there shall be a variation in the cost to the Seller of supplying Furnace Oil hereunder resulting from:

(i) the refixing by the Commonwealth Government of the Absorption Formula, the Allocation Formula and/or the price per barrel of indigenous crude oil (excepting any refixing of the price per barrel as a result only of a change in the assay of an indigenous crude oil blend) under the Commonwealth Government's policy relating to indigenous crude oil; or

40 (ii) a variation or variations aggregating not less than two per centum in the London closing selling rate of exchange for telegraphic transfer of United States Dollars or Australian Dollars published by AAP Reuters Economic Services compared with the relevant closing selling rate of exchange for telegraphic transfer applying on the date of this Agreement or as the case may be the relevant rate of exchange as aforesaid applying at the time of the

immediately preceding variation of the price pursuant to this paragraph (ii);

then the Seller may, by written notice to the Buyer, vary the price payable hereunder for Furnace Oil.

If within thirty (30) days of the date of the Seller's notification under this sub-clause (f) the Buyer shall not have notified the Seller in writing of the Buyer's acceptance of the varied price this Agreement shall terminate on the 35th day after the date of the Seller's relevant notification.

(g) PRICE CONTROL/PRICES JUSTIFICATION If at any time during the continuance of this Agreement the price for Furnace Oil established pursuant to the provisions hereof shall be higher than the price at which sales of Furnace Oil at Gove by the Seller has been (if necessary) justified pursuant to the Prices Justification Act or is higher than the highest price at which the Seller may sell Furnace Oil at Gove under any price control legislation applying in the Northern Territory then the Seller shall have the right to terminate this Agreement by giving to the Buyer thirty five (35) days notice in writing to the effect. 10

(h) If at any time during the continuance hereof 20

(i) a price shall cease to be posted at Bandah Mah-Shahr for medium fuel oil delivered f.o.b.; or

(ii) the price or prices posted at Bandah Mah-Shahr for medium fuel oil (or any posted price substituted therefor as herein provided) delivered f.o.b. shall cease to be quoted in United States currency per barrel; or

(iii) the Medium Range AFRA for the voyage Bandar Mah-Shahr/Gove shall cease to be made; or

(iv) the Reserve Bank of Australia shall cease for a period of not less than seven (7) days to publish a selling rate of exchange in Australian Dollars for telegraphic transfer of United States Dollars; or 30

(v) AAP Economic Services shall cease for a period of not less than seven (7) days to be published;

then the Seller shall give the Buyer notice thereof, in which event the parties hereto undertake to consult together for the purpose of agreeing upon fresh provisions for the variation of the price per metric ton payable hereunder for Furnace Oil. If, within a period of one (1) month from the date of the Seller's notice, the parties shall fail to reach agreement, either party may refer the matter to arbitration and such submission shall be deemed to be a submission to arbitration within the meaning of 40

the Act for the time being in force in the State of New South Wales relating to arbitration. Each fresh provision for the variation of the said price so fixed by arbitration shall take effect from the date of the Seller's notice to the Buyer in respect of that provision.

10 9. **DEMURRAGE** The said base price is based on the discharge of each shipment of Furnace Oil by an MR Tankship at an average rate of 1,102 metric tons per running hour Sundays and holidays included unless discharging on the relevant Sunday and/or holiday is prohibited by Law or Statutory Regulations at the Port of Gove. 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.

20 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 rate 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 said average rate 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.

30 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 fifteen (15) days after the expiry of the aforesaid period of thirty (30) 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.

40 **Payment** 10. **PAYMENT** for products delivered hereunder shall be made to the Seller's office at Sydney within thirty (30) days after presentation by the Seller to the Buyer of an invoice for the quantity so delivered.

Force Majeure 11. **NO** failure or omission to carry out or observe any of the stipulations or conditions of this contract shall except as to the obligation by the Buyer to make payments hereunder and 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.

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 of the Seller's sources 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 Furnace Oil 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. 10

The Buyer shall be free to purchase from other suppliers any deficiency of deliveries caused by the operation of this Clause. 20

12. 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 mailed shall be deemed served or given on the third day after the date of mailing. Each notice, consent or request sent by telegram, telex or cable shall be deemed served or given on the day after it is 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 the foregoing provisions of this clause a notice of readiness to discharge to be given under the provisions of Clause 9 hereof may subject to the observance of the requirements of that clause be given orally or by telegraph wireless telephone or in writing. 30

13. THIS Agreement shall be governed by and construed in accordance with the laws for the time being of the State of New South Wales. 40

14. 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 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.

*Exhibit W
Draft Supply
Agreement
(Cont'd)*

15. 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.

16. THIS Agreement shall constitute the entire Agreement between the parties hereto with respect to the supply of Furnace Oil by the Seller to the Buyer hereof and shall supersede all previous negotiations, commitments and writings with respect thereto.

10

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

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

.....
Director

.....
Secretary

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

.....
Director

.....
Secretary

20

(Signatures not reproduced)

Exhibit W
Draft Supply
Agreement
(Cont'd)

SCHEDULE I

HARBOUR FACILITIES

1. FUEL OIL

- One 18" standard weight wharfline, length approximately 6,500 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.

2. FIRE FIGHTING SYSTEM

10

- One complete fire fighting system approved by the local Fire Fighting Authority.

SCHEDULE II

SPECIFICATION BP FURNACE OIL

		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	—	20
Viscosity @ 122°F @ 100°F	cs	370 max.	D 445/71		*
	secs				
	Red 1	3,500 max.	Calc.		
Pour Point	°F	85 max.	D 97/51		*
Ash	% wt	0.1 max.	D 482/4		*
Water by Distillation	% vol.	0.5 max.	D 95	74	*
Sediment by Extraction	% wt	0.1 max.	D 473	53	*
Vanadium	ppm	100 max.	BP 370/62T		*
Calorific Value (Gross)	Btu/lb	18,000	Calculated		30

* ASTM-IP Joint Method

Exhibit 66 (part)

Exhibit 66 (part)
Telex:
Defendant to BP
Trading Ltd.
 —
 31st May, 1974

Telex: Defendant to BP Trading Ltd.

TO BP LONDON 88 31-5-74.
 FROM AUSTBEEPEE MELBOURNE

FOR SPP/RSB
 SPP/ASB
 SPP/PRODUCTS/EKELBLAD/ROBINSON
 SPP/COS/PLUMBLY
 RWH/WARR

10 RPTD BP SPORE 600 FOR S AND P
 BEPEFINERS PERTH 865 FOR TECHNICAL
 BRITPET MELBOURNE 316 FOR PRODUCTION.

FRPM PP AND S.

STOCK EXERCISE FOR JUN JUL AUG AND SEP.

FIRSTLY KWINANA:

AYE IMPORTS.		JUN	JUL	AUG	SEP
	1) CRUDE				
	BARROW	122	80	99	40
	BASRA	88	118	168	—
20	KUWAIT	157	105	30	74
	IRANIAN HVY	—	40	—	—
	QATAR	—	—	40	—
	KUWAIT SPIKE	—	—	34	80

2 REFORMER FEED NIL

3 NOMINATIONS.

	3/6 SEA SWALLOW	37.3	BASRA
	5/6 SOLEN	61.0	BARROW
	5/6 BR CAVALIER	50.7	BASRA
30	13/6 SOLEN	61.0	BARROW
	15/6 BR LIGHT	34.0	KUWAIT
	20/6 BR COMET	34.0	KUWAIT
	28/6 SVEN SALEN	40.0	KUWAIT
	6/7 BR PRESTIGE	42.0	BASRA
	9/7 SOLEN	61.0	BARROW
	9/7 BR JUDGE	42.0	BASRA
	12/7 BP ENDEAVOUR	19.0	BARROW
	13/7 BR ARCHITECT	34.0	KUWAIT
	18/7 BR ENERGY	34.0	BASRA
40	19/7 BR LIGHT	34.0	KUWAIT
	20-25/7 TBN	40.0	IRANIAN HVY
	24/7 TANJA DAN	37.0	KUWAIT 20.0 KHFO
	2/8 BR DESTINY	42.0	BASRA
	3/8 BR HUSSAR	30.0	KUWAIT 20.0 KHFO

Exhibit 66 (part) Telex: Defendant to BP Trading Ltd. — 31st May, 1974 (Cont'd)	1-5/8 TBN 8/8 LONG PHOENIX 8/8 BP ENDEAVOUR 10/8 SOLEN 18/8 BR PRESTIGE 20-25/8 TBN 26/8 BP ENDEAVOUR 27/8 BRANDON PRIORY	40.0 QATAR 48.0 BASRA 19.0 BARROW 61.0 BARROW 42.0 BASRA 34.0 KUWAIT SPIKE 19.0 BARROW 36.0 BASRA.
---	--	---

ABOVE BASED 290 OF 29/5 FROM CRUDE OIL SHIPPING WITH KHFO
 ADDED ON TANJA DAN 24/7 AND HUSSAR 3./8 HAVE ALSO 10
 REQUESTED ADDITIONAL TBN 20-25/7 WITH IRAN HVY AND 1-5/8
 WITH QATAR ALSO TBN 20-25/8 WITH SPIKED KUWAIT.

4) PRODUCTS/COMPONENTS.

	JUN	JUL	AUG	SEP	
K29		11.0(B)	10.0(E)		
K29		12.0(C)			
V8		2.5(C)			
F129	40.0(A)	20.0(D)			
KHFO		20.0(F)	20.0(G)	35.0H	
AF850				100.0J	20

- (A) IS SEA SONG ETA KWIN 2/6
 (B) IS KZ349 BR VINE ETA KWIN 22/7
 (C) IS KZ350 BR CORMORANT ETA KWIN 5/7
 (D) IS TAHAMA ETA KWIN 2/7
 (E) IS TBN ETA KWIN 20-25/7
 (F) IS TANJA DAN ETA KWIN 24/7 BALANCE CRUDE
 (G) IS BR HUSSAR ETA KWIN 3/8 BALANCE CRUDE
 (H) LOADED WITH KUWAIT CRUDE
 (J) MR VESSELS PREFERRED WITH ARRIVALS EVENLY DURING 30
 MONTH.

	JUN	JUL	AUG	SEP
LUBES	3.6(A)	5.0(C)		
M98		2.0(B)	3.0(E)	
ATK		10.0(B)	6.0(E)	10.0(F)
ATK		6.0(C)		
G21		2.5(B)		
F182		19.0(D)		
LDF2			1.0(F)	

- (A) IS BOTANY CHEMIST ETL KWIN 9/6
 (B) IS KZ350 BR CORMORANT ETL KWIN 5/7 40
 (C) IS KZ349 BR VINE ETL KWIN 23/7
 (D) IS TAHAMA ETL KWIN 2/7
 (E) IS KZ351 TBN ETL 20-25/8
 (F) IS TBN LOADING FOR SPORE WITH BALANCE GASOIL EX
 W'PORT.

CEE:	JUN	JUL	AUG	SEP
CRUDE USAGE				
BARROW	128	80	80	47
BASRA	86	118	138	31
KUWAIT	96	133	96	27
KUWAIT SPIKE	—	—	—	114
IRANIAN HVY	—	40	—	—
QATAR	—	—	40	—

Exhibit 66 (part)
Telex:
Defendant to BP
Trading Ltd.
—
31st May, 1974
(Cont'd)

10 DEE:				
PLANT USAGE				
CDU	86	100	100	100
CDU SPARE	57	—	—	—
CR	86	87	75	75
HF	93	93	100	100
CC	100	S/D	100	100

20 EEE:
PLANT SHUTDOWNS
CC 17/6-16/8
CDU2 26/8-22/9
CR2 9 DAYS EARLY JUNE
VDU2 5 DAYS JULY OR AUGUST

EFF:
WORKS FUEL SEE NOTE W'PORT SHEET.

30 GGG:
COMMENTS KWINANA IS GENERALLY RESTRICTED BY TOO MUCH FUEL THROUGHOUT PERIOD. OUR SALES IN WEST AUSTRALIA SEEM DOWN AND IF TREND CONTINUES WE MAY HAVE TO CANCEL PART OF 100 AF850 IMPORTS SHOWN IN SEPTEMBER REGRET UNABLE ACCEPT MORE FUEL OIL THAN SHOWN PRIOR SEPTEMBER BECAUSE ULLAGE NOT AVAILABLE UNTIL CDU SHUTS DOWN LATE AUGUST
(2) HAVE ATTEMPTED TO PROGRAMME SPIKED KUWAIT FOR PROCESSING WHILE CDU2 SHUTDOWN WHEN ADDITIONAL GASOIL IS OF MOST BENEFIT.
(3) KHFO AND POSSIBLY F129 IS BEING PROCESSED ON CDU/VACUUM UNIT IN ORDER PROVIDE CRACKER FEED AFTER CRACKER START UP 16/8

SECONDLY: W'PORT.

40 AYE IMPORTS.	JUN	JUL	AUG	SEP
1) CRUDE				
GIPPSLAND PUMPOVERS	180	180	180	180
KUWAIT	NIL	NIL	NIL	NIL
2 DIRTY REFORMER FEED				
SINGAPORE NAPHTHA		15.0A		
3 PRODUCTS/COMPONENTS				
BASRA RES (EX SPORE)		3.0A		
A IS BDR FALCON ETA 14/7 (SEE NOTE)				

Exhibit 66 (part) Telex: Defendant to BP Trading Ltd. — 31st May, 1974 (Cont'd)	BEE EXPORTS	JUN	JUL	AUG	SEP	
	LDF 2	1.0B				
	M96	7.0B				
	M97		2.7F			
	G21	10.0B	3.6F			
	G76		8.0E	10.0M		
	G77				3.0E	
	F198	19.0C	19.0G	19.0J	19.0K	
		19.0D	41.0H		19.0L	
	ATK (EX GEELONG)	3.5B	6.0E			10
	K29 EX (GEELONG)	2.0B	0.4F			

B IS KZ348 BR ESK 16/6 FOR NZ
 C IS BDR FALCON 4/6 FOR JAPAN
 D IS FIVE VALLEYS 20-24/6 FOR JAPAN
 E IS BR ESK FOR SPORE (BPS) 2/7
 F IS BR ESK FOR NEW GUINEA (BPA) 2/7 (JOINT LOADING)
 G IS ANGELO S 2/7 EX MELB FOR JAPAN
 H IS SEA SONG 20-25/7 EX TAS/MELB FOR JAPAN
 J IS TBN 20-25/8 FOR JAPAN. POSSIBLY EX SYDNEY C966
 K IS TBN 5-10/9 FOR JAPAN. POSSIBLY EX MELB C965 20
 L IS TBN 20-25/9 FOR JAPAN
 M IS TBN 25/8-5/9 FOR SPORE (LOADS ATK AT KWINANA)

CEE CRUDE USAGE	JUN	JUL	AUG	SEP	
GIPPSLAND	185	180	160	180	
KUWAIT	24	NIL	NIL	24	
DIRTY CRF	NIL	NIL	NIL	NIL	
CLEAN CRF	8	NIL	NIL	NIL	
DEE PLANT UTILIZATION					
CDU	91	77	68	92	
REFORMER FEED SPLITTER	96	80	70	85	30
CAT REFORMER	94	80	70	85	

EEE NO SHUTDOWNS.

EFF:

WORKS FUEL. SINCE REFINERIES RECENTLY ADVISED REFINERY ACTUALS NOT REQUIRED BY SUPPLY DEPT WE ASSUME WORKS FUEL ESTIMATES ALSO UNNECESSARY FOR MDF PURPOSES. PLEASE CONFIRM

GEE:

1 CRUDE RUN THROUGHOUT PERIOD IS LIMITED BY LACK OF RESIDUE ULLAGE EVEN THOUGH WE HAVE OPTED FOR 3RD F198 EXPORT EX W'PORT AT EXPENSE F182 EX KWINANA DURING AUG/SEP AT THIS STAGE CANNOT FIND OPPORTUNITY TO MOVE GIPPSLAND RESIDUE TO KWINANA AS IN AUG/SEP SOLUTION BUT SITUATION MAY CHANGE. 40

2) WE HAVE SHOWN 15.0 SPORE NAPHTHA ARRIVING W'PORT MID JUL BUT SINCE PRODUCTS HAVE NOT YET CONFIRMED THAT

NAPHTHA CANT BE PLACED IN JAPAN WE HAVENT SHOWN IT PROCESSED ABOVE.

3) EXPORT ITEMS E AND F ARE BOTH ON BR ESK LOADING 2/7 BUT WE HAVE SEPARATED LOADINGS BY DESTINATION FOR CLARITY

Exhibit 66 (part)
Telex:
Defendant to BP
Trading Ltd.
31st May, 1974
(Cont'd)

THIRDLY SPORE:

SEE SPORES TELEX 625. THE ONLY POINTS ON WHICH WE WOULD COMMENT ARE

10 1. F201 CARGO 12-17/8 IS TO EARLY FOR GOVE REQUIREMENTS IF 25/7-4/8 CARGO GOES TO GOVE SO WE SUGGEST IT LOADS F60 FOR C966 FOR SYDNEY ETA 14-21-8

2. BDR FALCON LOADING NAPHTHA AND BASRA RES IS STILL TENTATIVE PENDING RESULTS OF ATTEMPTS TO SELL NAPHTHA AS LDF 23.

3. COULD SPORE PLEASE ADVISE THE EARLIEST AND LATEST DATES FOR IMPORT C (10.0 ATK/QPGO IN SEP)

FOURTHLY: EXPORTS FOR OTHERS.

1) KZ348 BR ESK EX SHELL GEELONG 17/6 3.5 T11/2.0 K29
2) C937 BR ESK EX SHELL GEELONG 3/7 6.0 T11/0.4 DP KERO.

FIFTHLY IMPORTS TO INSTALLATIONS.

NO	CARGO	VESSEL	ETA	DESTINATION	GRADE	'000 TONS
20	1	C934	ATRIA	13/6	SYDNEY	F60 18.6
	2	C932	LOIDA	16/6	GOVE	F201 32.0
	3	C931	FIVE VALLEYS	16/6	PT KEMBLA	F60 7.0
	4	C953	TOLLANA	29/6	NEWCASTLE	F60 11.6
	5	C952	ANGELO		CHARISTMAS IS	F102 8.0
					G21	2.8
	6	C956	SCINICARIELLO	1/7	MELBOURNE	F102 19.0
	7	C954	TBN	10-24/7	GOVE	F201 32.0
30			SEA SONG	16/7	PT LATTA	F102 5.3
					BELL BAY	F102 9.6
					F204	4.0
					MELBOURNE	F102 22.7
	8	C955	BDR CHIEFTAIN	20/7	SYDNEY	F60 19.0
	9	C964	TBN	14-30/8	GOVE	F201 32.0
	10	C966	TBN	14-21/8	SYDNEY	F60 19.0
	11	C965	TBN	1-5/9	MELBOURNE	F102 19.0
	12		TBN	10-15/9	PT LATTA	F102 7.0
					BELL BAY	F102 2.5
					F204	3.0
40					HOBART	F102 5.5
	13	T	TBN	21-28/9	MELBOURNE	F102 19.0
	14		TBN	21-28/9	PT KEMBLA	F60 8.0
					SYDNEY	F60 11.0
	15		TBN	22/9-8/10	GOVE	F201 32.0

WE SEE SPORE LOADING 2, 4, 6, 9, AND 10 AND THUS 15 FROM ADEN.

Exhibit AJ (part)
Telex:
BP Trading Ltd
to Defendant
31st May, 1974

Exhibit AJ (part)

Telex: BP Trading Ltd to Defendant

TO BP AUSTRALIA MELBOURNE 340 31/5/1974
FROM BP LONDON

FOR WHOLESALE SALES FROM JOHNSTON

NABALCO

GRATEFUL YOU CONFIRM OUR UNDERSTANDING OF POSITION
POST 24TH JULY IN EVENT NEW CONTRACT NOT CONCLUDED BY
THIS DATE AS FOLLOWS (STOP)

FIRSTLY YOU HAVE UNDERTAKEN TO CONTINUE TO COVER THEIR 10
REQUIREMENTS FOR AN UNSPECIFIED PERIOD (STOP)

SECONDLY SUCH COVER WILL BE MET ON SPOT BASIS SEE OUR
C985 OF 9TH MAY (STOP) IN WHICH CASE YOU WOULD REFER TO US
FOR SPOT QUOTATION AND SPOT FREIGHT TO WHICH YOU WOULD
ADD YOUR ON COSTS (STOP)

Exhibit AJ (part)
Telex:
Defendant to BP
Trading Ltd
4th June, 1974

Exhibit AJ (part)

Telex: Defendant to BP Trading Ltd

TO BP LONDON 925 4-6-74.
FROM AUSTBEEPEE MELBOURNE

FOR JOHNSTON/RWH
FROM WHOLESALERS.

20

YOUR 340 FIRSTLY AND SECONDLY: YES..

Exhibit 27 (part)

*Exhibit 27 (part)
Notice:
Prices
Justification
Tribunal to
Defendant
—
4th June, 1974*

Notice: Prices Justification Tribunal to Defendant

PRICES JUSTIFICATION ACT 1973

BP AUSTRALIA LIMITED

Matter No. N 74/1888

NOTICE PURSUANT TO SECTION 18 (1) (b)

To **BP AUSTRALIA LIMITED**

10 You are hereby notified that the Prices Justification Tribunal does not intend to hold an inquiry as to whether the proposed price referred to in your notice dated 16 May 1974 is justified.

DATE 4 June 1974

**L.H. Williams
Chairman
For and on behalf of the
Prices Justification Tribunal**

Exhibit 77

*Exhibit 77
Memorandum:
Mr Notter to Mr
Coogan
—
5th June, 1974*

Memorandum: Mr Notter to Mr Coogan

5/6/74

To. **Mr A.G. Coogan**

20 Meeting with P. Nyholm

He has a lunch appointment in Nth Sydney and will try to be here between 3.00 and 3.30 p.m.

Also discussed timing re Contract.

- 1) Kuwait to confirm in writing FIRM Offer before weekend. Nyholm will then leave Australia.

Exhibit 77
 Memorandum:
 Mr Notter to Mr
 Coogan
 —
 5th June, 1974
 (Cont'd)

- 2) Should we decide to firm up with Kuwait:
 - D.F. Wilson to firm up shipping Contracts ready for final negotiation during week June 10-15
 - H. Herron to submit his final recommendations on Kuwait Contract
 - A.G. Coogan
 - E.A. Notter to leave for Zurich Week end June 16
 - D.F. Wilson to leave for London Oslo ect. June 16
- 3) Discussions and final decision in Zurich during week June 17-22
- 4) P. Nyholm can meet in Zurich during week June 17-22 for Contract finalisation
- 5) D.F. Wilson to have final contract, subject Board approval ready in Zurich June 21/22

10

We must have at least 1 month time to re-arrange shipping Schedules after conclusion of contract negotiations, since the BP Furnace Oil part of the "old" contract will expire on July 24

Therefor, as to whether we leave BP or not an early decision is imperative.

Eddy Notter

Exhibit 68
 Telex:
 Wilson to Stolt
 Neilsen
 —
 5th June, 1974

Exhibit 68

Telex: Wilson to Stolt Neilsen

5th June 1974

20

STOLTEN AA22232
 ATLS AA25825

276

ATTENTION E NANSEN

CONTRACT OF AFFREIGHTMENT

YOU ARE AWARE THAT WE REPRESENT NABALCO PTY LTD RE THE POSSIBILITY OF A CONTRACT OF AFFREIGHTMENT FOR FUEL CARGOES FROM PERSIAN GULF TO GOVE. FOR THE SAKE OF GOOD

ORDER WE NOW REPEAT ADVICE GIVEN TO YOU IN RECENT DISCUSSIONS NAMELY

*Exhibit 68
Telex:
Wilson to Stolt
Neilsen*

*5th June, 1974
(Cont'd)*

1. NABALCO PTY LTD IS IN THE PROCESS OF ASSESSING ALTERNATIVE SUPPLY SOURCES FOR THE SUPPLY OF HEAVY FUEL OIL FOR GOVE NT
2. REQUIREMENTS FOR THIS PURPOSE IS BETWEEN 300,000 TONS AND 400,000 TONS PER ANNUM IN EVENLY SPACED DELIVERIES
3. ONE ALTERNATIVE UNDER CONSIDERATION CONTEMPLATES PURCHASE OF OIL FOB BY NABALCO EX PERSIAN GULF
- 10 4. FOR THIS ALTERNATIVE TO BE GIVEN FULL CONSIDERATION IT IS THEREFORE NECESSARY TO MAKE AVAILABLE A PROFORMA FREIGHT CONTRACT EX PERSIAN GULF TO GOVE SO THAT NABALCO MAY CONSIDER EACH ALTERNATIVE ON THE SAME BASIS.

WE HAVE NOW BEEN AUTHORISED BY NABALCO PTY LTD TO NEGOTIATE A PROFORMA CONTRACT OF AFFREIGHTMENT FOR THE ABOVE PURPOSE.

- AS A CONSEQUENCE OF THE ABOVE YOU ARE AUTHORISED TO APPROACH SELECTED OWNERS FOR FIRM INDICATIONS LEADING TO EARLY DISCUSSIONS OF THE TERMS AND CONDITIONS OF A CONTRACT OF AFFREIGHTMENT. IN THIS CAPACITY YOU WILL BE ACTING AS BROKERS.

PLEASE REVERT SOONEST NOMINATING THOSE OWNERS WISHING TO CONSIDER CONTRACT ON THE FOLLOWING BROAD BASIS.

1. QUANTITY 300-400,000 TONS PER ANNUM HEAVY FUEL OIL
2. LOADING ONE SAFE BERTH SHUAIBA PERSIAN GULF
3. DISCHARGE ONE SAFE BERTH GOVE NORTHERN TERRITORY AUSTRALIA
- 30 4. EVENLY SPACED SHIPMENTS IN SHIP SIZE 40,000-60,000 TON RANGE DELIVERIES IN ACCORDANCE NABALCO'S CONSUMPTION REQUIREMENTS
5. CONTRACT PERIOD 3-5 YEARS SUBJECT TO NEGOTIATION.

FOR YOUR INFORMATION GOVE PORT FACILITIES HAS DEPTH 47' AT LOW WATER ORDINARY SPRING TIDE AND IS COMPLETELY SUITABLE FOR UP TO 60,000 DWT RANGE. SHUAIBA IS DESIGNED TO ACCOMMODATE VESSELS MAX LOA 985' ON MAX DRAFT OF 45' SALT WATER.

WE THEREFORE AWAIT YOUR INDICATIONS OF

Exhibit 68
Telex:
Wilson to Stolt
Neilsen
—
5th June, 1974
(Cont'd)

A. OWNERS INTERESTED IN CONCLUDING CONTRACT AND
B. FIRM RATE INDICATIONS SUBJECT CONTRACT DETAILS

WE EMPHASIZE THAT OWNERS MUST UNDERSTAND THAT ALTHOUGH SATISFACTORY CONTRACT OF AFFREIGHTMENT MAY BE NEGOTIATED THIS WILL NOT AUTOMATICALLY LEAD TO A COMMITMENT UNLESS NABALCO ELECTS TO PURCHASE ON AN FOB BASIS. SHOULD NABALCO PURCHASE C AND F BASIS THEN NO CONTRACT WILL EVENTUATE WITH OWNERS INVOLVED IN DISCUSSIONS.

WE AWAIT YOUR EARLY ADVICE AND WOULD APPRECIATE THIS MATTER KEPT CONFIDENTIAL. 10

REGARDS,
WILSON/ATLS

Exhibit 39
Telex:
Plaintiff to Dr
Sorato
—
6th June, 1974

Exhibit 39

Telex: Plaintiff to Dr Sorato

NABALCO AA20472
GA
4552487+
52487A ALU CH
NABALCO AA20472

20

XSGO1196 6.6.74 1745

ATTENTION: DR. B. SORATO — FOR URGENT ATTENTION
SUBJECT: FURNACE OIL

WE NOW HAVE THREE OFFERS FOR SUPPLY OF FURNACE OIL TO GOVE AS FOLLOWS:

A) BP

- ADLRS 52.52 C. AND F. GOVE
- CONTRACT TERM 3 YEARS.
- THIS IS A RISE AND FILL CONTRACT DENOMINATED IN US DOLLARS. 30
- CONTRACT SUBJECT TO NEW SOUTH WALES LAW. THE

CONTRACT CONDITIONS ARE VERY TOUGH AND AMOUNT TO THE SUPPLY OF OIL ON VIRTUALLY A SPOT BASIS. A NEW CONTRACT WOULD NOT BE AVAILABLE IF WE INSTITUTED LEGAL PROCEEDINGS RELATING TO THE PRESENT CONTRACT.

*Exhibit 39
Telex:
Plaintiff to Dr
Sorato
—
6th June, 1974
(Cont'd)*

- SIR DAVID GRIFFIN IS HAVING A MEETING WITH THE MANAGING DIRECTOR OF BP IN MELBOURNE ON MONDAY.
- IT MAY BE POSSIBLE THAT WE ACHIEVE A FURTHER PRICE REDUCTION BUT IT IS NOT EXPECTED THAT THIS WILL BE SUBSTANTIAL, NOR DO WE EXPECT ANY CHANGE IN THEIR ATTITUDE RELATIVE TO NO NEW CONTRACT IF WE PROCEED WITH LITIGATION.
- THE AMOUNT OUTSTANDING ON THE BP LOAN TO THE JOINT VENTURERS IS CURRENTLY ADLRS2.5 MILLION. THIS WILL HAVE TO BE REPAID ON TERMINATION OF THE PRESENT CONTRACT.
- FOLLOWING THE ADVICE OF TOP LEVEL COUNSEL RETAINED BY NABALCO AND AUSTRASWISS, UNANIMOUS LEGAL OPINION IS THAT BP'S NOTICE IS INVALID AND WE WOULD BE IN A STRONG POSITION IF WE WENT TO COURT.
- BP WOULD ONLY SUPPLY ON A SPOT BASIS DURING COURT PROCEEDINGS WHICH IT IS NOW ESTIMATED WOULD REQUIRE ABOUT ONE YEAR ASSUMING AN APPEAL TO THE PRIVY COUNCIL BY EITHER SIDE.
- BP WOULD CONTINUE TO SUPPLY OTHER PETROLEUM PRODUCTS TO GOVE.

B) KAISER TRADING COMPANY

- PRICE: ADLRS 51.85 C. AND F. GOVE.
- CONTRACT TERM: ONE YEAR.
- RISE AND FALL CONTRACT DENOMINATED IN US DOLLARS.
- A MUCH MORE REASONABLE CONTRACT DOCUMENT THAN BP'S AND EXPRESSED IN MORE USUAL TERMS. CONTRACT SUBJECT TO NEW SOUTH WALES LAW.
- KAISER'S SOURCE OF SUPPLY WOULD BE FROM A.G.I.P., A MAJOR WORLD PRODUCER NO DOUBT WELL KNOWN TO YOU AND WITH RESOURCES WHICH APPEAR TO BE AT LEAST EQUAL TO BP.
- KAISER TRADING ARE CURRENTLY HANDLING MORE THAN 2 MILLION TONNES OF FURNACE OIL TO WORLD WIDE

Exhibit 39
Telex:
Plaintiff to Dr
Sorato
—
6th June, 1974
(Cont'd)

CUSTOMERS INCLUDING A SUPPLY TO GLADSTONE IN EXCESS OF THE GOVE FIGURE.

- THEY STRESS THE FLEXIBILITY OF THEIR WORLD OIL TRADING AND THE STRONG RESOURCES THEY HAVE IN SHIPPING.
- THEY ARE VERY SERIOUS IN THEIR INTENTION TO OBTAIN OUR LONGTERM BUSINESS, ON BASIS OF AN OPTION TO RENEW THE CONTRACT EACH SUCCEEDING YEAR. HAVE ALREADY SUBMITTED TENTATIVE SHIPPING SCHEDULE TO JULY 1975.

10

C) KUWAIT NATIONAL PETROLEUM COMPANY

- PRICE: ADLRS42.22 PER M.T., F.O.B., PLUS FREIGHT ESTIMATED AT ABOUT ADLRS7 PER M.T.
- WE BELIEVE WE CAN FURTHER IMPROVE THE FOB PRICE BY AT LEAST ONE DOLLAR
- CONTRACT TERM. 5 YEARS
- RISE AND FALL CONTRACT DENOMINATED IN USDOLLARS. CONTRACT SUBJECT TO ENGLISH LAW.
- MUCH MORE REASONABLE CONTRACT DOCUMENT THAN BP'S.
- NABALCO WOULD HAVE TO ARRANGE SHIPPING. BUT DO NOT SEE THIS AS A PROBLEM FOLLOWING INITIAL DISCUSSION WITH POTENTIAL SHIPPERS.
- KUWAIT HAVE SUBMITTED AN IMPRESSIVE LIST OF PRESENT CUSTOMERS AND AS THEY HAVE DIRECT ACCESS TO OWN CRUDE OIL AND REFINERY CAPACITY, THERE SEEMS LITTLE DOUBT OF THEIR ABILITY TO SUPPLY
- AS WITH KAISER, THEY SEEM VERY INTERESTED IN ESTABLISHING A LONG-TERM RELATIONSHIP WITH NABALCO.

20

D) MAJOR DECISIONS TO BE MADE:

30

- 1) SELECTION OF SUPPLIER.
- 2) IF NOT BP; DO WE TAKE THEM TO COURT, OR IN THE INTEREST OF LONG-TERM RELATIONSHIPS, MERELY LET THE CONTRACT LAPSE.
- 3) IT IS TO BE NOTED THAT, IF WE ARE SUCCESSFUL IN PRIVY

COUNCIL IN HAVING THEIR NOTICE FINALLY DECLARED INVALID, THE ASSESSMENT OF DAMAGES WOULD INITIALLY BE A MATTER BETWEEN THE PARTIES.

