

A G R E E M E N T

between

THE GOVERNMENT OF BRITISH GUIANA

and

DEMERARA BAUXITE COMPANY, LIMITED

dated 29th October, 1965

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AGREEMENT made in triplicate this 29th day of October 1965 in Georgetown, British Guiana, between the GOVERNMENT OF BRITISH GUIANA, herein acting and represented by Peter Stanislaus D'Aguiar, Minister of Finance, and Robert James Jordan, Minister of Forests, Lands & Mines, (hereinafter acting jointly and severally and herein collectively referred to as "the Government") and DEMERARA BAUXITE COMPANY, LIMITED, herein acting and represented by James Grant Campbell, its Managing Director, and Reginald Paul Guselle, its Assistant Secretary (hereinafter referred to as "the Company").

WHEREAS the Company has been engaged in the mining and production of bauxite for over 40 years and in the production of alumina since 1961 and has represented that it is desirous of maintaining, developing and improving its operations in British Guiana and that the accomplishment of this objective needs the assurance of a mutually satisfactory long-term basis for its contributions to the public revenue; and

WHEREAS the Government is desirous of fostering the growth of industry in British Guiana and of continuing to secure for the country a proper share of the benefits of its natural resources;

NOW THEREFORE THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. The Government undertakes not to levy any taxes, customs duties, royalties, rents, harbour, port or tonnage dues or other burdens of whatsoever kind (herein called "taxes"), or to introduce any new tax, or to increase the rate of any existing tax, in such a manner as would result in discrimination against the bauxite or alumina industry in general or the Company in particular;

PROVIDED THAT all the special levies on the bauxite industry, that is to say, royalties, rentals (save as hereinafter specifically provided) and export duty, shall continue unchanged at their various current rates for a period of 25 years, commencing from January 1st, 1965; and

PROVIDED FURTHER THAT nothing herein contained shall be deemed to amend or vary the terms of the Agreement entered into between the Government and the Company on April 16th, 1957 (herein referred to as "the Alumina Agreement").

2. The Government, on behalf and with the authority and approval of the Commissioner of Inland Revenue undertakes that for a period of 25 years from 1st January 1965 the formulated price set out in the Appendix hereto shall for the purposes of income tax be deemed to be the sale price of all metallurgical grade bauxite sold by the Company;

PROVIDED THAT this clause shall not apply to any sale of metallurgical grade bauxite made by the Company at a price higher than the formulated price as aforesaid.

3. The provisions of clause (2) shall not apply to any other grade of bauxite sold. The price for the purposes of income tax for any such other grade sold by the Company shall be the fair market price negotiated at arm's length in accordance with normal commercial principles.

4. (i) The Government shall forthwith issue to the Company a single Exclusive Permission (hereinafter referred to as "the S.E.P.") for all the areas containing approximately 1,033,259 acres now held under the Exclusive Permissions numbered 377, 445, 500, 513 and 565 and for the following areas, containing approximately 124,200 acres, applied for by the Company, namely:

a Block to the north of E.P. 500;

a Corridor between E.P.'s 377 and 445;

and for the following areas containing approximately 600,000 acres to be applied for by the Company, namely:

a Block to the east and north of E.P. 445;

a Block to the North of the Block (already applied for) first above referred to;

and the Company shall at the same time surrender the said five Exclusive Permissions.

(ii) The Company shall be entitled as of right at any time to have added to the area of the S.E.P., such additional areas as are contiguous to the areas covered by the S.E.P. at the time of application and as are available;

PROVIDED THAT: (a) the aggregate area included in the S.E.P. at any one time shall not exceed 2,500,000 acres;

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(b) the said area will not extend west of the Essequibo River, nor east of the Berbice River;

(c) for the purposes of this clause 4, contiguity shall not be deemed to be interrupted by the interposition of lands owned or leased by the Company or by third parties, Crown lands reserved for public purposes or areas closed for mining, Colony lands, rivers or other watercourses.

