

NATIONAL AFFAIRS

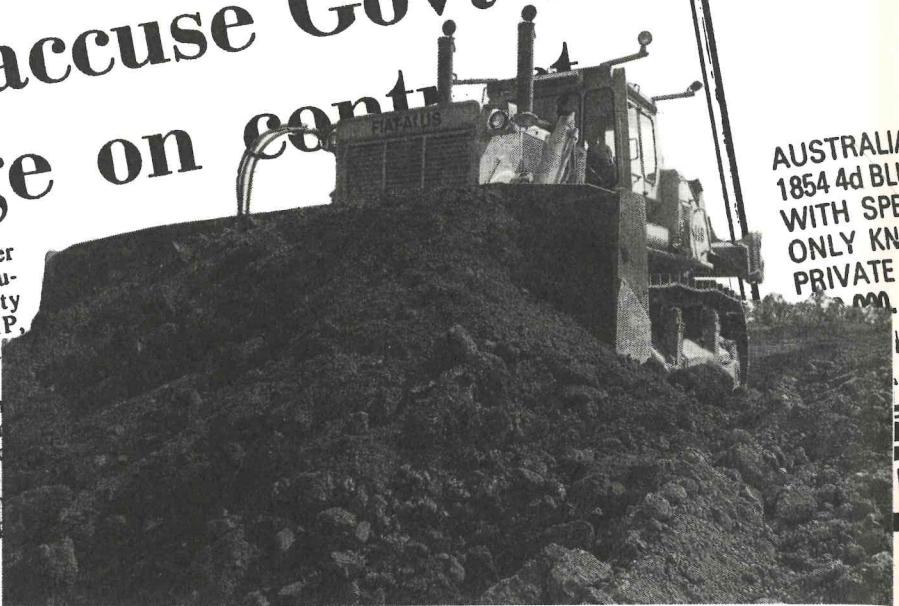
Gove partners accuse Govt of trying to renege on contract

By DAVID SHIRES

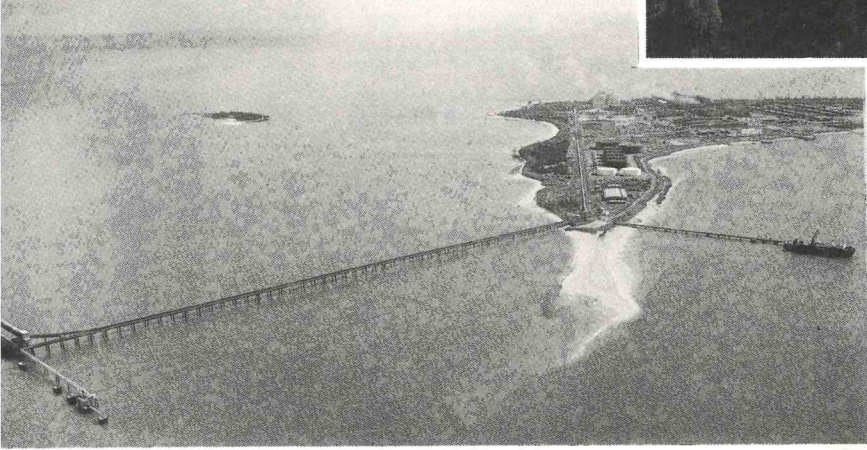
The two partners in the Gove alumina and bauxite project, Austraswiss and Gove Aluminium Ltd, stood by their actions yesterday in the face of a threat by the Federal Minister for Trade, Mr Dawkins, to place export controls to

wiss, rather than the 68 per cent CSR-owned Gove Aluminium in which minority shares are held by AMP, National Mutual and Westpac.

Austraswiss accounts for 68 per cent of the Gove alumina output and GAL 30 per cent, giving the junior partner a share of about 360,000 tonnes of bauxite output



INVESTOR
OPERATION
AUSTRALIA
1854 4d BLU
WITH SPE
ONLY KN
PRIVATE I



Transfer pricing and alumina exports from Australia

By Greg Crough

The emergence of transnational corporations as major actors in the world economy has raised a number of important issues, from the pricing of commodities to the taxation of the TNCs. In this article G J Crough looks at these problems with special reference to Gove Aluminium in Australia.

In the relatively short period of 25 years, Australia has become the world's largest producer of bauxite and alumina. The Australian deposits hold about 20 per cent of world reserves, and the entire industry is dominated by the major aluminium transnationals, usually operating in joint ventures with Australian companies.