*Exhibit 39
Telex:
Plaintiff to Dr
Sorato*

*6th June, 1974
(Cont'd)*

E) AS THESE DECISIONS ARE OF SUCH FUNDAMENTAL IMPORTANCE, WE BELIEVE THEY MUST BE DISCUSSED IN CONSIDERABLE DETAIL WITH YOU AND IT IS THEREFORE SUGGESTED THAT NOTTER AND MYSELF SHOULD COME TO ZURICH FOR DISCUSSIONS, SAY, DURING WEEK COMMENCING JUNE 17TH, DEPENDING ON YOUR MOVEMENTS.

10 ALTERNATIVELY, IF ZURICH NOT CONVENIENT, WE COULD MEET YOU ELSEWHERE.

F) IT IS IMPORTANT TO NOTE THAT, IF WE PROPOSE TO ENTER INTO LITIGATION A WRIT MUST BE SERVED ON BP NOT LATER THAN FRIDAY, 21ST JUNE.

G) WE WOULD BE GLAD TO HAVE ANY ALTERNATIVE SUGGESTIONS YOU MAY CARE TO MAKE ON THIS EXTREMELY IMPORTANT MATTER.

20 F) WILL BE AVAILABLE FOR TELEPHONE CALL IN SYDNEY TO SUNDAY THENCE WILL BE IN GOVE UNTIL THURSDAY OF NEXT WEEK.

KIND REGARDS,
NABALCO/COOGAN

CORRECTION

IN SECTION (C) KUWAIT NATIONAL PETROLEUM COMPANY SECOND SENTENCE SHOULD READ "WE BELIEVE WE CAN FURTHER IMPROVE THE FOBE PRICE BY AT LEAST ONE DOLLAR".

Exhibit C (part)
Letter and
Notification of
Prices:
Defendant to
Prices
Justification
Tribunal
 —
 7th June, 1974

Exhibit C (part)

Letter and Notification of Prices: Defendant to Prices Justification Tribunal

The Registrar,
 Prices Justification Tribunal,
 10 Queens Road,
 MELBOURNE 3004.

cc. Mr J.H. Rowland

WS-RJS:ZF

7th June, 1974

Dear Sir,

NOTIFICATION OF PROPOSED PRICE INCREASES

We enclose our notification under the Prices Justification Act 1973, which describes our intention to increase the prices of products supplied by BP Australia Limited. Also enclosed are four appendices — 10

Appendix 1 — Price lists reflecting the increases notified.

Appendix 2 — An annualized summary of additional costs incurred since 31/12/73.

Appendix 3 — A summary of estimated recoveries for 1974 annualized on current estimated sales.

*Appendix 4 — A summary of the price increases applicable to contract accounts affected by clause (ii) (a) and (b) of our notification.

The need to increase our prices has arisen due to two influences. 20

These are:—

1. Increases in the cost of imported crude oil.
2. Increases in the cost of imported products.

All of these increases notified have occurred since the 31/12/73 and are increases which formed no part of the costs and recoveries material prepared for our notification of the 14/2/74.

The Company believes that the great part if not all the material which the Tribunal will require to consider the present notification will already be in the Tribunal's hands and particularly with this Company's submission forwarded on 26/4/74 and this Company's answers to questions put in writing by Counsel assisting at that time. It is recognized however that the Tribunal will require particulars of the increased costs which underlie the present notification and, on 30

* In process of preparation and will follow.

past experience we have thought it preferable to await from the Tribunal details of its particular requirements. These will then be provided as soon as possible.

Yours faithfully,
J.H. Rowland
Secretary

Enc.

*Exhibit C (part)
Letter and
Notification of
Prices:
Defendant to
Prices
Justification
Tribunal
—
7th June, 1974
(Cont'd)*

PRICES JUSTIFICATION ACT 1973

NOTIFICATION OF PRICES PURSUANT TO SECTION 18(1)(a)

10 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:—

(i) We propose to increase the wholesale prices of products supplied by us as follows:—

	Aviation Gasolines	0.5	cents per gallon to posted airfield prices
	Aviation Turbine Fuel	0.5	" " "
	Power Kerosine	0.8	cents per gallon to all buyers
	Lighting Kerosine	0.8	" " "
	Heating Oil	0.8	" " "
20	Distillate	1.00	" " "
	Diesel Fuel	\$3.00	per ton to all buyers
	Fuel Oil	\$5.50	" " "
	Lubricating Oil	7.00	cents per gallon to all buyers
	Grease & Petroleum Jelly	0.7	cents per pound to all buyers
	Bitumen & Bituminous Products	\$7.50	per ton

(ii) We propose to increase the prices at which we supply goods pursuant to existing contracts obtained by competitive tender or competitive negotiation and containing rise and fall clause(s).

30 (a) Where the product concerned qualifies under the Australian Government's formula for an allocation for indigenous crude oil by the amount of price escalation in accordance with the terms of such contract up to the maximum

Exhibit C (part)
Letter and
Notification of
Prices:
Defendant to
Prices
Justification
Tribunal
—
7th June, 1974
(Cont'd)

wholesale list prices for products of that description as set forth in Appendix I hereto.

(b) Where the product concerned does not qualify under the Australian Government's formula for an allocation of indigenous crude oil by the amount of price escalation in accordance with the terms of such contract during the period 5th February, 1974 to the 31st May, 1974.

APPENDIX I SCHEDULE 8.
BP FURNACE OIL (FUEL OIL)

BUYER CLASSIFICATION	MELBOURNE	ADELAIDE	HOBART	DARWIN	10
	SYDNEY PERTH BRISBANE				
All Buyers	\$55.85	Bulk per Ton \$54.60	\$56.60	\$59.10	

CONFIDENTIAL

APPENDIX 2

ADDITIONAL COSTS INCURRED BEYOND FEBRUARY SBUMISSION
- ANNUAL 1974

1. CRUDE OIL — IMPORTED \$A 000

* Increased Invoice costs resulting from
Participation costs:

Source	Tons (000)	1/1/74 Increase \$A/ton	Total \$A000	1/4/74 Increase \$A/ton	Total \$A 000
Kuwait	635	2.98	1,892	3.24	2,057
Basra	391	3.68	1,439	2.85	1,114
Iranian Heavy	125	3.17	396	3.02	378
Qatar	145	3.85	558	3.52	510
			4,285		4,059

Total Participation Costs
Insurance Costs
Less Freight Adjustments

8,344
12
498

7,858

20

30

2. PRODUCTS — IMPORTED

	30/1/74	1/4/74	Freight Ins.	Total
Aviation Gasoline	10	91	- 5	96
Distillate	164	-	- 9	155
Super Motor Spirit	231	392	- 19	604
Regular Motor Spirit	25	56	- 3	78
Lighting Kerosine	107	72	- 13	166
Power Kerosine	3	2	-	5
Fuel Oil	1,493	-	- 371	1,122

40

TOTAL INCREASED COSTS

2,226
10,084

* Please refer to Page 1 Paragraph 3 of our Submission attached to our letter of 26th April, 1974

CONFIDENTIAL

APPENDIX 3

ESTIMATED RECOVERY — ANNUAL 1974

Exhibit C (part)
Letter and
Notification of
Prices:
Defendant to
Prices
Justification
Tribunal
—
7th June, 1974
(Cont'd)

PRODUCT	TOTAL 000	\$ p.t.	UNIT c.p.g.	TOTAL REC. \$000
Aviation Gasoline	23.7	1.61	0.5	38.2
Aviation Turbine Fuel	175.4	1.48	0.5	259.6
Power Kerosine	6.8	2.19	0.8	14.9
Lighting Kerosine	42.4	2.27	0.8	96.2
Heating Oil	157.7	2.22	0.8	350.1
10 Distillate	528.8	2.70	1.0	1427.8
Diesel Fuel	121.9	3.00	N.A	365.7
Furnace Oil	499.9	5.50	N.A	2749.5
Lubricants				
	50.1	17.50	7.0	876.8
Greases & Pet. Jelly				
Bitumen	56.3	7.50	N.A	422.3
Total Estimated Inland Recovery: (Ref. Part (i) of Notification)				6601.1
20 Total Estimated Contract Trade Recovery: (Ref. Part (ii) of Notification)				562.0

* Represents 0.7c per lb on greases and petroleum jelly.

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APPENDIX 4

SUMMARY OF INCREASES IN PRICES FOR CONTRACT ACCOUNTS

ACCOUNT	PRODUCT	MOVEMENT DATE	AMOUNT	INCREASE	PRICE WEF 1.6.74	REMARKS
North Shore Gas Co.	LDF	1.4.74	A\$ 5.54 per L/ton	A\$1.72 per L/ton	A\$ 46.30 per L/ton	These contracts escalate only to 31% of the move- ment in product posting.
Newcastle Gas Co.	LDF	1.4.74	A\$ 5.54 per L/ton	A\$1.72 per L/ton	A\$ 46.63 per L/ton	
30 Hobart Gas Co.	LDF	1.4.74	A\$ 5.47 per L/ton	A\$1.69 per L/ton	A\$ 52.61 per L/ton	
Castrol	Base Lube Oils	1.5.74	A\$15.01 per L/ton	A\$15.01 per L/ton	A\$135.31 per L/ton	
Mobil	"	"	"	"	"	

*Exhibit C (part)
Letter and
enclosure: Prices
Justification
Tribunal to
Defendant*

10th June, 1974

Exhibit C (part)

Letter and enclosure: Prices Justification Tribunal to Defendant

Melbourne
10 June 1974

Company Secretary,
BP Australia Limited,
G.P.O. Box 5222BB,
MELBOURNE. 3001.

Dear Sir,

I refer to your communication of 7 June 1974 relating to petroleum products. 10

The Tribunal does not propose to hold a public inquiry as to whether the prices referred to in the Company's notice are justified. The Company may therefore proceed to implement the proposed prices with effect from the date of receipt of the Notice enclosed or from such later date as the Company may determine.

Yours faithfully,
N.F. Brown
Registrar
Prices Justification Tribunal

PRICES JUSTIFICATION ACT 1973

20

BP AUSTRALIA LIMITED

Matter No. N74/2329

NOTICE PURSUANT TO SECTION 18 (1) (b)

To BP AUSTRALIA LIMITED

You are hereby notified that the Prices Justification Tribunal does not intend to hold an inquiry as to whether the proposed prices referred to in your notice dated 7th June 1974 are justified.

DATE 11 June 1974

E.A. Chambers
Deputy Chairman
For and on behalf of the
Prices Justification Tribunal

30

Exhibit 43 (part)**Notes: Mr Notter**

Exhibit 43 (part)
Notes:
Mr Notter
 —
 13th June, 1974

FILE NOTE — 13/6/74

BP AUSTRALIA LIMITED — QC MEETING — 13/6/74

A discussion also took place between the writer and Mr. C. Lockrey of BP in which we confirmed that both Sir David and Mr. Rendle reported identically on their meeting in Melbourne.

10 Mr. Lockrey mentioned earlier his intention to forward to us a "solicitor's letter" in reply to our letter of May 16 but was withholding this letter pending Sir David's discussion in Melbourne. He now felt that the letter should be sent.

Prior to our meeting in Zurich I felt it was necessary to learn of the contents of this letter. Mr. Lockrey indicated that it had not been sent as yet but basically it just refutes the points in our letter of May 16 and quotes that in their opinion, information on the prices, etc., of crude oil has been submitted etc.

I then ventured to recapitulate the situation as far as I, on behalf of Nabalco, understand it to be:

1. BP consider their Notice as valid and, therefore, insist that the old Contract comes to an end on July 24, 1974.
2. Therefore, supplies under the old Contract would cease on July 24, 1974.
- 20 3. Unless a new Contract is executed with BP as per the negotiations on May 31, 1974, supplies will no longer be forthcoming under Contract conditions.
4. BP re-iterated that they would not be as harsh as just to turn off the oil, but it would have to be clear in our mind that such continuous supplies would only be forthcoming on a "spot" basis with all its hazards and uncertainties.
5. If, in deed, a new Contract is not executed soon, there may even have to be some makeshift shipments between the termination of deliveries under the old Contract and the commencement of deliveries under such new Contract.

30 I also informed him that both the General Manager and myself will be proceeding to Zurich to discuss the final decision/actions of Nabalco. He was again drawn to the fact that Nabalco has, besides BP, two other alternative suppliers. This he knew from Sir David's discussion.

He also recalled Sir David's question to Mr. Rendle on the point as to whether BP would continue to supply petroleum, diesel and aviation fuels and lubricants

Exhibit 43 (part)
Notes:
Mr Notter

to Gove, should Nabalco elect to change its supplier of furnace oil. He agreed this would be the case.

13th June, 1974
(Cont'd)

E.A. NOTTER

cc: Sir David Griffin
AGP
AGC
H. Herron

Exhibit 50 (part)
Telex:
Stolt Neilsen to
Australian
Territory Liner
Services

Exhibit 50 (part)

Telex: Stolt Neilsen to Australian Territory Liner Services

13th June, 1974

ATLS AA25825
STOLTEN AA22232
13TH JUNE 74

10

ATTN.: CAPT DOUG. WILSON

NABALCO HVF COA

WE HAVE RECEIVED FOLL FIRM INDICATION FROM CONCORD (OXY), LONDON QUOTE

- 1) COA 300/400,000 TONS PER YEAR
- 2) PERIOD 3 YEARS (MIGHT BE WILLING STRAIGHT 5 YEARS)
- 3) IN 40/60,000 TONS BOTTOMS
- 4) MAX 2 GRADES IN VESSEL'S NATURAL SEGREGATION — MAX 20 HEAT 125F (WILLING 135F IF NECESSARY)
- 5) FROM 1/2 SAFE PORTS PERSIAN GULF EXCL FAO/ABADAN TO 1/2 SAFE PORTS NORTHERN AUSTRALIA
- 6) RED W 175 (WILLING LESS) PAYABLE IN US DLRS
- 7) BUNKER CEILING PRICES TO BE BASED ON AVERAGE PRICE OF USD 75,- PER LT DELIVERED FOR IFO MAX 1500 SECS AND FOR EACH US DLR INCREASE OVER USD 75,- FREIGHT RATE TO BE INCREASED BY 0.5 (ONE HALF OF A POINT) WSCALE POINTS

COMMENTS:

CONCORD (OXY) VERY EXPERIENCED IN SCHEDULING OF COAS, 30

HAVING LARGE FLEET. THEY HAVE GREAT FLEXIBILITY IN SWITCHING AROUND TO SUIT CHARTS PROGRAM AND BEING OIL COMPANY THEMSELVES KNOW HOW TO HANDLE COAS THIS BORNE OUT BY THE FACT THAT FOLL OIL COMPANIES HAVE CONCORD CONTRACTS: SOCAL — MOBIL — SOHIO — ASHLAND — CEPESA AND UNITED REFINING CO. IT IS ESSENTIAL TO KEEP THIS INDICATION CONFIDENTIAL AS WELL AS ANY SUBSEQUENT NEGOTIATIONS UNQUOTE

Exhibit 50 (part)
Telex:
Stolt Neilsen to
Australian
Territory Liner
Services
 —
13th June, 1974
(Cont'd)

- 10 SNAP : YOUR TELEX WITH AGREED COMMENTS PASSED ON TO THESE OWNERS PM YESTERDAY EUROPEAN TIME AND OWNERS WILL REVERT TOMORROW WITH THEIR COMMENTS+

FOLL REPLY RECD FROM HALCOUSSIS :

- AA) REPEAT WS 220 — FXD RATE FIRST 2.5 YEARS TIED TO BUNKERINDEX- ESCALATION THEREAFTER UP TO 5 YEARS WITH AGREED ESCALATION
- BB) CAN CHARTS USE 30,000 TONNER INSTEAD 40,000?
- CC) CAN CHARTS USE LARGER THAN 60,000?
- 20 DD) IF COMB CARRIER USED CAN CHARTS SUPPLY ANY DRY CARGO OUT OF AUSTRALIA?
- EE) PLS CLARIFY CL 31 — FORCE MAJEURE

KOCH

OWNERS STILL STUDYING YOUR TELEX AND WILL REVERT WITH THEIR COMMENTS TOMORROW STOP THEIR INITIAL REACTION, HOWEVER, THAT THEIR RATE INDICATION OF WS 185 STANDS STOP THEY ALSO EXTREMELY RELUCTANT NEGOTIATE SUB BOARD APPROVAL TO BE LIFTED BY 26TH AND ASK WHEN ABSOLUTELY EARLIEST CHARTS CAN LIFT? WILL RVRT WITH KOCH'S FURTHER COMMENT

- 30 NIARCHOS BROKER ADV AS FOLLOWS :

OWNERS THANKS YOU FOR THE LONG TELEX FROM AUSTRALIA. THEY APPRECIATE CHARTS SERIOUS INTENTIONS AND HAVE IN CONSEQUENCE TRIED VERY HARD TO COME BACK TODAY WITH SOMETHING POSITIVE, BUT TO NO AVAIL. AFTER SPEAKING TO OWNERS WE WOULD LIKE TO PASS FOLL COMMENTS TO CHARTS:

AS YOU MAY BE AWARE OWNERS ARE PARTOWNERS WITH GREEK GOVERNMENT OF OIL REFINERY IN GREECE. RECENTLY THEY HAVE BEEN SHIPPING PG CRUDE INTO THIS REFINERY. THEY HAVE

Exhibit 50 (part)
 Telex:
 Stolt Neilsen to
 Australian
 Territory Liner
 Services
 —
 13th June, 1974
 (Cont'd)

CONSEQUENTLY (AGAINST CHARTS SERIOUS INTEREST IN THEIR TONNAGE) HAD TO CHECK WITH REFINERY PROGRAM WHICH EVIDENTLY IS PRESENTLY UNDERGOING SLIGHT ALTERATION. AS PROGRAM NOT FINALLY CLARIFIED THIS INFO NOT CIRCULATED TO NIARCHOS' SHIPPING DEPARTMENT

NIARCHOS' CHARTERING DEPT FEEL THAT SHOULD NOT BE ANY PROBLEM IN THEIR TAKING ON NABALCO'S COA, HOWEVER THEY MUST BE ABSOLUTELY CERTAIN AND IT MAY TAKE FEW DAYS FOR THE POSITION TO BE CLARIFIED

ON THE ONE HAND WE HAVE POINTED OUT TO OWNERS THAT CHARTS HAVE A DATE LINE OF 22ND JUNE TO MEET AND ON THE OTHER WE HOPE THAT CHARTS CAN BEAR WITH OWNERS WHILE SCHEDULE ARE RECHECKED 10

WE ALSO MAKE THE POINT THAT OWNERS HAVE NOT AGAIN BROUGHT UP THE SUBJECT OF ITF

REGARDING CL 12 OWNERS POSITIVELY CONFIRM THAT THEY WOULD ONLY CONSIDER A CONTRACT WHICH WAS FIXED ON BASIS OF ONE WS RATE AGREED IN NEGOTIATIONS AND THAT THIS WS FIGURE WOULD BE APPLICABLE ON DATE OF EACH LIFTING

AS SOON AS WE SECURE FURTHER INFO FROM OWNERS WE WILL REVERT TO YOU MEANTIME FEEL IT IS ONLY FAIR TO ADVISE CHARTS THET TO ASSUME VISIT TO OWNERS IN LONDON ON MONDAY NEXT WOULD BE PREMATURE 20

UNQUOTE
 END+

Exhibit 43 (part)
 Notes:
 Mr Notter
 —
 14th June, 1974

Exhibit 43 (part)

Notes: Mr. Notter

Col. Lockrey — BP Melb.

Tel. 14/6/74

He rang to say that BP are concerned about Nabalco's supplies. They want to plan ahead (Aug. Sept. 74)

30

He suggested it may be of interest for both parties to meet in London.

Mr Duncan Johnson
 BP House London

Saudi Arabia have just concluded deal with ARAMCO for 60% Participation By — back ex S.A. now 93% of posted price = e.g. \$10.75 p.b. Thus prices may go up.

We should not quote A\$52.52 price to London, since that is lower than suggested London price.

E.N.

Exhibit AJ (part)

*Exhibit AJ (part)
Telex:
Defendant to BP
Trading Ltd
—
14th June, 1974*

Telex: Defendant to BP Trading Ltd

TO BEEPEE LONDON 115 14.6.74
FROM AUSTBEEPEE MELBOURNE

FOR JOHNSTON/RWH
FROM WHOLESALE SALES

NABALCO

YOUR 562 REFERS

10 HAVE ISSUED INVITATION COOGAN AND NOTTER TO VISIT LONDON
DURING THEIR ZURICH JOURNEY, THEY MOST APPRECIATIVE AND
WILL GIVE YOU PRIOR NOTICE FROM ZURICH IF THEY ABLE
ARRANGE. WE GRATEFUL FOR YOUR USUAL COURTESIES.

20 OUR STAND REMAINS AT OFFER IRREDUCIBLE DOLLARS (AUST)
52.52 WHICH PRICE NABALCO KNOWS SOMEWHAT LOWER THAN
YOUR EXPECTED REASONABLE LEVEL AND MADE POSSIBLE BY US
THROUGH LOCAL ECONOMIES INCLUDING QUALITY RELAXATION
AND REDUCED CREDIT TERMS. THIS PRICE WOULD FORM PART OF
A NEW CONTRACT ONLY IF THEY ACKNOWLEDGE COMPLETE
TERMINATION OF OLD FUEL OIL CONTRACT INCLUDING ANY
LITIGATION THEY CONSIDER ARISING THEREFROM.

Exhibit X

Letter: Plaintiff's Solicitors to Plaintiff

*Exhibit X
Letter:
Plaintiff's
Solicitors to
Plaintiff
—
14th June, 1974*

14th June 1974

The Administration Manager
Nabalco Pty. Limited
SYDNEY 2000

Dear Sir

Re BP Australia Limited
Fuel Supply Contract

30 You have asked us to briefly outline the procedure of a Declaratory Summons
issued out of the New South Wales Supreme Court. It is this procedure which we

Exhibit X
 Letter:
 Plaintiff's
 Solicitors to
 Plaintiff
 —
 14th June, 1974
 (Cont'd)

recommend to be adopted if the notice fixing a revised base price is to be challenged by legal process.

A Declaratory Summons seeks declarations from the Court on matters in dispute between for example parties to a contract. The effect of a declaration by the Court on matters in dispute is to preclude any further legal argument on the dispute but the effect does not extend to settling questions of damages which may arise out of the dispute.

In this case the Summons which we have already forwarded to you seeks a declaration from the Court as to the validity or otherwise of BP's notice.

If the Court declares that the notice is invalid the effect so far as the contract is concerned will be to establish conclusively that by issuing the notice and by subsequently refusing to supply oil except at the revised price BP has repudiated the contract. 10

The question of the assessment of Nabalco's damages arising out of the repudiation of the contract will be a matter either for a negotiated settlement or further legal action to have those damages determined.

The hearing of the Summons may be expected to take place in October of this year if the Summons is issued immediately. If any appeal is taken from that hearing further delays of up to twelve months can be expected.

Following yesterday's conference with Mr. Needham of Queens' Counsel we confirm the decision not to attempt to elicit from BP any further statements regarding supply of oil by BP to Nabalco pending determination of the dispute. 20

Yours faithfully,
 DUDLEY WESTGARTH & CO.

Exhibit 50 (part)**Telex: Stolt Neilsen to Australian Territory Liner Services**

*Exhibit 50 (part)
Telex:
Stolt Neilsen to
Australian
Territory Liner
Services*

14th June, 1974

ATLS AA25825
STOLTEN AA22232
14TH JUNE 74 - 1115 HRS

ATTN. CAPT. DOUG. WILSON

NABALCO HVF COA

WE RPT BELOW EXCHANGE OF OFFERS WITH CONCORDE LAST NIGHT AS PER VARIOUS TELEPHONE CONVERSATIONS:

10 NABALCO'S COUNTER TO FIRM INDICATION:

COUNTER FIRM
REPLY 8 PM SYDNEY TIME 13 JUNE

- 1) COA PERIOD 3 YRS
- 2) QUANTITIES AS PER OUR TLX 12TH JUNE UNDER CLAUSE 3
- 3) ITEMS 3 - 4 - 5 - 7 IN CONCORD INDICATION AGREED EXCEPT HEATING UPTO MAX 135 F
- 4) RED W 165 PAYABLE US DLRS
- 5) 72 HRS SHINC FOR LDNG AND DISCHNG
- 20 6) SUBJECT AGREEMENT BETWEEN NABALCO AND CONCORD ON WORDING AND FORMAT COA WHICH NABALCO PREPARED NEGOTIATE WITH OWNERS IN LONDON 17TH TO 19TH JUNE INCLUSIVE AND CONTENTS OF WHICH BASICALLY AS PER OUR TLX YDAY EXCEPT THAT CL 12 DELETED AND NABALCO ALSO WILLING DELETE CL 16 IF UNACCEPTABLE TO OWNERS
- 7) SUBJECT NABALCO BOARD APPROVAL BY 26TH JUNE 74

CONCORDE COUNTERED AS FOLLOWS:

30 CONCORD/NABALCO COA — RE YOUR COUNTER
CONCORDE ACCEPTS WITH FOLL AMENDMENTS
FOR REPLY 1400 LONDON TIME TODAY 13/6/74:—

- 1) PERIOD 3 YEARS OK
- 2) QUANTITIES PER YOUR TX 12/6 CL 3 OK

Exhibit 50 (part)
Telex:
Stolt Neilsen to
Australian
Territory Liner
Services
—
14th June, 1974
(Cont'd)

3) IS AGREED BUT ON HEATING WHILST MOST OF OXY SHIPS HAVE 135F IN HEAD CHARTER, A FEW HAVE 125F THEREFORE OXY FEELS 125F SHOULD BE ACCEPTABLE AS IN THEIR EXPERIENCE KUWAIT FUELOIL DOES NOT EVEN NEED HEATING OF 125F SO PERHAPS NABALCO TECHNICAL PEOPLE CAN CONFIRM TO CHARTERING SECTION 125F IS PLENTY

4) RATE W172.5
OXY FEEL THAT WITH SUCH STRINGENT TERMS OF FUEL SUPPLY CONTRACT TO BE MET, THEY BEING OIL COMPANY THEMSELVES, FAMILIAR WITH SUCH DIFFICULT SCHEDULING, AND HAVING MANY SUCH CONTRACTS, CHRTRS WOULD BE BETTER OFF THAN FIXING WITH AN OWNER FEW POINTS LESS WHO WILL EITHER NOT AGREE SUCH CLAUSES OR WOULD NOT BE ABLE FULFIL SAME. THIS REASON THEY THINK ITS WELL WORTH W172.5 10

5) 72 HRS SHINC OK

6) OK — ON CLAUSE 16 OXY WOULD PROBABLY AGREE IF THEY GIVEN 24 HOURS TO RECONFIRM EXTRA PERIOD.

7) OK

SINCE OXY DO NOT KNOW NABALCO, THEIR FINANCE DEPT MUST RUN A CHECK ON NABALCO AS THIS IS COMPANY REGULATION BUT ON INFO YOU GAVE THEY SAY SHOULD BE NO PROBLEM BUT COUNTER MUST BE SUBJECT MANAGEMENT APPROVAL OF CHRTRS. 20

OXY SAY LETS GET RATE AND THESE OTHER FEW DETAILS AGREED THEN GET TOGETHER IN LONDON AND GO THRU ALL OTHER ITEMS AS NO POINT IN GOING INTO DETAILS UNTIL WE GET TOGETHER ON RATE.

RE OXY TONNAGE

OWNERS HAVE THREE VESSELS OF THEIR OWN RANGING FROM 60 TO 75,000 TONS AND THE BALANCE OF THEIR FLEET IS MADE UP OF PERIOD CHARTERED IN TONNAGE FROM 20 TO 260,000 30

THE CHARTERED TONNAGE INCLUDES OWNERS SUCH AS LOLLIGHETTI — WILHELMSSEN — JAPAN LINE — CITIES SERVICE — P AND O — N.J. GOULANDRIS — NIARCHOS ETC.,

IN ADDITION THEY HAVE TONNAGE EXCHANGE AGREEMENTS WITH OTHER OIL COMPANIES ORDER SWOP AROUND AND PUT IN SUITABLE SHIP, IF ONE OF THEIR OWN NOT IN POSITION. MOST OF THEIR TONNAGE IS MODERN AND LESS THAN 15 YEARS OLD.

OXY WILL USE TONNAGE THAT FITS AS AGREED IN COA BUT IF FOR ANY REASON CHRTRS PREFER A LARGER OR SMALLER SHIP 40

THAN NOMINATED, THEN OXY WILL TRY RESHUFFLE THEIR OWN OIL PROGRAM AND OTHER CONTRACTS TO ASSIST.
UNQUOTE

Exhibit 50 (part)
Telex:
Stolt Neilsen to
Australian
Territory Liner
Services
—
14th June, 1974
(Cont'd)

NABALCO COUNTER :

ACCEPT EXCEPT :

REPLY 0630 SYD TIME TODAY 14/6/74 :

- 3) HEATING 125F IS ACCEPTABLE AND WILL BE REQUIRED BY SHIPPER
- 4) RATE W167.1/2 (DISCRETION CONCLUDE AT 170)
- 10 6) CLAUSE 16 : SHIPPER PREFERS LEAVE FOR DISCUSSION LONDON
- 9) DEMURRAGE TO BE PAID ON THE BASIS OF VESSELS CARGO INTAKE AT LOADING PORT PLUS WATER, BUNKERS AND STORES

RE : NABALCO

NABALCO IS MANAGER OF GOVE JOINT VENTURE WHICH IS OWNED 70 0/0 SWISS ALUMINIUM 30 0/0 GOVE ALUMINA STOP IF CHARTS ARE HAPPY WITH SWISS ALUMINIUM THEY SHOULD ALSO BE HAPPY WITH NABALCO STOP ANYHOW SHIPPER WILL SATISFY OWNERS ON THIS POINT WHEN IN LONDON

CONCORDE COUNTER:

ACCEPT EXCEPT REPLY LONDON 1800 HRS TODAY

- 4) RATE : W 172.1/2
- 9) DEMURRAGE TO BE PAID ACCORDING WS RULES REGULATIONS FOR TONNAGE UPTO 64,499 TDW STOP FOR LARGER TONNAGE DEMURRAGE TO BE PAID ON CARGO INTAKE PLUS BNKRS-WATER AND STORES

NABALCO COUNTER

ACCEPT EXCEPT REPLY 0630 SYD 14/6

- 30 4) RATE WS 167.1/2 — DISCRETION 170 FOR CONCLUDING ONLY

CONCORDE:

ACCEPT EXCEPT IMMEDIATE REPLY:

RATE : WS 172.1/2

NABALCO:

Exhibit 50 (part)
Telex:
Stolt Neilsen to
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14th June, 1974
(Cont'd)

RPT LAST REPLY SYD 0630 14/6

CONCORDE:

ACCEPT W170
THUS WE ARE FXD SUB COA TERMS/DETAILS AND SUB CHARTS'
BOARD APPROVAL BY 26TH JUNE

THANKS SO FAR
WILL RING YOU ABT 1215/1230
REGARDS OE
END+

Exhibit J
Contract:
Plaintiff and
Concord
Petroleum
Corporation
—
18th June, 1974

Exhibit J

Contract: Plaintiff and Concord Petroleum Corporation

THIS AGREEMENT made the 18th day of June, One thousand nine hundred and seventy-four BETWEEN NABALCO PTY LIMITED a company duly incorporated in the State of New South Wales and having its registered office at 1 Alfred Street, Sydney, in the said State (hereinafter referred to as "the Charterer") of the one part AND CONCORD PETROLEUM CORPORATION of Hamilton, Bermuda, chartered owner (hereinafter referred to as "the Owner") of the other part.

WHEREAS:

- (a) The Charterer requires transport of crude oil and/or dirty petroleum products from Arabian Gulf to Australia during the period 1 August 1974 to 31 July 1977 inclusive. 20
- (b) The Charterer and Owner have agreed that the Owner will provide during the said period vessel(s) for the above transport requirements.
- (c) The Charterer and the Owner have agreed that the provision by the Owner of such vessel(s) shall be in accordance with the following terms and conditions.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. EXCLUSIVE RIGHT

The Owner observing and performing all covenants and obligations on its part herein contained shall from 1 August 1974 to 31 July 1977 inclusive have and enjoy the exclusive right to transport the quantities of crude oil and/or dirty petroleum products (hereinafter referred to as "cargo") specified in Clause 3 hereof from the Loading Port(s) to the Unloading Port(s) and there unload the same in accordance with the terms and conditions herein contained. 30

2. **LOADING AND UNLOADING PORTS**

The loading port(s) shall for the purposes of this Agreement be at Charterer's option one or two safe ports Arabian Gulf but excluding Fao and Abadan. The unloading port(s) shall be at Charterer's option Gove N.T. Australia and/or one safe port Northern Australia.

*Exhibit J
Contract:
Plaintiff and
Concord
Petroleum
Corporation
—
18th June, 1974
(Cont'd)*

3. **ESTIMATED ANNUAL QUANTITIES**

The quantity of cargo which the parties agree shall be transported during the currency of this Agreement shall for the relevant periods be as follows:

	Period	Quantity
10	1 Aug 1974 to 31 Dec 1974	140,000 metric tons
	1 Jan 1975 to 31 Dec 1975	350,000 " "
	1 Jan 1976 to 31 Dec 1976	350,000 " "
	1 Jan 1977 to 31 Jul 1977	230,000 " "

Provided that the Charterer shall in its absolute discretion be entitled to increase or decrease the above quantities (or any of them) by up to ten (10) percent thereof.

