CHAPTER VI

ESSO BECOMES HINDUSTAN PETROLEUM

The opening years of the 1970s saw the oil business go through a big revolution. This period can rightly be called an era of nationalization in India particularly in the field of oil. The trend had already been initiated abroad by Iraq, when in 1972 it had successfully carried out the nationalisation of oil. This happened subsequent to the 1970 oil crisis and just before the 1973 crisis, when the oil producing countries assumed control of the price and production of oil. The West capitulated by accepting the general nationalization of oil wells and production, renouncing all authority over prices, which henceforth came under the 'strict sovereignty' of the Organisation of Petroleum Exporting Countries (OPEC). Saadoun Hammadi, President of Iraq National Oil Company proudly stated, "Well, now everyone knows that the lords of oil are no longer the companies." 1

To the newly independent nations, economic and social "sovereignties" became indispensable components of political sovereignty, because they had realised that merely by gaining political independence, they were not put automatically on the road to economic development. This gave birth to the feeling of economic nationalism. 2

Hence, the goal of economic independence became one of achieving economic sovereignty without which a comprehensive

economic plan to marshal all the potential of a country for developmental purposes could not be implemented. Effective control, through public policy measures involved foreign as well as national interests. It was in this background that the subject of permanent sovereignty over natural resources was first raised in the United Nations in 1952 under the heading of "The Right of Sovereign Countries to nationalize and freely export their natural resources."

By this, the delegates of the underdeveloped/developing countries were aiming to secure an international recognition of their right to nationalize and re-establish effectively their sovereignty over the natural resources contained in their territories. It was felt necessary to nationalize the alien economic interests and divert the output of their resources wholly to the benefit of their own people. They desired a right for free exploitation of their own wealth and natural resources. This Right of Permanent Sovereignty was finally recognized by the United Nations Resolution of December 14, 1962.

According to the terms of this Resolution, the nationalization of private property is a right of the Government, now widely recognized by international lawyers, but its exercise in a legally acceptable way carried with it the obligation of paying fair compensation to the private interests affected in the event of nationalization.

3. Mughraby, Permanent Sovereignty over Oil Resources, p.16.
5. Ibid.
The nationalized property may be compensated for in instalments over a reasonable period of time. The adequacy or appropriateness of compensation was to be determined "in accordance with the rules in force in the State and in accordance with international law."

The U.N. Resolution of December 14, 1962 was a manifesto of economic nationalism in the more legalistic form of permanent economic sovereignty. In the fight for independence, developing countries were seeking to achieve both political sovereignty and economic independence. Under this doctrine of sovereignty, a State (Government) enjoys full and exclusive control within the area of its jurisdiction. Sovereignty itself is of a permanent nature. It was a reassertion of the economic sovereignty in the face of powerful international corporations and other private international investors in control of its sources of wealth under generally old and inequitable agreements. The private economic powers enjoyed great benefits under a variety of legal instruments, mainly in the form of concession agreements. Their economic power naturally placed them in a position of superiority, thus greatly impairing the bargaining power of the host countries.

The Resolution on the Right of Permanent Sovereignty included rights of exploration, development and disposition of natural resources. This right could be enjoyed even by peoples who had not yet reached Statehood. The Resolution recognized nationalization, expropriation and requisitioning as a means of

exercising the Right of Permanent Sovereignty. Nationalization was recognized as a measure which it is within the competency of a sovereign country to take, if adequate compensation is secured for damaged interests.7

It was clarified that nationalization, expropriation or requisitioning is deemed reasonable and acceptable if it is based on interests of national development; well-being of the people and public utility; or on grounds of national security. These considerations should be national and should override individual or private interests, both domestic and foreign. This Resolution took the form of a U.N. Declaration assuming special importance because it dealt with a subject of prime importance in the development of economic relations between the industrialized and the underdeveloped/developing group of nations.

The exploitation of oil resources presents a prime example of the striving of developing countries to achieve economic sovereignty. The general assumption which later was to become a binding legal authority was that it is the State and not the surface owner to whom the oil in the ground belongs. And yet the oil industry in the Middle East had been controlled by a small club of concessionaires, the same seven major oil companies of the Western world, through the concession system, whereby the surface owners reaped the benefit of oil and not the country where it was found.

The concession agreements were negotiated and concluded in camera and in most cases it was agreed that texts of the concession instruments were to be considered and kept strictly confidential and were not to be published in any form. The insistence on secrecy gave rise to public suspicion on the motivation and objectives of many oil companies, who were given exclusive rights to explore and drill for petroleum in the area of the concession. They were entitled to carry the petroleum extracted, refine it, if necessary, and sell it both in the domestic and foreign markets. The periods of duration of these agreements were characterized by being surprisingly long.8

The nations of the granting government had an option to subscribe to a certain proportion of the capital stock of such companies. But provisions relating to profit sharing were among the most important and most controversial clauses of the oil concessions in the Middle East. Originally, the only consideration for the concession rights was made in the form of a fixed royalty per ton of production, with some agreements guaranteeing a certain minimum income under all circumstances. Early in the 1950s, Saudi Arabia demanded actual sharing of its concessionaire's profits by levying for the first time in the Kingdom's history, a direct income tax on all industrial enterprises in the country. Soon Aramco Oil Company operating in Saudi Arabia accepted the new tax subject to the provision that

the sum total of all royalties, taxes and other levies it pays the Government does not exceed 50 percent of its net earnings. All Middle East countries followed suit, and the 50-50 division of oil profits became the working formula of concessionary fiscal liabilities in the system. Most concession agreements provided in vague and general terms the right of the host government to supervise the performance of the company under the agreement. It did not leave much control over the basic natural resource in the hands of the host country. The only answer to this was to achieve permanent economic sovereignty by direct nationalization or other means to ensure effective public control of natural resources. "Control over all oil operations is our objective. The new agreements with France and others gave the national company an equal or preponderant share, and it was absolutely essential for the older companies to follow suit if they wished to continue operating peacefully in the area." 9

Thus began the tug of war between the oil producing countries and the foreign oil companies. The companies were refused permission to expand their activities beyond those existing at a certain date or were obliged to integrate their own operations into a framework established by State control and direction. Severe limitations were imposed on the freedom of these companies to take decisions solely in the light of their own corporate interests. They could, therefore, expand less

rapidly and had their degree of dominance in downstream activities somewhat curtailed. At the same time all major producing countries began to insist on a larger share of profits from oil production and that the companies operations be made part of a joint venture with a State-owned entity or be brought under the overall control of some official body. No doubt, the oil companies had been the biggest overseas investors for investment in petroleum. This represented a highly profitable venture which brought an enormous flow of capital into the home countries of these oil companies. But the position reversed now. For the world at large, it was hard to believe that the oil companies were beginning to lose much of their power and influence.

