MR. KENNEDY: Is it prosperous to have both?

MR. MILLER: Yes.

MR. KENNEDY: Is there a competition between these?

MR. MILLER: It varies.

MR. KENNEDY: What is the name of the Belgium pipe that you have?

MR. MILLER: Externite(?).

MR. KENNEDY: At this point, Mr. Chairman, I would like to offer a clarification. The other Japanese Company that was selling in this market, was Nipponite Externit. The pipe which Mr. Miller is using is Externit. We believe Nipponite Externite pipe was sold in this market under the term "Nipponite." I wanted to make it clear that the other Japanese pipe and the Belgium pipe are from different operations and the corporations do not have corporation relationships as far as we know.

Mr. Miller, do you sell Japanese pipe or Belgium pipe?

MR. MILLER: We do.

MR. KENNEDY: Or just as pipe?

MR. MILLER: Probably, off-hand, just as pipe, and if the customer had a preference for a Belgium or Japanese pipe, we would try to give our inventory, if it permitted it, we would try to give him what he wanted.

MR. KENNEDY: Is there any difference in the price at which you sell Belgian
pipe and the Japanese pipe?

MR. MILLER: No; no, sir, there is no difference.

MR. KENNEDY: What specification does the pipe that you handle -- and speaking to Belgium and Japanese pipe -- have.

MR. MILLER: AC pipe. It is KEMA, ASTM. We have the Federal specifications, together with the label approval on both items.

MR. KENNEDY: Do you bid on Federal Government jobs such as the Bureau of Reclamation projects?

MR. MILLER: No, sir.

MR. KENNEDY: Why?

MR. MILLER: I think Mr. Barclay might better answer that.

MR. KENNEDY: Mr. Barclay, would you answer that?

MR. BARCLAY: There are several factors that enter into this. There are preferences by certain government agencies, also the size of the pipe they use in the job. It could be beyond our range, and there could be a large combination, and we do not have a large variety.

MR. KENNEDY: I am not sure to whom I am addressing this question: will all areas accept this Belgium and the Japanese pipe?

MR. BARCLAY: Not so much in Washington today. We have more of a problem in Oregon, and I think John has been
MR. MILLER: In Oregon, it is a problem for us.

MR. KENNEDY: Mr. Miller, do you have a list of Oregon Water Districts and cities which will not accept the foreign material?

MR. MILLER: Yes, I do, and in addition to the consulting engineers that will not permit us to use this pipe, and --

MR. KENNEDY: Do you have copies of that?

MR. MILLER: Yes, sir.

MR. KENNEDY: We are offering this in evidence at this time.

SECRETARY MASON: It will be Exhibit No. 6.

COMMISSIONER PARKER: What is the exhibit?

SECRETARY MASON: Exhibit No. 6.

COMMISSIONER PARKER: Identify it for the record.

MR. KENNEDY: This is a list of Oregon cities that will not accept foreign pipe products. There are a number of names on here.

COMMISSIONER PARKER: That will be received as Exhibit No. 6.

MR. KENNEDY: And it has the consulting engineers on the other side.

(The document above-referred to was marked for identification as Exhibit No. 6 (Kennedy).)
COMMISSIONER PARKER: We will take a brief recess at this time.

(Whereupon, at 3:08, there was a brief recess, with the Commission reconvening at 3:15 p.m.)

COMMISSIONER PARKER: Mr. Kennedy, will you have your witnesses return to the stand, please?

MR. KENNEDY: Before going on with the questions and answers, I would like to say we are going to seek, for the Chairman's question concerning the letter from Kubota, from Kubota's head office in Tokyo, an answer; as soon as we have a response to it, we will submit it to the Commission.

COMMISSIONER PARKER: That would be satisfactory, Mr. Kennedy.

MR. KENNEDY: Thank you.

Mr. Miller, to whom do you sell your asbestos-cement pipe?

MR. BARCLAY: We sell our asbestos-cement pipe to, basically, four classifications: class 1 the first one, the first classification is direct sales to publicly owned users, county water districts, public utilities districts, and class 2 are sales to contractors for furnishing and installing jobs to these class 1 users.

Class 3 is sales to contractors and developers for development. Class 4 -- we class the private sales and miscellaneous sales that we pick up business occasionally from
other distributors.

MR. KENNEDY: Do you have an estimate of, relatively, each class of sales with you?

MR. BARCLAY: Yes, I do. I would like to submit this to the Commission in confidence.

COMMISSIONER PARKER: That will be satisfactory.

You have it in Exhibit form?

MR. KENNEDY: Yes, sir.

This is the form of the exhibit. The first page is classified, and the second page is self-explanatory.

COMMISSIONER PARKER: Give it to the Secretary and mark it as an Exhibit Number.

SECRETARY MASON: This is Exhibit No. 7.

MR. KENNEDY: This is confidential.

COMMISSIONER PARKER: It will be received as Exhibit No. 7.

(The document above-referred to was marked for Identification as Exhibit No. 7 (Kennedy) (Confidential).)

MR. KENNEDY: Do any of your customers buy imports - buy asbestos-cement pipe only from foreign sources, Mr. Miller?

MR. MILLER: No; they do not. I would say the only exception to that, if we had a one-time customer.

MR. KENNEDY: To your knowledge, do your customers
purchase also domestic sources?

MR. MILLER: Yes, sir.

MR. KENNEDY: Why don't you carry larger pipe sizes than 12-inch?

MR. MILLER: Due to the freight costs, we just can't afford to bring it in.

MR. KENNEDY: Do you carry smaller sizes of asbestos-cement pipe?

MR. MILLER: Than what?

MR. KENNEDY: Than 4-inch?

MR. MILLER: No, sir.

MR. KENNEDY: Why is that?

MR. MILLER: We used to carry smaller sizes, down through and including 2-inch. However, the plastic pipe people have moved into that area and we simply couldn't compete.

COMMISSIONER YOUNG: Let me ask a question. Is it impractical to slide the smaller diameter pipe inside of a larger diameter to overcome the freight?

MR. MILLER: Your question was, is it impractical?

Yes.

MR. KENNEDY: The shippers wouldn't permit it?

MR. MILLER: The shippers would. It was tried by others, and there was a loss of breakage.

MR. MC DUFF: I might add that Johns-Manville has
successful in shipping pipe in that manner. We have completed
a 6,000-ton to the Samoa Islands on a United States Government
aid program where we sell pipe to them, but that technology
is available.

MR. VOSS: May we have the technology?

MR. KENNEDY: Let the record show that Mr. Voss said,
may we have the technology.

Mr. Chairman, may I have a moment with Mr. Miller?

COMMISSIONER PARKER: Yes.

MR. KENNEDY: Mr. Miller, would you identify the
paper which you hold in your hands now?

MR. MILLER: Yes. I have before me a copy of the
General American Water Works Association, dated February 1971,
identified as the Water Utilities Use of Plastic Pipe, by
J. M. Wool, and I believe a co-author by the name of Robert A.
Yale, of Skagit County.

MR. KENNEDY: What District does Mr. Wool deal
with?