(iii) The rental payable in respect of the area covered by the S.E.P. shall be 1 cent per acre per annum for the first, second and third year the S.E.P. is in force and thereafter:

(a) 1 cent per acre per annum, in respect of the number of acres equivalent to one-quarter of the Company's annual plant capacity expressed in equivalent dried long tons of bauxite, which capacity is agreed for the purposes hereof to be 2,800,000 long tons for 1965;

PROVIDED THAT the Company shall, on or before 30th November in each year, declare to the Commissioner of Lands & Mines the comparable plant capacity projected for the ensuing year and shall make available to the said Commissioner all reasonable facilities, records and information with a view to enabling the Commissioner (who may for the purpose inspect the Company's equipment and operations at the sites) to check the accuracy of the declaration, and subject to any error discovered by the Commissioner and notified in writing to the Company on or before 31st December, the amount declared by the Company with such correction as may have been notified and accepted by the Company, shall be the Company's plant capacity for that ensuing year for the purposes of calculating that portion of the rental provided for in this para.

(iii) (a); and

- (b) be increased by two cents per acre per annum in respect of each acre in excess of the area calculated under sub-para (a) above in every year beginning with the fourth year after the date of this Agreement until a maximum of 15 cents per acre per annum has been reached in the tenth year, from and including which year the rate shall remain at 15 cents per acre per annum.
- (iv) By the end of every 3-year period, the first of which shall commence on 1st January 1966, the Company shall have relinquished not less than one-quarter of that area of the S.E.P. that was covered by sub-para. (b) of para. (iii) of this clause 4 at the beginning of the period but the Company shall be entitled, in accordance with the provisions of para. (ii) above, to have substituted new areas in exchange for those relinquished.
- (v) The Company shall on application have the right, to the exclusion of all others, to explore for bauxite any area or areas within one mile of the boundaries of the S.E.P., such area or areas to extend in width not more than one mile on either side of, the extremities of the area within the S.E.P. in which exploration activities are taking place, such activities not to include topographic or access surveys directly or indirectly connected with the exploration programme and such area or areas shall not be added to the S.E.P. unless and until an application under and subject to the provisions of para. (ii) aforesaid, has been made and granted in accordance with the Mining Regulations in force at the time of the application.

PROVIDED THAT this right shall only come into being on the date the Company commences work within one mile of the boundaries of the S.E.P. and shall continue in force only for a period of 5 years from the date on which the Company first reports in writing to the Commissioner of Lands & Mines, as required by the Mining Regulations, the work done in the S.E.P. as a result of which interest is retained in the neighbouring area of the S.E.P.

(vi) On or before the first business day of each year, commencing in the year 1966, the Company shall be entitled as a matter of right to obtain automatic renewal of the S.E.P. for a period of 12 months, on satisfying the Commissioner of Lands and Mines that the obligations of the Company set out in this clause 4 have been discharged.

(vii) (a) The Company shall furnish the Commissioner of Lands and Mines with half yearly reports indicating the progress of operations within the S.E.P., and such reports shall be presented on or before 15th February and 15th August in each year. Further, on expiry of the S.E.P. each year, the Company shall transmit to the Commissioner of Lands and Mines on or before 1st April of the following year, full information regarding its exploration activities in the form of a report indicating the steps taken for locating bauxite deposits and the results obtained.

(b) The Company shall spend the equivalent of at least 60 cents per acre in each 3-year period commencing 1st January 1966 on exploration work directed to locating bauxite deposits in the area covered by the S.E.P. but the Company may discharge its obligation under this para. (vii) by paying to the Commissioner of Lands & Mines the amount by which the actual expenditure falls short of that required hereunder;

PROVIDED THAT the Commissioner of Lands & Mines may require any statement of exploration expenditure to be certified by the Director of Audit or auditors approved by the said Director.

(viii) Nothing contained in this clause 4 shall be deemed to prevent or restrict the Company from applying to Government for other Exclusive Permissions or the Government from granting the same in the usual way if it sees fit.

5. (i) On application by the Company the Government shall grant to the Company a mining lease or mining leases over such area or areas covered by the S.E.P. as the Company may specify in its application;

PROVIDED THAT the total acreage of all such leases

together with all other bauxite mining leases held by the Company shall not exceed in the aggregate 75% of the acreage covered by sub-para. (a) of para. (iii) of clause 4 above at the time of making such application.