The oil producing countries soon insisted that the crude oil must be sold at a price which must be publicly fixed and not buried in the companies accounting. Accordingly, the companies agreed to publish a 'posted price' 10 at which they would offer their oil for sale to anyone and on that price would be based the taxes to be paid to each government. Inspite of this, the oil producing countries were insulated from the real market, and the companies went on paying taxes on the posted price, and obtaining tax relief on that basis. The exploitation continued.

But the 1970s showed that the days when the international oil companies felt obligated to maintain a market share of world oil trade whatever the cost, were over. British

10. Posted price : A value placed on a barrel of crude oil by a host Government for the purpose of computing the amount of revenue the Company must pay to the country. Posted prices may or may not approximate the market price or market value of the oil. This price is above the cost of production.
Petroleum and Shell's withdrawal from the Italian market and Gulf's sale of its assets in Germany in 1972-73 were indications of the changing mood of company thinking.\textsuperscript{11}

After the Teheran-Tripoli Agreement (1971) when Libya nationalised foreign-owned oil companies, for the next two and a half years, the companies were in trouble on three separate fronts. First the producers were demanding part ownership of concessions, or participation. Second, there were increasing signs of an oil shortage. Third, the Arab - Israel situation was again heading towards a conflict. The convergence of the three was to produce the greatest crisis in the history of world oil.\textsuperscript{12}

The year 1973 can be viewed as a turning point in the history of the oil industry. Reasons were part technical, part economic and part political. The year 1973 will go down in the history of the oil industry as the year of escalating prices, because it was in this year that the level of prices went up so high and so quickly. On October 16, 1973 OPEC decided to increase the posted prices of oil by 70 percent. The unilateral decision was taken after the failure of talks with the international oil companies. The price hike that occurred in October scrapped the five-year Teheran Agreement reached earlier. The Teheran Agreement which provided for annual increase in the posted prices was to run until 1975. The price hike of October 1973 brought the posted price of Arabian Light crude from $ 3.0 to $ 5.1 a barrel. The unprecedented increase in

prices enhanced the government take (12-1/2 percent expensed to royalty, plus 55 percent so called profits tax) from 70 to 95 percent, making the per barrel revenue to around $3 for most of the Gulf exporters and to more than $3.5 for Abu Dhabi. The Arabs, as if not satisfied with the 70 percent increase, announced on December 23, 1973 a 130 percent hike in Persian Gulf postings. This put up the posted prices of Light Arabian crude from the figure of $5.1 a barrel to $11.6 from January 1, 1974. What a change from $2.5 price of a year ago. Oil prices rose dramatically from just over a dollar a barrel in 1970 to over $30 by 1978 and the era of cheap energy appeared to have ended forever.

With the oil embargo which lasted from October 1973 through till March 1974, oil shortages began to hit the world. Cutback in production and steep hike in prices are the two weapons used in the oil war. Besides these two, selective embargo was used as a weapon to punish those countries that openly aided Israel. When U.S.A. provided military aid to Israel in 1973, Libya and Saudi Arabia immediately suspended all oil exports to America. Others followed suit and the General Union of Arab Chamber of Commerce decided that the Arab States should take full administrative control of the American oil companies operating in their countries. The oil embargo imposed on the U.S.A. triggered

13. S.Manoharan, The Oil Crisis, New Delhi, 1974, pp. 87-89.
14. M.S.Fatwardhan, Oil and other Multinationals in India, Bombay, 1986, p. xi.
an economic crisis which the American economists called, "another Pearl Harbour".

The companies were compelled (at the risk of forfeiting their concessions) to be instruments of the world-wide cutback in oil. Just as the shortage was worst, and the winter coldest, the oil companies began to announce record profits. Yet it would be true to say that the most obvious casualty of the prolonged series of the two oil crises was the oil industry itself and the major international oil companies in particular. One of the most important single developments in the oil industry during the 1970s was the loss by the major oil companies of their traditional ownership of oil reserves.

This was a big achievement for the oil producing countries and Colonel Boumedienne, the President of Algeria proudly stated, "for the first time in history, developing countries have been able to take the liberty of fixing the prices of their raw materials themselves".15

Soon enough, OPEC became a formidable force to be reckoned with. OPEC's success depended on taking control of its own resources, and no recovery was possible while the big companies remained in control. With the events largely in favour of the oil producing countries, it was not possible for oil importing countries or the major international oil companies to put up any resistance to check the rising power of the producing countries. The assertion of the rights of the producing countries. The assertion of the rights of the producing countries.

countries resulted in the emergence of the national companies and redrawing of the concessions awarded to the major oil companies. Both these steps reduced the rights and role of the major international oil companies. Nationalisation was used to tear down the barrier which foreign companies had erected between the producers and the clients, and to bring the developing nations face to face with the realities of the world oil industry. This marked the beginning of a new era.

At the beginning of the oil crisis, the oil companies appeared to be rapidly losing their global role. They now had no leverage over prices, their concessions were rapidly being taken over or nationalised and they were buffeted as never before between the producers and the consumers. The companies were being shorn of much of their profits from the oil fields 'upstream' and had to look for more profits 'downstream' from the business of distributing and selling oil.\textsuperscript{16}

It was in this context that nationalization was being regarded as an important tool to gain control of all activities associated with the oil industry. And Iraq became the pioneer, setting an example for the rest of the world to follow. Indeed, Iraq was the first to act. Alongwith restrictions on deliveries, that country also announced the nationalization of Exxon and Mobile Oil installations in Iraq's Basrah oilfield. The companies were shocked. Oil Minister of Saudi Arabia, Ahmad Zaki Yamini declared, "The nationalization of Iraqi Petroleum Corporation was

\textsuperscript{16} Sampson, \textit{The Seven Sisters}, p.308.
a shock to the oil companies. Some of them were not aware of the facts of life, and now realize that they have to face either nationalization or participation.17

Taking the clue from developments in the Middle East, the Government of India had initiated the process of negotiations with the three international oil companies operating in India, Esso, Shell and Caltex. The objective was to acquire effective control over all the operations connected with the oil industry and to seek that control from the foreign oil companies in order to secure optimisation of petroleum production and refining. The public ownership of the oil industry was desirable for its own development as well as an essential condition for any effective planning because of the influence which it could exert on the location and efficient working of many major industries. In pursuance of this objective, the first step was taken in this direction in March 1974 when the majority assets and operations of Esso were taken over by the Government and it was renamed as Hindustan Petroleum Corporation Limited (HPCL)18

The acquisition of Esso operations by the Government of India in 1974 was a significant step in the restructuring of the

17. As quoted by Steven.A.Schneider, The Oil Price Revolution, Maryland, USA, 1983, p. 176.
18. The researcher is an officer of the Central Government and reference material has been drawn from the Government records, details of which cannot be given in public interest. The Government of India has permitted me to use the material without giving exact specification of files. Hence, only file Nos. are given in subsequent footnotes.
country's oil industry, with the object of securing for the Government a commanding position in the vital petroleum sector of our economy. The reorganisation of the predecessor company resulted in the integration of its three operations: petroleum refining, lube refining and marketing. The task was not easy but was accomplished after prolonged negotiations.