The Gove bauxite/alumina project in the Northern Territory is one of Australia's largest mineral developments, with a turnover in excess of 250 M AUD. It accounts for about 18 per cent of Australian bauxite production and about half of bauxite exports, and some 15 per cent of alumina production and exports. It is a joint venture, owned 70 per cent by Swiss Aluminium Australia Ltd (Australiswiss), a subsidiary of Swiss Aluminium Ltd (Alusuisse); and 30 per cent by Gove Aluminium Ltd (GAL), owned by a group of Australian companies, the major one being CSR Ltd.

A formal agreement between the Federal Government and Nabalco Pty Ltd (the operating company) for the development of the main bauxite deposit was signed in 1968, and ratified by the *Mining (Gove Peninsula Nabalco Agreement) Ordinance*. Under this Ordinance, Alusuisse agreed to purchase for export the output of the alumina refinery, for a period of 20 years. Under a Supplemental Agreement signed in 1969 the Federal Government gave GAL permission to export up to 40 Mt of bauxite for 20 years. Subsequently a number of long term contracts for the export of bauxite and alumina were approved.

The bauxite and alumina contracts

With respect to alumina, Australiswiss and GAL were entitled to 70 per cent and 30 per cent respectively of the output of the refinery. GAL entered into an agreement in 1973 to sell its 30 per cent share to Alusuisse, subject to rights of drawback amounting to up to 50 kt per year. However, a considerable proportion of the alumina has now been withdrawn from this arrangement. GAL has

a contract with Sumitomo Light Metal Industries, and supplies part of the alumina requirements of the Pechiney-controlled Tomago smelter in NSW. GAL's sales to Alusuisse amounted to about 160 kt in 1984.

The two main contracts for the export of alumina are Australiswiss—Alusuisse and GAL—Alusuisse. The first contract is for the period 1972-1992, and the price of alumina is escalated according to a formula based on the cost of production. The other contract is on a similar basis, with a slightly different base price.

In terms of bauxite, the Supplemental Agreement authorised GAL to export 40 Mt. The largest contract is with Mitsui Alumina Company for 18.5 Mt, for the period 1972-1992. GAL also had other Japanese customers, including Sumitomo Chemical Industries, Showa Denko and Nippon Light Metal Company, and has arranged some small sales to the USSR. The other major contract was with Alusuisse for 14 Mt. However, in 1979 this contract was replaced by an arrangement which allowed Australiswiss to export bauxite. The purchaser of the bauxite is not known, although since the company is not *directly* related to Alusuisse it is probable that back-to-back contracts exist for the on-selling of the bauxite.

These long term bauxite and alumina contracts were typical during the 1960s, when most bauxite and alumina was sold under long term arrangements at fixed, or non-market prices. In the 1970s, however, the experience of high world-wide rates of inflation and the growing concern of some bauxite-producing countries about the adequacy of the returns they were receiving from exports led to significant changes in pricing techniques and mechanisms.¹

Despite the fact that establishing the appropriate price for bauxite and alumina during the 1960s was extremely difficult, the Australian Federal Government approved a set of contracts with a price formula *fixed for 20 years*.

Greg Crough is a Researcher at the Transnational Corporations Research Project, Faculty of Economics, University of Sydney, Sydney 2006, AUSTRALIA.

Even with the introduction of export controls by the Labor Government in 1973 existing contracts were not required to be re-negotiated. The Gove alumina contracts have not been re-negotiated, and according to the Austraswiss Annual Report "the alumina sales contract between Austraswiss and Swiss Aluminium protects the company from international price movements in alumina".

While the honouring of existing contracts certainly protected Australia's reputation as a stable and reliable supplier, it also contributed to the undermining of the International Bauxite Association's attempts to maintain minimum prices, since Australia is the largest producer member of the IBA.

The following sections of the paper turn to what is probably the most controversial aspect of the Gove project, the prices at which alumina is exported. To do this it is useful to examine the dispute between the Government of Iceland and Alusuisse, since it was this dispute which first brought public attention to the value of the alumina exported from Gove.

The dispute between the government of Iceland and Alusuisse

In December 1980 the Icelandic Minister of Industry and Energy, Mr Hjorleifur Guttormsson, announced that as a result of a study of the pricing of alumina to the Icelandic Aluminium Company (ISAL), a subsidiary of Alusuisse, exported from Gove, sizable differences had been found between the export and import values.