4. **ADDITIONAL QUANTITIES**

20 If the Charterer requires to transport quantities in excess of those stipulated above, then the Owner shall have first option to provide transportation for such excess quantities which shall be accepted and carried in accordance with the terms and conditions of this Agreement. The Owner shall declare such option within 30 days of being requested to do so by the Charterer.

5. **DELIVERY**

- 5.1 Not less than sixty (60) days in advance the Charterer shall submit a written request to the Owner specifying the day (hereinafter called "the presenting day") on which the vessel is required to present for loading at the loading port. The presenting day nominated as aforesaid shall be the first day of a fifteen (15) day spread representing laydays cancelling.
- 30 5.2 Not less than thirty-five (35) days prior to the presenting day as aforesaid the Owner shall declare to the Charterer in writing:
- (a) the name and nationality (if known) of the vessel, and
 - (b) the estimated time of arrival at the loading port within the said laydays cancelling period, and
 - (c) the quantity of cargo ten (10) percent more or less at Owner's option which the vessel will load. Such quantity shall not be less than 36,000 metric tons or more than 66,000 metric tons.

Exhibit J
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 —
 18th June, 1974
 (Cont'd)

5.3 Owners have the option of providing a vessel at the loading port earlier than the presenting day as aforesaid and Charterer shall accept such vessel provided that:

- (a) Owner shall advise the Charterer in writing of the vessel's ETA not less than thirty-five (35) days in advance, and
- (b) the maximum quantity of cargo as specified in 5.2 (c) above be reduced by an amount equivalent to 1,000 metric tons for each day that the vessel arrives in advance of the presenting day.

6. DECLARED VESSEL

- 6.1 The Owner shall only nominate to the Charterer a vessel complying with such limitations as are contained in this Agreement. The Owner shall not nominate a vessel which is prohibited from operating in the loading port according to present or future regulations issued by the government or authorities responsible for such loading ports. 10
- 6.2 The Owner shall have the right to substitute for the nominated vessel another vessel of similar size and capacity subject to its acceptability to the Charterer. The Owner shall give written notice to the Charterer of the nomination of such substituted vessel at least seven (7) clear days before the expected date of arrival nominated and declared for the substituted vessel. 20

7. PERIOD 1 AUGUST 1974 to 31 DECEMBER 1974

Notwithstanding any terms or condition to the contrary under Clause 5 it is hereby mutually agreed that:

- (a) the presenting day for the first vessel under this Agreement shall be within the period 26 July 1974 to 5 August 1974 and that such days shall be laydays cancelling for the purpose of the first shipment;
- (b) the Owner undertakes to declare a vessel to lift not less than 25,000 metric tons and not more than 35,000 metric tons at the Owner's option presenting for loading within the said laydays cancelling;
- (c) in respect of the above shipment the freight rate herein shall be increased by 0.75 point (three quarters of one point) World Scale for each 1,000 metric ton variation between Bill of Lading quantity and 60,000 metric tons. 30

The Charterer shall be entitled to limit subsequent shipments in the period 1 August 1974 to 31 December 1974 to not less than 25,000 metric tons and not more than 35,000 metric tons per vessel provided that the freight rate herein shall be adjusted in accordance with 7 (c) above for any such limitation notified in writing to the Owner by the Charterer.

8. EACH VOYAGE A SEPARATE CONTRACT

Each voyage under this Agreement shall be considered a separate contract and any claims in respect of any voyage shall only affect that single voyage and not the rights and obligations of the Owner and the Charterer under the total Agreement.

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9. SHIP LIMITATIONS

10 The Charterer guarantees that the loading port(s) are designed to accommodate vessels of maximum length overall 985 feet on a maximum draft of 45 feet in salt water and the Owner shall nominate vessels under Clause 6.1 which shall not exceed above limitations.

10. LOADING TRANSPORT AND UNLOADING

10.1 The Master of the vessel declared under Clauses 5 and 7 herein shall radio "Kunpetco London" and cable "Alusvd Sydney":

- (a) seven (7) days, 96, 48 and 24 hours in advance of the vessel's ETA at loading port;
- (b) immediately upon its happening should there occur any event materially affecting the vessel's ETA.

20 10.2 Unless otherwise instructed by the Charterers the notice of readiness shall be tendered to Kuwait National Petroleum Company (KSC) at the loading port or that company's nominated representative and to Nabalco Pty Limited at the unloading port.

10.3 Total laytime in running hours Sundays and holidays included for loading and discharging cargo shall be seventy-two (72) hours.

30 10.4 The Charterer shall pay demurrage per running day or pro rata for any part thereof at the rate of World Scale 170 (one hundred and seventy) as provided for in World Scale at the Bill of Lading date of each loading on vessel's summer dead weight for vessels sizes up to 64,499 tons dead weight. For vessels exceeding 64,499 tons dead weight in size demurrage shall be assessed at the same World Scale rate as above, but calculated on cargo bill of lading intake, plus bunkers, water and stores.

10.5 Hoses for loading and discharging shall be furnished by the Charterer or consignee and shall be connected and disconnected by the vessel. In cases where the practice of the port or existing port regulations prevent the vessel from connecting or disconnecting hoses then such connecting and disconnecting shall be done by the Charterer or in accordance with the said practice of the port or regulations.

10.6 Owners guarantee that the minimum terms and conditions of employment of the officers and crew of the vessel shall be covered by an ITF agreement or bonafide trade union agreement acceptable to the ITF.

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- 10.7 Cargo shall be heated to a maximum of one hundred and twenty-five degrees (125°) Fahrenheit by the Owner if required by the Charterer and the Owner undertakes to segregate two grades within vessel's natural segregation.
- 10.8 The Owner warrants that vessels nominated under this Agreement are entered as members of TOVALOP.

11. FREIGHT

- 11.1 Freight shall be paid at the rate of World Scale 170 (one hundred and seventy) as applicable on the Bill of Lading date of each cargo which at the commencement hereof is US \$ 10.08 (United States currency ten dollars and eight cents) per long ton and shall be computed on intake quantity (except deadfreight as per Clause 12) as determined by shore tank measurement carried out by cargo suppliers in the manner customary in the loading port. The quantity so ascertained shall be the Bill of Lading quantity. Owner has the right to appoint a representative to be present to observe the measuring and taking of samples. 10
- 11.2 Payment of freight shall be made by the Charterer without discount upon delivery of the cargo at destination. No deduction of freight shall be made for water and/or sediment contained in the cargo. The services of a Petroleum Inspector shall be arranged and paid for by the Charterer who shall furnish the Owner with a copy of the Inspector's certificate. Payment of freight shall be made telegraphically in United States currency to Owner's bank in London or New York at Owner's option as per instructions to the Charterer prior to shipment. 20

12. DEADFREIGHT

Should the Charterer fail to supply the quantity of cargo nominated under Clause 5 or Clause 7 herein as appropriate the vessel may at the Master's option and shall upon request of the Charterer proceed on her voyage provided that the tanks in which the cargo is loaded are sufficiently filled to put her in a seaworthy condition. In that event however deadfreight shall be paid at the rate specified in Clause 11 herein on the difference between the intake quantity and the quantity the vessel would have received if loaded with the quantity nominated under Clause 5 or Clause 7 respectively. 30

13. INSURANCE OF CARGO

The Charterer shall insure the cargo on terms Institute Cargo Clauses (FPA) plus war and strikes. The Owner agrees to pay any additional charge for insurance of cargo by reason of the use of an over age vessel (that is over twenty (20) years of age) or vessel not fully classed.

14. ADDRESS FOR COMMUNICATIONS 40

Except as otherwise herein provided all requests, notices, advices authorised or required to be given by or pursuant to this Agreement shall

be given in writing mailed postage prepaid or sent by telegram, telex or cable in the case of Nabalco to 1 Alfred Street, Sydney, NSW, 2000, Australia, telephone 278371; telex no AA20472; cable ALUSYD SYDNEY, and in the case of Concord Petroleum Corporation of Hamilton, Bermuda to Occidental International Oil Inc, Portland House, Stag Place, London, SW1E 5 BY, telephone 01-828 5600; telex no 918818; telegrams OXYOIL, London. The Owner and its vessels shall also send copies of arrival and departure advices to Nabalco Pty Limited, PO Box 21, Gove North Territory, Australia; telex no AA85000 cable GOBAUX DARWIN.

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10 15. GENERAL AVERAGE AND ARBITRATION

General Average and Arbitration in London.

16. FORCE MAJEURE

20 Notwithstanding anything contained herein both Charterers and Owners shall not be liable for any loss, claims or demands of any nature whatsoever or deemed to be in breach of this Agreement because of any delay or failure in observing or performing any of the conditions or provisions hereof, if such delay or failure was caused by or arose out of any of the following circumstances directly affecting the performance of this Contract such as declared or undeclared war, as defined in Clause 21, sabotage, blockade, revolution, police action, riots or disorder, embargos or trade restriction of any sort, government or quasi-government action, acts of God, fire, flood, earthquake, storm, tides or tidal waves, explosion, accident, radiation, strike lock-outs or other labour disputes or disease or boycotts of Owner's vessels by unions or governments, provided that such boycotts do not arise through failure of the Owners to meet the requirements of Clause 10.6.

17. TERMINATION OF AGREEMENT

30 Termination of this Agreement in exercise of any rights 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. DISCLOSURE OF AGENCY

40 The Charterer declares and the Owner acknowledges that the Charterer 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 ventures and accordingly in any action or claim hereunder for loss or damage suffered by the said joint venturers or either of them under this Agreement the Charterer 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 Charterer.

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19. **BUNKERS**

Bunkers ceiling prices to be based on a maximum price at the loading port(s) of US \$ 75.00 (United States dollars seventy-five) per long ton delivered for fuel oil max. 1500 seconds Redwood and for each US \$ 1 (United States dollar one) increase over US \$ 75.00 (United States dollars seventy-five), freight rate to be increased by 0.5 (one half of one point) World Scale points. In the event the bunker price on any one voyage exceeds US \$ 75.00 (United States dollars seventy-five) Owners shall notify the Charterer who has the option to supply bunkers at US \$ 75.00 (United States dollars seventy-five) per long ton without any increase in freight rate. 10

20. **WAR RISK INSURANCE**

Any increase in war risk insurance premiums on vessel and/or crew and/or crew war bonuses over and above those in effect as of the date of this charter to be for Charterer's account.

21. **WAR CANCELLATION**

It is hereby mutually agreed that Charterers and/or Owners shall have the liberty to cancel this Agreement should any major power become involved in a war with Liberia, a Scandinavian country, Greece, Panama, Italy, Yugoslavia, Kuwait, Australia or each other. Major powers are defined as USA, USSR, Great Britain, France, Japan and The Peoples Republic of China. 20

22. **WORLD SCALE REFERENCE**

In the event that World Scale be either replaced or modified to such extent that the basic calculations as described in the World Scale Preamble item 3 (a) (i) as revised 1st January 1974 then it is agreed that this Charter Party will be registered with World Scale in order to be serviced on the same basis as on the present basic calculation amended periodically and/or yearly. Any registration or service fees will be borne equally by the Charterer and the Owner. 30

23. **ADDITIONAL TERMS & CONDITIONS**

The "Exxonvoy" 1969 Voyage Charter Party, attached hereto and initialled for identification, shall be incorporated into this Agreement and all its terms and conditions, so far as they are not inconsistent with the provisions of this Agreement, shall have full force and effect as if expressly stated herein.

24. **COMMISSION**

A total of 3.75 percent commission is payable by the Owners on the actual amount of freight, deadfreight and demurrage to Pacific Marine, (Bermuda) Ltd, for division with others. 40

IN WITNESS whereof the parties hereto have hereunto set their hands on the day and year first hereinbefore written.

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FOR AND ON BEHALF OF) A.G. Coogan Eddy Notter
NABALCO PTY LIMITED) General Manager Secretary

FOR AND ON BEHALF OF) R.G. Martin
CONCORD PETROLEUM) Executive Vice President
CORPORATION)

10 EXXON INTERNATIONAL COMP CODE WORD FOR THIS
DIVISION OF EXXON CORPORATION CHARTER PARTY:
SUPPLY AND TRANSPORTATION DEPARTMENT EXXONVOY
1969

TANKER VOYAGE CHARTER PARTY

PREAMBLE

_____ Place _____ Date

20 IT IS THIS DAY AGREED BETWEEN _____
chartered owner/owner (hereinafter called the "Owner") of the _____
SS/MS _____ (hereinafter called the "Vessel")
and _____ (hereinafter called the "Charterer")
that the transportation herein provided for will be performed subject to the terms
and conditions of this Charter Party, which includes this Preamble and Part I and
Part II. In the event of a conflict, the provisions of Part I will prevail over those
contained in Part II.

PART I

A. Description and Position of Vessel:

Deadweight: _____ tons (2240 lbs.) Classed: _____
Loaded draft of Vessel on assigned summer freeboard _____ ft. _____ in. salt water.
Capacity for cargo: _____ tons (of 2240 lbs. each) % more or less, Vessel's option.
Coated: Yes No
Coiled: Yes No
30 Now: _____ Expected Ready: _____

B. Laydays:

Commencing: _____ Cancelling: _____

- C. Loading Port(s): _____ Charter's Option
- D. Discharging Port(s): _____ Charterer's Option
- E. Cargo: _____

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- Charterer's Option
- F. Freight Rate: per ton (of 2240 lbs. each).
- G. Freight Payable to: at
- H. Total Laytime in Running Hours:
- I. Demurrage per day:
- J. Commission of % is payable by Owner to
 on the actual amount of freight, when and as freight is paid.
- K. The place of General Average and arbitration proceedings to be London/New York (strike out one). 10
- L. Tovalop: Owner warrants vessel to be a member of TOVALOP scheme and will be so maintained throughout duration of this charter.
- M. Special Provisions:

IN WITNESS WHEREOF, the parties have caused this Charter, consisting of a Preamble, Parts I and II, to be executed in duplicate as of the day and year first above written.

Witness the signature of:

By:

Witness the signature of:

By:

20

PART II

1. **WARRANTY—VOYAGE—CARGO.** The vessel, classed as specified in Part I hereof, and to be so maintained during the currency of this Charter, shall, with all convenient dispatch, proceed as ordered to Loading Port(s) named in accordance with Clause 4 hereof, or so near thereunto as she may safely get (always afloat), and being seaworthy, and having all pipes, pumps and heater coils in good working order, and being in every respect fitted for the voyage, so far as the foregoing conditions can be attained by the exercise of due diligence, perils of the sea and any other cause of whatsoever kind beyond the Owner's and/or Master's control excepted, shall load (always afloat) from the factors of the Charterer a full and complete cargo of petroleum and/or its products in bulk, not exceeding what she can reasonably stow and carry over and above her bunker fuel, consumable stores, boiler feed, culinary and drinking water, and complement and their effects (sufficient space to be left in the tanks to provide for the expansion of the cargo), and being so loaded shall forthwith proceed, as ordered on signing Bills of Lading, direct to the Discharging Port(s), or so near thereunto as she may safely get (always afloat), and deliver said cargo. If heating of the cargo is requested by the Charterer, the Owner shall exercise due diligence to maintain the temperatures requested. 30

2. **FREIGHT.** Freight shall be at the rate stipulated in Part I and shall be computed on intake quantity (except deadfreight as per Clause 3) as shown on the 40

Inspector's Certificate of Inspection. Payment of freight shall be made by Charterer without discount upon delivery of cargo at destination, less any disbursements or advances made to the Master or Owner's agents at ports of loading and/or discharge and cost of insurance thereon. No deduction of freight shall be made for water and/or sediment contained in the cargo. The services of the Petroleum Inspector shall be arranged and paid for by the Charterer who shall furnish the Owner with a copy of the Inspector's Certificate.

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10 3. DEADFREIGHT. Should the Charterer fail to supply a full cargo, the Vessel may, at the Master's option, and shall, upon request of the Charterer, proceed on her voyage, provided that the tanks in which cargo is loaded are sufficiently filled to put her in seaworthy condition. In that event, however, deadfreight shall be paid at the rate specified in Part I hereof on the difference between the intake quantity and the quantity the Vessel would have carried it loaded to her minimum permissible freeboard for the voyage.

4. NAMING LOADING AND DISCHARGE PORTS.

20 (a) The Charterer shall name the loading port or ports at least twenty-four (24) hours prior to the Vessel's readiness to sail from the last previous port of discharge, or from bunkering port for the voyage, or upon signing this Charter if the Vessel has already sailed. However, Charterer shall have the option of ordering the Vessel to the following destinations for wireless orders:

ST. KITTS	<i>On a voyage to a port or ports in:</i>
PORT SAID	Carribbean or U.S. Gulf loading port(s)
	Eastern Mediterranean or Persian Gulf loading port(s)
	(from ports west of Port Said.)

(a) If lawful and consistent with Part I and with the Bills of Lading, the Charterer shall have the option of nominating a discharging port or ports by radio to the Master on or before the Vessel's arrival at or off the following places:

30 <i>Place</i>	<i>On a voyage to a port or ports in:</i>
LAND'S END	United Kingdom/Continent (Bordeaux/Hamburg range)
	or Scandinavia (including Denmark)
SUEZ	Mediterranean (from Persian Gulf)
GIBRALTER	Mediterranean (from Western Hemisphere).

(c) Any extra expense incurred in connection with any change in loading or discharging ports (so named) shall be paid for by the Charterer and any time thereby lost to the Vessel shall count as used laytime.

40 5. LAYDAYS. Laytime shall not commence before the date stipulated in Part I, except with the Charterer's sanction. Should the Vessel not be ready to load by 4:00 o'clock P.M. (local time) on the cancelling date stipulated in Part I, the Charterer shall have the option of cancelling this Charter by giving Owner notice of such cancellation within twenty-four (24) hours after such cancellation date; otherwise this Charter to remain in full force and effect.

6. NOTICE OF READINESS. Upon arrival at customary anchorage at each port of loading or discharge, the Master or his agent shall give the Charterer or his agent notice by letter, telegraph, wireless or telephone that the Vessel is ready to load or discharge cargo, berth or no berth, and laytime, as hereinafter provided, shall commence upon the expiration of six (6) hours after receipt of

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such notice, or upon the Vessel's arrival in berth (i.e., finished mooring when at a sealoading or discharging terminal and all fast when loading or discharging alongside a wharf), whichever first occurs. However, where delay is caused to Vessel getting into berth after giving notice of readiness for any reason over which Charterer has no control, such delay shall not count as used laytime.

7. HOURS FOR LOADING AND DISCHARGING. The number of running hours specified as laytime in Part I shall be permitted the Charterer as laytime for loading and discharging cargo; but any delay due to the Vessel's condition or breakdown or inability of the Vessel's facilities to load or discharge cargo within the time allowed shall not count as used laytime. If regulations of the Owner or port authorities prohibit loading or discharging of the cargo at night, time so lost shall not count as used laytime; if the Charterer, shipper or consignee prohibits loading or discharging at night, time so lost shall count as used laytime. Time consumed by the vessel in moving from loading or discharge port anchorage to her loading or discharge berth, discharging ballast water or slops, will not count as used laytime. 10

8. DEMURRAGE. Charterer shall pay demurrage per running hour and pro rata for a part thereof at the rate specified in Part I for all time that loading and discharging and used laytime as elsewhere herein provided exceeds the allowed laytime elsewhere herein specified. If, however, demurrage shall be incurred at ports of loading and/or discharge by reason of fire, explosion, storm or by a strike, lockout, stoppage or restraint of labor or by breakdown of machinery or equipment in or about the plant of the Charterer, supplier, shipper or consignee of the cargo, the rate of demurrage shall be reduced one-half of the amount stated in Part I per running hour or pro rata for part of an hour for demurrage so incurred. The Charterer shall not be liable for any demurrage for delay caused by strike, lockout, stoppage or restraint of labor for Master, officers and crew of the Vessel or tugboat or pilots. 20

9. SAFE BERTHING—SHIFTING. The vessel shall load and discharge at any safe place or wharf, or alongside vessels or lighters reachable on her arrival, which shall be designated and procured by the Charterer, provided the Vessel can proceed thereto, lie at, and depart therefrom always safely afloat, any lighterage being at the expense, risk and peril of the Charterer. The Charterer shall have the right of shifting the Vessel at ports of loading and/or discharge from the safe berth to another on payment of all towage and pilotage shifting to next berth, charges for running lines on arrival at and leaving that berth, additional agency charges and expense, customs overtime and fees, and any other extra port charges or port expenses incurred by reason of using more than one berth. Time consumed on account of shifting shall count as used laytime except as otherwise provided in Clause 15. 30 40

10. PUMPING IN AND OUT. The cargo shall be pumped into the Vessel at the expense, risk and peril of the Charterer, and shall be pumped out of the Vessel at the expense of the Vessel, but at the risk and peril of the Vessel only so far as the Vessel's permanent hose connections, where delivery of the cargo shall be taken by the Charterer or its consignee. If required by Charterer, Vessel after discharging is to clear shore pipe lines of cargo by pumping water through them and time consumed for this purpose shall apply against allowed laytime. The Vessel shall supply her pumps and the necessary power for discharging in all

ports, as well as necessary hands. However, should the Vessel be prevented from supplying such power by reason of regulations prohibiting fires on board, the Charterer or consignee shall supply, at its expense, all power necessary for discharging as well as loading, but the Owner shall pay for power supplied to the Vessel for other purposes. If cargo is loaded from lighters, the Vessel shall furnish steam at Charterer's expense for pumping cargo into the Vessel, if requested by the Charterer, providing the Vessel has facilities for generating steam and is permitted to have fires on board. All overtime of officers and crew incurred in loading and/or discharging shall be for account of the Vessel.

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(Cont'd)*

10 11. HOSES: MOORING AT SEA TERMINALS. Hoses for loading and discharging shall be furnished by the Charterer and shall be connected and disconnected by the Charterer, or, at the option of the Owner, by the Owner at the Charterer's risk and expense. Laytime shall continue until the hoses have been disconnected. When Vessel loads or discharges at a sea terminal, the Vessel shall be properly equipped at Owner's expense for loading or discharging at such place, including suitable ground tackle, mooring lines and equipment for handling submarine hoses.

20 12. DUES—TAXES—WHARFAGE. The Charterer shall pay all taxes, dues and other charges on the cargo, including but not limited to Customs overtime on the cargo, Venezuelan Habilitation Tax, C.I.M. Taxes at Le Havre and Portuguese Imposto de Comercio Maritime. The Charterer shall also pay all taxes on freight at loading or discharging ports and any unusual taxes, assessments and governmental charges which are not presently in effect but which may be imposed in the future on the Vessel or freight. The Owner shall pay all dues and other charges on the Vessel (whether or not such dues or charges are assessed on the basis of quantity of cargo), including but not limited to French droits de quai and Spanish derramas taxes. The Vessel shall be free of charges for the use of any wharf, dock, place or mooring facility arranged by the Charterer for the purpose of loading or discharging cargo; however, the Owner shall be
30 responsible for charges for such berth when used solely for Vessel's purposes, such as awaiting Owner's order, tank cleaning, repairs, etc. before, during or after loading or discharging.

13. (a). CARGOES EXCLUDED VAPOR PRESSURE. Cargo shall not be shipped which has a vapor pressure at one hundred degrees Fahrenheit (100° F.) in excess of thirteen and one-half pounds (13.5 lbs.) as determined by the current A.S.T.M. Method (Reid) D-323.

(b). FLASH POINT. Cargo having a flash point under one hundred and fifteen degrees Fahrenheit (115° F.) (closed cup) A.S.T.M. Method D-56 shall not
40 be loaded from lighters but this clause shall not restrict the Charterer from loading or topping off Crude Oil from vessels or barges inside or outside the bar at any port or place where bar conditions exist.

14. (a). ICE. In case port of loading or discharge should be inaccessible owing to ice, the Vessel shall direct her course according to Master's judgment, notifying by telegraph or radio, if available, the Charterers, shipper or consignee, who is bound to telegraph or radio orders for another port, which is free from ice and where there are facilities for the loading or reception of the cargo in bulk. The whole of the time occupied from the time the Vessel is diverted by reason of

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Contract:
Plaintiff and
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Petroleum
Corporation

18th June, 1974
(Cont'd)

the ice until her arrival at an ice-free port of loading or discharge, as the case may be, shall be paid for by the Charterer at the demurrage rate stipulated in Part I.

(b) If on account of ice the Master considers it dangerous to enter or remain at any loading or discharging place for fear of the Vessel being frozen in or damaged, the Master shall communicate by telegraph or radio, if available, with the Charterer, shipper or consignee of the cargo, who shall telegraph or radio him in reply, giving orders to proceed to another port as per Clause 14 (a) where there is no danger of ice and where there are the necessary facilities for the loading or reception of the cargo in bulk, or to remain at the original port at their risk, and in either case Charterer to pay for the time that the Vessel may be delayed, at the demurrage rate stipulated in Part I. 10

15. TWO OR MORE PORTS COUNTING AS ONE. To the extent that the freight rate standard of reference specified in Part I F hereof provides for special groupings or combinations of ports or terminals, any two or more ports or terminals within each such grouping or combination shall count as one port for purposes of calculating freight and demurrage only, subject to the following conditions:

(a) Charterer shall pay freight at the highest rate payable under Part I F hereof for a voyage between the loading and discharge ports used by Charterer.

(b) All charges normally incurred by reason of using more than one berth shall be for Charterer's account as provided in Clause 9 hereof. 20

(c) Time consumed shifting between the ports or terminals within the particular grouping or combination shall not count as used laytime.

(d) Time consumed shifting between berths within one of the ports or terminals of the particular grouping or combination shall count as used laytime.

16. GENERAL CARGO. The Charterer shall not be permitted to ship any packaged goods or non-liquid bulk cargo of any description; the cargo the Vessel shall count as used laytime; but should the quarantine not be declared until the Vessel is on passage to such port, the Charterer shall not be liable for any resulting delay. 30

17. (a). QUARANTINE. Should the Charterer send the Vessel to any port or place where a quarantine exists, any delay thereby caused to the Vessel shall count as used laytime; but should the quarantine not be declared until the Vessel is on passage to such port, the Charterer shall not be liable for any resulting delay.

(b) FUMIGATION. If the Vessel, prior to or after entering upon this Charter, has docked or docks at any wharf which is not rat-free or stegomyia-free, she shall, before proceeding to a rat-free or stegomyia-free wharf, be fumigated by

the Owner at his expense, except that if the Charterer ordered the Vessel to an infected wharf the Charterer shall bear the expense of fumigation.

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Petroleum
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*18th June, 1974
(Cont'd)*

10 18. **CLEANING.** The Owner shall clean the tanks, pipes and pumps of the Vessel to the satisfaction of the Charterer's Inspector. The Vessel shall not be responsible for any admixture if more than one quality of oil is shipped, nor for leakage, contamination or deterioration in quality of the cargo unless the admixture, leakage, contamination or deterioration results from (a) unseaworthiness existing at the time of loading or at the inception of the voyage which was discoverable by the exercise of due diligence, or (b) error or fault of the servants of the Owner in the loading, care or discharge of the cargo.

20 19. **GENERAL EXCEPTIONS CLAUSE.** The Vessel, her Master and Owner shall not, unless otherwise in this Charter expressly provided, be responsible for any loss or damage, or delay or failure in performing hereunder, arising or resulting from:— any act, neglect, default or barratry of the Master, pilots, mariners or other servants of the Owner in the navigation or management of the Vessel; fire, unless caused by the personal design or neglect of the Owner; collision, stranding or peril, danger or accident of the sea or other navigable waters, saving or attempting to save life or property; wastage in weight or bulk, or any other loss or damage arising from inherent defect, quality or vice of the cargo, any act or omission of the Charterer or Owner, shipper or consignee of the cargo, their agents or representatives; insufficiency of packing, insufficiency or inadequacy of marks; explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, equipment or machinery; unseaworthiness of the Vessel unless caused by want of due diligence on the part of the Owner to make the Vessel seaworthy or to have her properly manned, equipped and supplied; or from any other cause of whatsoever kind arising without the actual fault or privity of the Owner. And neither the Vessel nor Master or Owner, nor the Charterer, shall, unless otherwise in this Charter expressly provided, be responsible for any loss or damage or delay or failure in performing hereunder, arising or resulting from:—

30 Act of God; act of war; perils of the seas; act of public enemies, pirates or assailing thieves; arrest or restraint of princes, rulers or people; or seizure under legal process provided bond is promptly furnished to release the Vessel or cargo; strike or lockout or stoppage or restraint of labor from whatever cause, either partial or general; or riot or civil commotion.

20. **ISSUANCE AND TERMS OF BILLS OF LADING**

40 (a) The Master shall, upon request, sign Bills of Lading in the form appearing below for all cargo shipped but without prejudice to the rights of the Owner and Charterer under the terms of this Charter. The Master shall not be required to sign Bills of Lading for any port which, the Vessel cannot enter, remain at and leave in safety and always afloat nor for any blockaded port.

(b) The carriage of cargo under this Charter Party and under all Bills of Lading issued for the cargo shall be subject to the statutory provisions and other terms set forth or specified in sub-paragraphs (i) through (vii) of this clause and such terms shall be incorporated verbatim or be deemed incorporated by the reference in any such Bill of Lading. In such sub-paragraphs and in any Act referred to therein, the word "carrier" shall include the Owner and the Chartered Owner of the Vessel.

Exhibit J
Contract:
Plaintiff and
Concord
Petroleum
Corporation
—
18th June, 1974
(Cont'd)

(i) **CLAUSE PARAMOUNT.** This Bill of Lading shall have effect subject to the provisions of the Carriage of Goods by Sea Acts of the United States, approved April 16, 1936, except that if this Bill of Lading is issued at a place where any other Act, ordinance or legislation gives statutory effect to the International Convention for the Unification of Certain Rules relating to Bills of Lading at Brussels, August 1924, then this Bill of Lading shall have effect, subject to the provisions of such Act, ordinance or legislation. The applicable Act, ordinance or legislation (hereinafter called the "Act") shall be deemed to be incorporated herein and nothing herein contained shall be deemed a surrender by the Owner of any of its rights or immunities or an increase of any of its responsibilities or liabilities under the Act. If any term of this Bill of Lading be repugnant to the Act to any extent, such term shall be void to that extent but no further. 10

(ii) **JASON CLAUSE.** In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the Owner is not responsible, by statute, contract or otherwise, the cargo shippers, consignees or owners of the cargo shall contribute with the Owner in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the cargo. If a salving ship is owned or operated by the Owner, salvage shall be paid for as fully as if the said salving ship or ships belonged to strangers. Such deposit as the Owner or his agents may deem sufficient to cover the estimated contribution of the cargo and any salvage and special charges thereon shall, if required, be made by the cargo, shippers, consignees or owners of the cargo to the carrier before delivery. 20

(iii) **GENERAL AVERAGE.** General Average shall be adjusted, stated and settled according to York/Antwerp Rules 1950 and, as to matters not provided for by those rules, according to the laws and usages at the port of New York or at the port of London, whichever place is specified in Part I of this Charter. If a General Average statement is required, it shall be prepared at such port or place in the United States or United Kingdom, whichever country is specified in Part I of this Charter, as may be selected by the Owner, unless otherwise mutually agreed, by an Adjuster appointed by the Owner and approved by the Charterer. Such Adjuster shall attend to the settlement and the collection of the General Average, subject to customary charges, General Average Agreements and/or Consignee of cargo, if requested. Any cash deposit being made as security to pay General Average and/or salvage shall be remitted to the Average Adjuster and shall be held by him at his risk in a special account in a duly authorized and licensed bank at the place where the General Average statement is prepared. 30 40

(iv) **BOTH TO BLAME.** If the Vessel comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the Master, mariner, pilot or the servants of the Owner in the navigation or in the management of the Vessel, the owners of the cargo carried hereunder shall indemnify the Owner against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said cargo, paid or payable by the other or recovered by the other or non-carrying ship or her owners as part of their claim

against the carrying ship or Owner. The foregoing provisions shall also apply where the owners, operators or those in charge of any ships or objects other than, or in addition to, the colliding ships or object are at fault in respect of a collision or contact.

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*18th June, 1974
(Cont'd)*

(v) **LIMITATION OF LIABILITY.** Any provision of this Charter to the contrary notwithstanding, the Owner shall have the benefit of all limitations of, and exemptions from, liability accorded to the owner or chartered owner of vessels by any statute or rule of law for the time being in force.

10 (vi) **WAR RISKS.** (a) If any port of loading or of discharge named in this Charter Party or to which the Vessel may properly be ordered pursuant to the terms of the Bills of Lading be blockaded, or

20 (b) If owing to any war, hostilities, warlike operations, civil war, civil commotions, revolutions or the operation of international law (a) entry to any such port of loading or of discharge or the loading or discharge of cargo at any such port be considered by the Master or Owners in his or their discretion dangerous or prohibited or (b) it be considered by the Master or Owners in his or their discretion dangerous or impossible for the Vessel to reach any such port of loading or discharge — the Charterers shall have the right to order the cargo or such part of it as may be affected to be loaded or discharged at any other safe port of loading or of discharge within the range of loading or discharging ports respectively established under the provisions of the Charter Party (provided such other port is not blockaded or that entry thereto or loading or discharge of cargo thereat is not in the Master's or Owner's discretion dangerous or prohibited). If in respect of a port of discharge no orders be received from the Charterers within 48 hours after they or their agents have received from the Owners a request for the nomination of a substitute port, the Owners shall then be at liberty to discharge the cargo at any safe port which they or the Master may in their or his discretion decide on (whether within the range of discharging ports established under the provisions of the Charter Party or not) and such discharge shall be deemed to be 30 due fulfillment of the contract or contracts of affreightment so far as cargo so discharged is concerned. In the event of the cargo being loaded or discharged at any such other port within the respective range of loading or discharging ports established under the provisions of the Charter Party, the Charter Party shall be read in respect of freight and all other conditions whatsoever as if the voyage performed were that originally designated. In the event, however, that the Vessel discharges the cargo at a port outside the range of discharging ports established under the provisions of the Charter Party, freight shall be paid as for the voyage originally designated and all extra expenses involved in reaching the actual port of discharge and or discharging the cargo thereat shall be paid by the Charterers or 40 Cargo Owners. In the latter event the Owners shall have a lien on the cargo for all such extra expenses.