Seeing the rapid change in the world situation for the western oil companies, Esso had started exploring other alternatives for continuing or at least prolonging their economic hold in India. The basic objective in this case was to arrive at a mutually acceptable, long-term solution to the future of Esso in India. Esso had often expressed its interest not only in continuing but also in expanding its operations in India.

In 1972 itself Esso had started thinking about their future role in India and felt that it was best to be in consonance with the Government thinking and policies with regard to the oil industry. They had offered to sell their assets only if the Government did not favour participation in principle for the expansion in the refinery. They proposed this (participation) as an alternative to nationalisation.19

Esso were expecting a participation deal just as in the case of the lube refinery. On September 15, 1965 an agreement had been signed between the Government of India and Esso Standard Eastern (The Corporation name was changed to Esso Eastern Inc. on January 1, 1971) on a 50:50 partnership for the construction of a jointly owned lubricating baseoil refinery at Bombay under the

name of Lube India Ltd. (LIL). With an authorised capital of Rs. 3.5 crores LIL was established and incorporated in Bombay on April 4, 1966. The installation of the Lube Plant was completed in December 1969 and the manufacturing of base lube oils started in October 1969. From February 11, 1970 LIL formally commenced production of lubricating oil base stocks. The refinery started manufacturing carbon black feed stock from April 1973 onwards.

Lube India Ltd. had entered into a Technical Information Agreement with Esso Eastern Inc., New York whereby a sum of $11,500 was being paid to Esso for each calendar quarter. This Agreement was to be in force for ten years beginning from July 1979 and ending on June 30, 1979. In March 1970, A.G. Neff, the General Manager of Esso Eastern Inc. presented to H.R. Gokhale, the then Minister of Petroleum a proposal for forming a joint sector company with the Government of India. Inspite of Esso's willingness to negotiate the terms of the proposal, the Government did not show any interest.

Once again on October 3, 1972 Esso presented for the consideration of the Government of India two alternatives. Since the Government policies favoured minimum foreign equity, the first suggestion was based on the premise that participation would be acceptable in principle to the Government. The proposal indicated that the existing operations of Esso refinery,

21. Ministry of Petroleum Files, 1972-76. The researcher, an officer of the Govt. of India has taken reference from some classified files. However, in the national and public interest, it is not possible to provide exact references to these files. Subsequent reference to these files are given in the above manner.

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marketing and Lube India Ltd. be merged into a single company in which the Government would have 74% equity, and Esso would have the remaining 26% equity. Esso desired that these transactions be accomplished on a tax-free basis under the Indian law. This implied that if the liability to be provided for is Rs. 100 and the tax rate is 73.5%, provision is made in the books of account for only Rs. 26.5% on the ground that for the purposes of income tax, the actual payments be taken into account and not the provisions made in the books of account. Esso would then surrender the existing Refinery Agreement. Details on the management, crude supply, price and payment terms were also included in this proposal. In other words, Esso's rights and obligations would be limited to its equity capital in the company and the dividend yield thereon.

Even at the time of making this offer, Esso were aware of the Government's thinking particularly since, they felt that they had been granted inadequate compensation for the increase in crude costs; inadequate foreign exchange allocations to reflect crude price increases; punitive retroactive taxation on lubricating oil base stocks; all pointers towards the fact that the Government did not favour participation.

The other alternative included Esso's preparation to negotiate for the total sale of its business interests in India. Under this alternative, the Government would take over all of

22. Text in Appendix-B.

The files referred to for this Chapter are all Ministry of Petroleum files with the following numbers:
1. 21/48/72-IOC-Vol I 2. 21/48/72-IOC-Vol II
3. 21/48/72-IOC-Vol III 4. 21/48/72-IOC-Vol IV
5. 21/48/72-IOC-Vol V 6. 21/57/72-IOC-(A)
7. 21/57/72-IOC-(B) 8. 21/57/72-IOC-(C)
Esso's obligations, since in that case Esso would no longer have any equity interest in the Government company, that would be subsequently formed.

The matter was considered in a meeting with the Prime Minister on November 23, 1972. A Negotiating Team of Secretaries was constituted consisting of the Cabinet Secretary, Secretary (Petroleum and Chemicals), Secretary (Finance), Secretary (Expenditure) and Secretary (Planning). A senior representative of the Central Board of Direct Taxes and Secretary to the Prime Minister were also invited for discussions. This Team functioned under the guidance of the Cabinet Committee consisting of the Finance Minister, Minister of Petroleum and Chemicals, Minister of Industrial Development and Minister of Planning.

This was the beginning of the negotiations which the Government entered into with Esso. Negotiations were conducted with Esso within the parameters given from time to time by the Cabinet Committee. The progress of the negotiations was also regularly reported to and considered by the Negotiating Committee of Secretaries and the Cabinet Committee. The Government sent a detailed questionnaire to Esso, calling for information about the Company's assets and liabilities; individual reserves; past and projected balance sheets; loans and debts; preference share capital; profits; employees and labour agreements. While requesting for these details, the Government asked Esso to send information for either of the two alternatives suggested earlier. In the case of 74% participation, terms of sale for the balance
A stage had already been reached when both the sides were keen to expedite the negotiations which would lead to an early settlement. Esso soon sent the statistical data which formed the basis of the negotiations. The objective was to arrive at a long-term arrangement, which would be mutually advantageous to both Esso and the Government of India. The Company was now ready for negotiations in the spirit of "give and take" on individual items so long as the overall proposal remained attractive. What a change from the scenario of the nineteen fifties! Separately, the Government asked Lube India Ltd. also for information on their assets and liabilities; valuation of work-in-progress; finished goods and products in transit. The financial details and foreign exchange implications were also called for as these were considered essential for valuation of Esso's operations in India which would ultimately lead the Government to decide on the option of either 74% or 100% takeover. In an economic sense, assets represent future economic benefits. Such future economic benefits can be expressed in monetary terms by projecting the future profitability of the Company during the residual life, which in the case of the Esso Refinery Agreement as on December 31, 1971 was eight years.