The Government alleged that over a period of seven years Alusuisse withheld a total of 47.5 M USD of profit from its smelter which would otherwise have been subject to taxation.

"The results of the study show that the price of imported alumina into Iceland is much higher than one would normally expect

in view of the export price from Australia (where most alumina to ISAL comes). When comparing these two prices on an equivalent basis (fob Gove, Australia) between January 1974 and June 1980, it appears that the alumina price *increased at sea* by 54.1 per cent or, in total, by 47.5 M USD at the exchange rate prevailing each year."²

Following the Minister's announcement the Government and Alusuisse entered into detailed negotiations. An important issue was the price of electricity paid by ISAL. The Minister pointed out that the smelter used 49 per cent of Iceland's power output in 1979, while paying only 8—9 per cent of the country's energy bill. Under a 45 year power contract ISAL was at the time paying 6.5 mills per kWh, one of the lowest rates in the world.

Alusuisse defended itself against the allegations, arguing that it had not violated the Master Agreement with the Government and that the prices paid by ISAL reflected arms-length transactions. The company argued that the Ministry's report did not take account of the actual insurance and freight costs, changes in exchange rates, the provisional nature of the reported prices, and the peculiarities in the accounting practices in respect of debt financing and depreciation. However, the international auditing firm of Coopers and Lybrand concluded:

"ISAL paid at least 16.2 M USD too much to Alusuisse for alumina between 1975 and June 1980 compared with arm's-length prices as stipulated in the Master Agreement between Alusuisse and the Icelandic Government. The auditors also found that ISAL paid between 22.7 M USD and 25.5 M USD too much to Alusuisse for alumina in the same period, if related to the obligations of Alusuisse to provide ISAL with

raw materials on the best terms and conditions available, as stipulated in the Assistance Agreement. In coming to this conclusion, Coopers and Lybrand took into consideration a number of explanations provided by Alusuisse, such as certain Australian costs not present in the Australian export statistics, and other cost factors, to a total of 18 M USD."³

Coopers and Lybrand also found that ISAL was under-capitalized compared with other industrial companies, and that its interest charges amounted to 22.3 per cent of sales in 1981.⁴

Early in 1983 the Icelandic Government increased ISAL's consolidated tax by 6.66 M USD. Accordingly tax credits previously held by ISAL were eliminated, and an assessment of 1.83 M USD was presented to the company.

A new more conservative Government was elected in 1983. Agreement was finally reached between the government and Alusuisse, and ratified by the Parliament (Alting) in December 1984, despite considerable opposition.

"Under the new agreement, which took effect from 30 November 1984, a revised electricity price for the smelter is indexed to a weighted average of aluminium prices. The contract also provides for a base price of 15 mills per kWh, with a floor price of 12.5 mills and an upper limit of 18.5 mills. The arrangement will be subject to revision after five years. Under separate provision, the Government has dropped its charges against Alusuisse and ISAL in exchange for a settlement of 3 M USD by Alusuisse."⁵

The new 20 year agreement was seen as a major backdown by the Government. Despite the increase in electricity prices, the price is reportedly still below the cost of production. It is noteworthy that despite the low electricity prices, ISAL's net losses in the period 1970—83

amounted to a massive 107 M USD.

Despite the settlement of the dispute, the pricing of alumina exported from Gove remains an important unresolved issue. It is not intended to discuss the export pricing of bauxite, since no details are available to the author. However, it is possible to obtain reasonably precise estimates of the alumina prices.

Pricing of alumina exports from Gove

Generally the prices of bauxite and alumina are confidential. However, the exports of alumina from Australia to Iceland provide an excellent 'window' into the prices, since the alumina exports represent virtually the entire trade between the two countries, and official statistics are readily available.

The ISAL smelter produces about 77 kt a year, and accounts for about 12 per cent of total Alusuisse group aluminium production. The smelter is entirely reliant on imported alumina, primarily from Gove and to a lesser extent Guinea. Detailed statistics on Australia—Iceland trade are published by the Australian Bureau of Statistics, the International Monetary Fund, OECD, and United Nations.⁶ It is possible to approximate from these statistics the prices for Australian alumina exports to Iceland, and these are shown in Table 1.

There are a number of questions that arise in relation to these estimated prices. Firstly, their relationship to 'market' prices and the prices of alumina exported by other companies in Australia; and secondly, the difference between the export prices and the prices recorded for the imports of the ISAL smelter.