(c) The Vessel shall have liberty to comply with any directions or recommendations as to departure, arrival, routes, ports of call, stoppages, destinations, zones, waters, delivery or in any otherwise whatsoever given by the government of the nations under whose flag the Vessel sails or any other government or local authority including any de facto government or local authority or by any person or body acting or purporting to act as or with the authority of any such government or authority or by any committee or person

*Exhibit J
Contract:
Plaintiff and
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Petroleum
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*18th June, 1974
(Cont'd)*

having under the terms of the war risks insurance on the vessel the right to give any such directions or recommendations. If by reason of or in compliance with any such directions or recommendations, anything is done or is not done such shall not be deemed a deviation.

If by reason of or in compliance with any such direction or recommendation the Vessel does not proceed to the port or ports of discharge originally designated or to which she may have been ordered pursuant to the terms of the Bills of Lading, the Vessel may proceed to any safe port of discharge which the Master or Owners in his or their discretion may decide on and there discharge the cargo. Such discharge shall be deemed to be due fulfillment of the contract or contracts of affreightment and the Owners shall be entitled to freight as if discharge has been effected at the port or ports originally designated or to which the vessel may have been ordered pursuant to the terms of the Bills of Lading. All extra expenses involved in reaching and discharging the cargo at any such other port of discharge shall be paid by the Charterers and/or Cargo Owners and the Owners shall have a lien on the cargo for freight and all such expenses. 10

(vii) DEVIATION CLAUSE. The Vessel shall have liberty to call at any ports in any order, to sail with or without pilots, to tow or be towed, to go to the assistance of vessels in distress, to deviate for the purpose of saving life or property or of landing any ill or injured person on board, and to call for fuel at any port or ports in or out of the regular course of the voyage. Any salvage shall be for the sole benefit of the Owner. 20

21. LIEN. The Owner shall have an absolute lien on the cargo for all freight, deadfreight, demurrage and costs, including attorney fees, of recovering the same, which lien shall continue after delivery of the cargo into the possession of the Charterer, or of the holders of any Bills of Lading covering the same or of any storageman.

22. AGENTS. The Owner shall appoint Vessel's agents at all ports.

23. BREACH. Damages for breach of this Charter shall include all provable damages, and all costs of suit and attorney fees incurred in any action hereunder. 30

24. ARBITRATION. Any and all differences and disputes of whatsoever nature arising out of this Charter shall be put to arbitration in the City of New York or in the City of London whichever place is specified in Part I of this charter pursuant to the laws relating to arbitration there in force, before a board of three persons, consisting of one arbitrator to be appointed by the Owner, one by the Charterer, and one by the two so chosen. The decision of any two of the three on any point or points shall be final. Either party hereto may call for such arbitration by service upon any officer of the other, wherever he may be found, of a written notice specifying the name and address of the arbitrator chosen by the first moving party and a brief description of the disputes or differences which such party desires to put to arbitration. If the other party shall not, by notice served upon an officer of the first moving party within twenty days of the service of such first notice, appoint its arbitrator to arbitrate the dispute or differences specified, then the first moving party shall have the right without further notice to appoint a second arbitrator, who shall be a disinterested person with precisely the same 40

force and effect as if said second arbitrator has been appointed by the other party. In the event that the two arbitrators fail to appoint a third arbitrator within twenty days of the appointment of the second arbitrator, either arbitrator may apply to a Judge of any court of maritime jurisdiction in the city abovementioned for the appointment of a third arbitrator, and the appointment of such arbitrator by such Judge on such application shall have precisely the same force and effect as if such arbitrator had been appointed by the two arbitrators. Until such time as the arbitrators finally close the hearings either party shall have the right by written notice served on the arbitrators and on an officer of the other party to
10 specify further disputes or differences under this Charter for hearing and determination. Awards made in pursuance to this clause may include costs, including a reasonable allowance for attorney's fees, and judgement may be entered upon any award made hereunder in any Court having jurisdiction in the premises.

25. SUBLET. Charterer shall have the right to sublet the Vessel. However, Charterer shall always remain responsible for the fulfillment of this Charter in all its terms and conditions.

26. OIL POLLUTION CLAUSE. Owner agrees to participate in Charterer's program covering oil pollution avoidance. Such program prohibits discharge
20 overboard of all oily water, oily ballast or oil in any form of a persistent nature, except under extreme circumstances whereby the safety of the vessel, cargo or life at sea would be imperiled.

Upon notice being given to the Owner that Oil Pollution Avoidance controls are required, the Owner will instruct the Master to retain on board the vessel all oily residues from consolidated tank washings, dirty ballast, etc., in one compartment, after separation of all possible water has taken place. All water separated to be discharged overboard.

If the Charterer requires that demulsifiers shall be used for the separation of oil/water, such demulsifiers shall be obtained by the Owner and paid for by
30 Charterer.

The oil residues will be pumped ashore at the loading or discharging terminal, either as segregated oil, dirty ballast or co-mingled with cargo as it is possible for Charterers to arrange. If it is necessary to retain the residue on board co-mingled with or segregated from the cargo to be loaded, Charterers shall pay for any deadfreight so incurred.

Should it be determined that the residue is to be co-mingled or segregated on board, the Master shall arrange that the quantity of tank washings be measured in conjunction with cargo suppliers and a note of the quantity measured made in the vessel's ullage record.

40 The Charterer agrees to pay freight as per the terms of the Charter Party on any consolidated tank washings, dirty ballast, etc., retained on board under Charter's instructions during the loaded portion of the voyage up to a maximum of 1% of the total deadweight of the vessel that could be legally carried for such voyage. Any extra expenses incurred by the vessel at loading or discharging port

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Plaintiff and
Concord
Petroleum
Corporation

18th June, 1974
(Cont'd)

in pumping ashore oil residues shall be for Charterer's account, and extra time, if any, consumed for this operation shall count as used laytime.

BILL OF LADING

Shipped in apparent good order and condition by _____
on board the _____
whereof _____ is Master, at the port of _____

10

to be delivered at the port of _____
or so near thereto as the Vessel can safely get, always afloat, unto _____
or order on payment of freight at the rate of _____

This shipment is carried under and pursuant to the terms of the _____
New York/London _____
between _____ and _____ as

20

Charterer, and all the terms whatsoever of the said _____
payment of freight specified therein apply to and govern the rights of the parties
concerned in this shipment.

In witness whereof the Master has signed _____ (Bills of Lading)
of this tenor and date, one of which being accomplished, the others will be void.

Dated at _____ this _____ day of _____
_____ Master

30

Exhibit 32 (part)

Letter: Plaintiff to Gove Alumina Ltd

Exhibit 32 (part)
Letter:
Plaintiff to Gove
Alumina Ltd
—
19th June, 1974

19th June, 1974

The General Manager,
Gove Alumina Limited,
1 O'Connell Street,
SYDNEY . . . N.S.W. 2000.

Dear Sir,

**BP Australia Limited
Fuel Supply Contract**

10

You have been informally advised that a Notice under the above contract purporting to fix a new price was served by BP Australia Limited on Nabalco Pty. Limited on 25th March, 1974. That Notice sought to increase the price of furnace oil under the contract from the existing price of \$13.99 per tonne to a price of \$54.44 per tonne. You have also been advised that legal advice both from our solicitors and from Senior and Junior Counsel briefed by them has been that the Notice is invalid.

20

We are proposing to refer the matter to the Board of Direction, on 19th June 1974, pursuant to clause 2.3 and 2.6 of the Management Agreement seeking the Board's authority to issue proceedings in the Supreme Court of New South Wales challenging the validity of the Notice purporting to fix a new price.

In the event of the Court supporting Nabalco's contention, we will no doubt be seeking at a later date the authority of the Board to take such proceedings as are necessary to recover the damage which will result from the action of BP Australia Limited in giving the notice of 25th March 1974 and its subsequent refusal to supply furnace oil at the pre-notice price.

Yours faithfully,
David Griffin
CHAIRMAN.

Exhibit 32 (part)
Letter:
Plaintiff to Swiss
Aluminium
Australia Pty Ltd
—
19th June, 1974

Exhibit 32 (part)

Letter: Plaintiff to Swiss Aluminium Australia Pty Ltd

19th June, 1974

The General Manager,
Swiss Aluminium Australia Ltd,
1 Alfred Street,
SYDNEY . . . N.S.W. 2000.

Dear Sir,

BP Australia Limited
Fuel Supply Contract

10

You have been informally advised that a Notice under the above contract purporting to fix a new price was served by BP Australia Limited on Nabalco Pty. Limited on 25th March, 1974. That Notice sought to increase the price of furnace oil under the contract from the existing price of \$13.99 per tonne to a price of \$54.44 per tonne. You have also been advised that legal advice both from our solicitors and from Senior and Junior Counsel briefed by them has been that the Notice is invalid.

We are proposing to refer the matter to the Board of Direction, on 19th June, 1974, pursuant to clause 2.3 and 2.6 of the Management Agreement seeking the Board's authority to issue proceedings in the Supreme Court of New South Wales challenging the validity of the Notice purporting to fix a new price. 20

In the event of the Court supporting Nabalco's contention, we will no doubt be seeking at a later date the authority of the Board to take such proceedings as are necessary to recover the damage which will result from the action of BP Australia Limited in giving the notice of 25th March 1974 and its subsequent refusal to supply furnace oil at the pre-notice price.

Yours faithfully,
David Griffin
CHAIRMAN.

Exhibit 33**Agenda: 60th Meeting of Gove Joint Venture Board of Direction**

*Exhibit 33
Agenda:
60th Meeting of
Gove Joint
Venture Board of
Direction
—
19th June, 1974*

Apologies

PART I PRELIMINARY
Nil.

PART II MATTERS SUBMITTED BY THE MANAGER FOR DECISION

2.1 Initiation of Court Proceedings challenging the validity of the Notice served by BP Australia Limited on Nabalco Pty. Limited on 25th March, 1974.

2.2 Future Supply of Furnace Oil for Gove.

2.3 The secondment of an employee of Swiss Aluminium Australia Limited to perform duties on behalf of Nabalco Pty. Limited.

PART III MATTERS SUBMITTED BY THE MANAGER FOR INFORMATION
Nil.

2.1 Initiation of Court Proceedings challenging the validity of the Notice served by BP Australia Limited on Nabalco Pty. Limited on 25th March, 1974

Copies of letters dated 19th June, 1974 to Swiss Aluminium Australia Limited and to Gove Alumina Limited respectively from the Manager were tabled, wherein the Manager notified the Participants of the Notice served on Nabalco Pty. Limited and advised that the Manager would seek, on 19th June, 1974, the approval of the Board of Direction, pursuant to clauses 2.3 and 2.6 of the Management Agreement to issue proceedings in the Supreme Court of New South Wales to challenge the validity of the said Notice.

The Board of Direction noted the contents of the abovementioned letters and unanimously resolved to authorise the Manager to proceed as aforesaid.

DG 18.6.74

DRAFT OF SUGGESTED DECISION FOR THE BOARD OF DIRECTION MEETING

2.2 Future Supply of Furnace Oil for Gove

Exhibit 33
Agenda:
60th Meeting of
Gove Joint
Venture Board of
Direction
 —
19th June, 1974
(Cont'd)

The Board of Direction noted the information provided by the Manager in the report Ref. AGC/EAN dated 14th June, 1974 and authorised the Manager:—

- A) To enter into a contract with Kuwait National Petroleum Co. (KSC), London, for the supply of furnace oil for a three year period from 1st August, 1974 to 31st July, 1977 at an estimated cost (F.O.B. Arabian Gulf) of approximately \$A 14.8 million per annum.
- B) To enter into a contract of affreightment with Concord Petroleum Corporation of Hamilton, Bermuda, for the cartage of furnace oil from the port of shipment, Arabian Gulf, to Gove, at an estimated cost of approximately \$A 2.5 million per annum. 10

DG 18.6.74

Exhibit 34
Record of
Decisions:
60th Meeting of
Gove Joint
Venture Board of
Direction
 —
19th June, 1974

Exhibit 34

Record of Decisions: 60th Meeting of Gove Joint Venture Board of Direction

Present:

Representing Swiss Aluminium Australia Limited:

Sir David Griffin (In the Chair)

Mr. J.F. Linton (Alternate for Mr. E.R. Meyer) 20

Mr. A.G. Powell (Alternate for Dr. B. Sorato)

Representing Gove Alumina Limited:

Mr. B.N. Kelman

Mr. J.S. Proud

Mr. P. Lovell (Alternate for Mr. R.G. Jackson)

Apologies:

Mr. E.R. Meyer

Dr. P.H. Mueller

Dr. B. Sorato

Mr. R.G. Jackson 30

In Attendance:

Mr. P.J. Batterham, Secretary to the Board of Direction

PART I — PRELIMINARY

Nil.

PART II — MATTERS SUBMITTED BY THE MANAGER FOR DECISION

- 2.1 Initiation of Court Proceedings challenging the validity of the Notice served by BP Australia Limited on Nabalco Pty. Limited on 25th March, 1974

*Exhibit 34
Record of
Decisions:
60th Meeting of
Gove Joint
Venture Board of
Direction
—
19th June, 1974
(Cont'd)*

10 Copies of letters dated 19th June, 1974 to Swiss Aluminium Australia Limited and to Gove Alumina Limited, respectively, from the Manager were tabled, wherein the Manager notified the Participants of the Notice served on Nabalco Pty. Limited and advised that the Manager would seek, on 19th June, 1974, the approval of the Board of Direction, pursuant to clauses 2.3 and 2.6 of the Management Agreement to issue proceedings in the Supreme Court of New South Wales to challenge the validity of the said Notice.

The Board of Direction noted the contents of the abovementioned letters and unanimously resolved to authorise the Manager to proceed as aforesaid.

- 2.2 Future Supply of Furnace Oil for Gove

The Board of Direction noted the information provided by the Manager in the report Ref. AGC/EAN dated 14th June, 1974 and authorised the Manager:—

- 20 a) To enter into a contract with Kuwait National Petroleum Co. (KSC), London, for the supply of furnace oil for a three year period from 1st August, 1974 to 31st July, 1977 at an estimated cost (F.O.B. Arabian Gulf) of approximately \$A 14.8 million per annum.
- b) To enter into a contract of affreightment with Concord Petroleum Corporation of Hamilton, Bermuda, for the cartage of furnace oil from the port of shipment, Arabian Gulf, to Gove, at an estimated cost of approximately \$A 2.5 million per annum.

- 2.3 The secondment of an employee of Swiss Aluminium Australia Limited to perform duties on behalf of Nabalco Pty. Limited

30 The Board of Direction noted the information provided by the Manager in the report Ref. DG dated 18th June, 1974 and authorised the Manager, pursuant to clause 2.4 of the Management Agreement, for the secondment of an employee, Mr. D.F. Wilson of Swiss Aluminium Australia Limited to give specific assistance to the Manager.

PART III — MATTERS SUBMITTED BY THE MANAGER FOR INFORMATION

Nil.

40 Confirmed:
E.R. Meyer
Chairman:

Date: 26th July, 1974.

Exhibit AJ (part)
Telex:
BP Trading Ltd
to Defendant
—
20th June, 1974

Exhibit AJ (part)

Telex: BP Trading Ltd to Defendant

97 1932/20TH JRW

TO BP MELBOURNE C683 20/6/74
FROM BP LONDON

FOR WHOLESALE SALES FROM JOHNSTON

NABALCO

YOUR 184 NOTED STOP YOUR FIRSTLY CALLS FOR NO FURTHER
COMMENT ON OUR PART STOP YOUR SECONDLY HAVE YOU OR DO
YOU INTEND TO GIVE NOTICE TO PJT? STOP GRATEFUL YOU ADVISE
YOUR APPROACH STOP DO YOU FOR INSTANCE CONSIDER YOU
EXEMPTED UNDER PJ ACT 5 (1) ? OR UNDER 18 (8) ? STOP SITUATION
FORESEEN OUR 340 CONFIRMED YOUR 925 WILL NOW APPLY FREM
24TH JULY STOP IF THERE IS NO NEW CONTRACT BY THIS DATE WE
WILL CONSIDER IT CANCELLED AND THEREFORE EXPECT TO HEAR
FROM YOU AS SOON AS POSSIBLE TO QUOTE FOR NABALCO FIRST
SPOT REQUIREMENT

10

CORRECTION WORD AFTER APPLY — FROM

Exhibit K
Contract:
Plaintiff and
Kuwait National
Petroleum
Company
—
21st June, 1974

Exhibit K

20

Contract: Plaintiff and Kuwait National Petroleum Company

AN AGREEMENT

made by and between
KUWAIT NATIONAL PETROLEUM COMPANY (K.S.C.)
of P.O. Box 70, Kuwait, Arabian Gulf
(hereinafter referred to as "SELLER")
of the one part

and
NABALCO PTY LIMITED
of Gold Fields House, 1 Alfred Street, Sydney, N.S.W. 2000, Australia
(hereinafter referred to as "BUYER")
of the other part

30

WHEREBY IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:—

Article A — Delivery Period

(i) Deliveries under this Agreement shall commence on 1st August 1974 and shall continue until 31st July 1977 unless earlier terminated in accordance with the provisions hereof.

(ii) The said delivery period may however be further extended so that deliveries hereunder continue until 31st July 1979 as provided for in Article I below.

*Exhibit K
Contract:
Plaintiff and
Kuwait National
Petroleum
Company*

*21st June, 1974
(Cont'd)*

Article B — Product and Quantity

10 (i) During the delivery period specified in Article A (i) hereof, SELLER shall sell and deliver and BUYER shall buy, take delivery of and pay for HEAVY FUEL OIL in accordance with the following delivery schedule:—

Period of Delivery	Quantity deliverable in Metric Tons
(a) 1st August 1974 — 31st December 1974.	Between 130,000 and 150,000 (exact tonnage between such limits to be at BUYER'S option).
(b) 1st January 1975 — 31st December 1975.	350,000
20 (c) 1st January 1976 — 31st December 1976.	350,000
(d) 1st January 1977 — 31st July 1977	230,000

(ii) The quantities of Heavy Fuel Oil deliverable in each of the three periods specified in (i) (b), (i) (c) and (i) (d) above shall be subject to an operational tolerance of plus or minus ten per cent (10%) at BUYER's option.

Article C — Quality

The quality of the Heavy Fuel Oil deliverable hereunder shall conform to the specifications set out in the Attachment hereto.

30 Article D — Delivery

(i) Delivery hereunder shall be made by SELLER into BUYER's vessels F.O.B. Shuaiba, Kuwait (or at SELLER's option F.O.B. any other port in the Arabian Gulf excluding Fao and Abadan) in full or part cargo lots.

(ii) Delivery of the quantities of Heavy Fuel Oil specified in Article B (i) shall be made and taken at an approximately even rate during the respective periods of delivery.

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21st June, 1974
(Cont'd)

(iii) SELLER's berth at Shuaiba is designed to accommodate vessels of maximum length overall of 985 feet on a maximum draft of 45 feet in salt water and BUYER shall nominate vessels which can when fully laden safely reach and leave and always lie safely afloat at SELLER's berth. Such vessels shall have not less than 5,000 long tons carrying capacity.

Article E — Price

(i) Subject to (ii), (iii) and (iv) below, BUYER shall pay to SELLER for the Heavy Fuel Oil delivered hereunder a price F.O.B. loading port of Dollars 9.25 (nine U.S. Dollars and twenty-five U.S. Cents) per Barrel.

(ii) The above price shall be exclusive of any duties, taxes, dues or other imposts leviable on the Vessel at the port of loading which shall be for BUYER's account. 10

(iii) In the event that after 7th June 1974 there will be any increase or decrease in the Product Posted Price (as defined below) then the full difference between such Product Posted Price in effect on the date of the Bill of Lading of each shipment delivered hereunder and that in effect on 7th June 1974 shall be added to or deducted from, as the case may be, the price specified in (i) above.

The adjustment to the price, if any, shall be so calculated for each shipment of product delivered hereunder and the adjusted price shall apply to such shipment. "Product Posted Price" shall be deemed to mean the average of all the prices posted for "Medium Fuel" and "Heavy Fuel" at ports in the Arabian Gulf as published in Platts Oilgram Price Service under the heading "Caribbean Middle East and Far East Products". It is recorded that the Product Posted Price in effect on 7th June 1974 was Dollars 8.978 per Barrel. 20

(iv) If at any time after 7th June 1974 there will be a cost increase in the crude oil from which the Heavy Fuel Oil deliverable hereunder is derived, and such cost increase is not fully reflected in the escalation referred to in (iii) above, then SELLER shall have the right to notify BUYER of such increase and SELLER and BUYER shall meet within 10 days after such notice with a view to agreeing what adjustment to the price of the Heavy Fuel Oil deliverable hereunder shall be appropriate. Should SELLER and BUYER fail to reach agreement within ten days after such meeting on such adjustment then either party shall have the right to terminate this Agreement by giving thirty (30) days notice in writing to the other party. 30

(v) In the event that deliveries hereunder are extended beyond 31st July 1977 as provided for in Article I below, then the price payable for deliveries which complete loading after 31st July 1977 shall be determined in accordance with Article I (iii) below.

Article F — Payment

Payment hereunder shall be made in U.S. Dollars by means of irrevocable letters of credit confirmed by an International Bank in London acceptable to SELLER and payable sixty (60) days after the Bill of Lading date, which BUYER shall open in favour of SELLER not later than ten (10) days before the loading 40

date of the Vessel in question. Each letter of credit shall be for the approximate value of the shipment plus ten per cent (10%) and shall be valid for a period of sixty (60) days. Payment shall be made sixty (60) days after the Bill of Lading date against SELLER's draft drawn on the confirming bank for one hundred per cent (100%) of the invoice value upon presentation of SELLER's commercial invoice and one original Bill of Lading.

*Exhibit K
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21st June, 1974
(Cont'd)*

Article G — Limitation of Disposal

- (i) The Heavy Fuel Oil deliverable hereunder shall be for shipment by BUYER to Gove, Australia, for consumption at Gove.
- 10 (ii) Should circumstances arise which necessitate BUYER's disposing of the Heavy Fuel Oil other than as aforesaid, such alternative disposal shall be subject to prior approval by SELLER, which approval shall not unreasonably be withheld.

Article H — Additional Provisions

(i) Additional provisions relating to this Agreement shall be in accordance with SELLER's General Terms and Conditions for F.O.B. Sales with the following amendment:—

- The first two sentences of the second paragraph of Article IV (i) shall be deleted and the following substituted therefor:—
- 20 “Upon receipt by SELLER of Notice of Nomination BUYER shall be deemed to have given notice of a range of days extending for 7 days before to 7 days after the expected date of arrival (ETA) specified in the nomination and making a range of 15 days in all. Not less than 15 days prior to the nominated ETA, BUYER shall reconfirm or revise such ETA and narrow the loading range to 3 days before/3 days after the expected time of arrival making seven days in all. Should the expected date of arrival of the vessel so nominated (or of any vessel substituted therefor under the provisions of this Article) fall beyond the ranges indicated above BUYER shall give a renewal Notice of Nomination which notice SELLER shall have the right to reject.”
- 30 (ii) The said General Terms and Conditions amended as aforesaid shall constitute part of this Agreement and no condition inconsistent therewith shall be binding unless the same has been agreed in writing between SELLER and BUYER.

Article I — Continuation of Deliveries

(i) Subject to prior approval by SELLER's Board of Directors, deliveries hereunder shall be continued during the period 1st August 1977 – 31st July 1979 in accordance with the following delivery schedule:—

40 Period of Delivery	Quantity of Heavy Fuel Oil deliverable in Metric Tons
1st August 1977 — 31st December 1977	120,000
1st January 1978 — 31st December 1978	350,000
1st January 1979 — 31st July 1979	230,000

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(Cont'd)

(ii) The quantities of Heavy Fuel Oil deliverable in each of the periods specified in (i) above shall be subject to an operational tolerance of plus or minus ten per cent (10%) at BUYER's option.

(iii) Deliveries of Heavy Fuel Oil during the period 1st August 1977 - 31st July 1979 shall be subject to the same terms and conditions that apply to deliveries hereunder made during the period 1st August 1974 - 31st July 1977, except that the price payable for deliveries of Heavy Fuel Oil which complete loading after 31st July 1977 shall be subject to review between the parties during January 1977. BUYER and SELLER shall meet at a mutually acceptable time during January 1977 in order to agree the price that shall apply to deliveries of Heavy Fuel Oil which complete loading after 31st July 1977. 10

In the event that agreement is not reached by 31st January 1977 then this Agreement shall terminate as at 31st July 1977.

IN WITNESS WHEREOF the parties have respectively caused this Agreement to be executed in duplicate on the dates hereinafter indicated.

for SELLER

this twenty first day of June 1974.

for BUYER

this twenty first day of June 1974.

(Signatures not reproduced)

BOOK NO

ATTACHMENT 20

KUWAIT NATIONAL PETROLEUM COMPANY (KSC)

PRODUCT SPECIFICATIONS

GRADE: HEAVY FUEL OIL

SPECIFICATION NUMBER:		TEST METHOD		
Ash	% wt.	Max.	0.10	ASTM D 482 from ASTM/IP tables
Calorific Value (Gross)	BTU/lb.	Min.	18,000	
Flash Point, PMcc	°F	Min.	150	ASTM D 93
Pour Point	°F	Max.	85	ASTM D 97
Sediment by Extraction	% wt.	Max.	0.15	ASTM D 473 30
Specific Gravity, 60/60°F	—	Max.	0.995	ASTM D 1298
Sulphur, Total	% wt.	Max.	4.0	ASTM D 129/ D1551 (or by X-ray absorption)
Vanadium content	PPm	Max.	100	ASTM D 1548
Viscosity				
Kinematic @ 122°F	c'stokes	Max.	370	ASTM D 445 converted from c'stokes 40
Redwood 1 @ 100°F	seconds	Max.	3,500	
Water by distillation	% vol.	Max.	0.5	ASTM D 95

ISSUED June 1974

GENERAL TERMS AND CONDITIONS FOR FOB SALES

Article I — DEFINITIONS

In this Agreement unless the context otherwise requires the following terms shall have the meaning specified hereunder.

*Exhibit K
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(Cont'd)*

Metric Ton	— One thousand (1000) Kilograms
Long Ton	— Two thousand two hundred and forty (2240) pounds
The Vessel	— Any ship whether owned or chartered or otherwise obtained by BUYER which is employed by BUYER to load the Product(s) at SELLER's delivery point.
Dollars and Cents	— Monetary units so designated in the currency of the United States of America.
The "Agreement"	— These General Terms and Conditions together with any form of Agreement in which they are incorporated
Barrel	— Forty Two (42) U.S. Gallons

Article II — QUANTITY AND QUALITY DETERMINATION

- 20 (i) The quantity of each delivery shall be determined by shore tank measurement carried out by SELLER at the port of loading in the manner customary in that port. The quantity so ascertained shall be the Bill of Lading and invoice quantity. BUYER has the right to appoint a representative to be present during the operation of loading, and to assist in measuring and taking samples. Correction for variation in temperature shall be made in accordance with the ASTM-IP measurement Table 24 or latest issue.
- 30 (ii) The quality of each delivery shall be ascertained on representative samples taken from the loading shore tanks or from the Vessel connection hose while loading. Three sets of samples shall be taken for each delivery. The samples shall be sealed and signed by BUYER's and SELLER's representatives. One sample shall be kept by BUYER for its own use, one sample shall be given to SELLER and the third sample will be properly retained by SELLER as a reference sample and kept for a period of three months.
- 40 (iii) In case any differences arise between BUYER and SELLER as regards the quality and quantity of the Product(s) deliverable hereunder, the matter shall be settled at the port of loading by an independent inspector appointed by mutual agreement between the parties. The inspector's decision shall be final and binding. The cost of such inspector shall be borne equally by BUYER and SELLER.

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(Cont'd)

- (iv) SELLER shall issue certificates of quality and quantity and deliver copies of such certificates according to BUYER's instructions.
- (v) The operation of taking measurements, taking samples and testing the quality shall in no case be allowed to cause the Vessel to delay its departure.

Article III — RISK AND TITLE

Each delivery shall be completed and title shall vest absolutely in BUYER when the Product(s) pass(es) the Vessel's permanent hose connection at the port of loading at which time BUYER assumes all risks in respect of each delivery including loss, damage, deterioration, contamination or evaporation. 10

Article IV — VESSEL NOMINATING PROCEDURE AND LOADING CONDITIONS

- (i) In respect of each delivery under this Agreement BUYER shall nominate to SELLER a Vessel complying with such limitations as are contained in this Agreement. BUYER shall not nominate a Vessel which is prohibited from operating in the port of loading according to present or future regulations issued by the Government or authorities responsible for such port of loading. Such nominations shall be made in writing to reach SELLER's office not later than thirty (30) days before Vessel is expected to arrive and shall specify: 20
 - (a) name and nationality of the Vessel or Vessels to be named;
 - (b) estimated time of arrival (ETA) at loading port.
 - (c) quantity of Product(s) to be loaded in accordance with Article B of this Agreement, subject to a tolerance of 10% at BUYER's option.

BUYER shall have the right to substitute for the nominated Vessel another Vessel of similar size and capacity subject to its acceptability to SELLER. BUYER shall give notice to SELLER of the nomination of such substituted vessel at least 3 clear days before the expected date of arrival of the substituted vessel or of the expected date of arrival declared in the Notice of Nomination, whichever is the earlier. Should the substitute Vessel differ materially from that originally nominated SELLER will accept or reject such substitute nomination within two days after receipt thereof. 30

- (ii) Concurrent with nominating the Vessel to SELLER BUYER shall advise SELLER full details of documentation requirements in respect of the cargo to be shipped.
- (iii) The master of the Vessel nominated in accordance with (i) above shall radio "Kunpetco London".
 - (a) 96, 48 and 24 hours in advance of the Vessel's ETA at loading port.
 - (b) immediately upon its happening should there occur any event materially affecting the Vessel's ETA. 40
- (iv) When the vessel has arrived at the loading port and is ready to load a notice of readiness (NOR) shall be tendered to the SELLER by the master

of the Vessel. NOR to load may be tendered at any hour of the day or night with or without pratique having been granted, berth or no berth. The date and hour of tendering and acceptance of NOR shall determine the priority of loading provided NOR is tendered and accepted within a range of three days before to three days after ETA established in accordance with (i) above. SELLER undertakes to load the Vessel as promptly as possible but shall be allowed one half of the Charter Party laytime but in any event not less than 36 hours in which to load the Vessel, holidays included unless specifically excluded by law. Time shall start to count

- 10
- (a) in the case of a Vessel having tendered NOR within three days either side of ETA, six hours after NOR is tendered or upon commencement of loading whichever occurs first.
 - (b) in the case of the Vessel arriving outside the range quoted in (a) above upon commencement of loading.

Laytime shall continue to run and demurrage, if incurred, shall continue to be payable until cargo hoses have been disconnected.

Time shall not count against laytime or, if the Vessel is on demurrage, for demurrage when spent or lost,

- 20
- (c) due to breakdown, inefficiency or other cause attributable to the Vessel and/or owners.
 - (d) as a result of strike, lockout, stoppage or restraint of labour of master officers or crew of the Vessel or tugboats or pilot.
 - (e) in handling ballast.

Similarly any time lost on account of port closure or due to any action by the Government or authorities responsible for such port of loading shall not count as laytime.

- 30
- (v) SELLER shall load each Vessel at a berth to be indicated by it where there is at all times sufficient depth of water in the approaches thereof for the Vessel to reach and leave and at which the Vessel can lie and load always safely afloat at all stages of the tide, the vessel being of dimensions specified in the delivery clause of the Agreement. Should such dimensions not conform in any respect with those agreed then SELLER shall not be liable for any loss or damage caused as a result and has the right to refuse such vessel.
- 40
- (vi) Should SELLER due to its own fault or negligence but not on account of force majeure fail to load the Vessel within the laytime allowed in accordance with (iv) above, SELLER shall pay to BUYER demurrage strictly in accordance with the Average Freight Rate Assessment (AFRA) for the month in which loading commenced and applicable to the size of the Vessel.
 - (vii) BUYER undertakes that each vessel shall comply with all regulations in force relative to fires on board vessels or other port regulations which may from time to time be in force while loading at SELLER's berth.
 - (viii) All dues and other charges on any of the BUYER's vessels at the port of loading shall be borne by BUYER.

Exhibit K
Contract:
Plaintiff and
Kuwait National
Petroleum
Company
—
21st June, 1974
(Cont'd)

Article V — TRADE MARKS

Nothing in the Agreement contained whether express or implied shall be deemed to confer any right upon the BUYER to apply any trade mark owned by the SELLER or any of the SELLER's associated companies to any petroleum products supplied under the Agreement.

Article VI — FORCE MAJEURE

SELLER shall not be liable for any loss, claims or demands of any nature whatsoever or be deemed to be in breach of this Agreement because of any delay or failure in observing or performing any of the conditions or provisions hereof, if such delay or failure was caused by or arose out of any circumstances whatsoever beyond SELLER's control including (but without limiting the generality of the foregoing) declared or undeclared war, sabotage, blockade, revolution, police action, riots or disorder, embargoes or trade restrictions of any sort, government or quasi-government action Acts of God, fire, flood, earthquake, storms, tides or tidal waves, explosion, accident, radiation, strike, lockouts, or other labour disputes or disease. If by reason of any cause beyond the control of SELLER there is curtailment or suspension of availability of product then SELLER shall be at liberty to withhold reduce or suspend deliveries hereunder to the extent that SELLER considers reasonable and equitable and SELLER shall not be bound to acquire by purchase or otherwise additional quantities from other suppliers. In so far as any of the above causes shall prevent BUYER from nominating and accepting any delivery under this Agreement, BUYER shall be excused from nomination and acceptance of, or payment for such delivery.