MR. MILLER: Los Angeles County.

MR. KENNEDY: And with which water facility district
does Mr. Yale deal with?

MR. MILLER: Skagit County.

MR. KENNEDY: Where is that Skagit County, PUD.

MR. MILLER: In Washington.

MR. KENNEDY: I would like to offer this article as
MR. KENNEDY: That is not in confidence, of course.

(The document above-referred to was marked for identification as Exhibit No. 0 (Kennedy).)

MR. KENNEDY: I think this question is directed to either Mr. Miller or Mr. Barclay. What is your policy, indeed, for supplying asbestos-cement pressure pipe for a job?

MR. BARCLAY: First, we bid only on pipe which we have in inventory. We do not place orders with our Japanese or Belgian people to provide pipe against an order.

We have to determine our inventory, whether we can fully fill the job. The reason for this is that most of the jobs we are bidding on are public contracts and definite completion dates are required, with a penalty running from $25 to $200 a day if the contractor or supplier fails to meet the completion date.

After we cross that barrier, we have to look at the distance the job is from our yard and the type of the pipe that is used and see if we can compete with the other cost factors.
MR. KENNEDY: Does this mean you keep the large inventory at all times?

MR. BARCLAY: In the field, we complete it.

MR. KENNEDY: Could you give us a rough estimate as to the ratio of sales to inventory?

MR. MILLER: The ratio would be 2-to-1.

MR. KENNEDY: All right.

Mr. Miller, would you identify this report and describe its character to the Commission, please?

MR. MILLER: In order to present to the Commission certain information that we would like to get in your hands, we acquired the services of a business consultant in Seattle.

He has made up a report dated March 14, 1972, directed to me, "Subject: Analysis of AC Pipe Inventory and Sales Data by Quarter, Starting January 1, 1968."

MR. KENNEDY: We would like their report, complete with a handwritten tabulation of numbers and graphs, and we would like to submit it now in confidence.

COMMISSIONER PARKER: Inventory of sales ratio of Pacific Water Works?

MR. KENNEDY: Yes. That is Exhibit No. what?

SECRETARY MASON: Exhibit No. 9.

COMMISSIONER PARKER: That will be received in confidence as Exhibit No. 9.

(The document above-referred to
MR. KENNEDY: Do you bid on jobs -- I think this is for Mr. Barclay -- do you bid on the jobs requiring pipe sizes which you don't handle?

MR. BARCLAY: No.

MR. KENNEDY: Why? Why can't you sell, say, part of the pipe, then buy other pipe to supply the pipe which you don't inventory? Or why can't the contractor do this?

MR. BARCLAY: This is on a contract job. They try to tie this in a package. Sometimes there is a penalty because there is a difference in a freight rate or something like that that prevents us from offering a complete pipe-type package, so we don't bid.

MR. KENNEDY: Would you bid on jobs, requiring other asbestos-cement pipe, that is to say, for example, sewer pipe?

MR. BARCLAY: No.

MR. KENNEDY: Why is that?

MR. BARCLAY: That is similar to what I just got through saying. If we can't supply all of it, it is very hard to sell small portions of the job, and we only have so much time. I am estimating roughly -- we would take the jobs that are attractive and the ones that suit our business.

MR. KENNEDY: Can you estimate the number of jobs
for asbestos-cement pipe, because of the structure of your
business, because of the various types of pipe required, that
you cannot bid on at all?

MR. BARCLAY: I would say, it would be substantial.
I can't put a figure on it, but looking for jobs we will
receive a request to bid publication sort of like a trade paper that you
would read, and they not only list jobs that we do bid on,
but the other types of jobs, and I have never kept track of
them. I see them, but I never keep track of them.

MR. KENNEDY: Have your sales in asbestos-cement
pipe been increasing since 1969?

MR. MILLER: No, they have not.

MR. KENNEDY: Have they been decreasing?

MR. MILLER: They have been decreasing.

MR. KENNEDY: What is the reason for this?

MR. MILLER: There are probably many reasons for it.
Our economic interest rate, recession, and perhaps the biggest
reason might be other types of pipe being offered today.

MR. KENNEDY: What type of pipe are you making
reference to?

MR. MILLER: I am making reference to plastic pipe.

MR. KENNEDY: Do you handle plastic pipe?

MR. MILLER: Yes, sir

MR. KENNEDY: Is it domestically made?

MR. MILLER: Yes, sir.
MR. KENNEDY: Have the sales of this pipe been increasing since 1969?

MR. MILLER: In one year since 1969, we have had approximately a 300-percent increase in the sales of plastic pipe.

MR. KENNEDY: I think this information — Mr. Barclay, when you decide you want to make an offer on a job, how do you go about determining the offering price?

MR. BARCLAY: Well, I would say I want to bid on the job. We try to maintain a history of our competitors' pricings and we look at the type of customer, the size of the order, if it meets our inventory, freight costs, our needed profit margin. It depends upon the type of the job.

If you have a municipality job, you know that you are going to be paid on the second Tuesday following the day you start, and you don't have to finance to develop your job.

You might have trouble collecting your money. All these things go into the type of pricing. Those are costs, of course, and they go into too much detail, and I do not want to take the Commission's time with that, but, basically, it is what the trend in the market is.

MR. KENNEDY: Do you begin calculating your price on an ex-yard basis?

MR. BARCLAY: To answer your question, I think I start my calculations on the price that I am going to expose
from the trend in the market than I do for my cost. Naturally, I have to look at my cost, essentially that I have a profit in it, but I would say I start from the market price, established market price, to answer the question.

MR. KENNEDY: Do your price calculations begin on an X-yard basis as opposed to an ex-dock basis?

MR. BARCLAY: Definitely.

MR. KENNEDY: Do you have to haul the pipe from the docks to your yards?

MR. BARCLAY: Yes.

MR. KENNEDY: And that represents a cost to you?

MR. BARCLAY: Correct.

MR. KENNEDY: With whom do you compete in selling asbestos-cement pipe?

MR. BARCLAY: Johns-Manville sells directly in the area where we sell. Then there is H.D. Fowléz, a Certain-Teed distributor also operates in the same area, there have been imports from countries other than Japan to -- which have also been active in our market.

MR. KENNEDY: Have you had competition in your market from a Japanese pipe company whom you do not represent?

MR. MILLER: Yes, we have, but they have more or less retired from the market. I think we acquired some of their inventory, didn't we?
Company's inventory?

MR. MILLER: Yes, we acquired inventory from two distributors this late summer. I think it was of independent, one in California and one in the Seattle area, and they stated that they were going out of business, and we were glad to buy that inventory.

MR. KENNEDY: Do you think the possibility would be that this company would likely come back, or try to re-enter the market?

MR. MILLER: It would certainly be very difficult. I think it would be entirely unlikely.

MR. KENNEDY: Is your price sometimes higher than domestic prices?

MR. BARCLAY: Yes, it is.

MR. KENNEDY: In your experience in some instances in which you have competition from other foreign pipe companies, has this been essentially sharp?

MR. MILLER: Yes.