One of the major difficulties in comparing these prices with other export prices is that there is no published market price for alumina. This is primarily because about 80—95 per cent of the alumina produced is consumed either by the producing companies or their associates.

Table 1

Estimated prices of alumina exports from Australia to Iceland, 1972—84

Year	Value of alumina Exports (USD fob)	Alumina imported by ISAL (t)	Estimated alumina price (USD/t)
1972)	3 800	58 006)	65.51
1973)	5 480	68 743)	79.71
1973)	7 830	98 231)	79.71
1974)	9 690	96 976)	99.92
1974)	2,693	26 952)	99.92
1975)	16 207	142 959)	113.37
1976	14 294	130 958	109.15
1977	11 734	113 164	103.70
1978	11 438	113 988	100.34
1979	16 859	142 461	118.34
1980	23 490	145 900	161.00
1981	22 000	110 591	199.00
1982	10 000	58 520	171.00
1983	22 000	144 470	152.00
1984	21 000	147 508	142.00

Note:

The overlapping figures for the years 1972—75 reflect distortions caused by leads and lags in the recording of import and export statistics and shipment times.

Table 2

Comparison of estimated alumina export prices, 1972—84 (USD/t)

Year	Estimated Gove alumina export price	Estimated Australian alumina export price
1972	65.51	57.88
1973	79.71	71.45
1974	99.92	71.00
1975	113.37	96.28
1976	109.15	110.70
1977	103.70	117.71
1978	100.34	124.84
1979	118.34	127.04
1980	161.00	160.12
1981	199.00	193.49
1982	171.00	193.51
1983	152.00	169.34
1984	142.00	168.79

The prices under the Gove contracts for both bauxite and alumina are not directly related to prices prevailing in other countries and under other contracts, since they are set according to a pre-determined formula based on the cost of production. One method of comparison, however, is with the average value of total Australian alumina exports. In doing so it is of course necessary to net out of the published statistics the value of exports of the Gove project. The resulting calculations are shown in Table 2. For ease of comparison, the prices of the Gove exports from Table 1 are reproduced.

It is obvious that the price that resulted under the formula was relatively high until about 1975—76, compared with other alumina exports. However, it should be noted that the Gove refinery was not operating at full capacity until about 1976, and it is to be expected that the costs would be higher in earlier years because of initial technical problems associated with the start-up of the plant. A further cost factor was the substantial increase in the price of oil after 1973.

Another point of comparison is with the *import price* in the countries to which the alumina is exported. This was the crux of the dispute between the Icelandic Government and Alusuisse. To do this it is necessary to adjust the published cif figures to an fob basis, which necessitates estimating freight and insurance costs. The resulting calculations are shown in Table 3.

As a check on the accuracy of these calculations, the figures for 1982/83 in this table closely approximate those published by industry analyst James King in *Alumina Market Trends and Prospects* in 1983. He estimated cif prices for 1982 and 1983 at 230 USD and 228 USD per tonne and fob prices at 210 USD per tonne.

It is now possible to see the very large differences between the fob export and import prices, on the basis of the estimates in Tables 2 and 3. For ease of reference, the two sets of prices are repro-

duced in Table 4. The total amount of the difference between the two sets of prices for the period 1973—84 amounted to about 60 M USD. Since the Australian alumina exports to Iceland were approximately 200 M USD during this period, the unexplained discrepancy amounted to an increase of about 30 per cent. As noted, the smelter in Iceland has accumulated losses of 107 M USD in

the period 1970—83, so the value of the difference of the prices accounts for over half of the losses.

From Australia's point of view, the exports to Iceland represent only part of the story, since the alumina exports from Gove also go to a number of other countries in which Alusuisse operates aluminium smelters. According to industry analyst James King the alumina

Table 3
Iceland imports of alumina from Australia, fob basis, 1973—84

Year	Imports (USD)		Tonnage imported	Price (USD)	
	cif	fob		cif	fob
1973	12 033	10 759	126 749	94.94	84.88
1974	26 262	21 865	195 207	134.53	112.01
1975	27 558	25 701	169 911	162.19	151.26
1976	20 244	19 029	130 958	154.58	145.31
1977	18 214	16 970	113 164	160.95	149.96
1978	17 714	16 406	113 988	155.40	143.92
1979	25 220	24 195	142 461	177.03	169.84
1980	32 737	29 632	145 900	224.38	203.10
1981	26 234	24 042	110 591	237.22	217.40
1982	13 278	12 612	58 520	226.90	215.52
1983	34 250	31 762	144 470	237.07	219.85
1984	30 764	28 256	147 508	208.56	191.56