ARTICLE VII — PRICE ADJUSTMENT

If during the term of this Agreement changes should occur in the factors governing freely negotiated prices at which Petroleum products are sold in the Arabian Gulf including but not limited to world currency exchange rates, participation by Gulf States in respect of existing crude oil concessions, worldwide crude availability and to import policy of the U.S.A., Japan or Europe, and these changes are not being fully reflected in the price escalation provisions herein according to reasonable criteria of the SELLER, then SELLER shall notify BUYER and the parties must promptly renegotiate the conditions of the sale including the product price(s) for the purpose of reaching a new agreement. Should the parties fail to agree upon conditions within a period of 30 days from the date of the notification to BUYER then either party shall have the right forthwith to terminate the Agreement for all the product which has not been delivered. If neither party shall give written notice of cancellation to the other then the contract shall continue in effect.

Article VIII — PERFORMANCE

If BUYER shall fail to take any delivery of Product(s) deliverable under the terms of this Agreement through BUYER's own fault, and such failure shall not be excused by any other provision of this Agreement, SELLER shall, in addition to any other legal remedies it may have, be entitled to sell Product(s) comprised in such delivery for BUYER's account in a private or public sale after fifteen (15) days notice to BUYER and the price so obtained shall be deemed conclusively to

be the best price which SELLER could obtain. From such price shall be deducted SELLER's expenses incurred through BUYER's failure to take delivery, and the remainder shall be applied towards the price(s) mentioned in Article E of this Agreement and BUYER shall pay to SELLER the balance, if any, of such price(s) within thirty (30) days of SELLER's invoice.

*Exhibit K
Contract:
Plaintiff and
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Petroleum
Company*

*21st June, 1974
(Cont'd)*

10 Without prejudice to the Terms and Conditions of Article VI hereof defining grounds for claim of force majeure it is further agreed that SELLER shall not be liable for any loss, claims or demands of any nature whatsoever or be deemed to be in breach of this Agreement because of any delay or failure in observing or performing any of the conditions or provisions of the Agreement if such delay or failure was caused by or arose out of any action or order direct or indirect of the Government of the State of Kuwait or any agency thereof.

Article IX — ASSIGNMENT

This Agreement may not be assigned by BUYER without the prior written consent of SELLER which consent may be withheld in SELLER's absolute discretion without assigning any reason therefor.

Article X — TERMINATION IN THE EVENT OF LIQUIDATION OR DEFAULT

20 If BUYER shall go into liquidation (other than a voluntary liquidation for the purpose of reconstruction or amalgamation) or shall enter into an agreement or composition with its creditors, or if BUYER shall commit a substantial breach of the conditions on his part contained in this Agreement including being in arrears of payment, then SELLER shall have the right to terminate this Agreement forthwith on giving to the BUYER notice in writing to that effect. Such termination shall not prejudice any right of SELLER which exists at the date of such termination.

Article XI — GOVERNING LAW AND ARBITRATION

30 This Agreement shall be governed by and construed in all respects in accordance with the Laws of England. All disputes in connection with this Agreement shall be finally settled by arbitration in London under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with said Rules.

Exhibit 64 (part)
Telex:
Defendant to BP
Trading Ltd.
—
21st June, 1974

Exhibit 64 (part)

Telex: Defendant to BP Trading Ltd.

TO BP LONDON C214 21.6.74
FROM AUSTBEEPEE MELBOURNE

FOR JOHNSTON/RWH
FROM WHOLESALE SALES

YOUR 683

AYE. WE ADVISED THE PJT ON 16TH MAY THAT WE WERE
NEGOTIATING WITH NABALCO AND THE FINAL PRICE
WOULD BE ABOVE THEIR RECOMMENDED INLAND PRICE 10
WHICH WAS THEN DLRS A 50.35 PLT (SINCE BEEN RAISED TO
55.85 PLT) STOP HOWEVER THE P J ACT DOES NOT MAKE IT
ILLEGAL TO ADVISE A NEW PRICE STOP THE OFFENCE IS TO
SUPPLY AT AN INCREASED PRICE WITHOUT PRIOR NOTIFI-
CATION

BEE. OUR APPROACH IS TO LODGE WITH THE COURT BEFORE
THE HEARING AN AFFIDAVIT SETTING OUT OUR POSITION
STOP A DRAFT IS CURRENTLY BEING PREPARED BY COUN-
SEL.

CEE. AGREE THAT SHIPMENTS DISCHARGED AFTER 24TH JULY 20
WILL BE AT SPOT PRICES STOP HOWEVER WE MUST ENSURE
SUPPLIES ARE MAINTAINED TO PREVENT POSSIBLE MASSIVE
LIABILITY FOR SUBSEQUENT DAMAGES SHOULD COURT
FIND IN NABALCO'S FAVOUR.

THE FIRST SPOT SHIPMENT WILL BE CARGO C964 BEING
32,000 T ON THE 'LOIDA' LOADING SINGAPORE APPROXI-
MATELY 31/7 ARRIVAL GOVE 8/8 STOP GRATEFUL YOUR
ADVICE ON PRICE CIF GOVE THIS CARGO

1035

Exhibit 64 (part)

*Exhibit 64 (part)
Telex:
BP Trading to
Defendant
—
21st June, 1974*

Telex: BP Trading to Defendant

TO BP MELBOURNE C699 21/6/74
FROM BP LONDON

FOR WHOLESALE SALES FROM JOHNSTON

NABALCO

10 YOUR C214 THANKS AYE AND BEE NOTED. CEE CONFIRM WE
AWARE OF LIABILITY DANGERS AND HAVE NOT REMOVED OBLIGA-
TION FROM ESTIMATES NOR SHOULD YOU. WILL ADVISE SPOT
RATE FOR YOUR OFFER TO NABALCO 20TH JULY. CURRENT RATE
FOR YOUR INFORMATION US DLRS 60,000 FOB PG POU5 FREIGHT WS
200. WE EXPECT MARKET TO HARDEN BUT WHETHER THIS WILL DO
SO BY TIME OF YOUR OFFER NOT SURE. MEANTIME BUNKER RATE
IS US DLR 64.00

Exhibit 66 (part)

*Exhibit 66 (part)
Telex:
Defendant to BP
Trading Ltd.
—
26th June, 1974*

Telex: Defendant to BP Ttrading Ltd.

TO BP LONDON 284 26.6.74.
FROM AUSTBEEPEE MELBOURNE

20 FOR SPP/PRODUCTS BR/EKELBLAD.
RPTD SPP/RSB/BOOTH.

FROM PP AND S.

YOUR 745.
AYE: ORIGINAL KWINANA ARRIVAL PROGRAMME WE WERE USING
WAS AS OUR 88 OF 31/5

KWINANA	JUL	AUG	SEP
F129	20.0(A)		
KHFO	20.0(B)	20.0(C)	35.0(D)
AF850			100.0(E)

30 THIS HAS SUBSEQUENTLY HAD VESSELS NOMINATED AS
FOLLOWS:—

Exhibit 66 (part)
Telex:
Defendant to BP
Trading Ltd.
—
26th June, 1974
(Cont'd)

A IS TAHAMA ETA 2/7
B IS TROPIS LATE/7 WITH 14.0 KHFO 3.5 F129
C IS TBN
D SUGGESTED BROUGHT WITH CRUDE
E ARE EVENLY SPACED ARRIVALS MR OR GP

BEE: INSTALLATIONS.

OUR REQUIREMENTS FOR AUG/SEP ARE AS FOLLOWS:—

C964 LOIDA 32.0 F201 ETA 8/8 GOVE

C966 TBN 19.0 F60 14-21/8 NEWCASTLE/SYD

C965 TBN 19.0 F102 7-14/9 MELBOURNE

C970 TBN 15.0 F102 3.0 F204 15-20/9 PORT LATTA/BELL BAY/HOBART

C968 TBN 32.0 F201 9-25/9 GOVE

C971 TBN 19.0 F60 21-28/9 NEWCASTLE/SYD

C974 TBN 8.0 F60 2.9 G21 15-20/9 XMAS IS.

JULY PROGRAMME IS FIXED WITH ALL CARGOES HAVING VESSELS
NOMINATED.

CEE: A SHELL IMPORT TO FREMANTLE (WHICH IS EFFECTIVELY AN
IMPORT TO KWINANA) HAS NOW BEEN FIRMED AS
CAPRELLA 19.0 F60 10.0 F215 ETA 31/7

DEE: INSTALLATION PROGRAMME IS NEARLY SAME OUR 88 OF 31/5
EXCEPT CARGO 13 HAS SLIPPED TO EARLY OCT AND C974 FOR
XMAS IS HAS COME FORWARD. FROM WHERE THESE IMPORTS ARE
NET IS OF COURSE DEPENDANT ON SING/ME AVAILABILITIES. OUR
SUGGESTIONS WERE DETAILED IN ABOVE MENTIONED TELEX.

EEE. RE TROPIS. ITS LATER ARRIVAL CLASHES WITH CAPRELLA
ARRIVAL FREMANTLE THUS CAUSING SPOT HIGH STOCK POSITION.
WE LOATH TO REDUCE CRUDE RUN AT THIS POINT BUT WILL DO IF
MUST ACCEPT. THUS WE SEE KWINANA IMPORT PROGRAMME
STILL AS STATED (AYE) WITH COMMENTS OUR 265 REFERRING TO
PART (E). IE 80 OR 60 AF850.

EFF: RE 748. GASOIL POSITION NOTED. F182 EXPORT IN SEP MIGHT
BE LITTLE AWKWARD AS WILL HAVE RUN NEARLY ALL BARROW
BEFORE CDU 8/D IN MID/LATE AUG AND THEN MUST HOLD CARGO
TAKING UP VALUABLE ULLAGE. WE WILL LOOK AT THIS HOWEVER
IN .OUR STOCKEX RUNS AND REVERT 5/5/7. THANKS SUGGESTION.

GEE: APOLOGISE CONFUSION CAUSED AND HOPE POSITION NOW
CLEAR.

Exhibit 66 (part)

Telex: BP Trading Ltd to Defendant

*Exhibit 66 (part)
Telex:
BP Trading Ltd
to Defendant
—
26th June, 1974*

TO AUSTBEEPEE MELBOURNE 773 26/6/74
FROM BP LONDON

FOR PP AND S
FROM SPP/PRODUCTS BR/EKEBLAD

THANKS YR 284. HAVE NOTED PROGRAMME BUT WOULD MAKE
FOLLOWING COMMENTS

- 10 AYE) THANKS ACCEPTANCE TROPIS CURRENTLY DUE LOAD ADEN
ABOUT 11/7
BEE) INTEND LOAD G.P. WITH KMFO AT MINA 20-30/7
CEE) SUGGEST FOLLOWING LOAD PORTS:—
C964 SPORE
C966 SPORE
C965 BMS
C970 ADEN
C968 ADEN
C971 BMS
C974 SPORE
20 DEE) SUGGEST 2 M.R VESSEL I.E APPROX 65.0 AF850 FOR ARRIVAL
SEPT EX BMS. LOADING 5-10/8 AND 15-20/8
EEE) ANGELO S TO LOAD F182 EX KWANANA 25-30/7 FOR JAPAN

Exhibit AJ (part)

Telex: BP Trading Ltd to Defendant

*Exhibit AJ (part)
Telex:
BP Trading Ltd
to Defendant
—
27th June, 1974*

TO BP MELBOURNE C799 27/6/74
FM BP LONDON

FOR WHOLESALE SALES FROM RWH/JOHNSTON

30 WE LEARN THAT CONTRARY TO ASSURANCES KNPC HAVE CON-
CLUDED DEAL THROUGH THIRD PARTY. BELIEVE IT NETS BACK TO
THEM US DLRS 61.00 PMT IN PG. CAN YOU INVESTIGATE AND
REPORT.

- A. IMPLICATIONS ON CURRENT LITIGATION IF THEY HAVE ACTU-
ALLY SIGNED AGREEMENT.
B. DO YOU WISH US TO START REPLACING THIS BUSINESS BY
PICKING UP QAL THROUGH KAISER.

Exhibit AJ (part)
Telex:
BP Trading Ltd
to Defendant

27th June, 1974
(Cont'd)

**NO DOUBT YOU WILL STRESS EXTREME UNRELIABILITY KNPC IN
 TALKING TO NABALCO**

Exhibit 62
Notes:
Mr Lockrey

28th June, 1974

Exhibit 62

Notes: Mr Lockrey

28th June, 1974

Following receipt of London cable C799 this morning, I felt that it was time to re-enquire of Nabalco as to whether they would require the August shipment which would be on a spot basis, the subject of which I had earlier discussed with Notter.

The 'phone call to Sydney was booked to Coogan but a Mr. Butterham came on the line, advising that Coogan was in Gove. 10

Replying to my enquiry Butterham said that he was Coogan's Assistant and he knew something of what was going on with the contract and supplies. I explained that Eddy Notter had been informed that we were ready to continue to supply Nabalco to ensure that they had no interruption in supplies, but the only thing was that after the 24th of July would involve Nabalco buying from us on a spot basis. I also mentioned to Eddy Notter before his most recent visit to Switzerland that we were engaged in our normal forward programming and it was pretty important for us to know what shipments were required by Nabalco after the 24th July. Notter said they would have a look at it and let us know. I had also informed Notter that we had tentatively scheduled a shipment of 32,000 tons of furnace oil for August for delivery to Gove. 20

I indicated to Butterham that we had now reached a point where it would be necessary for us to firm on the cargo to ensure its arrival on schedule and what we wanted to know was whether Nabalco wanted the cargo, and presumably they did, and therefore did Nabalco wish to negotiate on the spot basis mentioned earlier.

Butterham said that Coogan was returning from Gove this evening and that he would inform him of the situation and advise us as soon as possible. I mentioned that the position is rather difficult when we are looking at our overall needs to ensure that everyone's requirements are met at the required time and it was important that we know from Nabalco quickly. I hadn't said anything about prices to Eddy Notter and was waiting for him to indicate first that the shipment was required and the matter of price to be discussed later. 30

I said that really we should be knowing something about subsequent cargoes also to cover Nabalco's needs. In my view this was to be all apart from the present

wrangle about the contract. My concern in this enquiry was to see that Nabalco did not run out of oil, as I expected was also his concern.

C. LOCKREY

Exhibit 62
Notes:
Mr Lockrey
—
28th June, 1974
(Cont'd)

Exhibit L

Telex: Plaintiff to Defendant

Exhibit L
Telex:
Plaintiff to
Defendant
—
28th June, 1974

AUSTBP AA30166
NABALCO AA20472

TLX 1058 28.6.74 4.00

ATTENTION: MR. LOCKREY

10 FURTHER TO YOUR ENQUIRY TODAY, WE ADVISE THAT WE HAD ALREADY FORWARDED A LETTER TO YOU EXPLAINING THE SITUATION.

IF THE LETTER IS NOT RECEIVED BY JULY 1ST PLEASE ADVISE AND WE WILL TELEX ITS CONTENTS.

BEST REGARDS,
NABALCO/COOGAN

Exhibit 63

Notes: Mr Lockrey

Exhibit 63
Notes:
Mr Lockrey
—
28th June, 1974

20 Further to my earlier telephone conversation with Mr. Butterham this morning in Sydney, I received a telephone call at 12.40 pm from Coogan, General Manager, who was 'phoning from Darwin.

He thanked me for the earlier offer to maintain their supplies, i.e. spot basis and went on to indicate that Nabalco would not require the proposed August shipment, nor would they require any further supplies of furnace oil in the foreseeable future. When asked what was happening to the other products, he went on to say that during Sir David's conversation with Mr. Rendle, Sir David was informed that in the event of Nabalco coming to some other arrangements for

Exhibit 63
Notes:
Mr Lockrey

28th June, 1974
(Cont'd)

the supply of fuel oil, that BP would continue to maintain supplies of other products and that Nabalco were working on this basis.

He finished by thanking us for past services and undertook, at my request, to confirm his Company decision not to purchase any more fuel oil from us under contract or on a spot basis after the final July shipment. Obviously Nabalco have negotiated new supply arrangements and from the information received from London by telex this morning, the new supplier could well be the Kuwait Oil Company.

At no stage was the conversation said to be without "prejudice" by Coogan. In fact he expressed his regret in having not informed us earlier about the August shipment. 10

C. LOCKREY

Exhibit AJ (part)
and
Exhibit 64 (part)
First Telex:
Defendant to BP
Trading Ltd
28th June, 1974

Exhibit AJ (part) and Exhibit 64 (part)

First Telex: Defendant to BP Trading Ltd

032 2130/28

TO BP LONDON C325 28-6-74.
FROM AUSTBEEPEE MELBOURNE

FOR JOHNSTON/RWH
FROM WHOLESALE SALES.

YOUR 799: NABALCO HAVE TODAY VERBALLY CONFIRMED THEY WILL NOT REQUIRE ANY FUEL OIL FROM US AFTER JULY 1974. WE HAVE CHECKED WITH AMPOL WHO HAVE IN THE PAST IMPORTED FUEL OIL FROM KNPC AND THEY STRONGLY DENY ANY INVOLVEMENT. THEY CLAIM THEY WERE ADVISED FOR INFORMATION THIS MORNING BY KNPC THAT THEY HAD FINALISED A CONTRACT WITH NABALCO. OTHER LIKELY SUPPLIERS HAVE ALSO DENIED ANY INVOLVEMENT SO DEAL MAY BE DIRECT: 20

COMMENTS ON YOUR SPECIFIC POINTS ARE:—

AYE)
LEGAL IMPLICATIONS ARE STILL BEING STUDIED AS THIS IS A MOST UNEXPECTED TURN. NEITHER WE NOR OUR LEGAL ADVISERS CAN SEE THE MOTIVE BEHIND NABALCO'S ACTION AT THIS STAGE. WE EXPECTED THEM TO FORCE US TO NOT SUPPLY UNDER THE OLD CONTRACT BEFORE ACTUALLY BUYING ELSEWHERE. DETAILED DISCUSSIONS WITH OUR LEGAL ADVISERS ARE CON- 30

TINUING AND WE EXPECT TO HAVE AN OUTLINE OF OUR APPROACH FOR YOUR COMMENT AFTER OUR NEXT MEETING WITH SENIOR COUNSEL ON 3 JUL. THIS STAGE WE EXPECT TO RECOMMEND YOUR SENDING OUT AN INDEPENDENT EXPERT TO GIVE EVIDENCE ON THE INTERNATIONAL OIL INDUSTRY ESPECIALLY THE HAPPENINGS DURING OCT-DEC 1973. WE SHALL REVERT ON THIS SOONEST BUT MEANWHILE YOU MIGHT LIKE TO GIVE THOUGHT TO A SUITABLE PERSON.

*Exhibit AJ (part)
and
Exhibit 64 (part)
First Telex:
Defendant to BP
Trading Ltd
—
28th June, 1974
(Cont'd)*

BEE:

- 10 WE HAVE NO OBJECTION TO YOU REPLACING THE TONNAGE TO QAL KAISER. WE APPRECIATE THE SHORT-TERM SUPPLY PROBLEM NABALCO'S MOVE HAS CAUSED. HOWEVER WE SHOULD NOT PUT OURSELVES IN A POSITION WHERE WE CANNOT MEET NABALCO'S NEEDS UNTIL WE RECEIVE WRITTEN CONFIRMATION OF THEIR DECISION. THIS IS EXPECTED EARLY NEXT WEEK.

Exhibit AJ (part)

*Exhibit AJ (part)
Second Telex:
Defendant to BP
Trading Ltd
—
28th June, 1974*

Second Telex: Defendant to BP Trading Ltd

TO BP LONDON C326 28-6-74
FROM AUSTBEEPEE MELBOURNE

- 20 FOR SPP/PRODUCTS BR/EKEBLAD
C.C. SPP/RSB/BOOTH
C.C. ASB/SPP

RPTD BP SPORE C644 FOR S AND P

FROM PP AND S.

URGENT AND CONFIDENTIAL.

AYE:

- FURTHER OUR 284, FUEL IMPORT SITUATION HAS GONE FROM BAD TO WORST WITH ADVICE TODAY THAT CUSTOMER AT GOVE HAS FOUND ALTERNATE SUPPLIER FOR AT LEAST C964 LOIDA 8/8 EX
30 SPORE AND WE MAY HAVE LOST CONTRACT INDEFINITELY.

BEE:

PRESUME PRODUCTS BR WILL NOW WISH US TO PLACE FUEL EX SPORE IN NSW AS F60. THEREFORE SPORE PLEASE ADVISE EARLIEST AND ABSOLUTE LATEST DATES FOR LIFTING YOUR FUEL PRODUCTION AFTER C955 TAMARA AS GP CARGOES THROUGH UNTIL CDU SHUTDOWN.

Exhibit AJ (part)
 Second Telex:
 Defendant to BP
 Trading Ltd
 —
 28th June, 1974
 (Cont'd)

CEE:
 RSB DO YOU SEE ANY LIKELYHOOD TO REDUCE SPORE THROUGH-
 PUT IN SHORT TERM NOTING WE HAVE NO ADDITIONAL GASOIL
 FOR SPORE DURING CDU SHUTDOWN IN SEPTEMBER.

DEE:
 WHAT ARE MERITS OF TRYING TO PUSH SOME FUEL OVER TO
 CALTEX AT SPORE COULD THEY ACCEPT ANY.

EEE:
 HAVE ESSO NOMINATED TO LIFT FROM YOU IN PG THE 25.0 LIGHT
 FUEL THAT WE ARE ACCEPTING FROM THEM IN MELBOURNE 10
 DURING JULY UNDER INTERNATIONAL EXCHANGE.

EFF:
 RWH CABLE 799 TO OUR MARKETERS SPEAKS OF POSSIBLE OUTLET
 FOR FUEL WITH QAL AT GLADSTONE. WHAT IS THE STORY.

Exhibit 66 (part)
 Telex:
 Defendant to BP
 Trading Ltd
 —
 28th June, 1974

Exhibit 66 (part)

Telex: Defendant to BP Trading Ltd

TO BP LONDON C326 28-6-74
 FROM AUSTBEEPEE MELBOURNE

FOR SPP/PRODUCTS BR/EKEBLAD
 C.C. SPP/RSB/BOOTH
 C.C. ASB/SPP 20

RPTD BP SPORE C644 FOR S AND P

FROM PP AND S.

URGENT AND CONFIDENTIAL.

AYE:
 FURTHER OUR 284. FUEL IMPORT SITUATION HAS GONE FROM BAD
 TO WORSE WITH ADVICE TODAY THAT CUSTOMER AT GOVE HAS
 FOUND ALTERNATE SUPPLIER FOR AT LEAST C964 LOIDA 8/8 EX
 SPORE AND WE MAY HAVE LOST CONTRACT INDEFINITELY.

BEE:
 PRESUME PRODUCTS BR WILL NOW WISH US TO PLACE FUEL EX 30
 SPORE IN NSW AS F60. THEREFORE SPORE PLEASE ADVISE
 EARLIEST AND ABSOLUTE LATEST DATES FOR LIFTING YOUR FUEL

PRODUCTION AFTER C955 TAMARA AS GP CARGOES THROUGH UNTIL CDU SHUTDOWN.

Exhibit 66 (part)
Telex:
Defendant to BP
Trading Ltd

CEE:

RSB DO YOU SEE ANY LIKELYHOOD TO REDUCE SPORE THROUGH-PUT IN SHORT TERM NOTING WE HAVE NO ADDITIONAL GASOIL FOR SPORE DURING CDU SHUTDOWN IN SEPTEMBER

28th June, 1974
(Cont'd)

DEE:

WHAT ARE MERITS OF TRYING TO PUSH SOME FUEL OVER TO CALTEX AT SPORE. COULD THEY ACCEPT ANY.

10 EEE:

HAVE ESSO NOMINATED TO LIFT FROM YOU IN PG THE 25.0 LIGHT FUEL THAT WE ARE ACCEPTING FROM THEM IN MELBOURNE DURING JULY UNDER INTERNATIONAL EXCHANGE.

EFF:

RWH CABLE 799 TO OUR MARKETERS SPEAKS OF POSSIBLE OUTLET FOR FUEL WITH QAL AT GLADSTONE. WHAT IS THE STORY.

Exhibit 66 (part)

Exhibit 66 (part)
Telex:
BP Trading Ltd.
to BP Singapore

Telex: BP Trading Ltd. to BP Singapore

28th June, 1974

58/1318 JHS

20 TO BP SINGAPORE C349 28.6.74
CC AUSTBEEPEE MELBOURNE C805 (FOR PP AND S)
FROM BP LONDON

URGENT FOR OPENING BUSINESS

FOR S AND P FROM SPP/PRODUCTS BR/EKEBLAD

URGENT FOR OPENING BUSINESS.
REF MELB C326.

30 AYE) V. WORRIED THOUGHT LOSING GOVE CONTRACT.
BEE) AM CURRENTLY ASSUMING SPORE LOADINGS AS FOLLOWS:
C956 TAMARA LOAD 6/7 18.0 F201 DESTINATION GOVE
C955 TAMARA 21/7 18.0 F201/F60 SYDNEY
C9614 LOIDA 1/8 32.0 F201/F60 UNKNOWN.
PLEASE ADVISE QUALITY TO LOAD ON C955 AND C964
CEE) RSB AND ASB INVESTIGATING OTHER QUERIES.

Exhibit 66 (part)
Telex:
BP Trading Ltd.
to BP Singapore

DEE) IS TAMARA C955 TOO LATE AT 21/7 ? OWING PROGRAMMING
CHANGES HANDY VESSELS AVAILABLE LOAD SINGAPORE END
JULY/AUGUST AS FOLLOWS:

28th June, 1974
(Cont'd)

ALBAROSA	LIBERIAN FLAG	6/8	EX NOUMEA
TARPONRIVER	GREEK	" 17/7	EX JAPAN
THALE	LIBERIAN	" 15/8	EX NOUMEA
TROPIS	PANAMANIAN	" 5/8	EX KWINANA.

Exhibit 1 (part)
Letter:
Plaintiff to
Defendant

Exhibit 1 (part)

28th June, 1974

Letter: Plaintiff to Defendant

28th June, 1974

10

The Managing Director,
BP Australia Limited,
MELBOURNE. VICTORIA. 3000

Dear Sir,

Following the service by you of the Notice dated 22nd March 1974, (which we contend and have always contended was invalid), we have done all in our power to obtain another source of supply of furnace oil for Gove and thus to minimise the loss we will suffer.

We are writing to inform you that we have now been able to arrange an alternative source of supply which should ensure regular deliveries to us commencing in August 1974. The price we are obliged to pay for such supply is, we believe, the best price which we could reasonably have obtained. While the price is lower than the price at which you were prepared to continue supplying furnace oil to us under a new contract, it is still substantially more than the price at which, in our view, you should be continuing to supply us under our contract with you of 11th June 1970.

20

As you are aware we have already taken out a Summons seeking declarations that the notice which you served on us is invalid, and we now inform you that if the Court finds in our favour we will look to you to recompense us for the loss suffered as a result of the events which have taken place.

30

Yours faithfully,
NABALCO PTY. LIMITED
David Griffin
Chairman

Exhibit M

Telex: Plaintiff to Defendant

*Exhibit M
Telex
Plaintiff to
Defendant*

1st July, 1974

AUSTBP AA30166
NABALCO AA20472

TLX 1060 1.7.74 1.45

ATTENTION: MR. C.R. LOCKREY

URGENT

10 FURTHER TO OUR TELEPHONE CONVERSATION THIS MORNING,
THE FOLLOWING IS THE TEXT OF THE LETTER ADDRESSED TO THE
MANAGING DIRECTOR OF BP AND FORWARDED ON 28TH JUNE BY
PRIORITY PAID DELIVERY.

QUOTE

THE MANAGING DIRECTOR,
BP AUSTRALIA LIMITED,
1 ALBERT ROAD,
MELBOURNE. VICTORIA. 3000

DEAR SIR,

20 FOLLOWING THE SERVICE BY YOU OF THE NOTICE DATED 22ND
MARCH 1974, (WHICH WE CONTEND AND HAVE ALWAYS CON-
TENDED WAS INVALID), WE HAVE DONE ALL IN OUR POWER TO
OBTAIN ANOTHER SOURCE OF SUPPLY OF FURNACE OIL FOR GOVE
AND THUS TO MINIMISE THE LOSS WE WILL SUFFER.

30 WE ARE WRITING TO INFORM YOU THAT WE HAVE NOW BEEN
ABLE TO ARRANGE AN ALTERNATIVE SOURCE OF SUPPLY WHICH
SHOULD ENSURE REGULAR DELIVERIES TO US COMMENCING IN
AUGUST 1974. THE PRICE WE ARE OBLIGED TO PAY FOR SUCH
SUPPLY IS, WE BELIEVE, THE BEST PRICE WHICH WE COULD
REASONABLY HAVE OBTAINED. WHILE THE PRICE IS LOWER THAN
THE PRICE AT WHICH YOU WERE PREPARED TO CONTINUE SUPPLY-
ING FURNACE OIL TO US UNDER A NEW CONTRACT, IT IS STILL
SUBSTANTIALLY MORE THAN THE PRICE AT WHICH, IN OUR VIEW,
YOU SHOULD BE CONTINUING TO SUPPLY US UNDER OUR CON-
TRACT WITH YOU OF 11TH JUNE 1970.

AS YOU ARE AWARE WE HAVE ALREADY TAKEN OUT A
SUMMONS SEEKING DECLARATIONS THAT THE NOTICE WHICH YOU
SERVED ON US IS INVALID, AND WE NOW INFORM YOU THAT IF
THE COURT FINDS IN OUR FAVOUR WE WILL LOOK TO YOU TO

Exhibit M
Telex:
Plaintiff to
Defendant

RECOMPENSE US FOR THE LOSS SUFFERED AS A RESULT OF THE
EVENTS WHICH HAVE TAKEN PLACE.

1st July, 1974
(Cont'd)

YOURS FAITHFULLY,
NABALCO PTY. LIMITED
SIGNED: DAVID GRIFFIN, CHAIRMAN.

UNQUOTE.

REGARDS,
COOGAN

Exhibit AJ (part)
Telex:
Defendant to BP
Trading Ltd
1st July, 1974

Exhibit AJ (part)

Telex: Defendant to BP Trading Ltd

10

TO BP LONDON C341 1.7.74
FROM AUSTBEEPEE MELBOURNE

FOR JOHNSTON/RWH
FROM WHOLESALE SALES

CONFIDENTIAL

NABALCO

YOUR 824 STOP AS OUR RECENT NEGOTIATIONS WITH NABALCO
WERE CARRIED OUT UNDER A CONTINUOUS CLOUD OF LITIGA-
TION, WITH EACH MOVE BY EITHER PARTY SUBJECT TO DETAILED
LEGAL VETTING, WE ARE QUITE ABLE TO UNDERSTAND HOW
CURRENT SITUATION AROSE WITHOUT OUR UP TO DATE KNOW-
LEDGE STOP IN VIEW OF IMPENDING LEGAL ACTION INSTITUTED
BY NABALCO AND THEIR AWARENESS THAT WE MAY NOW
COMMENCE COUNTER ACTION DISCUSSION IS VERY GUARDED STOP
HOWEVER OUR RELATIONSHIP WITH NABALCO MANAGEMENT
REMAINS CORDIAL.

20

WE WERE DISTURBED BY YOUR COMMENTS ABOUT OUR NEGOTIAT-
ING ATTITUDE AND SPOKE WITH THE GENERAL MANAGER OF
NABALCO WHO REFUTED THE REPORT YOU RECEIVED NABALCO
AS YOU WELL KNOW HAVE BEEN TESTING THE MARKET AND
AMONGST PRICES OFFERED BETTER THAN OURS WAS ONE FROM
KAISER TRADING OFFERING A ONE YEAR CIF OPTION FROM
ACCORDING TO NABALCO "QUITE GOOD SOURCES". THE KNPC
DEAL CONTRARY TO YOUR INFORMATION WAS SIGNED LAST
FRIDAY WEEK IN ZURICH IN THE PRESENCE OF THIS GENERAL

30

Exhibit AJ (part)
Telex:
Defendant to BP
Trading Ltd
1st July, 1974
(Cont'd)

MANAGER. UPON RETURNING TO AUSTRALIA HE FLEW STRAIGHT TO GOVE AND INTENDED COMMUNICATING WITH US LAST FRIDAY THE VERY DAY THAT WE SOUGHT INFORMATION FROM NABALCO CONCERNING THEIR FUTURE SUPPLIES. HE EMPHASISED THAT THERE WAS ABSOLUTELY NO TRUTH IN THE "CAVALIER" SUGGESTION AND THAT HE CONTINUED TO VALUE THE RELATIONSHIPS AND EXPRESSED HIS REGRET AT THE COURSE OF EVENTS WHICH WE GATHER WERE NOT IN KEEPING WITH HIS IDEAS AS TO HOW THE PROBLEM SHOULD BE HANDLED. HE STATED NOTWITH-
10 STANDING THAT THE DEAL WITH KNPC WAS DONE ON A STRAIGHT COMMERCIAL BASIS

AYE THE PRICE WAS SUBSTANTIALLY BETTER TO NABALCO OVER A PERIOD

BEE THE CONTRACT PERIOD WHICH WE MADE SUCH A FUSS ABOUT (REFER YOUR CORRESPONDENCE TO US) AND WHICH FINISHED AT THREE YEARS MAXIMUM WAS ECLIPSED BY THE KNPC OFFER OF FIVE YEARS. IN THIS CONNECTION YOU WILL BE INTERESTED TO KNOW THAT IN RECENT R.A. NAVY FUEL OIL CONTRACT TENDERS ALL OTHER COMPANIES QUOTED FOR
20 3 YEAR PERIOD, AS AGAINST OUR ONE YEAR WHICH YOU HAVE DIRECTED.