- (ii) Every such lease, except a lease which the Company is entitled to obtain in accordance with the provisions of the Alumina Agreement, shall be for a period of 25 years with the right of renewal for a further period of 25 years on the terms and conditions obtaining at the date of the granting or renewal of such lease, other than the terms and conditions relating to the rates of Royalty which shall be as specified in and in accordance with clause 1 hereof:

PROVIDED ALWAYS THAT

- (a) it may be provided in any such lease that the royalty payable after the 31st of December 1989, or the date of renewal shall be subject to review if the rates of royalty current and in force in respect of bauxite mining leases have been or are to be altered; and
- (b) if the Government or the Company gives not less than 6 months' prior notice in writing of its desire to have the rates of royalty payable after that date or the date of renewal as the case may be, reviewed;
- (c) on receipt of such notice the Government and the Company shall forthwith meet and discuss whether the rates of royalty payable under the lease should be altered;
- (d) if the Government is satisfied and that it would be reasonable in all the circumstances of the case to leave the rates of royalty payable under such lease unchanged or to reduce the same for the unexpired or renewed period of the lease or for such part thereof as it thinks fit, such rates of royalty shall remain unchanged or be reduced for such period as the Government may determine;

- (e) if the Government is not so satisfied and the said current rates of royalty have been increased, then the rates of royalty payable under the lease after that date or the date of renewal as the case may be shall be such increased current rates of royalty.
6. (i) At the time of making application for a Mining Lease in accordance with the provisions of clause 5 above, the Company shall declare to the Commissioner of Lands & Mines its determination of the tonnages of oregrade bauxite and of other bauxite occurrences (if any) in the area or areas specified in the said application.
- (ii) The Company shall declare to the Commissioner of Lands and Mines in such form and at such times as may be agreed on between the Commissioner of Lands and Mines and the Company the tonnages of oregrade bauxite and of other bauxite occurrences (if any) in the areas covered by the Company's Mining Leases.
- (iii) For the purposes of this clause 6, the expression "oregrade bauxite" shall mean crude bauxite containing not more than 10% total silica and not less than 47.5% total alumina or such other percentages of these two oxides as may be agreed upon from time to time between the Commissioner of Lands and Mines and the Company.
7. (i) At the request of the Company and in consideration of the covenants herein contained, the Government undertakes that ore reserve statements, drill hole logs and analyses and other specific information (including the results of any geophysical surveys) submitted by the Company to the Commissioner of Lands & Mines or to the Chief Geological Survey Officer, or to both, in any form of report or correspondence, shall be maintained on a confidential basis, that is to say, shall not be disclosed, to anyone other than an officer in the public service of British Guiana who properly requires knowledge of it and who prior thereto has taken an oath or made a statutory declaration that he will not disclose any of the information contained in the aforementioned documents, without the consent in writing of the Company first had and obtained, which consent shall not be unreasonably withheld.



- (ii) The confidential basis shall continue until such time as the Company ceases to carry on active operations of any kind in British Guiana, even though this Agreement shall otherwise have expired.
- (iii) Notwithstanding the foregoing provisions of this clause 7, reports made by the Company in respect of areas which the Company has abandoned and which, although containing statements of tonnages, are of a general nature, need not be maintained on a confidential basis by Government after the expiry of 5 years from the date of abandonment of the area to which they relate.

8. The Government undertakes as soon as possible to introduce into the Legislature such bill or bills and use its best efforts to have enacted such laws as may be necessary to implement and give effect to the provisions of this agreement.

9. In the event of force majeure either party shall be excused from its obligations herein for the period in which its operations are thereby affected.

10. This Agreement shall be deemed to have commenced on January 1st, 1965, and shall continue in force for 25 years thereafter.

#### T H E     A P P E N D I X

Herein Before Referred to

#### FORMULATED PRICE

(1) Formulated Price

The Formulated Price means a price for metallurgical grade bauxite determined in accordance with the formulae described below and is established for any shipment or group of shipments by taking the Base Price provided for the Base Grade selected by the Company and Bonus-&-Penalty provisions as are applicable and applying thereto such of the Escalation provisions as are applicable.

(2) Base Grade

Unless otherwise selected by the Company in accordance with the provisions of Clause (4) below, the Base Grade shall contain 53.0% Available Alumina, 4.5% Reactive Silica and 3.0% Moisture.