Table 4
Comparison of estimated fob export and import prices for Australia—Iceland alumina trade, 1973—84

Year	Export price	Import price	Value of difference
	fob USD/t (1)	fob USD/t (2)	000 USD (2) — (1) x tonnage
1973	79.71	84.88	655
1974	99.92	112.01	2 360
1975	113.37	151.26	6 438
1976	109.15	145.31	4 735
1977	103.70	149.96	5 235
1978	100.34	143.92	4 968
1979	118.34	169.84	7 337
1980	161.00	203.10	6 142
1981	199.00	217.40	2 035
1982	171.00	215.52	2 605
1983	152.00	219.85	9 802
1984	142.00	191.56	7 310

from Gove is exported to Iceland, Austria, Switzerland, Egypt, Norway, West Germany and the United States.⁷

Unfortunately it is much more difficult to estimate alumina export prices for these countries because Australia's trade with them is larger and the alumina trade figures are not easily recognizable. The official statistics published by the United Nations, do however, show reasonably similar cif values for the imports of alumina over the period 1973—84 for most of the countries, with the exception of Egypt (for which there are no statistics). This also accords with the information on prices published by King.

Since it is not possible to estimate, from official sources, the fob prices, the same calculations as have been done for Iceland cannot be done for the other countries. However, since the fob *export* price should be the same for all of the destinations, then a rough estimate of the losses to Australia through these transactions can be derived. The total exports to Iceland of alumina represented about 12 per cent of total exports to Alusuisse from Gove, and the difference between the values amounted to about 60 M USD. Therefore the approximate value of the difference for all of the countries amounted to about 500 M USD for the period 1972—84. This is an enormous unexplained discrepancy, or what the Icelandic Government referred to as an "increase at sea"!

The size of these figures illustrate the problems associated with the contracts for the export of alumina from Gove. Renegotiating the export prices will partly eliminate the problems, but a large part of the difference occurs as a result of the Alusuisse global accounting system, and the prices it decides to charge its own smelters in different countries for raw materials and other inputs. To the Alusuisse group it does not matter if any particular subsidiary or affiliate is declaring a profit or a loss. The important issue is the group's overall global profits and taxation payments.

The Australian taxation position of Austraswiss

From an individual country's point of view of course where profits and losses are made is crucial, not least from the taxation point of view. This is why it is significant that Austraswiss has finally been assessed for taxation by the Australian Commissioner of Taxation. The situation is outlined in the company's 1984 Annual Report.

"During 1984 Austraswiss received its first income tax Assessment and is disputing those assessments. The Commissioner of Taxation, in purported use of his discretionary powers under Section 136 of the Income Tax Assessment Act 1936 and Article 9 of the Australia—Switzerland Double Taxation Agreement, has, for taxation purposes, used a price for alumina higher than that received by Austraswiss and thereby notionally increased the income of Austraswiss for the years 1976 to 1979 by 100.641 M AUD. Because of past accumulated tax losses, tax is not payable on income during the years prior to 1978 and the tax assessed as payable on income, notional or otherwise, during 1978 was 4.795 M AUD. For the income year 1979, tax assessed on income, notional or otherwise, was 10.672 M AUD."

The accounts of Austraswiss are revealing in many respects. With prices based primarily on the cost of production, the company is unlikely to be highly profitable, which is clearly the intention of the parent company. In the period 1972—80 trading surpluses amounted to 140.886 M AUD, and yet in the period 1974—84 group losses totalled 29.443 M AUD.

There are a number of reasons for the persistent losses by Austraswiss. An important one is interest payments and foreign exchange losses associated with the company's large international borrowings. In the period 1974—84 realised

foreign exchange losses amounted to 4.797 M AUD, while unrealised losses amounted to 49.85 M AUD. Interest payments totalled 107.609 M AUD during this period. By far the largest component of the company's borrowings in recent years have been denominated in Swiss francs, a currency which has generally appreciated against the Australian dollar.

In this context it should be noted that although the ultimate parent company of Austraswiss is Swiss Aluminium Ltd of Zurich, there are a number of companies interposed in the shareholding chain. One such company is Alusuisse International NV, which is located in the Netherlands Antilles, an important tax haven for transnational corporations. No details are available as to how the Australian operations relate to this tax haven company, or indeed the other tax haven subsidiaries of the Alusuisse group.