MR. KENNEDY: Could you place this in a point of time?

MR. BARCLAY: Well, I believe it is about in the period that we are talking about -- not really, but back in 1969, '70, and '71.

MR. KENNEDY: Thank you.

MR. BARCLAY: Not too much in '71.
MR. KENNEDY: What is the relationship of import—
tion asbestos-cement pipe from Japan and your sales?

MR. MILLER: There really is no relationship between
the two. We must purchase six months to a year ahead of time.
We certainly don't know what the sales are going to be.

MR. KENNEDY: So that if you purchased Japanese
pipe, that -- let's say, in the last half of '70 -- that would
not represent a sale until perhaps what period of time? Say,
you bought it in the last half of 1970, when would you get a
sale from this?

MR. MILLER: If the product is shipped from Japan
in the last part of '70, I would figure a minimum lead time
of -- a lead time of four months from the time of shipment.
Another perhaps three to four weeks to arrive here, and from
the time that it is received and until it is ultimately sold
out of our yard, it would come up to about six to eight months.

MR. KENNEDY: So there is no relationship between
your sales and your purchases?

MR. MILLER: I don't believe so.

MR. KENNEDY: Mr. Miller, in your opinion, do you
maintain inventory larger than that of your domestic competitors

MR. MILLER: I know what we maintain, and I have to
go on what our people tell us that our domestic competitor
maintains, and I would say that they -- from what I understand
would have something along the lines of ten truckloads, and we would have two boatloads.

MR. KENNEDY: Mr. Miller, must you or your competitors test your pipe locally before it is acceptable in a certain place?

MR. MILLER: No, sir; we do not.

MR. KENNEDY: What if there were a specification in a contract requiring local testing?

MR. MILLER: They sometimes have a specification stating that the pipe must be tested within the Continental limits of the United States, and in those cases we do not bid.

MR. KENNEDY: Why don't you bid?

MR. MILLER: We don't have the facilities in order to test.

MR. KENNEDY: Mr. Miller, in your opinion, what is the most important factor in establishing price trends in the market.

MR. MILLER: May I refer that question to Mr. Barclay?

MR. BARCLAY: I would say the competition between Johns-Manville and Certain-Teed.

MR. KENNEDY: Mr. Miller, in your opinion, your sales of the asbestos-cement pipe, is it injurious to the domestic industry?

MR. MILLER: We are taking a share in the business
but I think it is an extremely small share of the business.

We are trying to maintain prices, yet prices that, as much as we can, for our product. I do not believe we are materially hurting them.

MR. KENNEDY: All right.

Now, that finishes my questions to Mr. Miller and Mr. Barclay, except for questions I would like to put to Mr. Barclay concerning what I believe to be, as Exhibit No. 2, the bid-type establishing, submitted by Johns-Manville on bids by the Seattle Series 810.

Mr. Barclay also keeps tabulations.

COMMISSIONER PARKER: This is a reproduction of the package which was referred to yesterday?

MR. KENNEDY: Yes.

COMMISSIONER PARKER: It is Exhibit No. 2?

MR. KENNEDY: Yes. I am going to hand these to you and explain what we have done. Mr. Barclay also keeps a tabulation of bids. These are public bids which he may or may not have bid.

COMMISSIONER PARKER: Could you give counsel a copy?

MR. KENNEDY: Surely.

COMMISSIONER PARKER: I understand, Mr. Kennedy, this is merely a reproduction of an exhibit that is already in evidence, and you have done this for purposes of cross examination or redirect examination?
MR. KENNEDY: We can find implementation in that. Let me use that a minute. I am going to try to explain what we are doing.

Mr. Barclay reviewed his compilations and compared them to those and he made his notations in red, which doesn't reproduce in color in our exhibit, and I think you will see it is in a darker black there. Now, Mr. Miller was comparing — Mr. Barclay was comparing his information about what Pacific Water Works is doing with that indicated in Johns-Manville tabulation.

I don't have a copy of this.

COMMISSIONER PARKER: Can I interrupt you, so that we can have some order in the record.

W h ibit 2, I guess the sheets were sub-numbered?

SECRETARY MASON: No, they were not.

COMMISSIONER PARKER: All right. These sheets are in chronological order, or in the same chronological order as Exhibit No. 2?

MR. KENNEDY: No, sir. These are five expressly chosen, which were used in direct testimony yesterday, and one other example. Our only purpose at this time is to question the access of some of the information concerning Pacific Water Works' activities, and we hope at a further time to analyze the entire exhibit and point out what we think are in excess. We were thinking of doing this in a form of letter to the
Now, this, Mr. Barclay, is an analysis of these tabulations based upon an analysis which he keeps, as a matter of day-to-day concerns, which has been submitted in confidence to the Staff of the Tariff Commission.

I think it was last week or sometime ago. I am not sure which day. And one further word of explanation: at the top of the sheet you will see "E" or "K". "E" is Erickson, and "K" is Kubota, and that is Japanese.

COMMISSIONER PARKER: When you offer this as an exhibit, this is going into it?

MR. KENNEDY: Yes.

COMMISSIONER PARKER: I think it should.

MR. KENNEDY: Exhibit No. 9?

COMMISSIONER PARKER: It will be Exhibit No. 9, so we will know what the witnesses are talking about.

SECRETARY MASON: It would be Exhibit 10; excuse me.

MR. KENNEDY: It was a little difficult to get a format for this.

COMMISSIONER PARKER: I can understand that.

COMMISSIONER YOUNG: Would you explain to me "E"?

MR. KENNEDY: "E" is Enterrite. Now, that was provided, and "K" is Kubota. That is Japanese.

COMMISSIONER YOUNG: Thank you.
MR. KENNEDY: Now, I might explain one other thing that I made available to the staff and that is an informal contractor job list that he has.

MR. BARCLAY: Some of these are contractor lists for installed jobs, and getting into those, I was interested that he picked those five, because I recognize most of them, and I could only vouch for my information, but looking at this, I can understand why there is a situation there in pricing that evidently they are not getting accurate information, and I am wondering about that, myself, also, from my point of view.

COMMISSIONER PARKER: Proceed with your questions.

MR. BARCLAY: So what I have done here in the order — the first one is June 22, 1970, the City of McCleary, and the first thing referred to was the successful bidder, the Belgium pipe, and, secondly, they didn’t have a complete tabulation for my records. The distributor is always written in and then J-M, That bid was $1.40, and they forgot one on here — Western Utility, and it was their bid of $1.40, and on the 6-inch, J-M bid $1.00, and Western Utility bid $1.03 on 4-inch.

COMMISSIONER YOUNG: Excuse me, you are PWW?

MR. BARCLAY: Yes.

COMMISSIONER YOUNG: Thank you.
MR. KENNEDY: Pacific Water Works.

MR. BARTLEY: Also, it did not show the terms on
Johns-Manville. They had a two-percent discount, and that goes
to the City's paydays. Sometimes it is 10 days, and I also
consider that in this, that they are going to offer a cash
discount. Certain-Teed was not, and Western Utilities was
also not.