A number of meetings were held in 1973 to which were invited the representatives of Esso accompanied by their legal

23. Ministry of Petroleum Files/Documents have been referred by the researcher. Exact reference is not possible in public interest. The texts of the followings agreements have been consulted. (i) Agreement to Modify the Participation Agreement between the President of India and Esso Eastern Inc. and others. (ii) Participation Agreement between the President of India and Esso Eastern Inc. and others.
counsels. Samples of sales of retail outlets to Indian Oil Corporation and sale of assets in Ceylon (Srilanka) were taken into account although in the case of Ceylon, it was a question of expropriation by the Government, which had resolved the issue of compensation under pressure. In the present case, the question was not of takeover but of participation. Esso, however, was interested in an overall package proposal. Esso were specifically asked to clarify the arrangement that would have to be made for meeting the crude requirements of the refinery subsequent to the conclusion of any agreement between the Government and Esso.

In a series of formal and informal meetings the Government obtained necessary clarifications from Esso especially on valuation; tax free reorganization; debt-equity ratio; dividend rate; interest rate on deferred payment; period of payment and contingent liabilities. Since Esso was interested in an overall package deal, Esso's position on individual items was taken in the context of the overall proposal. The Government preferred a low equity base in order to minimise their cash outflow. Details on crude supply rights were also chalked out and a review on possible alternatives to the Refinery Agreement were considered. It was not clear initially whether any long-term contract will have to be entered into for the crude oil supply subsequent to the take-over. Esso was asked to clarify quality restrictions, if any, in respect of the crude that was to be supplied to the refinery. This aspect was considered to be
extremely crucial to the entire proposal. Details were sought on the terms and conditions, the source of supply, the mode of long-term arrangement, the quality and the price of the crude to be supplied.

It was further clarified to Esso that good-will would not be pertinent in the present case since the Indian market was tightly controlled and supply line limited. Therefore, products would be sold regardless of the name of the company which would sell the same in view of the fact that the availability and demand were by and large being watched on a continuing basis. It was clearly recognised that growth for the new company was anticipated.

Since the marketing operations of Esso in India were being carried out by a branch of the large Esso Company, the Indian branch would not qualify for a tax-free amalgamation under the Income Tax Act. This did not, however, apply to amalgamation of Esso Standard Refining Company of India Ltd. (ESRC) (after merger of branch assets and liabilities) and LIL. To carry this out, the first step would be redemption of ESRC preference shares by obtaining the approval from the preference shareholders and more important, approval from the Government in line with the provisions of the Refinery Agreement.

In case this was not found to be feasible, one alternative was for the Government to form an Indian company

which would then acquire under section 396 of the Companies Act, all the assets and liabilities of the Indian branch operation of Esso Eastern for a consideration. The next step would be amalgamation of this Government company with LIL and ESRC under Section 394 or 396 of the Companies Act. Thereafter, Esso and the Government would have equity interest in the amalgamated company in the proportion of 26% and 74% respectively.

The Government was very particular on arrangements for the long-term supply of crude and the 26% option. It was apparent that although twenty years old, the refinery had been constantly well maintained and kept in good operating condition at all times. In fact, although the throughput at that time was 54,000 barrels per day, the refinery was capable of operating at 70,000 barrels per day as had been demonstrated in December 1971. The refinery was one of the lowest cost operative refinery among the Esso refineries around the world. It had outstanding safety record with minimum oil loss. Esso had real estate properties, a number of service stations in the key cities of India apart from the office building in Bombay. All this was brought out to highlight the fact that the value of Esso's assets was far greater than the book value.

From the trend of the negotiations, it was clear that Esso was interested in a final figure for which the Government wanted to be fair and reasonable. Esso's proposal was a case of a

long term participation as opposed to distress sale. The Indian Government was facing acute foreign exchange difficulties and inspite of this asked Esso to present a package taking all factors into consideration. Esso was interested in negotiating only the net repatriable amount on account of the proposed equity participation/take-over.

Briefly stated, the tax aspects of Esso's proposal contemplated two steps:

I - Transfer of all the assets and liabilities of Esso Eastern's (EE) Indian branch to ESRC by Court's Vesting Order under Section 391/394 of the Companies Act 26 for a token consideration of one or a few shares of ESRC to Exxon (which held the entire share capital of EE).

II - Merger of ESRC into LIL for a few token equity shares and mainly redeemable preference shares/debentures.

The Government viewed step II as a tax free amalgamation and that compensation payable to Esso in the form of redeemable preference shares and/or debentures would not attract any tax at the time of their issuance and redemption.

Indianisation of a foreign branch by means of its merger into an Indian subsidiary was in public interest and therefore it was considered to be adequate if some 'tax ruling' from the Central Board of Direct Taxes (CBDT) could be obtained to resolve the tax issue. The CBDT was duly consulted.

26. Ibid., p.244.
The thrust now was on the determination of the price or compensation to be paid for Esso's assets. The precedent of nationalization of Banks was taken into account. In their case the Government had accepted the concept of two depreciation rates, one for tax and one for compensation and had also accepted the principle of a price higher than book value. On this basis, if applied to Esso's proposal, the price payable to Esso would amount to about Rs.32 crores.

The other example of nationalisation of General Insurance Companies was also considered wherein the compensation amounts paid indicated that the principle used appears to be three times the total of the previous three years earnings. On this application, the price payable to Esso would be Rs.29.4 crores. On the issue of earning power of the assets, it was explained that since the petroleum industry is under price and project control by the Government, this should not be applied. Even if it were, the price payable to Esso would be Rs.27 crores. If future earnings were used as a basis, then the price would amount to Rs.38 crores, including that for LIL. If book value (tax basis) was to be applied for computing the price, it would amount to only Rs.18.8 crores.27

Ultimately in the package offered to Esso, the Government selected replacement cost less observed depreciation as the basis evaluating Esso's business. The Government was

27. Refer to Footnote 18.
genuinely interested in arriving at a mutually acceptable package deal in the shortest possible time. Initially, Esso had offered to sell their 100% share in Esso Refinery Company and the Marketing Branch and 50% share in LIL for a net repatriable amount of Rs.35.50 crores to be paid in five equal instalments. Through negotiations and discussions, it was possible to bring them down on this amount.

Esso modified the initial terms and agreed to accept a total price of Rs.29.6 crores provided this amount represented the net amount payable to Esso for 100% sale. An appropriate adjustment was to be made for the 74% sale. This amount was to be remitted in foreign exchange and would not be subject to any deductions for any reason whatsoever. On the decision for a 74% takeover finally, Esso were persuaded to accept a total valuation of Rs.18 crores and the payment was to be made over a period of seven years. For a 100% takeover by January 1981 the total foreign exchange outgo would be Rs.24 crores which at a discounted rate for 74% participation in Esso amounted to a net Rs.18 crores. As against this, even the quantified advantage of the first year of take-over would be of the order of Rs.18.77 crores. Moratorium on repayment of instalment in the first year was agreed upon, apart from a tax free rate of interest at 6.5% on the outstanding amount of compensation. While the value of 100% share and interest thereon were to be paid in US dollars, the
dividend would accrue in convertible rupees.