(3) Bonus-&Penalty

Every shipment or group of shipments shall be analysed in accordance with the provisions of Clause (7) below for Available Alumina, Reactive Silica and Moisture, and, subject to Clause (5) below, its price shall be determined by adding or subtracting from the Base price bonuses and penalties as follows:

- (a) For every full percent of Available Alumina it contains above or below the Base Grade, there shall be a Bonus or Penalty of U.S. \$0.32 (fractions in proportion) per long ton respectively.
- (b) For every full percent of Reactive Silica it contains below or above the Base Grade, there shall be a Bonus or Penalty of U.S. \$0.50 (fractions in proportion) per long ton respectively.
- (c) For every full percent of Moisture it contains below or above the Base Grade, there shall be a Bonus or Penalty of U.S. \$0.17 (fractions in proportion) per long ton respectively.

(4) Base Price

The Company may select any Base Grade it chooses and may from time to time change its selection. The Base Price for the Base Grade shown in Clause (2) above shall be U.S.\$8.00 per long ton f.o.b. Mackenzie or other point of ocean loading. The Base Price for any other Base Grade shall be calculated by applying the Bonus-&Penalty adjustments prescribed in Clause (3) above. Thus, a Base Grade of 57.0% Available Alumina, 3.0% Reactive Silica and 1.5% Moisture would attract a Base Price of \$10.28, calculated as follows:

$$\begin{aligned} \$8.00 + (4.0\% \times \$0.32) + (1.5\% \times \$0.50) + (1.5\% \times \$0.17) = \\ \$10.28 \text{ U.S.} \end{aligned}$$

(5) Escalation

The Total price, that is to say, the price arrived at after applying the Bonus-&Penalty adjustments determined in accordance with Clauses (2), (3) and (4) of this Appendix shall be increased or decreased in the same proportion as any increase or decrease, averaged daily during the preceding six months, in the price of 99.5% purity aluminium unalloyed ingot for U.S. delivery, as published in the daily newspaper, American Metal Market, New York City, from the price of U.S. \$0.245 per pound effective 1st January, 1965.

(6) Reviews

(a) In addition to the foregoing provisions, and in order to deal with the possibility that unforeseen circumstances not now contemplated by either party might arise, the parties agree that at the end of the 7th, 12th, 17th and 22nd years of this Agreement, the Base Price and Bonus-~~&~~-Penalty arrangements set forth above will be subject, generally, to review in the light of world bauxite price trends and the costs of the various elements entering into the establishment of the Bonus-~~&~~-Penalty figures.

(b) The Company agrees that in the event the Demerara River channel, including the Georgetown Bar is dredged, at the cost and expense of the Government, the Base Price and Bonus-~~&~~-Penalty arrangements set forth above, will also be subject to review insofar as they might be affected by demonstrable benefits accruing to the Company from such dredging at the time such dredging is completed.

(c) In establishing any change in the Base Price and Bonus-~~&~~-Penalty arrangements, regard shall be had to the desirability of avoiding double taxation and to the views of the income tax authorities having jurisdiction over the income of the Aluminium Company of Canada, Limited.

(7) Analyses

(a) The percentages of Available Alumina, Reactive Silica and Moisture in any shipment or group of shipments shall be determined by analysis in accordance with the procedure currently used by the Company.

(b) The Company may at any time introduce new procedures if at least 3 months' written notice of their proposed introduction has been given to the Commissioner of Lands & Mines and he has not during the notice period dissented from their introduction.

(c) The Company will at any time on request by the Commissioner of Lands & Mines furnish him with a sample for analysis of the bauxite in any weekly group of shipments made less than one year previous to the request.

(d) If with respect to any such group of shipments the analysis of the sample furnished to the Commissioner of Lands & Mines under para. (c) above disagrees with the Company's analysis with respect to such group of shipments, the parties shall be bound by the results of the analysis of a comparable sample carried out by such third party as may be agreed upon.

IN WITNESS WHEREOF this Agreement has been signed on the day and year first above mentioned by the Parties through their said representatives duly authorised thereunto

Witnesses:

1. W.P.D'Andrade

2. A.A. Thompson

Witnesses:

1. H.T. Hunte

2. T.A. Ying

Peter Stanislaus D'Aguiar

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Minister of Finance

Robert James Jordan

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Minister of Forests, Lands & Mines

DEMERARA BAUXITE COMPANY, LIMITED

James Grant Campbell

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Managing Director

Reginald Paul Guselle

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Assistant Secretary