On the next one, August 3, this was a Class 2, which
is a contractor-furnished, installed to the public in the City
of Olympia. They have the wrong price down there for PMW,
they have it as selling for $3.30 and we actually sold it for
$3.35, and the only 8-inch size, $1.70. And we actually sold
at $1.80. I would like to point out something further here,
and this is the same customer, Tenneson Construction
Company, that bid a job in April to the same city, and they
completed this job and it came up for bid, and we had sold it
to Mr. Thompson -- and Tenneson Construction Company on that
prior job.

So it was sold at the same price, because conditions
hadn't changed to warrant a price increase or decrease. I
don't know if Jack wants to go into it. I could explain why
we are down at that price.

MR. KENNEDY: May we have a moment to talk here,
Mr. Chairman?

COMMISSIONER PARKER: Proceed.
MR. KENNEDY: We're at page three of this exhibit.

MR. BARCLAY: This is a Class 3. This is a contractor's bid for private work on two developers. The bid date was 9/4/70. This actually was bid on July 28. When that was -- that was for Horizons Highlands for Morris Construction Company, Tacoma.

First of all, we furnished Steinbit than Kubota, in the paragraph down at the bottom it says, "We quoted storm drain and sewer as exception to specs." They trying one of these combinations and we were able to survive and get by it.

I don't have any records with me on pricing on this. I didn't have this with me. I can't comment on the prices there.

The next one, September 25, Lagoon Water District. This is a Class 2 contractor furnishing installed to a public owner, and we did furnish Kubota on it, PWW, at $1.73, I believe that is -- $1.16. But our actual price to the contractor was $1.70 and $1.10.

The next one ---

COMMISSIONER LEONARD: Why would you have gotten that particular contract when your price, according to you, higher than one of the domestic producers?

MR. BARCLAY: This is an interesting question. We feel that we offer service. We have a company that can offer
a complete water system, as Mr. Miller said earlier. Although I don't know the veracity of the Certain-Toed figures, I showed them bidding. I just have my own. But we had material in stock and we were able to furnish the complete job immediately and that included meters, valves, fittings, and et cetera. And getting this was one of the larger jobs that we had, and getting the material on the job site, as he wanted the pipe, the mix of pipe, and he did not want all the pipe shoved out there at one time.

COMMISSIONER LEONARD: Thank you.

MR. BARCLAY: The next one, 10/1/70, Gold Bar, Washington, Class 2, Kubota. Again, our prices, the prices of PWW, Kubota, 78¢ on the 4-inch; we sold it at 75¢, 3 cents cheaper. Six-inch, $1.14 -- we sold at $1.13, and wherein they show 6-inch price of $1.56 and $1.78 is what we had and what our actual figure was.

This one is one of our better contracts and there is an interesting note down there. It notes that it was lost to PWW. What they are saying down there is that one of the contractors believed in our service and that we do a job for them and get the material when they need it.

We have one more, Mr. Deutsch didn't use yesterday, and that is 6/26/69. That's Black Lake Boulevard, and again that is the City of Olympia. It is a contract to furnish and install, and we used both "K" and "E" on that job. It again
stated our figures wrong. We sold at $3.51, $1.94, and $1.23.

Also, I notice that the total amount is a little off. They have a little over $5,000, and the actual amount would be a little over $8,000, and that stands corrected. This was a kind of an interesting comment down there, to say, and I quote:

"Wilder said after he had placed order, that if we could have met PWW price that he would have given us the job. Stan and I felt the job was too small to ask for price, in keeping with H. L. Olson's request." That is a couple of truckloads there. We appreciated that business there.

MR. KENNEDY: Just one final point. It might be obvious. Class 1, you are referring to the tabulation of a customer that you earlier gave to it?

MR. BARCLAY: In confidence.

MR. KENNEDY: Also, for Class 2, those would correspond to the classes?

MR. BARCLAY: Yes.

MR. KENNEDY: We have nothing further to say at this point in time, and if the Commission would like to ask any questions they would be happy to respond.

MR. MILLER: May I make a comment, please?

COMMISSIONER PARKER: Surely; proceed.

MR. MILLER: I hope the Commission will understand that the recent increases that we have had in cost, in purchasing pipe overseas, and particularly in Japan, the increase in
freight rates, the yen devaluation and the surcharge, they are all worth mentioning for our account. These things that I have just mentioned represent an increase in our cost in the neighborhood of 25 percent over what they might have been in June of 1971.

These increased costs, Mr. Barclay can bear me out on this, have reflected higher selling prices.

COMMISSIONER PARKER: Does that complete your statement?

MR. MILLER: Yes; it does.

COMMISSIONER PARKER: Commissioner Moore, do you have any questions?

COMMISSIONER MOORE: No questions.

COMMISSIONER PARKER: Commissioner Young?

COMMISSIONER YOUNG: Yes. I am a little confused. We have instances where you have obtained business with a little higher price. And the last witness testified that the prices of your company have been a little lower in order to get the business. He stated three to five percent, and we had earlier testimony that the price might have to be discounted a little more than that.

Is it reasonable to get a job with a higher bid? Would you describe further those services and then indicate
whether or not this is an exception -- whether or not there is a rule considered to be a standard practice?

MR. BARCLAY: First, I would like to say one thing to help clarify this. Classification of bidding is a guide to this, and on our direct Class 1 municipal district material bid, you have to be the low bidder.

COMMISSIONER YOUNG: Class 1 doesn't mean anything to me.

MR. BARCLAY: I am saying the bid we turn in for direct municipality district material, as opposed to bids to contractors the contractor, you have to be the low bidder. And none of those examples were the direct material bids where we were the high bidder and got the order.

COMMISSIONER YOUNG: Let's stop right there for a minute. How much lower do you feel you have to bid in order to have the contract awarded to you.

MR. BARCLAY: We tried to be one penny lower.

COMMISSIONER YOUNG: Beg your pardon?

MR. BARCLAY: One penny lower.

COMMISSIONER YOUNG: Low bidder.

COMMISSIONER PARKER: Just by any amount?

MR. BARCLAY: Yes, sir.

COMMISSIONER YOUNG: All right; I understand it.

Go ahead, please.

You were going to describe some other instance?
MR. BARCLAY: On the contractor — perhaps I should describe my work a little bit. We tried to develop the market, the market in our area, to a service that we could cover, or offer. As estimator, what this means on these contractors, installed jobs, we will request prints and specifications from their engineers or owners, whoever is issuing them, and I don't know, but I am sure you are familiar with bidding procedures.

They have a bid form that they have to fill out which includes a list of some, maybe up to 200 items, and these items -- the various material that go into this specific item, we will read the specifications, and we will make sure that the material which is bid on them will meet the specifications as to what is required.

I mean, there is a variety of items: fire hydrants, things of that nature, that go into making up the price, and they are going to install. But my job is to go through the specifications, understand them, as far as water works material is concerned. Then I take the prints and take off and make a material list for the contractor, for an analysis. I will price it up and mail it to the contractor so they can use it to help them in preparing their estimates to the owner that they are going to bid to.