Esso agreed to phase out the remittances of the sale price as per the Government's suggestion of one year moratorium plus six equal annual instalments. The valuation was separately made for 74% share and 26% share respectively. It is significant to note that the amount was fixed much in advance of the actual take-over of the remaining 26% share, thereby indicating the Government's ultimate plan and policy. The final price was determined after detailed consultations with the Ministry of Finance at every stage and with their full concurrence.

Once the negotiations came to a conclusion, a Bill was introduced in the Lok Sabha. The Bill to acquire the undertakings in India of Esso Eastern Inc. was essential since the transaction negotiated by an Agreement with the Company was likely to lapse within a very short time and it was necessary to complete the take-over as quickly as possible. The Bill provided for the acquisition and transfer of the right, title and interest of the Esso Eastern Inc. in relation to its undertakings in India with a view to ensure co-ordinated distribution and utilisation of petroleum products distributed and marketed in India by Esso Eastern Inc.28

Detailed analysis of the amount paid; the long term benefit of acquiring the assets and liabilities of Esso; the foreign exchange out-flow and its repatriation to Esso over the

seven year period; the interest and instalments dividend and the basis for determining the price was carried out. The financial terms were outlined vis-à-vis the amount in dividend and profits that would have accrued to Esso had the Government not taken over Esso's operations. And they would have continued to retain 100% ownership of the refinery company and the marketing branch and 50% ownership of LIL. It was explained that by paying a lump-sum over a set period, the Government would have the added advantage of possessing all of Esso's retail outlets, depots and installations, airfield fuelling facilities at Bombay in addition to a 3.5 MTPA (million tons per annum) refinery, capable of being expanded to nearly 6 MTPA at a nominal cost alongwith full control of LIL. This would eliminate the cost of duplicating these facilities in the public sector and help conserve a large amount of capital investment.

Another important aspect which weighed heavy with the Indian Government related to crude oil supplies. Esso had agreed to maintain crude oil supplies of 2.75 MTPA for the next three years at the current price and at half of this rate for the subsequent four years. In all, Esso was to supply 13.75 MTPA of crude oil during the seven years period. Esso also agreed to charge the same price which they recovered from their own affiliates in this region for the Arabian crude oil which they were then importing.
Esso also agreed that they would import crude oil on the existing basis and charge only the monthly published rate popularly known as the AFRA (Average Freight Rate Assessment) rates. It was known that the AFRA rates would be almost half the rate at which tankers could be chartered in the open market. This Affreightment Contract was finalised in consultation with the Ministry of Shipping and Transport. India, however, reserved the option of utilising the Indian flag tankers by giving three months notice and to that extent Esso's obligation for providing tankers for importing crude oil to the extent of Esso's commitments would get reduced.

Esso allowed the use of their trade marks free of charge for a period of six months and also agreed to take responsibility for all past corporate tax liability cases in courts. One notable concession obtained from Esso was that they would not repatriate any profits of the refinery company for the year 1973 even though during that year the Government did not have any financial status in the working of the Esso refinery. The entire management, henceforth would rest with the majority shareholder, now the Government. However, Esso would continue to maintain a small shareholders office in India for some more time.

At the time of the introduction of the Esso Acquisition of Undertakings in India Bill 1974, a statement of objects and reasons was presented to the Lok Sabha. Therein, it was

declared that in the first place it was proposed to take over all the Indian assets and liabilities and to vest them in the Government. The said assets were to include leases and tenancy rights held by Esso Eastern Inc. India. The Bill provided that the Government may vest these assets and liabilities in a Government Company as soon as the acquisition of 74% of the shares of Esso Standard Refining Company of India Ltd. in favour of the Government is completed. The Bill provided that all contracts would continue, unless terminated by the Government.

The Bill made incidental provisions for the transfer of the services of the existing employees of Esso Eastern Inc. and of their provident, superannuation and welfare funds to the said Government Company. It was proposed to preserve the pay structure to the extent possible. In the Financial Memorandum dated February 12, 1974 attached to the Bill, D.K. Barooah, then Minister of Petroleum and Chemicals clarified that the Bill would involve a total non-recurring expenditure of Rs.259 lakhs on account of principal and Rs.35.82 lakhs on account of interest which corresponded to US $ 30,84,690 and US $ 426,557 respectively at the exchange rate of Rs.1 = $ .1191, being the Reserve Bank of India selling rate of exchange for US Dollars prevailing on February 5, 1974.

The final assent of the President was received on March 13, 1974 for the acquisition of Esso's marketing branch. The

30. The total strength of Officers and Staff as on 1.4.73 was 2,884.
corresponding Act was published in the Gazette of India, Extraordinary, Part-II, Section 1, as Act No.4 of 1974 on March 14, 1974. Legally, the ownership now vested in the Government of India. It was no mean achievement and was universally acclaimed including by PRAVDA (official news agency) of USSR. On March 14, 1974 an Agreement called the Participation Agreement was concluded between the Government of India and Esso Eastern Inc., USA. Esso agreed to sell free of encumbrances 832,500 equity shares of Rs.20 each of ESRC for a total lump sum price of Rs.15.29 crores. Esso also agreed to sell 11,520 equity shares of LIL of Rs.1000 each for a total lump sum price of Rs.2.91 crores. 31

Under the terms of this Agreement with Esso, all the assets and liabilities of Esso marketing company in India, 74% of the shares in Esso Standard Refining Company and an additional 24% of the shares in Lube India Ltd. were acquired. LIL was to be amalgamated with ESRC under the provision of Section 396 of the Companies Act of 1956.