It is likely that the dispute between the Commissioner of Taxation and Austraswiss will continue for many years. Litigation has already commenced with respect to the first assessment, and the matter will probably only be resolved when the validity of the original assessments and approvals is tested in the courts.

Notes:

¹ See T Wälde, "Third World mineral development in crisis", *Journal of World Trade Law*, January—February 1985.

² *Metal Bulletin*, 1981-01-20.

³ *Metal Bulletin*, 1981-07-21.

⁴ *Metal Bulletin*, 1982-09-07.

⁵ *Metal Bulletin*, 1985-01-18.

⁶ ABS, *Australian Exports, Country by Commodity*; IMF, *Direction of Trade Statistics*; OECD, *Monthly Statistics of Foreign Trade*; UN, *Commodity Trade Statistics, World Trade Annual*.

⁷ The smelter in Egypt is state-owned. ■



The following is the full text from an article in the Swiss daily newspaper *Schweizerische Handels Zeitung*, 1985-10-17. Italics by SHZ.

UNPLEASANT NEWS
Australian Tax Authorities demand 17 million AUD from Alusuisse subsidiary

Austraswiss (Swiss Aluminium Australia Ltd), held 100 per cent by Alusuisse of Australia Ltd. (Holding), which mines bauxite and produces alumina in Gove, Australia, under the management of Nabalco (North Australian Bauxite and Alumina Company, a 50 per cent subsidiary of the Alusuisse Group), received very unpleasant news in 1984 from the highest Australian Tax Commissioner: A tax assessment which is based on different transfer prices than those contractually agreed upon in 1969 with the Alusuisse parent company in Switzerland. Austraswiss, backed by the Swiss parent, is fighting this tax ruling with all resources at its disposal.

Background

In 1963, Alusuisse founded *Nabalco Pty Limited* in Sydney, together with Australian shareholders, for the purpose of exploiting the bauxite deposits in Gove

and erecting an alumina plant. Today, it manages the mining company Austraswiss which controls 70 per cent of the mining rights in Gove. In 1969, it was planned to invest around 200 million Australian dollars; in 1984, the total invested value represents the stately sum of 1 billion Australian dollars. In 1969, at the instigation of the conservative Australian government then, a 20-year contract was concluded between Austraswiss and Swiss Aluminium Ltd in which the purchase conditions for alumina were regulated. Over the years these conditions were observed:

• *For many years the prices were higher than those of the market, only in the last 2 to 3 years have they been somewhat lower than, not in the least, reflects a certain discount which for such a long-term contract can be viewed as quite normal*

According to Werner Regli, Alusuisse's head of finance, "no competitor of Alusuisse has a long-term contract of this type".

• *The then Minister of the Interior confirmed to Austraswiss on 6 November 1969 that the prices stipulated in the contract for alumina were acceptable and that the government had made corresponding legal dispositions, thereby the mining in Gove could proceed in accordance with the contractual condi-*

The bauxite crushing plant at Gove (below)

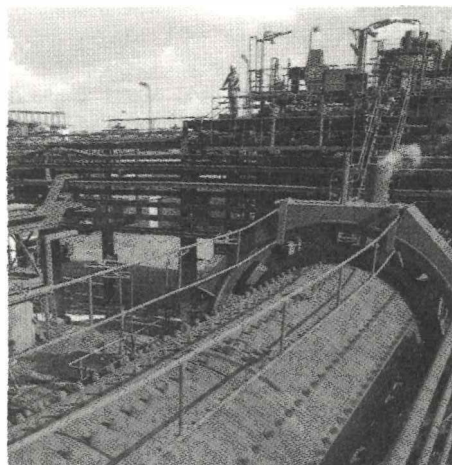
ons. The highest tax commissioner of Australia (Tax Commissioner of the Commonwealth) has now just simply ignored these arrangements in an effort to obtain from Austraswiss, retroactive to 1976, tax income instead of accumulated losses. By the way, Austraswiss received this decision without the Tax Commissioner having previously talked with those responsible at Austraswiss.

Always in discussion

In the Group's Zürich headquarters, Werner Regli makes no secret that transfer prices always provide a tempting opportunity for tax officials to demand adjustments. As you may recall, such a public discussion also took place in the case of Iceland. Regli admits that presently such discussions are also underway in the USA; however, thus far a compromise could always be found.