This is a service some of them said that they would take our quote and figures on a job without looking, or without making their own take-off. This is a reputation that we have
built, that we are accurate and thorough and they don't have
to do anything with it because we stand behind our work 100
percent, and they don't have to pay more money for material
afterward because we forgot something. If we don't quote it
right or don't have the right type material, we pay for it.

COMMISSIONER YOUNG: Did I understand you to say
some of this might be done in advance of the submission of
the specifications, in advance for bidding?

MR. BARCLAY: In advance of the bidding?

COMMISSIONER YOUNG: In advance for bidding.

MR. BARCLAY: Yes. Generally, a minimum of ten days'
notice of the job is the general rule. A lot of the time there
are many jobs in the same time period, and a lot of contractors
appreciate what we do, because it can take me up to one hour
to several days to compile a take-off like this.

Some of the larger companies, quite a few of the
companies have their own estimating departments, but they like
to check it against their own work. This is part of the
service. This is before bidding service and we service after-
wards also.

COMMISSIONER YOUNG: What would be the effect on
you gentlemen of a dumping duty, the imposition of a dumping
duty?

MR. BARCLAY: I think Mr. Miller could answer that
MR. MILLER: We have pipe that has come in, since—

I believe they call it withholding of an appraisal — we have had additional tonnage coming in that we had to bring in because we had it on order from Kubota. If we were to be faced with an anti-dumping ——

COMMISSIONER YOUNG: Go ahead, don't worry about that.

MR. MILLER: If we were faced with an anti-dumping duty, it would be just about the end for us. Our sales of asbestos-cement pipe —— I might add that about over the last four years, 65 percent of the pipe that we have brought in, asbestos-cement pipe, I say brought in —— that we have imported has been Kubota, and the balance of that has been from

manufacturer.

COMMISSIONER YOUNG: When you say the Japanese manufacturer sold the pipe at their value —— if that is a proper term —— in other words, exporters pay the same price for it as the home consumption, you could not have bid as low as you did and, therefore, gotten these orders and come out with any sort of profit. Is that what you are saying?

MR. MILLER: It would be very difficult to realize a legitimate reasonable profit.

COMMISSIONER YOUNG: When you say "legitimate" ——

MR. MILLER: What we consider reasonable.

COMMISSIONER YOUNG: Yes. So then, if you take a
of whether there is a dumping duty imposed, it is the
practice of the Japanese manufacturer in the future, such that
they will charge the same for exports as they do at home, and
would this put you out of the business of importing AC pipe?

MR. MILLER: No. We have had a very fine relationship
with Kubota and it would terminate, and it would force us into
looking into other sources of supply.

COMMISSIONER YOUNG: Now, both of you gentlemen are
with FWW, aren't you?

MR. MILLER: Yes.

MR. BARCLAY: Yes.

COMMISSIONER YOUNG: Let me
go back to this instance wherein you render certain services,
where you sell fittings, fire hydrants, et cetera, as a part
of the whole job. You indicated that you would help to get
business and at a little higher bid; is that correct?

MR. BARCLAY: Correct, sir.

COMMISSIONER YOUNG: On a transaction of that
type, would your profit be greater on the pipe or greater on
the other basis?

MR. MILLER: We keep very detailed records of profit,
percentages of business, as to total, in 15 different cate-
gories, and our percentage of profit on asbestos-cement pipe
sales is almost identical to the average on the other 14
product lines that we have.
COMMISSIONER YOUNG: Then the competition on pipe

in general terms, is no more deeper than on the other

items that you handle as a group?

MR. MILLER: As far as the result of the final

selling price; no.

COMMISSIONER YOUNG: Thank you.

I have one suggestion for Mr. McDuff. Apparently,

some little mixup has come about in the prices,

listed on the sheets. I think this was unintentional, and

Would you check, and would Certain-Teed people verify the

prices on these exhibits to see if they are correct, and

if there are any errors in their bids, and furnish the correct

information to the Staff?

MR. MC DUFF: We will. I would like to go to this

one where we appear to be the low bidder. These pipes have

not been -- they do not appear to be Certain-Teed prices.

I will do specifically this: we would have to

appear there to have been the low bidder. We do not know that

to be true.

COMMISSIONER YOUNG: If each of you gentlemen would
do this, perhaps it would serve a useful purpose; if there

are any incorrect figures, have them corrected.

MR. MC DUFF: You have to appreciate what the

source of information that you have been gathering is; that we
do not have access to their records.
COMMISSIONER YOUNG: I understand that.

MR. DEUTSCH: Under the Antitrust laws, we can't talk to them, so we asked a person who is involved and this was the information we were given at that time.

COMMISSIONER YOUNG: I understand that. I thought they were public bids. As I said, I am not being critical. 

MR. DEUTSCH: These are the East Bay Municipal Utility District bids. That is a public bid and we are going to check the information requested, where we know that is for a fact the bid, as against, for example, these contractor bids.

Take, for example, the Lagoon Water District, that was, I believe, through a contractor, and when it is a contractor then we only have the asking of somebody; whether or not that person has given us the truth in answering, we don't have that.

COMMISSIONER YOUNG: Let me see if I understand. You all sold, or submitted bids, to, Tonnesen Construction and each of you submitted to Tonnesen, so this was not a public bid opening?

MR. DEUTSCH: Yes.

COMMISSIONER YOUNG: I understand. Thank you very much.

MR. PHILLIPS: I think they have coded those by indicating that Class 1 is a public bid and, as you will
notice, the figures have not been corrected on that. They have merely added another set of prices from another bidder. I think Class 2 and Class 3 is on there.

COMMISSIONER PARKER: Commissioner Leonard?

COMMISSIONER LEONARD: I don't have any questions.

I do have a comment. My comment is relative to Mr. Deutsch's last statement, and that is the Antitrust implication concerning action of identical prices, or something like that.

MR. DEUTSCH: In asking what their prices are, it is our interpretation of the Antitrust laws that we may not discuss prices with a competitor.

COMMISSIONER LEONARD: All right, but it is very curious that on all but one of these examples furnished to us, in which there are bids made by both domestic producers, the prices were identical for both domestic producers. That is the only comment I have.

MR. PHILLIPS: We assume Johns-Manville knows their prices on this sheet. I think documents that we have furnished to the Investigators would show that most often the prices for Johns-Manville and Certain-Teed are not the same. Whether we are doing a better job than Johns-Manville, there has been a variety, and I think our sheets will show that.

MR. DEUTSCH: If you look at the last three sheets out of the six sheets, you will notice, beginning with the third sheet, it appears there is a difference in Johns-Manville
price and Certain-Teed price. You will see on the next sheet, Mr. Johns-Manville salesman indicated that he was unable to get any information whatsoever as to the Certain-Teed price, and you will notice that on the last sheet there is an indication that he was unable to get any information whatsoever as to the Certain-Teed price.

And remember that in all these six examples, the foreign pipe was the pipe that got the order. Therefore, our salesman is getting information from a source, and he is trying to get reliable information, but maybe the person that is supplying the information would just say Certain-Teed was the same as you guys, and the only one price that really counts is the person who got the job.