These three units were merged and the resultant company was renamed Hindustan Petroleum Corporation Ltd., a name adopted by the Company with effect from July 15, 1974. The new Company, Hindustan Petroleum Corporation Ltd (HPCL) increased its authorised capital to Rs.10,75,00,000 and the paid-up equity share capital to Rs.10,00,00,000. This was done so that 74

percent of the total equity share capital of HPCL could be held by the Government. The Government of India thus acquired 74 percent equity share holding in Esso operations but the balance 26 percent was still in the hands of Esso Eastern Inc. However, even at that point of time it was agreed that at the end of the seven year period, the Government of India would acquire the remaining 26 percent equity of Esso at a lump sum price of Rs.2.6 crores. This price was a fixed amount which would neither appreciate nor depreciate on the basis of the intrinsic worth of HPCL. The said sale would be completed in 1981.32

Esso also agreed to maintain crude oil supplies at mutually agreed level for seven years and charge to HPCL the favourable affiliate price. The total equity capital of HPCL then was Rs.10 crores. The price payable for 100% of the equity shares of ESRC, 50% of the equity shares of LIL, and all the assets and liabilities of Esso in India was Rs.23.39 crores, inclusive of Rs.2.59 crores payable for the vesting of the Indian assets and liabilities of Esso in the Government of India with effect from March 13, 1974. The said shares of ESRC and LIL were transferred to the Government.33 For the duration of the Agreement and until such time that the 26% of the shares were purchased by the Government of India, it was agreed that Esso Eastern Inc. would remain entitled to a guaranteed annual dividend.

Along with this Participation Agreement, another

32. Participation Agreement, March 14, 1974, p.3.
33. Ibid., p.2.

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agreement for the sale/supply and purchase of 100 million barrels (13.75 million tonnes) of Arabian mixed crude oil during the seven years period from March 1974 to February 1981 was signed with Exxon International. Esso Eastern Tankers Ltd. also entered into a Contract of Affreightment with HPCL for the transportation of crude for one year effective from March 1974 in order to maintain the supply line. The crude was to be supplied at the price which Exxon would charge to its affiliates in the Far East. This affiliate price was a concessional price compared to the then prevailing international market prices. Mainly for these two reasons, which at that time were almost like necessities, Esso was allowed to retain 26 percent interest in HPCL as against the 100 percent ownership which the Government of India acquired in respect of Burmah Shell. Apart from this, it was expected that Esso's continued association with the new Company would help the Government in obtaining the benefit of innovation and technological progress resulting from their vast research and development establishment abroad.

The Esso (Acquisition of Undertakings in India) Act, 1974 received the assent of the President on March 13, 1974. It was indicated clearly therein that Esso Eastern Inc. had been engaged in the business of distributing and marketing of petroleum products manufactured by Esso Standard Refining Company of India Ltd., and Lube India Ltd. But the Government felt it as
expedient in the public interest that the undertakings of Esso Eastern Inc. should be acquired in order to ensure that the ownership and control of the petroleum products distributed and marketed in India by this Company are vested in the Government of India so that these are distributed to subserve the common good.

As per the terms of the Act, Esso Standard Refining Company of India Ltd. was willing to comply with the terms and conditions imposed by the Government of India. Therefore, the Government of India directed that the right, title and interest and the liabilities of Esso Eastern Inc., in relation to its undertakings in India, shall be with effect from March 15, 1974 transferred to and vested in Esso Standard Refining Company of India Ltd. with a view to ensure co-ordinated distribution and utilisation of petroleum products distributed and marketed in India by Esso Eastern Inc.34

It was also indicated therein that the undertakings shall not include the following, namely:

a) any share held by Esso in the equity capital of Esso Standard or Lube India;

b) any trade mark, and any right of Esso to use any trade mark in India, specified in the First Schedule;

c) all patents and designs registered in India in the name of Esso35

The amount of compensation was to be remitted on the

34. The Gazette of India Extraordinary Part II-Section 3, Sub - Section (i) Ministry of Petroleum and Chemicals Notification, New Delhi, March 14, 1974, p. 277.
35. The Gazette of India Extraordinary Part II - Section 3, Sub - Section (i), pp.278-9.
dates and in instalments as indicated in the table below:

<table>
<thead>
<tr>
<th>Date of Payment</th>
<th>Instalments</th>
</tr>
</thead>
<tbody>
<tr>
<td>i) First anniversary of</td>
<td>200,504.85 dollars towards interest on principal amount</td>
</tr>
<tr>
<td>the appointed day</td>
<td>i) 2,691,660.00 dollars towards the principal amount</td>
</tr>
<tr>
<td></td>
<td>ii) 200,504.85 dollars towards interest</td>
</tr>
<tr>
<td>ii) Second anniversary of</td>
<td>i) 393,030.00 dollars towards the principal amount and</td>
</tr>
<tr>
<td>the appointed day.</td>
<td>ii) 25,546.95 dollars towards interest.</td>
</tr>
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</table>

In case of Lube India Ltd., the Government considered it essential in the public interest that it should be amalgamated with Esso Standard Refining Company of India Limited, so that the production and marketing of lube oils and other petroleum products may be carried on more efficiently and economically by a single company. Therefore, in terms of the Lube India Limited and Esso Standard Refining Company of India Limited ESRC Amalgamation Order dated July 12, 1974 the undertaking of Lube India Ltd. was transferred to and vested in ESRC on July 15, 1974. Immediately on this transfer the name ESRC was changed to Hindustan Petroleum

Corporation Limited (HPCL). The new corporation HPCL entered the main stream of the national oil industry to play its rightful role in the country's economy.

With the formation of HPCL, Lube India Ltd. was dissolved. The Memorandum and Articles of Association of ESRC were adopted by HPCL, of course, with certain amendments. It was agreed that the Board of Directors of HPCL would comprise of not more than eight members. Article 121 clarified that so long as Esso Eastern Inc. held twenty six percent of the total equity paid up share capital of the Company, they shall be entitled to nominate and appoint two directors. 37

The main disadvantage of allowing 26 percent participation was that to maintain the 74% : 26% relationship for a period of seven years, any restructuring of the oil companies with a view to securing the benefits of nationalisation and optimum utilisation of facilities would have to be excluded till 1981. And till such time, this would seriously impede the progress towards rationalisation of the oil industry as a whole. Such integration became all the more necessary to solve the problems of processing a large volume of Bombay High crude. It was felt that it would be in the national interest to acquire the balance of 26 percent of Esso shares, since India wished to accelerate the process of nationalization particularly in the case of extractive industries.

37. The Gazette of India Extraordinary, Part II, Section 3, Sub - Section (i), Ministry of Law, Justice and Company Affairs, Deptt. of Company Affairs, Company Law Board, Order, New Delhi, July 12, 1974, p.1463.
The performance of HPCL in the first year of its operation was indeed remarkable. During the year, the fuel refinery had the highest throughput of over 3 million tonnes for the first time since the refinery was established in 1954. The lubricating oil refinery manufactured 170,000 tonnes of lube oil base stocks and transformer oil base stocks during 1974. This was about eight percent more than the installed capacity. At the same time the refineries recorded a substantial reduction in the cost of refining. In the marketing field the foremost problem was to give the Company a new identity and yet retain all that was good in the predecessor organisation. The first task was to develop and establish a new logo and new brand names. This was completed smoothly and the customers and people soon became familiar with the name of HPCL. The operations of the fuel refinery, lube refinery and the marketing division during 1974 established better product yields and lower refining marketing expenses. All this convinced the Government of India that nationalisation had to be and must be carried out expeditiously.