Consequences for other companies

It is quite unusual that, in a country which tries everything to attract foreign investors, retroactive tax decisions of the type described are made, without previous consultation, by a government Tax Commissioner provided with very great powers. In the meantime, Austras-



Austraswiss

(In M AUD)			% changes	
	1984	1983	1984/1983	1976
Assets	294.4	293.8	0.2	253.8
Liabilities	141.2	172.5	-18.1	156.1
Profit	4.8	0.6	+70.0	0.8
Paid-up capital	140.0	140.0	0.0	125.0
Production in Mt				
Bauxite				
(incl inventory)	8.5	8.0	+6.2	6.6
Alumina	1.3	1.2	+0.8	1.0
Employees	940	917	+2.5	998

wiss is no longer alone since also the competitors, and companies in other branches, among them Nestlé, received bad news from the tax commissioner.

However, the chosen procedure could have a rather *discouraging effect* on potential foreign investors. All concerned firms have appealed the decisions handed down and corresponding proceedings are in progress. Presently, it is completely open whether the Australian authorities — *the Treasury could dismiss the Tax Commissioner's assessments and try to reach a satisfactory agreement with the companies* — want to pursue the *judicial stages of appeal* or whether they are after all interested in a settlement acceptable to all parties.

De facto claims

For Austraswiss, the tax decision means that their proceeds for 1976—1979 would be 100.64 million Australian dollars higher than declared. Due to accumulated losses before 1978, no payable taxes would result for Austraswiss. But for 1978, the Tax Commissioner now wants retroactively 4.8 million Australian dollars and for 1979 10.67 million AUD. In addition to the presumably owed 15.47 million AUD, there could be a 20 per cent fine assessed which would amount to 1.36 million AUD by the end of 1984.

Besides the transfer prices, the tax commissioner thinks there is something fishy about certain *depreciation methods*. Regarding this point, there is a *difference in interpretation of the respective legislation and the Australian-Swiss Double Taxation Agreement*. But, with that, the claims list of the commissioner is still in no way concluded. Both Austraswiss and Alusuisse fear that he still *could make subsequent claims for following years beginning with 1980*.

Moreover, the claims by the Australian tax commissioner will have negative effects on the Australian-Swiss Double Taxation Agreement. The Swiss

federal tax administration could be confronted with having to make a *refund in an amount about equal to the taxes to be paid in Australia*. An outlook that produces no joy in Bern. Anyhow, for the time being, everything is in a state of flux and a change to a somewhat milder course by the Australian government (negotiations for contract changes) is not precluded. But, until then, the Sword of Damocles continues to hang over Austraswiss and as a result also over Alusuisse. Since there is still hope to find a solution, the auditors in Switzerland did not yet see themselves forced to a proviso. However, the auditors of Austraswiss stated, *"that the implication due to the uncertain outcome of the present proceedings and appeal of the tax assessment permit no definitive opinion"*.

The management of Austraswiss stated in the 1984 Annual Report, *"that the final decision on the judicial appeal*

will be of monumental importance for all companies which want to make long-term investments in Australia". Andrew Powell (Managing Director of Austraswiss) declared to the "Schweizerische Handels Zeitung": *"As an Australian, I always thought I lived in a civilized country where the government honored all obligations including those of former governments. I do not understand the position of the present government and I will combat it and defend Austraswiss"*.

So far "only Australian" was grappled with. But now Werner Regli announced in Zurich that the next steps will be taken in Bern at the *Swiss Tax Administration*. As a consequence, for the first time *formal proceedings* would have to be opened between Australia and Switzerland within the scope of the double Taxation Agreement. But, political pressure from Bern is also conceivable, that could bear fruit!

From a correspondent in Switzerland RMR has received the following information relating to the conflict between Alusuisse and the Icelandic government:

On October 16, 1985 Mr A G Powell, Managing Director of Swiss Aluminium Australia Ltd, sent a MEMO to all Commonwealth Parliamentarians in Australia. In this letter Mr Powell states (point 8):

"8. Reference is made to a tax claim in 1980 by the Icelandic government against our parent company, Alusuisse. The fact that the Icelandic government settled its claim against Alusuisse by accepting a US dollar 3 million cash payment instead of pursuing its tax claims is an indication that the claims could not be substantiated. The cash payment was made by

Alusuisse because its legal costs were going to exceed 3 million dollars and settlement made commercial sense."