In the situation here, it was Japanese pipe.

COMMISSIONER LEONARD: Thank you.

COMMISSIONER PARKER: We'll take a five-minute recess.

(Whereupon, at 4:05 p.m. the Commission recessed, and adjourned at 4:16...)

COMMISSIONER PARKER: Are you ready to proceed?

MR. KENNEDY: Yes. I am sorry about the delay.

MR. PARKER: I guess we are ready for cross examination by the domestic industry.

Mr. Phillips, do you have any questions?

MR. PHILLIPS: I have no questions for the gentlemen
from Washington, but I do have a question for Mr. Kennedy.

COMMISSIONER PARKER: Surely.

MR. PHILLIPS: May I question any of these three witnesses?

COMMISSIONER PARKER: Yes.

MR. PHILLIPS: This, again, relates to the letter, to the testimony with respect to the letter from Mr. Hashimoto.

Do we understand this to be a commitment on the part of Kubota to not to export more than this tonnage to the United States in this year and future years?

MR. KENNEDY: That is my understanding. The Chairman also raised the question. I am trying to contact them in Tokyo to establish that very clearly. The information you received there, or we received Monday morning, in the way of a very short Telex, and then the letter was put together very quickly on Monday evening.

MR. PHILLIPS: Will we be informed?

MR. KENNEDY: Surely, just as soon as I receive the reply. If you just give me your name and address after the hearing.

COMMISSIONER PARKER: Yes, I have it.

MR. PHILLIPS: That is no problem.

COMMISSIONER PARKER: I asked for the witnesses to supply this. It is on the record, so you will be receiving a reply to it.
rude, and no one else needs me, I am asking if I might be
excused?

COMMISSIONER PARKER: Yes, Mr. Voss. I thought I
indicated that you were excused. We understand you have to
catch a plane.

MR. Voss: Thank you very much.

COMMISSIONER PARKER: You may proceed, Mr. Phillips.

MR. PHILLIPS: Mr. Kennedy, do I take it, this is not
a commitment to export this at fair value?

MR. KENNEDY: Mr. Phillips, I told you I will try to
get a clarification of the letter.

MR. PHILLIPS: Can you inquire as to whether this
will be exported at fair value?

MR. KENNEDY: I assume it would be.

MR. PHILLIPS: As having been exported at less than
fair value?

MR. KENNEDY: I can't make a commitment until I
elicit the information which you are requesting.

MR. PHILLIPS: Thank you.

MR. KENNEDY: As you know, whether something is fair
value or less than fair value, can't be shown by comparing
value.

MR. PHILLIPS: I understand, but it is much easier
for Kubota to give us the information.
MR. KENNEDY: Yes, and also for me.

COMMISSIONER PARKER: Does this complete your questions, Mr. Phillips?

MR. PHILLIPS: Yes.

COMMISSIONER PARKER: Mr. Deutsch?

MR. DEUTSCH: Mr. Kennedy, the reason that I believe Mr. Phillips has asked about the fair value is that there has been nothing said to this point of time with respect to fair value, either in the letter or in the colloquy that has been had with respect to the letter.

MR. KENNEDY: No, sir. I don't think fair value is relevant in this proceeding. There have been sales of fair value. Therefore, we are appearing before the Tariff Commission to industry — this is the Tariff Commission's job here, and we don't plan to talk about fair value here.

MR. DEUTSCH: Except that I don't understand then the representation that is being made here. Is it correct to understand that this letter is saying that there will be a continuation of bringing of Japanese asbestos-cement pipe at less than fair value, but only 9,600 tons a year at less than fair value?

MR. KENNEDY: I think the letter is directed to the question of injury. It is not directed to the matter of fair value. You are looking for something that is not there.

MR. DEUTSCH: So that it is correct then, that this
latter in no way makes any representation to the Tariff Commission that the 9,600 tons will be brought in at fair value?

MR. KENNEDY: If Kubota makes representations to the Treasury Department and, then, possibly they were.

MR. DEUTSCH: I think you have answered my question.

I would like to put a question to either Mr. Miller or Mr. Barclay, and that is, in 1970, what was your company’s share of the market in the States of Washington and Oregon, of the asbestos pressure cement pipe?

MR. MILLER: What were those years, Mr. Deutsch?

MR. DEUTSCH: Nineteen, Seventy.

MR. MILLER: I am going to give you dollar figures. This represents both — represents all of our Kubota sales. These are sales figures, 1970, $717,200.

MR. DEUTSCH: Is it fair to say that that represents approximately 30 to 35 percent of the asbestos-cement water pressure sold in the States of Oregon and Washington in the year 1970?

MR. MILLER: I have no idea, sir.

MR. DEUTSCH: Again, to either Mr. Miller or Mr. Barclay: what was your price dockside on Class 150 6-inch, 8-inch, and 12-inch pressure pipe from Japan in the year 1970?

MR. MILLER: We don’t have that information, nor do I believe it is — it is, I believe, confidential information.
MR. DEUTSCH: There has been a statement made by Kubota with respect to shipments of asbestos-cement pressure pipe to the United States, beginning in the, I take it, the year 1972, to a reference in the letter of March 21, 1972, to Mr. Kenneth Mason of the Tariff Commission.

"We now plan in 1972 to establish our levels of export to the United States, Canada, Guam, and other areas at 1,000 metric tons per month." Has a price dockside on Class 150 6-inch, 8-inch, and 12-inch pressure pipe from Kubota for the year 1972 been quoted to your company?

MR. MILLER: It has not.

MR. DEUTSCH: At this point, we would merely reiterate our position, the answer of Mr. Miller to Mr. Young that his company could not compete if it did not have dumping prices.

COMMISSIONER PARKER: That is in the nature of argument. You can cover that in your argument.

Any more questions of the witnesses?

(NO RESPONSE.)

COMMISSIONER PARKER: If not, the witnesses are excused.

MR. KENNEDY: Thank you very much, Mr. Chairman.

COMMISSIONER PARKER: Mr. Hemmendinger, did you have any witnesses?

MR. HEMMENDINGER: I wish to testify briefly, myself,
Mr. Chairman, move on the law as applied to this case then anything else, and taking my understanding of your comment from the Chairman's last statement that if you feel that the material that I am going to cover would, or rather should be in a brief, I would, of course, respect your opinion.

I do think as counsel, it is incumbent upon us to make clear our position and perhaps remind you of the statute which being applied here because we suggest, first, that the industry which is involved here is the totality of the American AC pipe industry, and that is the scope of the clarification investigation, and there is testimony that they consider the plants which produce it are all one and, therefore, the facts that imports have tended to be concentrated in certain types of articles does not narrow the definition of "industry" for purposes of this investigation.

We do not contend that plastic pipe and other competitive products that are other materials are a part of the industry concerned in this case. We do say that that information is quite relevant with respect to the areas of competition as to where injury and loss of sales may, in particular situations, be coming from.