CEE. NABALCO LAWYERS BOTH HERE AND IN ZURICH REGARDED OUR CONTRACT TERMS AND CONDITIONS RESTRICTIVE AND UNNECESSARILY COMPLICATED IN COMPARISON WITH THOSE OFFERED BY KNPC

DEE. NABALCO HAVE MADE THEIR OWN SHIPPING ARRANGEMENTS FROM THE PERSIAN GULF INDEPENDENTLY WITH WHAT THEY REGARD AS A RELIABLE ORGANISATION.

WE HAD SOME APPREHENSION THAT THE NABALCO MOVE MAY
30 HAVE BEEN ENCOURAGED FROM GOVERNMENT SOURCES BUT WE HAVE BEEN REASSURED THAT THIS IS NOT SO AND THAT THE DEAL IS A STRAIGHT ONE WITH KNPC (WITHOUT A THIRD PARTY AS YOU SUGGESTED EARLIER)

NO DOUBT YOUR OWN CLOSENESS WITH KNPC WILL ENABLE YOU TO ADD TO THE INFORMATION ABOVE ALTHOUGH THE APPARENT INACCURACIES TO DATE COULD WELL CALL FOR CAUTION IN ACCEPTING THEIR STATEMENTS. FOR OUR PART WE SHALL CONTINUE TO SUPPLY YOU WITH WHATEVER INTELLIGENCE WE CAN GLEAN AND NATURALLY WE HAVE REGRETS AT THE TURN OF
40 EVENTS WHICH YOU OF COURSE REALISED COULD WELL HAVE FINISHED UP IN THIS SITUATION. TALKS WITH COUNSEL ARE CONTINUING AND WE WILL HOLD COMMENT UNTIL THE POSITION IS CLEARER. IN THE MEANTIME IT SHOULD BE UNDERSTOOD THAT THE NABALCO ACTION RELATES TO FUEL OIL AND THAT OUR EXCLUSIVE POSITION AT GOVE WITH OTHER PRODUCTS REMAINS UNTOUCHED. THIS IN TURN COULD HAVE EFFECT UPON OUR LOAN

Exhibit AJ (part)
Telex:
Defendant to BP
Trading Ltd

WHICH IS CURRENTLY ATTRACTING A VERY HIGH RATE OF INTEREST.

1st July, 1974
(Cont'd)

REGARDING SPOT SALES TO QAL PLEASE ADVISE PRICE AND TERMS YOU WISH US TO OFFER FOR SAY TWO 32,000T CARGOES IN AUGUST/SEPTEMBER. WITH DUE REGARD ACTIVITIES KAISER REPORTED ABOVE.

Exhibit 66 (part)
Telex:
Defendant to BP
Trading Ltd.
1st July 1974

Exhibit 66 (part)

Telex: Defendant to BP Trading Ltd.

TO BP LONDON 342 1.7.74
FROM AUSTBEEPEE MELBOURNE

10

FOR SPP/PRODUCTS BR/EKEBLAD
CC SPP PRODUCTS BR/GRUNDY
FROM P P AND S

YOUR C349. C955 TAMARA RTL 21/7 18.0 F60 (NOT F201) FOR SYDNEY ACCEPTABLE. C964 LOIDA NOT ACCEPTABLE IN AUSTRALIA. ONLY PORTS ABLE RECEIVE MR ARE GOVE AND MELBOURNE AND LATTER FULL EARLY AUG. WE AWAITING SING STATEMENT RE GP LIFTING DATES (OUR C326 BEE) BEFORE COMMENTING FURTHER.

BEE. WHEN CAN WE START WORKING TO REVISED F168 SPEC FOR SUPPLIES OF FUEL OIL TO NSW PORTS. WE ABLE ACCEPT 55 POUR ON F60 REFERRED TO ABOVE AND AWAIT ISSUE F168 TO STOP CONFUSION

20

CEE. PLEASE ADVISE IF TOLLANA ALBAROSA AND THALE HAVE ITF CERTIFICATE OR EQUIVALENT

Exhibit 66 (part)

*Exhibit 66 (part)
Telex:
BP Trading Ltd.
to BP Singapore
1st July 1974*

Telex: BP Trading Ltd. to BP Singapore

M
TO BP SINGAPORE 377 1/7/74
CC BP MELBOURNE 839 (FOR PP AND S)
FROM BP LONDON

FOR S AND P FROM SPP/PRODUCTS BR/EKEBLAD

REF YR 988. CARGOES TAMARA AND LOIDA NOTED.

10 YOUR FINAL PARA GAVE 3 G.P. CARGOES. WE ASSUME FIRST ONE
IS F60 FOR NEWCASTLE AND SYDNEY. ALSO HAVE 12-18/9 LOADING
SINGAPORE GO/FO FOR XMAS ISLAND.

REF MELB 342. WORRIED RE DESTINATION LOIDA. OBVIOUSLY DO
NOT WISH PART CARGO ONLY TO ENABLE DISCH AUSTRALIA BUT
HANDIES IN V. SHORT SUPPLY END JULY SINGAPORE AREA.
TOLLANA, ALBAROSA AND THALE HAVE NO ITF CERT BUT TROPIS
HAS GREEK EQUIVALENT.

Exhibit 1 (part)
Stockholding
Notice: Plaintiff
to Defendant
2nd July 1974

Exhibit 1 (part)**Stockholding Notice: Plaintiff to Defendant**

July 2, 1974.

BP Australia Limited,
G.P.O. Box 905E
ADELAIDE S.A. 5001

Re: NABALCO/BP AUSTRALIA SUPPLY AGREEMENT

Dear Sirs,

Fortnightly notice of stock holding and estimated usage is as follows:

STOCK HOLDING	BUNKER FUEL	DIESOLEUM	PREMIUM MOTOR SPIP	A.T.K.	10
Date: 2.7.74					
Stock on hand (l. gals)	10,616,229	525,561	443,540	304,185	
Converted at (gal/tonne)	236	266	298	279	
Stock on hand (tonne)	44,984	1,976	1488*	1090	

* includes 582 tonnes held on behalf of BP Nhulunbuy

ESTIMATED CONSUMPTION
(in tonnes)

2.7. — 8.7.	6281				20
9.7. — 15.7.	6281				
16.7. — 22.7.	6281				
23.7. — 29.7.	6281				
30.7. — 5.8.	6256				
6.8. — 12.8.	6256				
13.8. — 19.8.	6256				
20.8. — 26.8.	6256	81 tonnes	34 tonnes	23 tonnes	
27.8. — 2.9.	5882	per week	per week	per week	
3.9. — 9.9.	5882				
10.9. — 16.9.	5882				
17.9. — 23.9.	5882				30
24.9. — 30.9.	5882				
1.10. — 7.10.	5010				
8.10. — 14.10.	5010				
15.10. — 21.10.	5010				
22.10. — 28.10.	5010				

Copies to: BP Australia Ltd., Melbourne
General Manager
Administration Manager, Sydney
V. Trotta
J. Kennedy
Site Admn Manager

J. F. Sauerlander
SITE ADMINISTRATION
MANAGER

40

Exhibit AJ (part)

Exhibit AJ (part)
Telex:
BP Trading Ltd
to Defendant

3rd July 1974

Telex: BP Trading Ltd to Defendant

87 1741/3 LEMCG

TO BP MELBOURNE C890 3/7/74
 FROM BP LONDON

FOR WHOLESALE SALES
 FROM JOHNSTON/RWH

NABALCO

10 THANKS YOUR C341 WE GLAD TO LEARN THAT RELATIONS NOT AS REPORTED BY KNPC. HOWEVER WE FEEL NABALCO ACTIONS DO NOT REFLECT THE CORDIAL RELATIONS EXISTING BETWEEN YOU AND MORE IMPORTANTLY DO NOT ALLOW YOU TO RECOVER FROM CARRYING THEM FOR SO LONG. NOTWITHSTANDING THEIR LEGAL ACTION IT WOULD STILL HAVE BEEN POSSIBLE TO DISCUSS WITH YOU NEW CONTRACT ESPECIALLY AS YOU HAD SPECIFICALLY GUARANTEED SUPPLY. WE HAVE NO REASON TO DOUBT COMMENT PASSED TO YOU AND IT SEEMS LIKELY NABALCO ADOPTS ATTITUDE DEPENDING ON TO WHOM THEY SPEAKING.

20 YOUR AYE.
 WE SHALL BE INTERESTED TO LEARN PRICE AND ESPECIALLY REVIEW/ESCALLATION. OUR INFORMATION AS ALREADY ADVISED OUR C824 WOULD NOT JUSTIFY DESCRIPTION "SUBSTANTIALLY BETTER". WE ANTICIPATE CONSIDERABLE MARKET HARDENING END 3Q/4Q AND WILL BE INTERESTED TO LEARN WHAT HAPPENS TO THIS ACCOUNT.

30 YOUR BEE.
 THE CONDITIONS WHICH HAVE LED US TO LIMIT CONTRACTUAL OBLIGATIONS AS MUCH AS POSSIBLE STILL OBTAIN. ALTHOUGH FM CLAUSE GIVES COMPLETE PROTECTION INDISCRIMINATE USE WOULD IMPAIR OUR RELIABILITY AND IT IS FOR THIS REASON WE DO NOT WISH TO HAVE TO RELY UPON IT EXCEPT IN OBVIOUSLY LIMITING CONDITIONS.

40 YOUR CEE.
 THE PROOF OF THAT PUDDING WILL LIE IN THE EATING. THE RESTRICTIONS AND COMPLICATIONS CONFER SOME SAFEGUARDS FOR PURCHASER ALSO AND IT IS POSSIBLE THAT KNPC'S UNCOMPLICATED APPROACH MAY RESULT IN SOME PRETTY STARTLING OPPORTUNITY PRICES ESPECIALLY IF PRODUCTION IS AGAIN REDUCED IN THE INTEREST OF MAINTAINING/INCREASING CRUDE PRICES.

Exhibit AJ (part)
Telex:
BP Trading Ltd
to Defendant
3rd July 1974
(Cont'd)

YOUR DEE.
IN DUE COURSE WE WOULD LIKE TO KNOW DETAILS IF YOU CAN
GET THEM.

FINALLY WE EXAMINING TWO SPOT CARGOES QAL AND WILL
REVERT. WE UNDERSTAND YOU HAVE DROPPED LOIDA SHIPMENT.
GRATEFUL YOU KEEP US ADVISED YOUR LEGAL ADVICE

Exhibit AJ (part)
Telex:
BP Trading Ltd
to Defendant
10th July 1974

Exhibit AJ (part)

Telex: BP Trading Ltd to Defendant

TO AUSTBEEPEE MELBOURNE 022 10.7.74
FROM BP LONDON

10

FOR PPS FROM PRODUCTS BRANCH WILLIAMS

NABALCO. TO MAKE SURE WE ARE ALL CLEAR ON THE SITUATION
OUR UNDERSTANDING IS THAT DELIVERY OF 8 AUGUST C964 IS
CANCELLED BY VIRTUE OF NABALCO OBTAINING CARGO FROM
KNPC

THEREFORE EVEN IF JUDGEMENT GOES AGAINST US WE WILL NOT
BE REQUIRED TO PROVIDE CARGO BEFORE 9-25 SEPTEMBER
ARRIVAL (C968). OUR WORRY IS THAT WE WILL BE CALLED UPON
TO PROVIDE CARGO AT SHORT NOTICE WHICH MAY NOT BE
POSSIBLE IF TIMING OF REQUIREMENT AND SHIPPING AVAILABILITY
DO NOT COINCIDE

20

GRATEFUL YOU CONFIRM WE ARE ALL THINKING ALONG SAME
LINES

Exhibit AJ (part)

Exhibit AJ (part)
Telex:
Defendant to BP
Trading Ltd
 —
 11th July 1974

Telex: Defendant to BP Trading Ltd

TO BP LONDON 507 11-7-74.
 FROM AUSTBEEPEE MELBOURNE

FOR JOHNSTON/RWH
 FROM SALES DIVN.

MAJOR VARIATION BETWEEN STE FOR JUNE AS SHOWN I/O
 DOCUMENT ATTACHED OUR 536-WS OF 29/4 SENT TO STOCKS AND
 ESTIMATES BRANCH AND PROVISIONAL SALES ADVISED OUR 442
 10 OF 8/7 IS:—

PRODUCT	STE	PROVISIONAL (000'S METRIC TONS)	VARIATION
FUEL	151	169	+18.

THIS INCREASE DUE NABALCO SHIPMENT IN JUNE, PREVIOUSLY
 SCHEDULED FOR MAY AS ADVISED.

Exhibit AJ (part)

Exhibit AJ (part)
Telex:
BP Trading Ltd
to Defendant
 —
 16th July 1974

Telex: BP Trading Ltd to Defendant

TO AUSTBEEPEE MELBOURNE 104 16/7/74
 CC BP SINGAPORE 596 FOR S AND P
 FROM BP LONDON

20 FOR SALES/PP AND S
 FROM PRODUCTS BRANCH/WILLIAMS

YOUR C564. FROM OPERATIONAL POINT OF VIEW WE DO NOT
 ANTICIPATE TOO MUCH TROUBLE IN RE-INSTATING GOVE DELIVER-
 IES PROVIDED WE RECEIVE 4 WEEKS NOTICE. HOWEVER IF
 SETTLEMENT NOT REACHED BEFORE END JULY THEN EARLIEST WE
 COULD DELIVER CARGO WOULD BE ABOUT 20TH AUGUST AND THIS
 WOULD BE DEPENDENT ON SINGAPORE BEING ABLE TO MANUFAC-
 TURE F201 FOR BORDER CHIEFTAIN 11TH AUGUST AND PP AND S
 30 BEING ABLE TO FOREGO CARGO OF BASRA RESIDUE BEING
 LOADED ON THIS VESSEL. MUST EMPHASISE THAT WE CANNOT
 PROGRAMME AGAINST PROVISIONAL REQUIREMENT AND ANY
 NOMINATION MUST BE UNCONDITIONAL

Exhibit 1 (part)
First Letter:
Defendant to
Plaintiff

17th July 1974

Exhibit 1 (part)**First Letter: Defendant to Plaintiff**

The General Manager,
Nabalco Pty Limited,
Sydney,
NEW SOUTH WALES 2000.

17th July, 1974

Dear Sirs,

We acknowledge receipt of your notice dated 2nd July, 1974 sent to our Adelaide Office advising of your estimated usage of furnace oil as well as other products pursuant to Clause 5(A) of the supply agreement. Such notice has been sent by you notwithstanding the assertion contained in your letter dated 28th June, 1974 that you have arranged an alternative source of supply. 10

Consistent with our letters to you of even date we propose to arrange our tankship programme to ensure that your stocks of furnace oil will be replenished as envisaged by Clause 5(B) of the supply agreement. We will notify you separately of details of our shipping programme in order to avoid port congestion at Gove in the usual manner. Should you not require such replenishment we would be grateful for your telexed advice.

In due course we will invoice you for all furnace oil supplied after 24th July, 1974 at the revised base price of \$54.44 set out in our notice dated 22nd March, 1974. We will expect payment to be made in accordance with our invoice. For our part we will, however, make the appropriate refund to you in the event that the final determination by the Court in the present proceedings is that our notice was invalid. 20

Yours faithfully,
BP AUSTRALIA LIMITED
C. Lockrey
Manager — Sales Division.

Exhibit 1 (part)

Exhibit 1 (part)
Second Letter:
Defendant to
Plaintiff
 17th July 1974

Second Letter: Defendant to Plaintiff

The General Manager,
 Nabalco Pty Limited,
 Sydney,
 NEW SOUTH WALES 2000.

17th July, 1974

Dear Sir,

10 We acknowledge receipt of your letter of 16th May, 1974. Having regard to the institution of legal proceedings by your Company on 19th June, 1974, we feel we should formally deal with the letter, although, of course, after we received the letter, a number of further discussions and negotiations did in fact take place between us.

We therefore reply to the letter in accordance with your numbered paragraphs as follows:

1. We agree and you have our assurance that for our part we will co-operate in seeking a speedy determination of the issues by the Court.
- 20 2. We agree that the conference of 17th April, 1974 took place on a "without prejudice" basis and we have not sought to detract from that situation in any way; all we referred to, in the third paragraph of our letter, was the subject matter of part of the discussions which took place at the conference on our part.

30 We cannot agree that our supply situation was not "explained in some detail", although as we pointed out, we were unable in the circumstances to answer your specific questions. As to the last two sentences of your second paragraph, all statements made were, as you state, without prejudice but we would like to say that statements made by us as to available resources were not precisely as you assert and we do not agree that the effect of what was said is accurately summarised by your statement "the reason you sought a revised base price under the Agreement was that the OPEC Price increases have made the fixed price under the Agreement commercially unacceptable to you."

3. We do not agree that you were entitled to condition the termination of the supply agreement, in relation to the supply of furnace oil, on the validity of the notice dated 22nd March, 1974.

Nevertheless, notwithstanding that by your act you brought the supply contract to an end so far as concerns furnace oil, we are willing to continue the supply of furnace oil at the base price stated in our said notice until the final determination by the Court of its validity following which we are prepared to supply furnace oil at a base price conforming with that determination.

40 Yours faithfully,
 BP AUSTRALIA LIMITED
 C. Lockrey Manager — Sales Division.

Exhibit 1 (part)
Third Letter:
Defendant to
Plaintiff
 17th July 1974

Exhibit 1 (part)

Third Letter: Defendant to Plaintiff

The Chairman,
 Nabalco Pty Limited,
 Sydney,
 NEW SOUTH WALES 2000

17th July, 1974

Dear Sir,

We acknowledge receipt of your letter of 28th June, 1974.

We note your advice that you have arranged an alternative source of supply for furnace oil at a price lower than the price specified in our notice dated 22nd March, 1974, but that it is "substantially more" than the price at which, in your view, we should be continuing to supply you under our supply agreement. 10

We desire to affirm to you that while adhering to the validity of the notice, we are prepared to continue the supply of furnace oil at the base price stated in our said notice until the final determination by the Court of its validity, following which we are prepared to supply furnace oil at a base price conforming with that determination. In our letter to you of 7th May, 1974, we expressed the view, to which we still adhere, that you had given three months' notice pursuant to Clause 9C(iii) of the supply agreement, and that therefore by your own actions you had brought the agreement to an end as regards the supply of furnace oil. If by reason of the Court's determination, the true situation is that our notice was invalid in the first place, then for our part we are ready and willing to perform the supply contract in the manner set out above. 20

In this connection, we note that your letter of 28th June, 1974, also affirms the continued subsistence of the supply contract in relation to the supply of furnace oil as well as the other petroleum products the subject of the agreement.

Yours faithfully,
 BP AUSTRALIA LIMITED
 E.F. Lever
 Director.

1057

Exhibit Z

Telex: Australian Territory Liner Services to Alusuisse

*Exhibit Z
Telex:
Australian
Territory Liner
Services to
Alusuisse
—
19th July 1974*

52034 ALUGK CH
ATLS AA25825
395

ATTN. BERNATH

FIRST VESSEL UNDER CONTRACT OF AFFREIGHTMENT FOR FUEL SUPPLY IS "NAI GINO" 49,000 DWT LOADING SHUAIBA 26th JULY AND ETA GOVE 13TH AUGUST.

- 10 THIS VESSEL IS BULK/ORE CARRIER AND WE HAVE BEEN REQUESTED BY STOLT NEILSON AUST. TO ASCERTAIN WHETHER YOU HAVE ANY INTEREST FIXING VESSEL BAUXITE/ALUMINA GOVE/EUROPE.

REGARDS,
WILSON/ATLS
19.7.74

Exhibit 1 (part)

Telex: Plaintiff to Defendant

*Exhibit 1 (part)
Telex:
Plaintiff to
Defendant
—
22nd July 1974*

M
AUSTBP AA30166
NABALCO AA20472

20 TLX 1108 22.7.74 4.25

ATTENTION: MR. COLIN LOCKREY, MANAGER, SALES DIVISION.

REFERENCE YOUR LETTER 17 JULY — OUR NOTICE 2 JULY.

THE ROUTINE NOTICE OF 2 JULY WAS ISSUED FROM GOVE BY OVERSIGHT. IN BRIEF ANSWER TO YOUR LETTER WE DO NOT REQUIRE THE REPLENISHMENT OF FURNACE OIL YOU REFER TO.

LETTER TO FOLLOW.

REGARDS,
COOGAN/NABALCO

Exhibit 1 (part)
First Letter:
Plaintiff to
Defendant
—
2nd August 1974

Exhibit 1 (part)

First Letter: Plaintiff to Defendant

GENERAL MANAGER
C. Lockrey, Esq.,
Manager — Sales Division,
BP Australia Limited,
BP House,
1 Albert Road,
MELBOURNE. VICTORIA. 3000

2nd August, 1974

Dear Sir,

10

We acknowledge receipt of your letter of the 17th July 1974.

It would appear from the terms of your letter, especially when read together with the other two letters of the same date sent by you to us, that you are seeking to gain some tactical advantage in relation to the dispute between us by endeavouring to obtain an admission that the supply agreement so far as it relates to the supply of furnace oil is still on foot. We have dealt with this matter in our reply to your letter of even date.

As advised in our telex No.1108 of 22nd July 1974 the notice of the 2nd July 1974 referred to in the first paragraph of your letter is a routine letter sent by our administration at Gove to you in Adelaide. As you know it is one of a number of letters to the same effect sent fortnightly to you in Adelaide. It is in no way an affirmation of the subject contract.

20

As we pointed out to you in our letter of the 28th June we have been able to arrange an alternative source of supply of furnace oil which should ensure regular deliveries to us commencing August 1974. For the reasons mentioned in our letter to you of even date the agreement so far as it relates to the supply of furnace oil is now at an end.

Yours faithfully,
A.G. COOGAN

Exhibit 1 (part)

Exhibit 1 (part)
Second Letter:
Plaintiff to
Defendant
—
2nd August 1974

Second Letter: Plaintiff to Defendant

GENERAL MANAGER

2nd August, 1974

C. Lockrey, Esq.,
Manager — Sales Division,
BP Australia Limited,
BP House,
1 Albert Road,
MELBOURNE. VICTORIA. 3000

10 Dear Sir,

We acknowledge receipt of your letter of 17th July 1974. Both this letter and the letter addressed to our Chairman of the same day assert an attitude to your obligation under the subject contract which is totally contrary to the attitude adopted by you prior to our letter of 28th June.

20 The facts are that until we informed you that we had made alternative arrangements for future supplies of furnace oil you never suggested that in any circumstances you would continue to supply at the old base price, and indeed you repeatedly asserted to the contrary. Now that you are no longer at any risk of being taken up on that suggestion, you make it for the first time. We do not propose to speculate as to your purpose in doing so.

We do not agree that the agreement so far as it relates to furnace oil has been brought to an end by our conduct. On the assumption that your notice dated 22nd March 1974 be held invalid it was your conduct which constituted a repudiation of your obligations in relation to the supply agreement so far as it relates to the supply of furnace oil, that obliged us to terminate the agreement in relation to the supply of furnace oil.

30 Our Chairman is unavailable for approximately two weeks and intends to reply to your letter to him upon his return to his office. However, it should be said in the meantime that there is no affirmation by us in our letter of 28th June signed by the Chairman of the continued subsistence of the agreement in relation to the supply of furnace oil. There is no dispute between us that the agreement continues in relation to petroleum products other than furnace oil. However, our attitude in relation to the supply of furnace oil is as we have stated earlier in this letter.

Yours faithfully,
A.G. COOGAN

Exhibit 1 (part)
Third Letter:
Plaintiff to
Defendant

2nd Aug., 1974

Exhibit 1 (part)

Third Letter: Plaintiff to Defendant

CHAIRMAN OF THE BOARD

2nd August, 1974

Mr. C. Lockrey,
 BP Australia Limited,
 MELBOURNE ... VIC.

Dear Sir,

The Chairman is presently unavailable and will reply to your letter on his return to the office in approximately two weeks time.

Yours faithfully,
 J. PAGE
 Secretary to Sir David Griffin

10

Exhibit 78 (part)
Debit Note:
Defendant to
Plaintiff

2nd Aug., 1974

Exhibit 78 (part)

Debit Note: Defendant to Plaintiff
BP AUSTRALIA LIMITED

Nabalco Pty. Ltd.,
 Goldfields House,
 1 Alfred Street,
 Sydney Cove
 N.S.W. 2000

DEBIT NOTE
 No. H. 4180

2nd August 1974

<p>Fuel oil delivered at Gove on 19th July 1974 ex the vessel "TAMARA" 19,284.96 Long tons = 19,594.55 Metric tons 13.39 per Metric ton</p>		<p>\$262,371.02</p>
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20

Exhibit 78 (part)

**Report: Whinney Murray
BP AUSTRALIA LTD. — NABALCO PTY. LTD. CONTRACT**

	BP MOTOR SPIRIT SUPER GP VESSELS		BP DIESELEUM GP VESSELS		BP FURNACE OIL GP VESSELS		BP FURNACE OIL MR VESSELS	
	A Base Prices - \$A per Metric Ton	31.32		18.31		12.45		9.42
B Contract Freight Index Range - £(S) per Long Ton	1.433 — 2.388		1.433 — 2.388		1.075 — 1.792		1.075 — 1.792	
AFRA Freight Rates as at 1st July, 1974	U.S.\$	£(S)	U.S.\$	£(S)	U.S.\$	£(S)	U.S.\$	£(S)
C Per Long Ton converted - U.S.\$ to £(S) at 2.3865	12.17	5.100	12.17	5.100	10.31	4.320	10.31	4.320
D Variation from Index Range - £(S) + (Higher)-(Lower) per Long Ton		+2.712		+2.712		+2.528		+2.528
Exchange Rate - £(S) to \$A = 1.5942		\$A		\$A		\$A		\$A
E London Selling Closing Rate on 1st July, 1974		4.32		4.32		4.03		4.03
F Variation - \$A per Metric Ton		4.25		4.25		3.97		3.97
G Indigenous Crude Oil Penalty - \$A per Metric Ton		10.47		9.36		—		—
H Selling Prices as at 1st July, 1974 - \$A per Metric Ton - (A + F + G)		46.04		31.92		16.42		13.39

We report that we have examined the above statement concerning the Freight escalation clauses in the relevant contract. Our verification of the statement included the examination of AFRA freight rates and the London selling closing exchange rates as published by AAP Reuters Economic Service.

In our opinion the above statement correctly sets out the price calculation in terms of the contract.

8th August 1974

WHINNEY MURRAY ERNST ERNST

Chartered Accountants

Exhibit 78 (part)
Report:
Whinney Murray
8th Aug., 1974

Exhibit 78 (part)
Letter:
Defendant to
Plaintiff

9th Aug., 1974

Exhibit 78 (part)

Letter: Defendant to Plaintiff

Nabalco Pty. Ltd.,
SYDNEY. N.S.W. 2000.

SA-GWN:LP

9th August, 1974

Dear Sirs,

ACCOUNTS FOR PAYMENT

We attach a copy of our Debit Note H4180 dated 2nd August, 1974 for 19,594.55 metric tons of BP Furnace Oil delivered at Gove ex the 'TAMARA' on 19th July, 1974.

10

A copy of this letter, Debit Note and certificate have been forwarded under separate cover to your Administration Manager.

Also enclosed is an auditor's certificate relating to the variations in the contract prices for Super Motor Spirit, Diesoleum and Furnace Oil effective 1st July, 1974.

Yours faithfully,
G.W. NORTHCOMBE
for (B.C. Snape),
Manager — Government & National Department,
Sales Division.

Exhibit 1 (part)

Exhibit 1 (part)
Letter:
Defendant to
Plaintiff
 —
 14th Aug., 1974

Letter: Defendant to Plaintiff

The General Manager,
 Nabalco Pty Limited,
 Sydney,
 NEW SOUTH WALES 2000.

14th August, 1974

Dear Sir,

We acknowledge receipt of your two letters of 2nd August, 1974.

10 With regard to the longer of your two letters, we comment as follows:

1. What we repeatedly asserted to you was that we were no longer obliged to supply at the "old base price" because of your having terminated the Supply Agreement insofar as Furnace Oil is concerned; that was the case prior to your letter of 28th June, 1974 and that is still the case. What we endeavoured to communicate to you by our letters of 17th July, 1974 and which you appear to have misunderstood, was that, in the event only that the Court's determination was adverse to the validity of our notice dated 22nd March, 1974, then for our part we would be "prepared to supply furnace oil at a base price conforming with that determination". The remarks therefore made in the first and second
 20 paragraphs of your letter under reply are at the very least inappropriate.

2. The assertions made in the third paragraph of your letter are of course at the heart of the controversy between us and there is nothing to be further gained by canvassing our respective contentions. But it must be said that you have by the last paragraph on page 1 of your letter of 24th April, 1974 purported to terminate the Contract in relation to the supply of furnace oil in the event that our notice is held to be valid; whether you were entitled to express the contention of invalidity on the one hand and purport to terminate in the event of validity on the other will no doubt be controverted in the course of the present proceedings.

30 3. We note your statement "that there is no affirmation by us in our letter of 28th June ... of the continued subsistence of the agreement in relation to the supply of furnace oil". Obviously, that letter contained no such express affirmation but it did not, on the other hand, unequivocally express your intentions for the totality of the unexpired term of the supply agreement as regards furnace oil. We were not unnaturally all the more uncertain as to your intentions after receiving your notice dated 2nd July, 1974 requiring further supply.

As regards the shorter of your two letters of 2nd August, 1974 we comment as follows:

40 4. For the reasons indicated above, your suggestion that we were seeking "to gain some tactical advantage by endeavouring to obtain an admission that the supply agreement so far as it relates to the supply of furnace oil is still on foot"

Exhibit 1 (part)
Letter:
Defendant to
Plaintiff
—
14th Aug., 1974
(Cont'd)

appears to be a speculation on your part; it misconceives what was in our view clearly conveyed by our letters of 17th July, 1974. What we primarily sought to convey was our attitude to the question of supply following the institution of proceedings challenging the validity of our notice, particularly in the light of your notice to supply of 2nd July, 1974, in the event of a determination in the proceedings adverse to us. We felt obliged to take your notice of stockholding and estimated usage seriously, particularly since we had incomplete details from you of your alternative supply; more particularly since in your letter of 16th May, 1974 you stated "For so long as any dispute continues between us on this point the Contract in all of its terms continues to bind the parties. It is for this reason that the immediate resolution of that dispute by an appropriate Court is vital." Earlier in the same letter, you had stated that the issues between us had to be placed before the Court "as a matter of extreme urgency". We note that the proceedings were instituted on 19th June, 1974 and even then did not claim we had repudiated our obligations to supply furnace oil. 10

5. The explanation set out in the third paragraph of your letter under reply is accepted and we certainly do not propose to regard your notice to supply as containing any admission on your part not to regard it as constituting "an affirmation of the subject contract".

Finally, as the dispute between us is now before the Court, may we suggest that all necessary future correspondence on it be conducted through our respective Solicitors. 20

Yours faithfully,
BP AUSTRALIA LIMITED
C. Lockrey
Manager — Sales Division

Exhibit 1 (part)
Telex:
Defendant to
Plaintiff
—
16th Aug., 1974

Exhibit 1 (part)

Telex: Defendant to Plaintiff

NABALCO SYDNEY NAT ACCTS NABALCO
FROM
AUSTBEEPEE MELBOURNE 16-8-74.

30

ATTENTION MR A COOGAN GENERAL MANAGER

FURTHER TO OUR LETTER OF 14th AUGUST WE SHOULD BE GRATEFUL IF YOU WOULD SUBSTITUTE THE WORD 'NOR' FOR THE WORD 'NOT' IN THE THIRD LINE OF PARA 5. THIS CORRECTS A TYPOGRAPHICAL ERROR

REGARDS LOCKREY/BP.

Exhibit 1 (part)

Exhibit 1 (part)
Telex:
Plaintiff to
Defendant
—
16th Aug., 1974

Telex: Plaintiff to Defendant

NABALCO AA20472

TLX 1172 16.8.74 3.45

ATTENTION: MR. COLIN LOCKREY, MANAGER, SALES DIVISION

THANK YOU FOR YOUR TELEX 16.8.74. YOUR LETTER 14.8.74 HAS BEEN CORRECTED AS REQUESTED BY YOU.

REGARDS,
COOGAN/NABALCO/SYDNEY

10

Exhibit 1 (part)

Exhibit 1 (part)
Letter:
Plaintiff to
Defendant
—
5th Sept., 1974

Letter: Plaintiff to Defendant

CHAIRMAN OF THE BOARD

5th September, 1974

Mr. C. Lockrey,
BP Australia Limited,
MELBOURNE VIC.

Dear Sir,

I regret having taken so long to acknowledge receipt of your letter of 17th July. Having however read the letters written by you to the General Manager on the same day and his replies to those letters, I do not think any good purpose would be served by adverting to matters which he has already dealt with.