As time progressed, the urgency of taking over the foreign oil companies totally assumed greater importance and it was felt that :

1) To facilitate re-organisation of the oil industry for optimum utilisation of assets and facilities, the Government of India should acquire the balance 26 percent equity share of Esso in

0576HHPCL at the earliest. The restructuring of the industry was being seriously hampered by some of the conditions and restraints contained in Clause 8 of the Agreement dated March 14, 1974 which are binding on the Government and HPCL, as long as Esso continued to be a shareholder.39

ii) Esso's share could be acquired by cash down payment. The payment schedules and the interest rate (tax-free) as per the Participation Agreement of 1974 would be left undisturbed.

iii) Specific issues like the remittance of technical service fees, head office expenses, net profits, unpaid dividend could be settled separately, based on the merits of each case.

The Government, therefore, approached Exxon for the acquisition of the balance 26 percent holding in HPCL. In accordance with the Agreement signed in March 1974, these shares would have been transferred to the Government only in 1981 at the end of the seven years period. The Agreement of March 14, 1974 specifically provided that the 26 percent shares owned by Esso Eastern Inc. will be necessarily sold by them and purchased by the Government of India at a lump sum of Rs.2.60 crores not earlier than February 1, 1981 and not later than December 31, 1981.

This was the time when the world oil situation was rapidly changing with constant crude oil price hikes. The oil crisis of 1975 witnessed a surplus of oil, thereby changing the

39. Text contained in Annexure. Ministry of Petroleum File Nos. JS(P)/8/76-Main and JS(P)/8/76-Part have been consulted.
international crude situation. India was in a position to secure adequate quantities of crude oil without any special arrangement with any multinational corporation. Moreover, the affiliate price too had become equal to the international price of crude. The anticipated flow of information and technical know-how also did not materialise. By 1976, while the advantages accruing from 26% participation by Esso in HPCL had been seriously eroded, certain distinct disadvantages remained, particularly relating to the acceptance of the representatives of Esso on the Board of Directors of HPCL. Such representation was not conducive to progress in the rationalisation of the oil industry. These representatives could not be removed by the shareholders of HPCL without Esso's consent. In addition were the restrictions on the operation of HPCL as stated in Clause 8 of the Agreement of March 14, 1974. It was considered that in the national interest, the Government should acquire the balance of 26% of Esso shares in HPCL, in the absence of which any restructuring of the oil companies with a view to secure the benefits of nationalisation would be excluded till 1981.

S. Krishnaswami, Chairman and Managing Director of HPCL raised this issue with the President of Esso during his visit to USA in October 1975. Esso had decided not to extend their operations in India and were willing to commence negotiations for the sale of their share in the equity of HPCL if

40. Text contained in Annexure at the end of this chapter.
the Government aimed to do so with a view to carry out a reorganisation of the oil industry. Esso appreciated the Government's desire to purchase their equity in order to restructure the oil industry and offered to co-operate in achieving the Government's objective on mutually acceptable terms.

Negotiations were already in progress with Caltex and Assam Oil Company for taking over their assets in India. During this interval Burmah Shell Undertakings had also been acquired (in January 1976) thereby bringing 94% of the refining and marketing operations in the petroleum sector in the hands of the Government. Acquisition of the balance 26% equity of Esso Eastern Inc. in HPCL was essential in order to attain the objective of restructuring the oil industry for overall benefit of its economic operations and for improving the standard of service to the public. The decision of the Government to negotiate and acquire the share holding of Esso Eastern in HPCL was conveyed to the share holders representatives in Bombay on August 3, 1976.

It was agreed that the amount and interest as well as the payment schedule in respect of 74% acquisition of Esso's assets and operations in India would be left undisturbed. However, the purchase price for 26% shares of Esso in HPCL amounting to a total of $3,096,600 (net of taxes) would be paid.

On their part, Esso were keen to resolve certain issues
connected with the remittances of Esso's profits for the year 1973; the unpaid dividend for the year 1972 and the remittance of technical service fees. All these important outstanding issues were to be resolved as part of the overall package deal. The negotiations between the Committee of Secretaries and Exxon commenced on August 11, 1976. It was proposed to effect the sale of the 26% shares on October 1, 1976 on payment of an amount of US $3,096,600 net of taxes. The outstanding issues like dividend, technical service fees and head office expenses were also resolved. The Participation Agreement would be suitably amended. The proposal was approved by the Prime Minister, Indira Gandhi on August 14, 1976.

The formal agreement in this regard was signed on September 25, 1976. It was clarified that, "this will not in any way disturb the existing arrangements for payment of principal and interest amounts relating to acquisition of 74% share of Exxon in 1974. Exxon will continue to supply crude oil till 1980-81, as agreed earlier. I would like to take this opportunity for placing on record Government's appreciation of the co-operative spirit shown by Exxon during these negotiations".41

K.D. Malaviya spoke at length on the subject and addressed the Parliament, "Government are considering restructuring of the oil industry with a view to making optimum utilization of the existing assets and facilities and improving

the standard of service to the public. In order to achieve this goal, we have been actively engaged in completing negotiations for the acquisition of foreign oil companies. Negotiations are in progress with Caltex and Assam Oil Company for taking over their assets in India. Meanwhile Government had approached Exxon for acquisition of their 26 percent holding in HPCL. In accordance with the Agreement signed in March 1974, these shares would have been transferred to the Government only in 1981. However, negotiations with Exxon have recently been completed and an understanding has been reached that these shares will be transferred to the Government on October 1, 1976 on payment of an amount of $ 3,096,600 net of taxes. The formal Agreement will be signed in September 1976. This will not in any way disturb the existing arrangements for payment of principal and interest amounts relating to acquisition of 74 percent share of Exxon in 1974. Exxon will continue to supply crude oil till 1980-81, as agreed.42

For the acquisition of shares of all the foreign companies, the Government had adopted certain principles, norms and parameters to expedite the process of take-over. It would be relevant to mention here that the task of nationalization is not an easy one. All corporate mergers, takeovers, and partnerships involve a host of problems. Companies, like countries and individuals, have differing aims and interest. It is never easy

42. K.D. Malaviya, Minister of Petroleum, Lok Sabha, August 23, 1976.
to reconcile them so that the potential advantages are achieved. And when different nationalities are involved, the problems are multiplied several times. 43 But, in the case of nationalisation of the foreign oil companies in India, the task was carried out very smoothly through the process of negotiations. An Agreement to modify the Participation Agreement was prepared by the Ministry of Petroleum in consultation with the Ministry of Finance, Department of Expenditure, Department of Legal Affairs, Department of Company Affairs, Central Board of Direct Taxes and the Department of Revenue. The Agreement, in line with the Memorandum of Understanding signed earlier, was signed on September 25, 1976 the date on which Hindustan Petroleum Corporation achieved the status of a 100% public enterprise. According to the Press Information Bureau release, "Government of India and the Esso Eastern Inc. today signed here a formal Agreement for the acquisition and transfer of the remaining 26 percent equity holding of Esso Eastern Inc. in Hindustan Petroleum Corporation Ltd."