Now, the other principal statutory point that I would like to make is to simply point out that the statute reads in the present tense, and I think the Commission has only recently, in bicycles from Germany, had occasion to comment on
this. We are certainly not concerned with whether or not
importation in 1958 or 1959 was causing injury. The
Commission naturally has to look at the consequences of the
very importations that were studied by the Customs Bureau,
which is to say, to be more realistic, exportation in the last
half of 1970, but it can go further than that.

The Commission is concerned to render a judgement as
of the very time of this investigation. I don't know if it
would be today or the day that you vote, if you had new facts,
but it certainly complements some of the new facts which have
been brought to your attention namely, the fact that
Nipponite Enternet in categorically out of this market. You
have observed this through our witnesses, that the company could
not return -- and there was another point the Commission may not
have quite caught.

Let me point out there was a suggestion that other
sources of imports, other pipe from Nipponite Enternet had
been sold at competitive prices in the Northwest, and we think
the record will show and the Tariff Commission Study will show
that most of the sharper prices that did occur at one point in
this market were that product that has been discontinued
before the Tariff Commission began its investigation.

The Kubota letter is relevant in that connection
also and let us say, without getting into some of the questions
that we didn't have answers for a few minutes ago, that the
object of that letter was to deal with the question of
availability, and it bears upon the -- it confirms the point that was made by Mr. Kennedy that they have turned some of their capacity over to other products which, by the way, is not
it has not been said, are for the domestic market in Japan, and, therefore, when you face the question of the likelihood of injury, you do have, I think, before you the fact -- infor-
mation of the availability of pipe from Kubota, that in 1972 and henceforth it will be limited by reason of their own business decisions.

This is quite independent of the answers that may be forthcoming to some of the other questions which were raised by that latter.

Then, if I may proceed to relate these observations about the statute to some of the facts that have been set forth here, we had evidence of two different cases, because I find it rather difficult to put together the Certain-Toed and Joffe-Manville cases. I don't think anybody is going to accuse them of getting together on what they have presented to this Tariff Commission. The Certain-Toed case is that they were suffering injury back in 1968 and 1969, and they themselves indicated their 1971 sales, which is certainly the earliest period that the Commission needs to go into, in terms of whether injury is being caused, '71 was a very good year.

Their competitor volunteered a statement which that Certain-Toed operating in the
California area, and 90 percent of it was at capacity, and the inference is that it is pretty good.

The third factor which is a new factor and has been referred to by witnesses, is currency realignments which causes the price to go up a great deal. These are all independent of the question of sales at fair value, and our testimony has not related to that question.

I want to repeat Certain-Teed claim of injury was carefully rested on loss of sales, not on price depression, but their position is that they just — they are not going to reduce prices to meet this kind of competition. It is not good business practice.

Now, we have attempted to put together some picture of the market. You know, they compared their capacity with the statistics on imports. If you take for 1971, just taking the figures given in this hearing, two plants of Certain-Teed in California add up to 89, 89,000 tons, and then you have some testimony which is hard to put your finger on from Johnsville that one-quarter of their capacity in California was unused and, therefore, — and that was 50,000 tons.

This suggests their capacity must be around 240,000 tons in California, and the five-year average was 180,000 tons.
we do have some testimony that '71 was higher, so we got 180,000-plus. Then you add to that — I have taken the figures from the two questionnaires, which are confidential, and I made an estimate for another Japanese import and I came up with 12,000 tons.

You don't want to compare imports with sales of the Japanese pipe in 1971,...

comes to around four percent. There have been a lot of figures, a lot of suggestions that it is much bigger. The Staff will verify this with much better data than I have.

That is what you look like if you take it regionally. As a matter of fact, we agree with Johns-Manville quite seriously on that point.

... We think the Commission should look upon this as a national market and your percentage is obviously going to go down below that four percent. Mr. Kennedy thought it was around two percent. That was without regard to a specific year and the truth is we had to do a lot of guessing on that. We think the Staff will not have to guess, and they will be able to come up with a percentage of Japanese imports for any given year to the National shipments of the domestic marketers.

We think it will be a small percentage annually, indeed.

Now, you come to Johns-Manville's position and they,
they don't claim anything much about lost sales as injury.

They are claiming their prices have been depressed.

I think it is important to take a minute to look at
the incongruity and extravagance of the kind of information that was
offered to you. If a rate-making body or some other economic body
had to decide what the cause of the price depression was in a partic­
ular product, they could take expert testimony for six months and yet

we have this conclusion offered to you no explanation. Taking a
particular key product the price as of ten years ago was

$2.30 a foot and now it is down to $2.00 they say.

It is suggested to the Commission that you should
draw the inference that imports is the reason for this, less-
than-fair-value imports at that, when we're going -- they
don't even tell you when it dropped to that neighborhood of

$2.00. It could have been nine years ago, and this is not
anything worthy of the Commission's attention.

Now, I do want to suggest something that the
Commission must take a good look and that is the Antitrust
case against these two companies, and I am not saying this to
cast any stones, or even to ask the Commission, as the
Justice Department has been known to do, to give weight to it,

to the interest of the economy and the consumer and the
competition that comes from imports.

You have your own statute that you go by and we
understand that there is some question of just how you put that consideration into the computer, but that case was about 1962, if my information is correct, and it was a criminal proceeding, and we are talking about something on the public record now, and it was a criminal proceeding against these two companies which was based, in part, on charges of price-fixing; in part, on charges of specifications — there are my notes on that — I want to be exact.

MR. PHILLIPS: I would like to clarify one point. Certain-Teed was not in the asbestos-cement business in 1962. We were not an original party to that suit. We became a party in the last stages of the proceedings because we acquired the cement pipe-making facility of one of the original parties.

COMMISSIONER PARKER: I am going to give you a chance to cross examine Mr. Hennedinger and you will also have a chance to make a statement.

MR. PHILLIPS: Fine.

MR. HENNEDINGER: I believe that the second count, in effect, was a major charge, that they conspired to discourage imports by encouraging specifications by public bodies that discriminated against imports.

Now, the District Court decided in favor of these companies. They were acquitted. Therefore, I am not making any suggestion that there was any wrong done or there is any wrong being done. What I am saying, those of you who are
ladies know the validity of this right away. They live under an antitrust cloud. They cannot make a move without consulting an antitrust counsel in the light of this history. And, therefore, the existence of imports, whether less than fair value up to a certain point, is not hurtful to this industry, gentlemen.

It is advantageous to this industry. It might be like oligopoly to say any—and I think they talk about General Motors or any large company that could be charged with being, or approaching a monopoly position. They have to hold up their competitors. They needed the competitors, or they will be in trouble, not through any reason of wrong-doing, but for monopoly to be achieved through their own success.

We all look very sharply at a controlled market, and they do look sharply, and fair inference is that they do continue to look sharply and, therefore— I don't know if this suggestion has ever been made before—perhaps you gentlemen can tell me, but I do seriously suggest that a certain quantity of imports in the market is an advantageous thing to these two companies.