Yours faithfully,
DAVID GRIFFIN

1066

*Exhibit AF
Telex: Kuwait
National
Petroleum
Company to
Plaintiff in
relation to price
escalation*

Exhibit AF

Telex: Kuwait National Petroleum Company to Plaintiff in relation to price escalation

5th Sept., 1974

NABALCO AA20472
KUWAIT NPC LDN 261998

5 SEPTEMBER 1974

TO: NABALCO

L 5822

COMMERCIAL INVOICE: 'NAI GINO'

FURTHER YOUR 1645/1730 STOP THE PRICE OF COARGO LOADED 'NAI GINO' B/L DATE 27 7 74 WAS CALCULATED AS FOLLOWS: 10

	DLRS/BBL	DLRS/BBL
1) BASE PRICE		9.25
2) ESCALATION		
POSTED PRICE	7 6 74	8.978
POSTED PRICE	27 7 74	9.006
DIFFERENCE		<u>0.028</u>
PRICE FOB MINA AL AHMADI		9.278

THUS AMOUNT OF INVOICE FOR 231086 BBLs F O LOADED THIS VESSEL IS DLRS 2144015.91 STOP THE COMMERCIAL INVOICE WAS AIRMAILED TO YOU 4.9.74. REGARDS. 20

KUNPETCO LONDON

SENT 11 30 HRS BST JFD/DPW

Exhibit AJ (part)

Exhibit AJ (part)
Internal
Memorandum:
Mr Snape
 18th Sept., 1974

Internal Memorandum: Mr Snape

TO MANAGER — FINANCE & ACCOUNTS DIVISION

FROM MANAGER — SALES DIVISION

SA 18 SEP 74 KMcQ:SH

C.I.F. — NABALCO

10 It is advised that our furnace oil agreement with Nabalco has been terminated, effective 24th July, 1974, and that we shall be making no further deliveries of furnace oil to Gove, Northern Territory, pending the outcome of current legal proceedings. Nabalco has made alternative arrangements with K.N.P.C. and are purchasing furnace oil on an f.o.b. basis Middle East.

Our agreement to supply gas oil and motor spirit shall continue on the existing terms and conditions until further notice.

(Sgd) B. C. SNAPE
 for Manager — Sales Division

Exhibit 78 (part)

Exhibit 78 (part)
Remittance
Advice: Plaintiff
to Defendant
 17th Oct., 1974

Remittance Advice: Plaintiff to Defendant

REMITTANCE ADVICE

20 Nabalco Pty. Limited
 Manager, Gove Joint Venture

Date	Cheque	Suppl.No.	Our Ref.	Your Ref.	Amount	Our Ref.	Your Ref.	Amount
17/10/74	59917	36072	427530	4180	\$262,371.02			
COMMENTS								
						Sub-Total Less Discount		
						Total This Cheque		\$262,371.02c

Exhibit 50 (part)
Telex:
Concord to
Plaintiff
—
21st Oct., 1974

Exhibit 50 (part)

Telex: Concord to Plaintiff

TO: DOUG WILSON NABALCO SYDNEY
FM: OXYOIL LONDON TLX 918818

FURTHER TO OUR TELCON PLEASE NOTE THAT WE HAVE A DEFINITE INTEREST IN EXTENDING OUR CURRENT CONTRACT FOR A FURTHER PERIOD OF 2 YEARS. WE APPRECIATE THAT OUR CONTRACT RATE, AS AGAINST THE PRESENT SPOT MARKET RATE MAY LOOK GOOD FOR THE OWNER BUT OBVIOUSLY WE ARE TALKING ABOUT PERIOD OF 1ST AUGUST 1977 - 31ST JULY 1979 AND AT THE PRESENT ANNUAL RATE OF INCREASE IN OPERATING EXPENSES WE MUST BE VERY CAREFUL. 10

ANYHOW, WE OFFER YOU A REDUCTION OF FIVE WORLDSCALE POINTS STRAIGHT FROM JANUARY 1975 I.E. WS 165 RIGHT THROUGH TO JULY 1979 BASED ON A CONTRACT EXTENSION OF 2 YEARS OF 350,000 METRIC TONS PER ANNUM. AS I ALREADY TOLD YOU, TO MAKE THIS CONTRACT MORE ATTRACTIVE TO US, PARTICULARLY FOR THE 2 YEARS EXTENSION, WE WOULD RATHER LIKE TO INCREASE THE VOLUME.

THIS IS NOT EXACTLY OF A DIRECT INTEREST TO YOU, BUT FOR INSTANCE AT A DOUBLED VOLUME I.E. AN ADDITIONAL 350,000 TONS PER ANNUM FOR 4 YEARS AS FROM JANUARY 1975 ONWARDS OR THEREABOUTS, I WOULD BE ABLE TO GIVE YOU A FURTHER 10 WORLDSCALE POINTS REDUCTION., IN OTHER WORDS WS 155 FOR 700,000 TONS PER ANNUM. I WOULD ALSO AGREE TO DO THIS PER FRACTION OF ABOUT ONE FOURTH OF OUR PRESENT CONTRACT QUANTITY, I.E. MINIMUM 87,500 LONG TONS ADDITIONAL AS FROM JANUARY 1975 FOR 4 YEARS, A REDUCTION OF 2.1/2 WS POINTS WHICH IS THE PRORATA OF 10 POINTS FOR AN ADDITIONAL 350,000 TONS. 20 30

AT THIS STAGE, FOR AN EXTENSION ALONG OF THE PRESENT CONTRACT QUANTITIES, IT WILL BE DIFFICULT FOR ME TO GIVE YOU MORE THAN 5 POINTS.

PLEASE ADVISE WHETHER THIS WILL ENABLE YOU TO EXTEND AS PROPOSED.

BEST REGARDS JOHN DE KORVER

Exhibit AC**Plaintiff's Documents with respect to payments to Kuwait National Petroleum Company**

*Exhibit AC
Plaintiff's
Documents with
respect to
payments to
Kuwait National
Petroleum
Company
—
28th Oct., 1974*

28th October, 1974

The Manager,
Manufacturers Hanover Trust Company,
SYDNEY, N.S.W. 2000.

Attention: Mr. D.J. Byrne

Dear Sir,

10 We enclose an application for a Commercial Letter of Credit to be raised by your London Office in favour of Kuwait National Petroleum Company (KSC) for the amount Three million, nine hundred and sixty thousand Dollars U.S. (US\$3,960,000) for supply of about 57000 tonnes of Heavy Fuel Oil on the vessel "Russel H. Green" on or about 8th November, 1974.

Would you please arrange for this Application to be forwarded on our behalf to your London Office.

We thank you in anticipation.

Yours faithfully,
NABALCO PTY. LIMITED
E.A. Notter
Administration Manager.

20

Application for Commercial Letter of Credit
MANUFACTURERS HANOVER TRUST COMPANY
7, Princes Street, London, E.C.2.

Date October 29, 1974
Reference No.

30 Please open and transmit by *mail an *irrevocable Letter of Credit subject to Uniform Customs and Practice for documentary credits (1962 Revision), International Chamber of Commerce Brochure No. 222, in favour of KUWAIT NATIONAL PETROLEUM CO. (KSC) 25 ST. JAMES'S STREET, LONDON SW1A 1HQ. UNITED KINGDOM. available by their drafts on YOU drawn at 60 days from bill of LADING date for an amount not exceeding THREE MILLION NINE HUNDRED AND SIXTY THOUSAND UNITED STATES DOLLARS. (\$US. 3,960000) accompanied by the following documents:—
□ 1/3 original clean on board ocean Bills of Lading issued to our order and marked

- (1) "Notify ourselves
- (2) "Freight Payable in accordance with COA dated 18th June 1974 – NABALCO/CONCORD.

Exhibit AC
Plaintiff's
Documents with
respect to
payments to
Kuwait National
Petroleum
Company
—
28th Oct., 1974
(Cont'd)

□ Commercial Invoice.
Other documents:—

CERTIFICATE OF QUALITY in duplicate
CERTIFICATE OF QUANTITY in duplicate
BENEFICIARY'S CERTIFICATE that 1/3 BILL OF LADING has been handed to the ship's master and that 1/3 BILL OF LADING has been airmailed direct to us evidencing the current shipment from FOB ARABIAN GULF PORT to GOVE, NORTHERN TERRITORY AUSTRALIA of:—
ABOUT 57,000 metric tonnes of HEAVY FUEL OIL on the vessel "RUSSEL H. GREEN"
Partial shipments are not allowed.
Transshipment is not permitted.
Drafts must be drawn and negotiated not later than 60 days after BILL OF LADING date
*We confirm that Insurance is covered by us with STENHOUSE (NSW) LIMITED under Policy No.10303/4
Other conditions:— Charter Party Bills of Lading are acceptable insurance cover limited to \$A4,000,000 any one vessel.

10

Yours very truly,
NABALCO PTY. LIMITED
Eddy Notter

20

CUSTOMERS
COPY

MANUFACTURERS HANOVER TRUST COMPANY
7 PRINCES STREET, LONDON, EC2R 8AQ

IRREVOCABLE LETTER OF CREDIT

DATE 4th November, 1974.
No. A 35654

Kuwait National Petroleum Co. (KSC)
25 St. James's Street
London. SW1A 1HQ.

30

GENTLEMEN.

WE AUTHORIZE YOU TO DRAW ON
Manufacturers Hanover Trust Co. 7 Princes Street, London. EC2P 2LR.
FOR ACCOUNT OF

MAIL TO Nabalco Pty. Ltd., Gold Fields House, 1 Alfred Street, Sydney N.S.W. 2000, Australia.

FOR ANY SUM OR SUMS NOT EXCEEDING IN ALL

United States Dollars Three Million Nine Hundred and Sixty Thousand Only
US\$3,960,000.00

40

AVAILABLE BY YOUR DRAFTS AT 60 days from Bill of Lading date,
WHEN ACCOMPANIED BY THE FOLLOWING DOCUMENTS:

Commercial Invoice in Quadruplicate.

1/3 Original clean on board ocean Bills of Lading, issued to the order of
Nabalco Pty. Ltd., Gold Fields House, 1 Alfred Street, Sydney, N.S.W. 2000,

Australia, marked "Freight Payable in accordance with COA dated 18th June, 1974 - NABALCO/CONCORD," and "Notify Nabalco Pty. Ltd. Gold Fields House 1, Alfred Street, Sydney, N.S.W. 2000, Australia;"

Certificate of Quality, in duplicate.

Certificate of Quantity in duplicate.

Your Certificate to the effect that 1/3 Original Bills of Lading has been handed to the ship's master and that 1/3 Original Bills of Lading has been airmailed direct to Nabalco Pty.Ltd., Gold Fields House 1 Alfred Street, Sydney, N.S.W.2000, Australia.

*Exhibit AC
Plaintiff's
Documents with
respect to
payments to
Kuwait National
Petroleum
Company
—
28th Oct., 1974
(Cont'd)*

- 10 evidencing the current F.O.B. shipment per vessel "Russel H. Green" from Arabian Gulf Port to Gove, Northern Territory, Australia of:—
ABOUT 57,000 METRIC TONNES OF HEAVY FUEL OIL.

Continued....

ALL DRAFTS MUST BE MARKED: "DRAWN UNDER MANUFACTURERS HANOVER TRUST COMPANY CREDIT NO. 35654

- 20 THE AMOUNT OF ANY DRAFT DRAWN UNDER THIS CREDIT MUST BE ENDORSED ON THE REVERSE HEREOF, AND THE PRESENTATION OF EACH DRAFT, IF NEGOTIATED, SHALL BE A WARRANTY BY THE NEGOTIATING BANK THAT SUCH ENDORSEMENT HAS BEEN MADE AND THAT THE DOCUMENTS HAVE BEEN FORWARDED AS HEREIN REQUIRED: IF THE DRAFT IS NOT NEGOTIATED THIS CREDIT AND ALL RELATIVE DOCUMENTS MUST ACCOMPANY THE DRAFT. THIS CREDIT MUST ACCOMPANY ANY DRAFT WHICH EXHAUSTS THE CREDIT.

SUBJECT TO UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1962 REVISION), INTERNATIONAL CHAMBER OF COMMERCE BROCHURE NO. 222.

- 30 WE HEREBY ENGAGE WITH THE DRAWERS, ENDORSERS AND BONA FIDE HOLDERS OF DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS CREDIT THAT THE SAME SHALL BE DULY HONOURED ON PRESENTATION AND DELIVERY OF DOCUMENTS AS SPECIFIED, IF NEGOTIATED OR PRESENTED ON OR BEFORE 13th December, 1974.

js

YOURS VERY TRULY,

SIGNATURE NOT REPRODUCED

AUTHORIZED SIGNATURE

4.11.74.

Exhibit AC
Plaintiff's
Documents with
respect to
payments to
Kuwait National
Petroleum
Company
—
28th Oct., 1974
(Cont'd)

Kuwait National Petroleum Co. (KSC)

Letter of Credit. 35654

Charter Bills of Lading are acceptable.
Insurance covered by Openers.
Partial Shipments are not allowed.
Transshipment is not permitted.

Yours very truly,

Authorised Signature.

KUWAIT NATIONAL PETROLEUM CO. (K.S.C.)

10

KUWAIT, ARABIAN GULF

INVOICE

No. 74/1/S/1/1/0297

Date 16th November, 1974

Messrs. Nabalco Pty Ltd Goldfields House 1 Alfred Street Sydney, NSW 2000 Australia

M.V. Russel H. Green
 Port of Loading: Shuaiba,
 Kuwait
 Port of Discharge: Gove
 Northern Territory, Australia
 Completed Loading: 11th
 November, 1974

Ref	DESCRIPTION	US \$ C	US \$ C
	401,580 U.S. BARRELS (60,752 LONG TONS OR 61,727 METRIC TONS) OF HEAVY FUEL OIL SHIPPED EX SHUAIBA, KUWAIT, TO GOVE, NORTHERN TERRITORY, AUSTRALIA, PER M.V. RUSSELL H. GREEN AT PRICE FOB SHUAIBA, KUWAIT US\$9.633 PER U.S. BARREL		3,868,420.14
	U.S. DOLLARS THREE MILLION EIGHT HUNDRED SIXTY EIGHT THOUSAND FOUR HUNDRED TWENTY AND CENTS FOURTEEN ONLY.-		3,868,420.14

20

30

ACCOUNTANT

Exhibit AD

**Plaintiff's documents with respect to payments to
Concord Petroleum Corporation**

*Exhibit AD
Plaintiff's
documents with
respect to
payments to
Concord
Petroleum
Corporation
—
2nd Dec., 1974*

Bank of New South Wales
OVERSEAS PAYMENTS OUTWARDS DEPT
Sydney, N.S.W.

2nd December 1974

10 THE SECRETARY.,
NABALCO PTY LTD.,
SYDNEY N.S.W. 2000

Dear Sir,

We refer to your letter dated 29/11/74 (ref:KA) and have effected the cable remittance as requested. Relative receipt is enclosed.

Your account has been debited with A\$466,096.79.

Yours faithfully,
J.D. BROTCHE
SENIOR ASSISTANT

918124 OXY

UK LONDON 4.12.74

KA

20 OCCIDENTAL INTERNATIONAL OIL INC.

OCEAN FREIGHT — VOYAGE 123 "RUSSELL H. GREEN"

\$US 612,440.91c TELEGRAPHICALLY TRANSFERRED 2.12.74 TO A/C NO. 15006638 CHASE MANHATTAN BANK (WOOLGATE HOUSE BRANCH) IN PAYMENT OF INVOICE NO. 311-027 OF 12.11.74 RE CONCORD PETROLEUM BERMUDA.

RYAN/NABALCO

51918124
OXYUK LDN
NABALCO AA20472

30 XSG01623 4.12.74 1600

SUBJECT : OCEAN FREIGHT - VOYAGE 123 "RUSSELL H. GREEN"

USDLRS612,440.91 TELEGRAPHICALLY TRANSFERRED 2.12.74 TO A/C

Exhibit AD
 Plaintiff's
 documents with
 respect to
 payments to
 Concord
 Petroleum
 Corporation
 —
 2nd Dec., 1974
 (Cont'd)

NO. 15006638 CHASE MANHATTAN BANK (WOOLGATE HOUSE BRANCH) IN PAYMENT OF INVOICE NO. 311-027 OF 12.11.74 RE CONCORD PETROLEUM BERMUDA.

RYAN/NABALCO/SYDNEY/AUST

Invoice
 CONCORD PETROLEUM CORPORATION
 Hamilton Bermuda

Address any enquiries to:
 Occidental International Oil Inc.
 Portland House
 Stag Place
 London SW1E 5BY, ENGLAND

10

NABALCO PTY LTD
 C/O PACIFIC MARINE (UK) LTD.,
 1/7 RANGOON STREET
 LONDON E.C.3/ENGLAND

Invoice No. 311-027
 Date 12th November 1974
 c/p 18th June 1974
 Ref: TBM 239/74

Customer Code 154024

Vessel RUSSELL H. GREEN	Loading Port SHUAIBA
Loading Date 11th November 1974	Delivery Port GOVE, 28th November 1974
Payment Terms DUE IN LONDON	Due Date 2nd December 1974

20

OCEAN FREIGHT - VOYAGE 123	
60,752 long tons of Fuel Oil at US\$5.93 W170% =	US\$ 612,440.91

Payment Instructions

Payable in US DOLLARS,
 not later than the
 2nd December 1974,
 by Telegraphic Bank
 Transfer to:—

THE CHASE MANHATTAN BANK, N.A. Attn. 30
 FOREIGN EXCHANGE DEPT., P.O. BOX 440,
 WOOLGATE HOUSE, COLEMAN STREET,
 LONDON. EC2P 2HD-GREAT BRITAIN

FOR CREDIT TO FOREIGN US DOLLAR
 ACCOUNT No. 15006638 OF
 CONCORD PETROLEUM CORPORATION

BANK OF NEW SOUTH WALES requisition for oversea telegraphic transfer 2/12/1 5/50

29/11-1974

Wanted a TELEGRAPHIC TRANSFER to be sent at ^{my}our risk and cost

Credit account of CONCORD PETROLEUM
 Advise and Pay CORPORATION A/C 1500 6638
 Pay on application to with Chase Manhattan Bank NA
150 Attention Fgn. Exchange Dept. P.O. box 440 Woolgate House Coleman St.
London EC2P 2H-D
due date 2/12/74

Details of Local Currency Paid

CASH	Full rate
Cheques as per back	
Total	466096.79
Less Cable Cost	7.82
	466088.97

(Oversea Currency Amount)

[Redacted box]

Remitter's name (if to be included in message) NABALCO P/L.

(Remitter's

.....Signature

Manager.....Accountant

Issuing Branch.....Teller

Converted at 1,3140

= US\$ 612,440.91

Oversea Currency Amount
Converted by.....Checked by.....

REMITTER'S COPY

1075

Exhibit AD
Plattiffs
documents with
respect to
payments to
Concord
Petroleum
Corporation
—
2nd Dec., 1974
(Cont'd)

Exhibit 48

*Exhibit 48
Letter:
Plaintiff to
Kuwait National
Petroleum Co.
—
12th Dec., 1974*

Letter: Plaintiff to Kuwait National Petroleum Co.

December 12, 1974

The Vice President
Kuwait National Petroleum Co. (KSC)
25 St. James's Street
LONDON SW1A 1HQ, UNITED KINGDOM

Dear Mr. Tawse:

SUPPLY CONTRACT - KNPC/NABALCO - JUNE 21, 1974

- 10 We appreciated the opportunity of meeting again with Mr. Poul Nyholm during his recent visit to Australia and feel that it will be of interest to recapitulate some of the matters discussed with him in Sydney.

Whilst we regret that the Government of Australia and more particularly, the Department of the Northern Territory, has not as yet been able to decide on its future source of furnace oil for the power station in Darwin, we would like to again assure you that Nabalco, as far as reasonably possible, will endeavour to co-operate with KNPC to ensure effective utilization of available frequency and shipping capacity between Kuwait and the Northern Territory. Should KNPC be awarded the contract for the supply of oil to Darwin, we would appreciate your
20 advice in order that the necessary joint logistics can be resolved between the various parties.

We were also pleased to learn of the positive developments taking place between KNPC and Alcoa of Australia and in view of our excellent commercial relationship with Alcoa, offer our continued assistance as appropriate.

We also discussed with Mr. Nyholm the very important concept of the escalation of the FOB price of furnace oil based on the average product posted price as determined by the major oil companies and published in Platts Oilgram. Whilst we are not in any way questioning the basis of our contract with KNPC, we would appreciate your clarification of certain aspects of product posted prices.

- 30 The base price as determined on June 7, 1974 amounted to US\$9.25 per barrel FOB Kuwait. As a result of increases recorded under the product posted price, the price of furnace oil has escalated to US\$10.132 per barrel as at December 1, 1974. The latest increase of 50¢ per barrel was telexed to us on December 6, 1974. These price increases represent additional FOB costs to Nabalco on approximately US\$2 mio. per annum in the six months since the signing of the contract.

- 40 We indicated our concern at this rapid escalation to Mr. Nyholm and endeavoured to explain that unlike a major oil company or distributor, Nabalco is not able to pass onto secondary consumers, at short notice, such increased costs in raw materials. The alumina which is being produced at Gove must remain competitive within world market prices.

Exhibit 48
 Letter:
 Plaintiff to
 Kuwait National
 Petroleum Co.
 —
 12th Dec., 1974
 (Cont'd)

We recognize that oil producing countries, in determining their rights and ownership, are exerting certain pressures on major oil companies. Having foreseen such developments in the early part of 1974, Nabalco chose to secure its long term supplies of furnace oil with a producing country and not to rely upon the fortunes of a major oil company and in continuance of that policy we look to a strengthening of our direct relationship with KNPC.

As a consequence, we would appreciate an early opportunity to discuss the following matters:—

1. For our part, we did not anticipate that political developments between producing countries and major oil companies which have given rise to increases in the product posted prices as recorded to date, with resultant major increases in our costs, would apply to us as a direct customer not involved in oil company affairs. 10
2. We have some doubt in our mind as to whether the current developments, in respect of product posted price, reflect the original intent between KNPC and Nabalco for the long term supply of furnace oil.
3. We can foresee developments taking place in the near future, between producing countries and major oil companies, which may well render the system of product posted price inoperative.

You will appreciate that Nabalco as Manager of the Gove Joint Venture has a direct responsibility to Swiss Aluminium Limited and Gove Alumina Limited, to maintain a reliable and economic supply of furnace oil to Gove which represents some 35% of our total alumina manufacturing costs. 20

We reiterate that we greatly value our relationship with KNPC and look forward to a mutually satisfactory resolution of the points raised.

With kind regards,

Yours sincerely,
 NABALCO PTY. LIMITED
 A.G. COOGAN
 General Manager

Exhibit 76

*Exhibit 76
Report:
Mr Notter
—
July 1975*

Report: Mr Notter**REPORT TO THE GENERAL MANAGER:****SUPPLY OF FUEL OIL TO GOVE UNDER CONTRACTS****. KUWAIT NATIONAL PETROLEUM CO. (KSC) &****. CONCORD PETROLEUM CORPORATION****1. INTRODUCTION**

10 The Minutes of the Management Meeting held at Gove on Thursday, June 12, 1975 referred, under Item 8. (Supply), to the logistics of fuel oil deliveries, and questioned the adequacy of our minimum stockholding prior to arrival of the next fuel oil shipment.

I have been asked to report on the feasibility and costs (if any) of reducing future fuel oil shipments to below the present 60,000 tonnes.

2. FUEL OIL STORAGE CAPACITY IN GOVE

20 In June 1970, when Nabalco executed a Supply Contract with BP (Australia) Limited for furnace oil, Nabalco undertook to have available at Gove, storage capacity of approximately 60,000 tonnes in order to receive M.R. (Medium Range) tanker parcels ranging between 35,000 and 45,000 tonnes. Under the same Supply Contract, BP (Australia) was obliged to maintain a minimum quantity in our tanks of not less than 14,000 tonnes, ie: approximately fourteen days Plant consumption.

The Contract also envisaged that fuel oil shipments would come directly from the Persian Gulf to Gove in M.R. Tankers at approximately \$3.00 cheaper per tonne than shipments in G.P. (General Purpose) tanker parcels ranging between 25,000 to 35,000 tonnes.

30 BP subsequently elected to supply Nabalco from its refinery in Singapore in shipments of approximately 25,000 to 30,000 tonnes, but at the same cost as if the oil had come direct from the Persian Gulf in 35,000 to 45,000 tonne parcels. BP met their obligation to maintain a minimum stock of not less than 14,000 tonnes in Gove.

The Board of Direction approved in January 1974, the construction of two additional fuel oil storage tanks with a nominal capacity of 20,000 tonnes each at an indicative cost of \$1.6 mio. The tanks were to be completed within ten months (from January 1974), and to be adapted for alternative storage of caustic soda.

In June 1974, when the KNPC/Concord Contracts were negotiated, it was assumed that all five fuel oil tanks (three old/two new) would be available towards the end of 1974. For this reason, an initial arrangement was

Exhibit 76
Report:
Mr Notter
—
July 1975
(Cont'd)

negotiated with Concord to ship fuel oil in smaller parcels (35,000 tonnes) during the first six months of 1974. Thereafter, parcels of up to 66,000 tonnes would need to be received.

As at July 1975, our fuel oil storage capacity in Gove amounts to 88,000 tonnes using four tanks only, or 110,000 tonnes if the fifth tank, currently filled with caustic soda, is also utilized for oil.

3. FIRST TWELVE MONTHS EXPERIENCE WITH FUEL OIL SUPPLIES UNDER CONTRACTS WITH KNPC/CONCORD

The enclosed graph (Appendix I) records Nabalco's consumption, receipts and fuel oil stockholdings for the period May 28, 1974 to date. 10

The change in concept from BP to KNPC/Concord is clearly demonstrated. The last shipment under the BP Contract on vessel "Tamara" amounted to 19,595 tonnes. The first shipment from KNPC was "Nai Gino" amounting to 35,074 tonnes in August 1974. (Initial parcel size.)

The minimum stockholding ranges between 11,689 tonnes and 36,512 tonnes. Due to a miscalculation on the part of Nabalco, it was necessary to employ the vessel "Mikton" of 27,104 tonnes. Also at that time, consumption at Gove was still to some extent, fluctuating, and the mechanics of the new KNPC/Concord Contracts were not fully understood. The next recorded minimum stock of 14,317 tonnes in July 1975 was due to the fact that the vessel "Frances Hammer" was delayed en route from Kuwait to Gove by bad weather. Nevertheless, we did not go below the 14,000 tonnes previously accepted as the contractual minimum tonnage under the BP Contract. Subsequent shipments remained within an acceptable minimum stock level of around 25,000 tonnes to 30,000 tonnes. 20

On the question of maximum stock levels, we recorded a high of 89,405 tonnes without utilizing the fifth fuel oil storage tank, currently used for caustic soda. The corresponding investment in working capital amounts to approximately A\$5.25 mio.

In summary, it can be said that the performance by both KNPC/Concord and Nabalco has been successful despite the fact that the No.5 storage tank has not been available, contrary to our earlier understanding. 30

4. FUTURE PLANNING (Appendix II)

Appendix II projects future shipments for the period July 1975 to July 1976 in respect of 66,000 tonnes or 45,000 tonne shipments. The following conclusions can be made:

4.1 If we continue to employ vessels within the 60,000 tonne range, we will record in future, minimum stock levels of approximately 17,000 tonnes and maximums close to 88,000 tonnes.

4.2 If, for any reason, a 66,000 tonne vessel is delayed due to bad weather, engine problems, strikes, etc., the minimum stock level will fall below 17,000 tonnes. 40

- 4.3 By limiting shipments to approximately 45,000 tonnes, a minimum stock level of not less than 30,000 tonnes can be maintained.

If a tanker breaks down or is lost in transit from Kuwait to Gove, sufficient time would be available to either load a new vessel in Kuwait or "Spot" purchase a 20,000 to 30,000 tonne parcel from Singapore. The maximum working capital employed would be limited to approximately \$4.5 mio.

*Exhibit 76
Report:
Mr Notter*

*July 1975
(Cont'd)*

- 10 4.4 Should the fifth storage tank be made available for fuel oil the minimum quantity, despite 66,000 tonne shipments, could be comfortably maintained at 30,000 to 40,000 tonnes, again adequate to cover any short term contingencies by buying "Spot" from Singapore or neighbouring areas.

5. ECONOMICS

In 1974, Nabalco entered into long term contractual arrangements with KNPC and Concord until 1979. Under the Contract of Affreightment, vessels of 60,000 tonnes plus or minus 10% shall be utilized. (54,000 to 66,000 tonnes) This allowed Nabalco to achieve certain economies of scale as against utilizing smaller tankers. The Contract World Scale Tanker Rate with Concord is firm for the Contract period.

- 20 The International Tanker Market has just past through the most serious depression ever recorded. Consequently, the past nine months have favoured Concord. However, with the opening of the Suez Canal, tankers of 40,000 to 70,000 tonnes have been subject to increased demand, which will result in freight rates increasing again.

Modern tankers of the G.P. size, and up to 40,000 tonnes, are today fairly scarce. The trend has been directed towards larger tankers ranging up to 350,000 tonnes to combat escalating operating costs.

- 30 "Flag of Convenience" operators also had to adopt the same course as their crew costs have increased dramatically with the introduction of ITF Conditions.

Thus, it will be difficult to negotiate downwards into the 40,000 to 45,000 tonne range without incurring considerable additional freight costs estimated at between \$500,000 and \$1 mio. per year, (optimistic point of view). It would be far more economical to build an additional caustic soda tank at Gove and release the existing fifth tank for its originally intended purpose, namely storage of fuel oil, and to retain the present contract conditions with Concord.

6. ALTERNATIVES

In summary, we have the following alternatives available:

- 40 6.1 Continue on present basis, and accept minimum stockholdings of below 20,000 tonnes.

Exhibit 76
Report:
Mr Notter
—
July 1975
(Cont'd)

- 6.2 To re-introduce the No.5 storage tank later this year when the present stock of caustic soda has been consumed, and maintain a minimum stock of 30,000 to 40,000 tonnes of fuel oil at Gove.

Emergency excess quantities of caustic soda could again be stored in Plant Precipitators.

- 6.3 Approach Concord and negotiate, if possible, for smaller tanker parcels not exceeding 45,000 tonnes. This may cost between \$500,000 to \$1 mio. per annum or more.

- 6.4 If Concord refuse alternative 6.3, we could part load existing tankers (60,000 tonne range) and pay approximately 15,000 tonnes dead-freight at approximately \$10.00 per tonne resulting in an additional cost of \$1.2 mio. per annum. 10

- 6.5 Alcoa have just concluded an FOB Supply Contract with KNPC, under which KNPC is obliged to supply and Alcoa to purchase 500,000 tonnes per annum, as from December 1975, gradually increasing to 800,000 tonnes per annum by 1981.

Alcoa at present, have no storage capacity in Kwinana, but have leased from BP's refinery in Kwinana, at 50¢ per tonne, sufficient fuel oil storage capacity to receive parcels not exceeding 30,000 tonnes. Alcoa are, therefore, more restricted in the choice of tanker size than Nabalco. 20

Last Wednesday, July 16, they invited the international market to submit tenders for the transport of oil from Kuwait to Kwinana.

We have introduced Alcoa to Concord in London. Both parties now agree that a combination with Nabalco could well represent the most economic means of transporting oil to Kwinana. At the same time, Alcoa are interested to explore the purchase, bareboat or time charter of a 30,000 tonne tanker to supplement the additional fuel oil requirements over and above that available under a combination arrangement. It is clearly understood that the contractual arrangements between the three parties, namely Concord, Nabalco and Alcoa, would remain completely independent from each other at all times. (Separate Contracts and Bills of Lading.) 30

7. RECOMMENDATION

From the enclosed telexes it can be seen that the connection between Concord and Alcoa has been made. We have suggested to Alcoa that they should continue with their international enquiries, and evaluate all offers received by the end of July. By that time, Concord in London will have put forward to Alcoa a proposal based on a possible combination with Nabalco. Should such combination be economical to Alcoa, then further discussions between the three parties can take place in August 1975. 40

It is, therefore, recommended that:

- 7.1 Nabalco does not approach, at this point of time, Concord with a request to reduce fuel oil parcels for Gove.
- 7.2 Should Alcoa and Concord favour a combination with Nabalco (which we believe they do), then Nabalco should be invited to consider such a proposal on its full merits.

*Exhibit 76
Report:
Mr Notter*

*July 1975
(Cont'd)*

Nabalco having introduced Alcoa to Concord would be entitled to some form of recognition. We could, therefore, achieve our end objectives without additional costs, but most likely receiving some financial rewards. (Freight reduction or brokerage of approximately \$70,000 p.a.)

10 Alcoa Managers, Mr. D. Tucker and Mr. N. Samuels, are scheduled to leave for Kuwait on April 5, 1976 to visit KNPC on their way to London where they intend to commence negotiations with either Concord or some other selected parties during week commencing August 11.

Should Nabalco be asked by Concord and Alcoa to consider a combination freight arrangement, it would be necessary for Nabalco to attend these discussions in London, particularly in view of the objectives referred to above.

- 20 7.3 Should no combination with Alcoa be possible, full consideration should be given to the allocation of the No.5 storage tank for fuel oil, and the retention of our present contractual arrangement with Concord.
- 7.4 If the No.5 tank must be retained for caustic soda, we should establish what additional freight costs will be incurred if future parcels are limited to 45,000 tonnes. (Negotiate with Concord in London.)
- 7.5 The results of 7.4 above to be evaluated against the cost of constructing an additional fuel oil storage tank at Gove.

EAN:July 1975

Exhibit 53 (part)

Letter: Department of Minerals and Energy to Defendant's Solicitors

*Exhibit 53 (part)
Letter:
Department of
Minerals and
Energy to
Defendant's
Solicitors*

24th Oct., 1975

24th October 1975

30 Dear Sirs,

I acknowledge receipt of your letter of 20 October 1975 regarding the Government's indigenous crude oil pricing policies.