In accordance with the Agreement signed in March 1974, the balance 26 percent share of Esso would have been transferred to the Government only in 1981. But Esso Eastern Inc. agreed to part with these shares early. The 100 percent take over of former Esso is expected to facilitate reorganisation and rationalisation of the country's oil industry, 99 percent of which would now be

under Government control. The total compensation amount for 100 percent take over of Esso was fixed at Rs.18 crores. Out of this, the value of 26 percent shares of Esso Eastern Inc., now transferred to the Government is $ 3,096,600.

The 100 percent take over of former Esso will not in any way disturb the existing arrangements for payment of principal and interest amount relating to the acquisition of 74 percent shares of Esso Eastern Inc. in 1974, as stipulated in the original Participation Agreement. Esso will also continue to supply crude oil till 1980-81 as provided in the earlier Agreement."

The Agreement dated September 25, 1976 was made between the President of India, Esso Eastern Inc. and HPCL. It was explained that by an agreement called the Participation Agreement dated March 14, 1974 between Government of India, Esso., Esso Standard Refining Company of India Ltd. (ESRC) and Lube India Ltd. (LIL), it had been agreed that the Government could acquire 100% of the equity capital of ESRC, 50% of the equity capital of LIL and all the Indian assets and liabilities of ESSO. By an Order dated July 12, 1974 issued by the Central Government, under Section 396 of the Companies Act of 1956, LIL was transferred to and vested in ESRC and the name of ESRC had been changed to HPCL. The parties now desired to modify the Participation Agreement by the Agreement dated September 25, 1976.

As per the terms of this Agreement:

1. Esso would sell and the Government would buy 26,000 equity shares of Rs. 1,000 each of the equity share capital of HPCL owned by ESRC at the price of US $ 3,096,600 net of all taxes. Esso could hand over to the Government the form of transfer duly signed and deliver the relevant share certificate representing 26,000 equity shares of Rs. 1,000 each. The payment would be made to Esso's account in New York before October 1, 1976.

2. HPCL had declared an interim dividend for the year 1976 at the rate of 10 percent of the paid up equity capital of HPCL. Esso's share of such dividend after deduction of appropriate taxes amounting to Rs. 19,50,000 had been remitted in US currency to Esso's account in New York.

3. All outstanding claims between Esso, the Government and HPCL were settled at a lump sum of US $ 309,215 net of all taxes. This was to be paid by October 1, 1976.

   It was declared that in the event of any liabilities of Esso for any additional Indian taxes, the Government agreed to pay or cause HPCL to pay Esso in rupees such additional amounts as will enable Esso to discharge its entire liabilities within the time prescribed by law.

   It was agreed that HPCL would take all necessary steps to effect the remittances due, not later than December 31, 1976.
Not only in India but in other countries too, the oil companies were losing ground, mainly because of the price fluctuations in the oil industry. The transformation in oil prices in the mid 1970s meant that many international oil companies found their assets being taken over long before the prevailing agreements made this legal. They agreed on negotiations with the host governments hoping for reasonable compensation, which was generally generous.

The transfer of shares from Esso to the Indian Government became effective from October 1, 1976 when HPCL became a 100 percent Government undertaking.

The 100 percent take over of former Esso was expected to facilitate reorganisation and rationalisation of the country's oil industry. By the end of 1976, 99 percent of the foreign shareholding had already been acquired. Ever since full ownership, HPCL has been striving to achieve its objectives to maintain continuity of supplies through their refining and marketing network at optimum costs and provide up to date technical assistance to the consumer to conserve and use efficiently the valuable energy resources. The objectives include running of an efficient organisation on sound commercial lines engaged in refining of crude oil, manufacture of petroleum products (including lubes, greases and specialities), bottling of liquified petroleum gas (LPG), marketing and distribution of the
full range of petroleum products and related automotive accessories all over the country. The Company also ensures that the investments made in the Corporation earn a fair return.

Hindustan Petroleum Corporation Ltd. has achieved much since nationalization. Efficiency of operations must be measured by financial as well as technical success and so the operational obligation merges with the financial one. On both these fronts HPCL has been able to withstand the associated pressures and problems and come out victorious.
8. Government (on behalf of itself and the transferees if any of its shares in HPCL) and Esso mutually covenant with each other that they shall for as long as Esso remains shareholder of HPCL exercise their voting rights as shareholders in HPCL in such manner and shall procure that the directors nominated by each of them to the Board of Directors of HPCL shall vote so as to ensure:

(a) the proper maintenance and observance of the terms of this Agreement;

(b) that except with the consent of both the parties

(i) no alteration shall be made to the Memorandum and/or to the Articles of Association of HPCL;

(ii) that the authorised capital of HPCL shall be Rs. 10.75 crores and that the participation in the total issued subscribed and paid-up equity share capital of HPCL shall unless otherwise agreed between the parties be maintained in the respective proportion of 74% : 26%.

(iii) no sale or other disposal shall be made of any part of the fixed assets of HPCL exceeding Rs. 50 lacs based on cost of acquisition thereof;

(iv) there shall be no diversification into non-allied lines;

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(v) the debt equity ratio of HPCL will not be changed beyond the range of 1:1 to 2.5:1;

(c) that the Board of Directors of HPCL shall consist of not more than eight directors of which Esso shall have the right to nominate two and the other directors shall be nominated by the Government.

(d) that subject to the provisions of Section 255 of the Companies Act, 1956 one of the directors of HPCL appointed and specified by Esso in writing shall not be liable to retirement by rotation;

(e) that the Board of Directors of HPCL shall appoint such alternates as Esso may name as alternates for the nominees of Esso on the Board of Directors and the parties shall procure that the Board of Directors shall appoint such alternates accordingly;

(f) except as otherwise required by the Companies Act, 1956 no director of HPCL appointed by Esso shall be removed by the shareholders of HPCL without the consent of Esso.

The provisions of the above shall apply mutatis mutandis to the Board of Directors and the shareholders of ESRC and LIL during the interval between the date of this Agreement and the effective date of the amalgamation of LIL with ESRC pursuant to Step II above.