By this statement, Mr Powell, an Alusuisse representative in Australia, trespasses the agreement made between Alusuisse and the Icelandic Government in 1984 the so called Settlement Agreement. In clause 9 of this agreement it is stated:

"Neither Party shall issue any press release or other similar announcement with respect to this Settlement Agreement without the consent of the other Party?"

It must be borne in mind, that the tax dispute between Iceland and Alusuisse was not brought to end by a judgement. As long as this will not be done, the former accusations have a moral standing.



The following exchange of views took place in the Australian Parliament on November 25th, 1985:

Bauxite and alumina

Mr Bilney — Has the Minister for Trade seen reports that bauxite and alumina sales from the Gove project in the Northern Territory involving Swiss Aluminium Limited have been made at artificially low prices which have been arrived at on a less than arms length basis? In this connection I refer the Minister to reports in the *National Times* of 11—17 October which claims to cover the history of this project, and refer to the pricing policy by which attempts were made to subvert Australia's national interests and its control over this important commodity?

Mr Speaker — Order! I suggest that the honourable member get to his question.

Mr Bilney — Thank you, Mr Speaker. Can the Minister advise what action he is taking in respect of these exports?

Mr Dawkins — I thank the honourable member for Kingston for his question. I take this opportunity to commend him on his job in representing the Australian government at a recent meeting of the International Bauxite Association. He was called upon to chair that meeting held in Kingston, Jamaica. It is not the first time that the honourable member for Kingston has served his country with distinction in Kingston, Jamaica. I welcome this opportunity to refer to the matter raised by the honourable member because the bauxite and alumina industries are important industries for Australia, representing some 1.5 billion USD of export income, or some 5 per cent of our gross income. It has been the policy of this Government to encourage mineral resource exports and to achieve pricing levels which maximise the returns for Australia. Unfortunately in

some cases this has not been the case, and in this particular case exports to Swiss Aluminium Limited by its Australian subsidiary, Austraswiss and Gove Aluminium Limited, a subsidiary of CSR Limited, have been made at unreasonably low prices for several years. This matter was brought to a head recently when approval was sought to reduce substantially the price of bauxite being exported from the Gove project. I have recently notified both companies that these arrangements are not acceptable and that I will continue to approve exports only if they are made on conditions which reflect fair and reasonable long term market pricing levels.

The sales contract under which these contracts take place predate the introduction of export controls on bauxite and alumina. They are based on prices related to the cost of production and certain contracts have pricing arrangements which do not always achieve what is accepted as a fair international price. Since the mid-1970s successive governments have pursued these matters with the company, Austraswiss, in an attempt, through discussions, to have it change the terms and conditions of those contracts so that the prices can be more fair and reasonable in market terms. Whilst some changes were made in 1977 in respect of bauxite, the company has been unwilling to address the question of its more important contracts in relation to the export of alumina. As well, the company, Austraswiss, has been reluctant — in fact, it has refused — to indicate to the Government the prices at which it sells its bauxite and alumina and to whom. The House will know that the annual reports of Austraswiss have indicated that that company has paid no company tax since this project began in the 1970s. The Commissioner of Taxation — this is now a matter of public record — has reassessed the company's income for the years 1976 to 1979 and has increased the notional company income by 100 M

USD. He has provided assessments to the company involving increases in income taxation of 4.7 M USD in 1978 and 10.6 M USD in 1979.

The company has steadfastly resisted these attempts by the Commonwealth to ensure that a fair price is received. Also it has vigorously resisted attempts by the Commissioner of Taxation to extract taxation from this company. Indeed, its strenuous attempts, using all legal avenues available to it, have involved an expense to both my Department and the Australian Taxation Office in trying to resist requests for information from this company — requests which involve information provided to the Department of Trade on a confidential basis by other exporting companies. This is a shabby story. It involves important issues as far as Australia is concerned. The Commonwealth has an obligation to secure from these projects the maximum benefits for Australia. Whilst in relation to the export of bauxite alumina I have recently released some proposals for the relaxation of export controls, we are not prepared to relax those controls to the point where Australia's national interest can be compromised. I have, as have my several predecessors, given these companies adequate opportunities to put these affairs into order, to try to ensure that a reasonable return is received from the export of these important commodities. I am still prepared to discuss these matters with the companies, but I can assure them that I will be prepared to discuss these matters only on the basis that we can secure a better return for Australia and maintain the very strong, reputation that these industries have in the international market-place.

Source:

Official Records, pp 3560—1, House of Representatives, "Questions without notice", 1985-11-25. ■