Exhibit 53 (part)
Letter:
Department of
Minerals and
Energy to
Defendant's
Solicitors
 —
 24th Oct., 1975
 (Cont'd)

As announced by the Prime Minister in his statement on 14 September 1975 (copy attached), the prices for indigenous crude oil after midnight on 17 September 1975 are:

Gippsland/Bass Strait—	\$2.33 per barrel for all production for the next three years;	
Barrow—	\$2.73 per barrel with further increases to \$2.88 as from 18 September 1976 and \$3.17 as from 18 September 1977 to September 1978;	
Moonie—	\$3.00 per barrel with further increases to \$4.35 as from 18 September 1976 and \$5.25 as from 18 September 1977 to September 1978.	10

Yours faithfully,
 D.H. HUNTER
 First Assistant Secretary
 Department of Minerals and Energy

Messrs. Arthur R. Pritchard & Co.,
 Solicitors & Attorneys,
 Bligh House,
 4 Bligh Street,
 SYDNEY, N.S.W. 2000

20

Exhibit 53 (part)
Prime Minister's
Press Statement
 —
 14th Sept., 1975

Exhibit 53 (part)

Prime Minister's Press Statement

INDIGENOUS CRUDE OIL POLICY

The Prime Minister, Mr Whitlam announced today a radical new approach to pricing of Australian crude oil as from 18 September 1975.

Mr Whitlam said the new policy had a two-fold objective. The Government wished to provide the maximum practicable incentive for exploration of new oil fields and at the same time wanted to give existing producers from known discoveries a fair return on their investment which would ensure that all economically recoverable oil is produced from known oil fields.

30

This policy means that there will be different prices for oil from different fields. Although the Government's proposals are generous to oil producers the overall effect on prices should mean that petrol will not rise by more than 1 cent per gallon.

The new policy differentiates between oil produced from fields discovered in the future and oil produced from fields already discovered.

*Exhibit 53 (part)
Prime Minister's
Press Statement*

*14th Sept., 1975
(Cont'd)*

Oil from newly discovered fields will attract a price at the nearest refinery port equivalent to the landed cost of imported crude oil from time to time. On the basis of the present landed cost this would mean, after allowance for the \$2.00 per barrel excise on oil production, a return of around \$6.90 per barrel to producers of new oil. This should provide a major incentive for exploration.

The prices for oil produced from the following fields will be:

Gippsland/Bass Strait

- 10 Increase of 23 cents per barrel to \$2.33 for all production as from 18 September 1975.

Barrow

Increase of 50 cents per barrel to \$2.73 as from 18 September 1975, then further increases to \$2.88 as from 18 September 1976 and \$3.17 as from 18 September 1977.

Moonie

Increase of 85 cents per barrel to \$3.00 as from 18 September 1975, then further increase to \$4.35 as from 18 September 1976 and \$5.25 as from 18 September 1977.

- 20 The varying prices have regard to the varying costs of the respective producers.

The pricing levels indicated above for oil from fields already discovered will apply for 3 years. It is not possible at this stage to determine prices beyond 3 years for existing producing fields. Before September 1978 the pricing levels to apply after then and up to September 1980 will be reviewed by the Industries Assistance Commission.

The Industries Assistance Commission will also be asked to make recommendations on all aspects of Australian crude oil policy after 1980, when the present indigenous crude oil absorption arrangements expire.

- 30 For this purpose the I.A.C. will have particular regard to the desirable allocation of resources as between oil and other energy sources.

The Department of Minerals and Energy will be discussing the detailed application of the new pricing arrangements with the companies at an early date.

CANBERRA. A.C.T.

*Exhibit AM
Extract from
Letter:
Defendant's
Solicitors to
Plaintiff's
Solicitors*

Exhibit AM

Extract from Letter: Defendant's Solicitors to Plaintiff's Solicitors

29th Oct., 1975

29th October 1975

Messrs. Dudley Westgarth & Co.,
SYDNEY, N.S.W. 2000.

Dear Sirs,

BP AUSTRALIA LIMITED -ats- NABALCO PTY. LIMITED

As requested by your letter of 13th October 1975 we now supply the following particulars of the Defendant's Points of Defence and Points of Cross-claim filed herein: 10

Defence

The Plaintiff's conduct by which it affirmed the Agreement comprises the totality of its actions at least from and after 24th April 1974 in accepting delivery from the Defendant of supplies of petroleum products including furnace oil, in making payment to the Defendant therefor and otherwise indicating to the Defendant that the Defendant was required to continue to observe and perform its obligations under the Agreement. Such actions of the Plaintiff included —

- (a) The Plaintiff's letter of 24th April 1974 to the Defendant.
- (b) The Plaintiff's letter of 16th May 1974 to the Defendant.
- (c) The Plaintiff's letter of 28th June 1974 to the Defendant. 20
- (d) The acceptance by the Plaintiff of delivery on or about 19th July 1974 of 19,594.55 metric tonnes of furnace oil from the Defendant.
- (e) The payment by the Plaintiff on or about 21st October 1974 of \$262,371.02 for the said delivery of furnace oil.
- (f) The continued issue by the Plaintiff of fortnightly notices of its estimated usage of petroleum products, other than furnace oil, pursuant to Clause 5(A) of the Agreement.
- (g) The continued acceptance by the Plaintiff of petroleum products, other than furnace oil, delivered by the Defendant pursuant to the Agreement and the continued payment by the Plaintiff therefor. 30

(Note: Particulars of Cross-claim not reproduced)

Yours faithfully,
Arthur R. Pritchard & Co.

Exhibit 75**Statement of Diesoleum and Super Motor Spirit delivered under Supply Agreement since 28th October 1974**

*Exhibit 75
Statement of
Diesoleum and
Super Motor
Spirit delivered
under Supply
Agreement since
28th October
1974*

13th Nov., 1975

November 13, 1975
LHW:CCW

B. P. AUSTRALIA LIMITED

DIESOLEUM			SUPER MOTOR SPIRIT		
Date Delivered	Qty. Tonne	Vessel	Date Delivered	Qty. Gallons	Vessel
28.10.74.	1511.600	B.P. Endeavour			
22.11.74.	1853.030	British Spey			
1. 3.75.	1795.762	B.P. Endeavour	1.3.75.	45896	B.P. Endeavour
24. 7.75.	1493.09	British Neath	24.7.75.	36798	British Neath

Exhibit 52**Notice: Defendant to Plaintiff**

*Exhibit 52
Notice:
Defendant to
Plaintiff*

20th Nov., 1975

TO
Nabalco Pty. Limited,
1 Alfred Street,
SYDNEY, N.S.W. 2000.

20 **SUPPLY AGREEMENT DATED 11TH JUNE 1970 FOR SUPER MOTOR SPIRIT, DIESOLEUM AND FURNACE OIL**

Pursuant to Clause 9(C)(v) of the above Agreement BP Australia Limited (hereinafter called "BP") hereby gives notice to Nabalco Pty. Limited that:—

(i) On 14th September 1975 the Commonwealth Government refixed as from 18th September 1975 the price per barrel of indigenous crude oil under the Government's policy relating to indigenous crude oil.

(ii) BP hereby fixes the following revised base prices per metric ton for supplies of petroleum products under the said Agreement —

Super motor spirit \$A89.61

Diesoleum \$A73.53

Furnace Oil \$A67.38

30

*Exhibit 52
Notice:
Defendant to
Plaintiff*
—
20th Nov., 1975
(Cont'd)

- (iii) BP further hereby fixes the provisions set out in the Schedule hereto as the provisions for variation of the abovementioned prices in substitution for all of the provisions contained in Clause 9 of the said Agreement.
- (iv) The abovementioned prices and variation provisions shall become operative on 23rd February, 1976.

DATED this — 20th — day of November 1975.

the COMMON SEAL of)
BP AUSTRALIA LIMITED) (Seal)
was hereunto affixed)
in the presence of:)

10

E.F. LEVER
Director.

J.H. ROWLAND
Secretary

SCHEDULE

PROVISIONS FOR VARIATION OF PRICES
(all amounts in Australian currency unless otherwise indicated)

1. Price Adjustments

The revised base prices per tonne (or metric ton) for supplies of petroleum products shall increase or decrease as follows:

20

(a) Super motor spirit — From time to time by the amount of \$1.355 for each one-tenth of one cent by which the Seller's wholesale commercial market price per litre for the time being in force at Darwin for super motor spirit, less the then excise duty component of that market price, shall vary from the index of \$0.08575 per litre (such index being the Seller's wholesale commercial market price per litre at Darwin for super motor spirit as at 7th October 1975 after deduction therefrom of \$0.04905 being the excise duty component of such market price as at that date) AND for the purposes of this sub-clause one tonne shall be deemed to be equal to 1 355 litres.

30

(b) Diesoleum — From time to time by the amount of \$1.208 for each one-tenth of one cent by which the Seller's wholesale commercial market price per litre for the time being in force at Darwin for diesoleum, less the then excise duty component of that market price, shall vary from the index of \$0.08115 per litre (such index being the Seller's wholesale commercial market price per litre at Darwin for diesoleum as at 7th October 1975 after deduction therefrom of \$0.04905 being the excise duty component of such market price as at that date) AND for the purposes of this sub-clause one tonne shall be deemed to be equal to 1208 litres.

40

(c) Furnace Oil — on the first day of each month by:

(i) F.O.B. — the amount by which the lowest Posted Price for deliveries f.o.b. in bulk cargo lots at Bandar Mah-Shahr of Light Fuel Oil (converted to Australian currency per tonne) posted on the fifteenth day of the immediately preceding month by any entity or body regularly posting such a price at Bandar Mah-Shahr for that grade of fuel differs from the index of \$57.11 per tonne (based on an estimated Posted Price of U.S.\$10.80 per U.S. barrel as at 1st January 1976).

10 (ii) Freight — the amount by which the ocean freight rate for the voyage Bandar Mah-Shahr/Gove applying on that day calculated from the assessment known as Medium Range AFRA (converted to Australian currency per tonne) differs from the index of \$8.92 per tonne (based on an estimated Medium Range AFRA rate of U.S.\$11.42 per long ton for that voyage as at 1st January 1976).

AND for the purposes of this sub-clause (c):

20 (A) Conversion to Australian currency of amounts expressed in United States currency shall be made at the relevant selling rate of exchange for telegraphic transfer published by the Bank of New South Wales as applying on the date of the adjustment or, if there is no such publication relative to that day, then at the relevant selling rate of exchange for telegraphic transfer published by the said Bank as applying immediately prior to that day.

(B) One tonne shall be deemed to be equal to 6.663 U.S. barrels and 0.9842 long tons.

30 AND for the purposes of the whole of this clause a certificate under the hand of a General Manager, Secretary or Deputy Secretary for the time being of the Seller as to any of the foregoing matters shall be prima facie evidence of the truth and accuracy of the matters so specified and of the authenticity and authority of the signatory to any such certificate and the Seller shall whenever so requested by the Buyer furnish a certificate as to any of the foregoing matters as at or in relation to a particular point of time.

2. Cost Increases

(a) The Seller shall have the right to increase the price or prices per tonne by the full amount of all increases (converted to an amount per tonne) after 7th October 1975 in the cost to the Seller of making available any of the products to the Buyer and which result from:

40 (i) any increase in the Seller's tax paid cost per barrel of crude petroleum; "the Seller's tax paid cost per barrel of crude petroleum" shall mean the total expressed as an amount per barrel of the Seller's and the Seller's supplier's costs of any kind whatsoever incurred in obtaining delivery at the loading or

Exhibit 52
Notice:
Defendant to
Plaintiff
—
20th Nov., 1975
(Cont'd)

Exhibit 52
 Notice:
 Defendant to
 Plaintiff
 —
 20th Nov., 1975
 (Cont'd)

supplying terminal of the grades of crude petroleum used by the Seller or Seller's supplier for the manufacture of petroleum products, including (without limitation to the generality of the foregoing) production, loading and operating costs, royalties, duties, income and other taxes, payments and benefits of any kind whatsoever payable or accruing to any Government or agency thereof or any governmental, local or port authority, and the cost of purchased oil under participation or other arrangements of whatsoever nature; or

- (ii) the imposition by any governmental, local or port authority of any new or increased duties, fees, taxes or other similar charges upon any of the products supplied hereunder, or upon their production, manufacture, storage, export, import, ownership, use, handling, sale, delivery or transportation; or 10
 - (iii) the Seller or the Seller's supplier being unable (or able only on onerous terms), due to circumstances beyond its control, to obtain supplies of crude petroleum and/or petroleum products from its normal sources and by the normal and recognised routes for such supplies, provided that any price increase pursuant to this paragraph (iii) shall apply only for so long as such conditions in the opinion of the Seller continue to subsist. 20
- (b) The Seller's right under sub-clause (a) hereof may be exercised by the Seller giving to the Buyer written notification of the price increase in question which shall apply to all deliveries commenced on or after the effective date of the increase in the Seller's costs or to such deliveries occurring subsequent to such effective date as the Seller may by such notification specify.
- (c) The Seller shall also have the right to increase the price or prices per tonne to take account of any increase in the Seller's tax paid cost per barrel of crude petroleum (as defined in paragraph (i) of sub-clause (a) hereof) which the Seller has reason to believe will be retrospectively applied to the Seller or the Seller's supplier PROVIDED that if any price is increased pursuant hereto any necessary adjustment shall be made when the actual amount and effective date of the relative increase (if any) in the Seller's cost of petroleum become known. The Seller's right under this sub-clause may be exercised by the Seller giving to the Buyer written notification of the price increase in question which shall apply from the date of such notification or such later date as the Seller may by such notification specify. 30
- (d) If at any time after 7th October 1975 there shall be an increase in the cost to the Seller of making available any of the products to the Buyer and which results from: 40
- (i) the announcement by the Australian Government of any change of policy or procedure relating to the Absorption Formula, the Allocation Formula and/or the price per barrel of indigenous crude oil (excepting any re-fixing of the price per barrel arising as a

result only of a change in the assay of any indigenous crude oil blend); or

*Exhibit 52
Notice:
Defendant to
Plaintiff*

*20th Nov., 1975
(Cont'd)*

- 10 (ii) a variation or variations aggregating not less than five per centum in the London closing selling rate of exchange for telegraphic transfer of United States Dollars or Australian Dollars published by AAP Reuters Economic Services compared with the relevant closing selling rate of exchange for telegraphic transfer applying on 7th October 1975 or as the case may be the relevant rate of exchange as aforesaid applying at the time of the immediately preceding variation of the price pursuant to this paragraph (ii);

then the Seller may by giving written notification to the Buyer increase the price for the relevant products to the extent which in the opinion of the Seller is sufficient to re-imburse to the Seller the increased costs so occurring.

- 20 (e) If the Buyer is unwilling to pay any increased price notified pursuant to this Clause the increased price shall nevertheless take effect as aforesaid but the Buyer shall have the right, to be exercised within three months of the date of the Seller giving notification of the increase, to give the Seller thirty (30) days written notice of termination of the obligation to purchase the product or products whose price is so increased.
- (f) The foregoing provisions of this Clause shall not operate so as to confer on the Seller the right to recover any cost increase recovered by the Seller under Clause 1 hereof. Save as aforesaid, the said provisions shall apply independently of any price adjustments occurring pursuant to the operation of Clause 1 hereof and all references in the said provisions to "price" shall mean the revised base price from time to time adjusted in accordance therewith.

3. Substitution of Further Provisions

30 If at any time —

- (i) any regularly posted price shall cease to be posted at Bandar Mah-Shahr for light Fuel oil for delivery f.o.b. in bulk cargo lots; or
- (ii) a posted price at Bandar Mah-Shahr (or any other posted price substituted therefor) shall cease to be quoted in United States currency per U.S. barrel for Light Fuel Oil for delivery f.o.b. in bulk cargo lots; or
- (iii) the Medium Range AFRA freight rate assessment for the voyage Bandar Mah-Shahr/Gove shall cease to be made or shall cease to be quoted in United States currency per long ton; or
- 40 (iv) the Bank of New South Wales shall cease for a period of not less than seven days to publish a selling rate of exchange for telegraphic transfer of United States Dollars; or

*Exhibit 52
Notice:
Defendant to
Plaintiff
—
20th Nov., 1975
(Cont'd)*

- (v) AAP/Reuters Economic Services shall cease to be published for a period of not less than seven (7) days; or
- (vi) there shall cease to be a Seller's wholesale commercial market price per litre at Darwin for super motor spirit or diesoleum;

then the Seller shall give the Buyer notice thereof in which event the parties hereto shall consult together for the purpose of agreeing upon the substitution of a fresh provision or provisions for the relevant provisions of Clauses 1 and 2 hereof. If, within a period of one (1) month from the date of the Seller's notice, the parties shall fail to reach agreement, either party may refer the matter or matters in dispute to the determination of the President for the time being of the Institute of Petroleum of the United Kingdom or his nominee (or failing him, the President for the time being of the Australian Branch of the International Chamber of Commerce or his nominee) acting as a referee and not as an arbitrator and whose determination shall except in the case of manifest error be final and binding on the parties. The said referee shall be entitled to seek advice and assistance and his fees and expenses shall be borne equally by the parties. 10

*Exhibit 73
Record of
Decisions:
Board of
Direction of
Gove Joint
Venture
—*

Exhibit 73

Record of Decisions: Board of Direction of Gove Joint Venture

17th Nov., 1975

Present:

Representing Swiss Aluminium Australia Limited: 20
Mr. J.F. Linton (In the Chair)
Mr. A.G. Powell (Alternate for Dr. B. Sorato)

Representing Gove Alumina Limited:
Mr. G.C. O'Farrell (Alternate for Dr. D.D. Brown)
Mr. F. Ainsworth (Alternate for Mr. R.G. Jackson)

General Manager of Nabalco Pty. Limited:
Mr. A.G. Coogan

Apologies:

Mr. E.R. Meyer
Dr. P.H. Mueller
Sir David Griffin
Dr. B. Sorato
Mr. R.G. Jackson
Mr. J.S. Proud
Dr. D.D. Brown 30

In Attendance:

Mr. P.J. Batterham, Secretary to the Board of Direction

PART I — PRELIMINARY

NIL

PART II — MATTERS SUBMITTED BY THE MANAGER FOR DECISION

2.1 BP Legal Proceedings

10 The Board of Direction resolved that the authority of Nabalco Pty. Limited to initiate, prosecute and conclude proceedings in the Supreme Court of New South Wales against BP Australia Limited, to recover damages arising out of the service by that company of a notice dated 22nd March 1974 increasing the price of furnace oil under the contract dated 11th June 1970 and the subsequent conduct of that company in relation to the supply of such furnace oil, be and is hereby confirmed and that the action taken by Nabalco Pty. Limited to date in pursuance of that authority be and is hereby ratified in all respects.

PART III — MATTERS SUBMITTED BY THE MANAGER FOR INFORMATION

3.1 Aboriginal Land (Northern Territory) Bill 1975

20 The General Manager of Nabalco Pty. Limited advised the Board of Direction that the House of Representatives debate on the Aboriginal Land (Northern Territory) Bill 1975, a Bill which purports to give effect to the recommendations of the second report of the Aboriginal Land Rights Commission (the Woodward Report) and grant land rights to aboriginals in the Northern Territory on all Aboriginal Reserves, has been adjourned. The Board was further advised that Nabalco had arranged to meet with an official of the Department of Aboriginal Affairs, to discuss the aspects of the abovementioned legislation considered to adversely affect the existing rights of the Joint Venturers. However, following the dissolution of both Houses of Australian Parliament, further consideration of the Bill will be a matter for decision by the new Government after the elections which are to be held on December 13, 1975. This situation will now allow a more adequate period for representations to be made on behalf of the Joint Venturers.

3.2 Gove Leases — S.P.L.216 and S.P.L.252

3.2.1 S.P.L.216 (Small Cargo Jetty)

The Board of Direction was advised that pursuant to Declaratory Clause (c) of S.P.L.216 Nabalco on 27th June, 1974 made a request in writing for renewal of the lease for 7 years.

40 The Board was further advised that on 30th June, 1975 rent was tendered to and accepted by the Department of the Northern

*Exhibit 73
Record of
Decisions:
Board of
Direction of
Gove Joint
Venture*

*17th Nov., 1975
(Cont'd)*

*Exhibit 73
Record of
Decisions:
Board of
Direction of
Gove Joint
Venture*

17th Nov., 1975
(Cont'd)

Territory for the undiminished area of the Lease but at this stage a reaction to the request in writing is still outstanding. In the meantime the Joint Venturers are continuing in occupation by virtue of their action under the lease and the payment and acceptance of rent.

3.2.2 S.P.L.252 (Barge Landing)

The Board noted that S.P.L.252 terminated on 21st December, 1974.

Confirmed:

Chairman: J.F. Linton

Date: 19-11-75

10

*Exhibit AN
(part)
Record of
Decisions:
Gove Joint
Venture*

28th Nov., 1975

Exhibit AN (part)

Record of Decisions: Gove Joint Venture

Present:

Representing Swiss Aluminium Australia Limited:

Mr. J.F. Linton (In the Chair)

Mr. A.G. Powell (Alternate for Dr. B. Sorato)

Representing Gove Alumina Limited:

Mr. N.L. Carter (Alternate for Mr. R.G. Jackson)

General Manager of Nabalco Pty. Limited:

Mr. A.G. Coogan

20

Apologies:

Mr. E.R. Meyer

Dr. P.H. Mueller

Sir David Griffin

Dr. B. Sorato

Mr. R.G. Jackson

Mr. J.S. Proud

Dr. D.D. Brown

In Attendance:

Mr. P.J. Batterham, Secretary to the Board of Direction

30

PART I — PRELIMINARY

NIL

PART II — MATTERS SUBMITTED BY THE MANAGER FOR DECISION

2.1 BP Australia Limited — Supply Agreement

The Board received an oral report from the Manager on the subject of BP Australia Limited's notice of 20th November, 1975 and noted that Nabalco Pty. Limited considered the revised base prices unacceptable and that a suitable notice to that effect should be given by Nabalco Pty. Limited to BP Australia Limited.

The Board agreed with the view of Nabalco Pty. Limited and authorised the Manager to proceed accordingly.

*Exhibit AN
(part)
Record of
Decisions:
Gove Joint
Venture
—
28th Nov., 1975
(Cont'd)*

10 PART III — MATTERS SUBMITTED BY THE MANAGER FOR INFORMATION

NIL

Confirmed:

Chairman: J.F. Linton

Exhibit AN (part)

Plaintiff's resolution

*Exhibit AN
(part)
Plaintiff's
resolution
—
28th Nov., 1975*

NABALCO PTY. LIMITED

Resoltuion in Pursuance of Article 75 of the Company's Articles of Association

20 We, the undersigned, Sir David Griffin, A.G. Powell as alternate Director for Dr. H.P. Mueller, A.G. Powell as alternate Director for Dr. B. Sorato, B.N. Kelman, G.C. O'Farrell and Dr. H.F. Bell being all the Directors of Nabalco Pty. Limited at this time, hereby pursuant to Article 75 of the Company's Articles of Association:—

Having been advised that BP Australia Limited on 20th November 1975 had served notice under Clause 9(c)(v) of the 1970 Supply Agreement purporting to fix revised base prices as to Super Motor Spirit, Diesoleum and also Furnace Oil, and wholly new provisions for variations of prices in lieu of Clause 9, and having heard an oral report on this matter from the General Manager:—

RESOLVED that

30 BP Australia Limited should be notified in terms of Clause 9(c)(v) that such

*Exhibit AN
(part)
Plaintiff's
resolution
—
28th Nov., 1975
(Cont'd)*

revised prices were unacceptable to Nabalco Pty. Limited and that a suitable notice to that effect should be given to BP Australia Limited in or to the effect of the draft tabled, at a suitable time prior to the expiration of one month from 20th November 1975.

*Exhibit AN
(part)
Notice: Plaintiff
to Defendant*

Exhibit AN (part)

Notice: Plaintiff to Defendant

TO: B.P. AUSTRALIA LIMITED

SUPPLY AGREEMENT dated 11th June 1970 between B.P. AUSTRALIA LIMITED (therein and herein called "the Seller") and NABALCO PTY. LIMITED (therein and herein called "the Seller")

10

WHEREAS:

1. By Notice dated the 20th November 1975 stated to be delivered pursuant to Clause 9.(C)(v) of the above Agreement the Seller purported to fix revised base prices for supplies under the said Agreement of Super Motor Spirit, Diesoleum, and Furnace Oil and the Seller further purported to fix certain provisions for variation of the said prices.
2. At the time of the delivery of the said Notice and at all material times there have been on foot proceedings in the Supreme Court of New South Wales (No. 4310 of 1974) between the Buyer and the Seller in relation to the said Agreement.
3. One of the matters in issue in the said proceedings is whether the said Agreement is still in force and effect with respect to the supply of Furnace Oil thereunder.
4. It is and at all times material to the said Notice has been a contention of the buyer that the said Agreement is no longer in force and effect with respect to the supply of Furnace Oil.

20

THE BUYER HEREBY GIVES NOTICE PURSUANT TO THE SAID CLAUSE 9(C)(v), without prejudice to its contention referred to in Recital 4 above, that the revised base prices and provisions as notified in the Seller's said Notice are unacceptable to the Buyer and the Buyer's obligation to purchase under the said Agreement any of the products referred to in the said Notice will terminate upon the expiration of three months from this Notice.

30

Exhibit 79 (part)

*Exhibit 79 (part)
Request for
Particulars:
Defendant to
Plaintiff*

Request for Particulars: Defendant to Plaintiff

16th Dec., 1975

Particulars Required of New Para. 13A

1. Specify the conduct referred to by reference to time(s) and place(s) and by reference to the representative(s) of the Defendant engaging in such conduct and the representative(s) (if any) of the Plaintiff in whose presence the said conduct is alleged to have taken place.
2. Identify each dispute referred to.
3. As to the alleged agreement referred to:
 - 10 (a) Is it alleged that the agreement was made expressly or is to be implied from any conduct or other facts and circumstances or partly made expressly and partly to be implied?
 - (b) If express or partly express
 - (i) Was the same made in writing or partly in writing? If so, please identify the writing by description and produce the same for our inspection (if you have not already done so).
 - (ii) Was the same made orally or partly orally? If so, identify the parties to the relevant conversation(s), the time and place thereof and the actual conversations relied on.
 - 20 (c) If implied or partly to be implied, specify the conduct, facts or circumstances alleged to constitute the agreement or part thereof (as the case may be).
4. Is it alleged that there was valuable consideration for the alleged agreement? If so, please specify the same with precision.

R.A. CONTI
Counsel for the Defendant

Exhibit 79 (part)
Answer to
Request for
Particulars:
Plaintiff to
Defendant
 —
 17th Dec., 1975

Exhibit 79 (part)**Answer to Request for Particulars: Plaintiff to Defendant**

17th December, 1975.

Messrs. Arthur R. Pritchard & Co.,
 SYDNEY

Dear Sirs,

NABALCO PTY. LIMITED V. BP AUSTRALIA LIMITED

We answer your request for the particulars of the proposed paragraph 13A of the Plaintiff's Points of Claim as follows:

1. The Plaintiff relies on the conduct of the Defendant set forth in paragraphs 3, 5, 8, 9, 10 and 11 of the Points of Claim both severally and collectively. As to relevant times and places and representatives of the parties engaging in the conduct the Plaintiff relies upon the particulars already given in relation to paragraph 12 of the Points of Claim (see your letter dated 2nd October 1975, and our reply of that date). 10
2. The disputes were as to:
 - (a) The validity of the Defendant's notice of 22nd March, 1974.
 - (b) The validity of the Plaintiff's notice of 24th April, 1974.
 - (c) The effect in law of the said notices, and in particular the Plaintiff's right to continuity of supply of furnace oil under the agreement after 24th July, 1974. 20
3.
 - (a) Partly express and partly implied.
 - (b)
 - (i) No.
 - (ii) Yes. The subject was raised in a telephone conversation on or about 10th June 1974 between Sir David Griffin and Mr. Rendle, and was pursued in later telephone conversations between Messrs. Notter and Lockrey on 13th June and Messrs. Coogan and Lockrey on 28th June. Evidence was given before Sheppard J. as to the terms of these conversations.
 - (c) The conduct facts and circumstances constituting the agreement so far as it was implied are that the Defendant informed the Plaintiff that as from 24th July 1974 the Plaintiff would no longer have its requirements of furnace oil for Gove satisfied under the 1970 supply agreement. The Defendant had offered the Plaintiff contractual supplies under a new contract on the condition that the Plaintiff did not take legal action in relation to the Defendant's conduct under the 1970 agreement. As the Defendant knew, the Plaintiff was considering various alternative courses which were open to it, one of which was to obtain its requirements of furnace oil from suppliers other than the Defendant and to take legal action against the Defendant in relation to the Defendant's conduct. For the Plaintiff to obtain supplies from sources 30 40

10 other than the Defendant meant a termination of the contractual obligations of the Defendant to satisfy the Plaintiff's furnace oil requirements because by hypothesis it involved the Plaintiff satisfying its requirements from other sources; for the Plaintiff to take legal action against the Defendant at that time could only have involved the Plaintiff in suing the Defendant for damages or at least taking proceedings for declaratory relief as a preliminary step in the Plaintiff's claim for damages; so that one alternative which was in contemplation by the parties was that the Plaintiff would obtain furnace oil from other sources and sue the Defendant for damages. In that context the Plaintiff raised with the Defendant the question of whether, if the Plaintiff obtained its requirements of furnace oil from sources other than the Defendant and took legal action against the Defendant, the Defendant would nevertheless be willing to continue contractual supplies of diesoleum and motor spirit under the 1970 agreement. The conversations referred to above took place, the Plaintiff made alternative arrangements for the supply of furnace oil, the Plaintiff commenced legal action against the Defendant, and the Defendant continued the supply to the Plaintiff of diesoleum and motor spirit under the said agreement.

Exhibit 79 (part)
Answer to
Request for
Particulars:
Plaintiff to
Defendant
 —
 17th Dec., 1975
 (Cont'd)

- 20
4. Yes. The promises of the parties mentioned in paragraph 13A and in particular that the Plaintiff agreed to take and pay for the other products in circumstances where it would have been entitled to terminate the entire supply agreement.

30 To analyse this situation in terms of offer and acceptance, the Defendant's repudiation constituted an offer to the Plaintiff that the Plaintiff could terminate the entire agreement and sue the Defendant for damages in respect of such entire termination; the Plaintiff however made a counter offer to the Defendant that if the Defendant would continue supplies of products other than furnace oil under the said agreement the Plaintiff would terminate the said agreement only in respect of the obligations of the Defendant to supply furnace oil and would restrict its claim for damages accordingly, which counter offer was accepted by the Defendant.

Yours faithfully,
 DUDLEY WESTGARTH & CO.
 A.W. Stevenson

Exhibit 80
 Plaintiff's
 Answer to
 Interrogatories 1,
 4, 5, 6 and 7
 —
 10th Feb., 1976

Exhibit 80

Plaintiff's Answer to Interrogatories 1, 4, 5, 6 and 7

The Plaintiff Nabalco Pty. Limited answers the Defendant's interrogatories specified in notice dated on 23rd January 1976 as follows —

- 1A. What was said in the telephone conversation of 10th June 1974 referred to in paragraph 3 of the Plaintiff's letter giving particulars of 17th December 1975, and by whom?
- 1B. So far as the conversation between Sir David Griffin and Mr. Rendle on 10th June 1974 related to the agreement alleged by the Plaintiff in its letter giving particulars of 17th December 1975 the following statements were made at the conclusion of the conversation — 10
 Sir David Griffin: "If there is to be a parting of ways on the supply of furnace oil to Gove which seems likely would BP still be interested in the other parts of the contract".
 Mr. Rendle: "I really have not thought about it at all but at this stage I feel that the answer would be 'Yes we would'".
 (Numerous other statements, not relating to the said agreement were made in the course of the conversation. It is assumed that details of these statements are not being sought but if that assumption is incorrect such details will be provided). 20
- 4A. What was said in the conversation between Messrs. Lockrey and Notter on 13th June 1974?
- 4B. The conversation between Messrs. Lockrey and Notter of 13th June 1974 is in evidence in these proceedings. The relevant parts of that conversation are to be found in the transcript of proceedings at the following points —
 (a) Page 155, 8th paragraph (X)
 (b) Page 201, 6th paragraph (XX)
 (c) Notter's notes of that conversation which are part of Exhibit 43.
- 5A. What was said in the conversation between Messrs. Lockrey and Coogan of 28th June 1974? 30
- 5B. The conversation between Messrs. Lockrey and Coogan of 28th June 1974 so far as it is relevant to the agreement referred to in the Plaintiff's letter of 17th December 1975 is in evidence in these proceedings at page 71 of the transcript, paragraphs 12 to 15 inclusive, and in Mr. Lockrey's note of that conversation, such note being an exhibit in these proceedings.
- 6A. What was said, when where and by whom constituting an agreement "by and between the parties"
 (a) that they would confine their disputes to the Defendant's obligation to supply furnace oil under the said agreement and to the legal consequences of the actions taken by the parties in so far as they related to the furnace oil, and 40

(b) that the said agreement would continue in relation to products other than furnace oil?

*Exhibit 80
Plaintiff's
Answer to
Interrogatories 1,
4, 5, 6 and 7
—
10th Feb., 1976
(Cont'd)*

6B. The conversations relied on as constituting the agreement referred to in 6(a) and 6(b) are those particularised above. In this connection the plaintiff relies, inter alia, on the evidence given by Mr. Lockrey at page 316 of the transcript as to his understanding of the substance and effect of the relevant conversations.

10 7A. Who, when and with whom and in what place raised with the Defendant the question of whether, if the Plaintiff obtained its requirements of furnace oil from sources other than the Defendant and it took legal action against the Defendant, the Defendant would nevertheless be willing to continue contractual supplies of diesoleum and motor spirit under the 1970 agreement and what was said to and by the person with which it was raised?

7B. The relevant conversations are those details of which appear above.

NOTE: Answers 2, 3, 8, 9 and 10 are omitted from this document.