I want to say one thing, Mr. Chairman. In the last analysis, you are really going to pass on a quantum of injury and this is something on which, as I read the Tariff Commission's reports over the years, there has been a kind of see-saw. There was a time when the (unclear) were very
material, clearly in line with what the GATT says on this subject. There was a time when most of the present Commission members were not on the Commission, and it seemed to mean almost nothing. We used to say in our part of town that it was an automatic finding if some of those decisions were correct. The Commission has recently been trying to scrutinize the cases and trying to make a real determination if injury has been caused, in a meaningful sense.

It is essential that somebody in the United States Government give weight to this, because dumping is not an offense legally or morally; it is good business for the exporter and receiving country unless there is material injury. You don't have to use the word natural; but injury must be meaningful in order to give proper construction to the trade position of the United States, and giving weight to what Mr. Leonard has in the back of his mind, non-tariff trade barrier study, has to be considered in forming our trade policy.

You gentlemen have an important position in formulating the trade policy of the United States.

Thank you very much.

COMMISSIONER PARKER: Thank you, Mr. Hemmendinger.

Any questions of Mr. Hemmendinger, Mr. Young?

COMMISSIONER YOUNG: Yes, sir.

You said that the imports would be an advantage to the domestic producers in the marketplace, that it would be an
advantage to these two companies because they were being
scrutinized continuously by the Justice Department in connection
with Antitrust actions.

MR. HEMMENDINGER: Essentially; yes.

COMMISSIONER YOUNG: Well now, that may well be so,
but, nevertheless, is it your view that any advantage which
would accrue -- to them by virtue of these imports
would have offset any potential economic gains they would
realize at less than fair value, therefore, the situation would
be equalized?

MR. HEMMENDINGER: That puts it very well. We do,
of course, claim the economic injury is meaningless.

I am glad you gave me an opportunity to clarify that
in the Antitrust argument. Any injury from less than fair
value competition in this investigation is minimal
and does not rise to the level of the statutory meaning of
injury.

COMMISSIONER YOUNG: Well, let's go on. You used
the term "material", and I do not mind that word "material" in
there.

MR. HEMMENDINGER: I meant to suggest -- I meant to
suggest that material which is in the GATT, which expresses
the international obligations of the United States is
consistent with the way the statute was applied for a long
time by the Tariff Commission. I am not sure --
I think there have since been times when they have gone back to it, and I don't think you can read the word "material" in there. I am just giving injury some solid meaning not equivalent to not negligible.

COMMISSIONER YOUNG: Thank you.

COMMISSIONER PARKER: Mr. Leonard?

COMMISSIONER LEONARD: No questions.

COMMISSIONER PARKER: Mr. Phillips, do you have any questions of this witness?

MR. PHILLIPS: I would just simply like to make a comment on the colloquy between Mr. Young and Mr. Hemmendinger.

COMMISSIONER PARKER: Do you want to ask any questions of Mr. Hemmendinger?

MR. PHILLIPS: I have no questions.

COMMISSIONER PARKER: Thank you, Mr. Hemmendinger.

You are excused.

Now, we will perhaps depart a little from our customary procedures, and we did give Mr. Hemmendinger an opportunity to make more or less an outline of the legal argument he is probably going to make in his brief. We will afford you the same opportunity, confined within a reasonable boundary.

MR. PHILLIPS: It has been a long day and I have a train to catch, and I will put most of my legal argument in my brief, but I would like to just make the point that if, in fact, antitrust was a problem and it was balanced or more than
We instituted this case. We have no facts on that score, and we do feel that we have been injured by this. We have no Antitrust in this area, and the case referred to was one that was brought on extremely narrow grounds. It was not a product asbestos-cement business in that sense, and I would like the Commission to know that we are the instigators of this action before the Treasury and we feel our interests have been injured and our interest in being here are on those matters.

MR. DEUTSCH: I just have a brief statement.

MR. PARKER: Thank you, Mr. Phillips.

Mr. Deutsch?

Mr. DEUTSCH: I want to briefly make a statement on behalf of Johns-Manville.

First, I would point out to the Tariff Commission that in the Antitrust case that Mr. Hemmendinger made reference to, that Johns-Manville was found innocent. There was a companion civil suit in which the findings of the Court was for the defendant, Johns-Manville. So that in two suits, brought by the Department of Justice, in the criminal action, Johns-Manville was found innocent, and in the civil case, the Judge of the Court was for the defendant, Johns-Manville, and we are proud that the Court so found.

And there are no inferences, I believe, that Mr.

Hemmendinger is entitled to from those actions, which were
brought -- decided in favor of Johns-Manville. There is an inconsistency in the argument that Mr. Nussendinger presented to you. He argued to you that because of some antitrust position that Johns-Manville needed competition, of the dumped asbestos-cement pipe from Japan.

Then he argued to you that this dumped asbestos-cement pipe from Japan was not in a material amount. This is completely inconsistent. We would leave you with this: these two thoughts with respect to our case.

The dumped asbestos-cement pipe from Japan in the year 1970 was probably approximately 20,000 tons, possibly higher, and I don't have the exact figures at hand. You have them from your investigators. This tonnage is enough to keep a plant of 350 to 500 working men at work.

Mr. Nussendinger says that is immaterial. I would leave you also, again focusing back to the testimony, not of Johns-Manville, but of the Pacific Water Works, where it was pointed out that an anti-dumping duty to bring the price of Japanese asbestos-cement pressure water pipe up to a fair market value would be a catastrophe and they couldn't stay in business and have that business in the United States.

If they had to sell the Japanese pipe at fair value. And this very simply summarizes the case we have made out of the mouth of the other side.

COMMISSIONER PARKER: Does that complete your
statement.

MR. DEUTSCH: That completes my statement.

COMMISSIONER PARKER: If you desire to make corrections to the transcript, it is suggested that the corrections be in the hands of the Secretary of the Commission not later than the third of April.

MR. DEUTSCH: Will we be provided with a copy of the transcript?

COMMISSIONER PARKER: I don't know. If you made arrangements from the reporter to receive one, but if not, one will be available in the Secretary's office, and you may make corrections at that time.

MR. DEUTSCH: I see.

COMMISSIONER PARKER: It is also suggested that briefs related to the investigation, I have two dates here, the first date being Wednesday, April 3rd, and the second date being the following week, the following Wednesday, April 12th, and I know that that may seem to be a relatively short period of time. We do have a time limitation -- so is there is no objection -- is the earlier date objectionable to either side?

MR. KENNEDY: Not to either side.

COMMISSIONER PARKER: April 5th for briefs.

MR. DEUTSCH: The date for the following additional briefs is what?
COMMISSIONER PARKER: That is not long after the
date of corrections of the transcript, and I don't think that
would bear directly upon the preparation of your briefs.

MR. DEUTCH: When does the reporter deliver the
transcript?

COMMISSIONER PARKER: The transcript are delivered in
the morning, but in this case, probably noon, perhaps.

MR. DEUTCH: I have no objections.

COMMISSIONER PARKER: Briefs will then be scheduled
for April 5th, and if there is nothing further, this hearing
stands adjourned.

Thank you very much.

(Whereupon, at 4:45 p.m., the hearing in the above-
entitled matter was adjourned.)