

1 MR. KENNEDY: Is it prosperous to have both?

2 MR. MILLER: Yes.

3 MR. KENNEDY: Is there a competition between them?

4 MR. MILLER: It varies.

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

7 MR. MILLER: Enternit(?).

8 MR. KENNEDY: At this point, Mr. Chairman, I would
9 like to offer a clarification. The other Japanese Company
10 that was selling in this market, was Nipponite Enternit. The
11 pipe which Mr. Miller is using is Enternit. We believe
12 Nipponite Enternit pipe was sold in this market under
13 the term "Nipponite." I wanted to make it clear that the
14 other Japanese pipe and the Belgium pipe are from different
15 operations and the corporations do not have corporation rela-
16 tionships as far as we know.

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

19 MR. MILLER: We do.

20 MR. KENNEDY: Or just as pipe?

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

25 MR. KENNEDY: Is there any difference in the price
at which you sell Belgian

1 pipe and the Japanese pipe?

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

15

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

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

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

11 MR. MILLER: No, sir.

12 MR. KENNEDY: Why?

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

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

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

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

24 MR. BARCLAY: Not so much in Washington today. We
25 have more of a problem in Oregon, and I think John has been

1 working on that.

2 MR. MILLER: In Oregon, it is a problem for us.

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

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

9 MR. KENNEDY: Do you have copies of that?

10 MR. MILLER: Yes, sir.

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

13 SECRETARY MASON: It will be Exhibit No. 6.

14 COMMISSIONER PARKER: What is the exhibit?

15 SECRETARY MASON: Exhibit No. 6.

16 COMMISSIONER PARKER: Identify it for the record.

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

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

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

(The document above-referred to
was marked for identification
as Exhibit No. 6 (Kennedy).)

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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 of 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

1 other distributors.

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

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

6 COMMISSIONER PARKER: That will be satisfactory.
7 You have it in Exhibit form?

8 MR. KENNEDY: Yes, sir.

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

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

13 SECRETARY MASON: This is Exhibit No. 7.

14 MR. KENNEDY: This is confidential.

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

17 (The document above-referred to
18 was marked for Identification as
19 Exhibit No. 7 (Kennedy) (Confidential).)
20

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

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

25 MR. KENNEDY: To your knowledge, do your customers

77 1 purchase also domestic sources?

2 MR. MILLER: Yes, sir.

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

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

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

9 MR. MILLER: Than what?

10 MR. KENNEDY: Than 4-inch?

11 MR. MILLER: No, sir.

12 MR. KENNEDY: Why is that?

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

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

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

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

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

25 MR. MC DUFF: I might add that Johns-Manville has

1 successful in shipping pipe in that manner. We have completed
2 a 6,000-ton to the Samoa Islands on a United States Government
3 aid program where we sell pipe to them, but that technology
4 is available.

5 MR. VOSS: May we have the technology?

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

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

9 COMMISSIONER PARKER: Yes.

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

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

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

19 MR. MILLER: Los Angeles County.

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

22 MR. MILLER: Skagit County.

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

24 MR. MILLER: In Washington.

25 MR. KENNEDY: I would like to offer this article as

1 an exhibit.

2 COMMISSIONER PARKER: It will be received as Exhibit
3 No. ----

4 SECRETARY MASON: Eight.

5 COMMISSIONER PARKER: No. 8.

6 MR. KENNEDY: That is not in confidence, of course.

7 (The document above-referred to
8 was marked for identification
9 as Exhibit No. 8 (Kennedy).)

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

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

16 We have to determine our inventory, whether we can
17 fully fill the job. The reason for this is that most of the
18 jobs we are bidding on are public contracts and definite com-
19 pletion dates are required, with a penalty running from \$25 to
20 \$200 a day if the contractor or supplier fails to meet the
21 completion date.

22 After we cross that barrier, we have to look at the
23 distance the job is from our yard and the type of the pipe
24 that is used and see if we can compete with the other cost
25 factors.

1 MR. KENNEDY: Does this mean you keep the large
2 inventory at all times?

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

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

6 MR. MILLER: The ration would be 2-to-1.

7 MR. KENNEDY: All right.

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

10 MR. MILLER: In order to present to the Commission
11 certain information that we would like to get in your hands,
12 we acquired the services of a business consultant in Seattle.
13 He has made up a report dated March 14, 1972, directed to me,
14 "Subject: Analysis of AC Pipe Inventory and Sales Data by
15 Quarter, Starting January 1, 1968."

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

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

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

22 SECRETARY MASON: Exhibit No. 9.

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

25 (The document above-referred to

was marked for identification as
specification No. 9 (Barclay) (confi-
dential.)

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4 MR. KENNEDY: Do you bid on jobs -- I think this is
5 for Mr. Barclay -- do you bid on the jobs requiring pipe sizes
6 which you don't handle?

7 MR. BARCLAY: No.

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

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

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

18 MR. BARCLAY: No.

19 MR. KENNEDY: Why is that?

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

25 MR. KENNEDY: Can you estimate the number of jobs

1 for asbestos-cement pipe, because of the structure of your
2 business, because of the various types of pipe required, that
3 you cannot bid on at all?

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

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

12 MR. MILLER: No, they have not.

13 MR. KENNEDY: Have they been decreasing?

14 MR. MILLER: They have been decreasing.

15 MR. KENNEDY: What is the reason for this?

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

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

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

22 MR. KENNEDY: Do you handle plastic pipe?

23 MR. MILLER: Yes, sir.

24 MR. KENNEDY: Is it domestically made?

25 MR. MILLER: Yes, sir.

1 MR. KENNEDY: Have the sales of this pipe been in-
2 creasing since 1969?

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

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

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

14 If you have a municipality job, you know that you
15 are going to be paid on the second Tuesday following the day
16 you start, and you don't have to finance to develop your job.
17 You might have trouble collecting your money. All these things
18 go into the type of pricing. These are costs, of course, and
19 they go into too much detail, and I do not want to take the
20 Commission's time with that, but, basically, it is what the
21 trend in the market is.

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

24 MR. BARCLAY: To answer your question, I think I
25 start my calculations on the price that I am going to use, those

1 from the trend in the market than I do for my cost. Naturally.
2 I have to look at my cost, essentially that I have a profit in
3 it, but I would say I start from the market price, established
4 market price, to answer the question.

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

7 MR. BARCLAY: Definitely;

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

10 MR. BARCLAY: Yes.

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

12 MR. BARCLAY: Correct.

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

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

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

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

MR. KENNEDY: Mr. MILLER, did you acquire this

1 Company's inventory?

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

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

10 MR. HILLER: It would certainly be very difficult.
11 I think it would be entirely unlikely.

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

14 MR. BARCLAY: Yes, it is.

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

18 MR. HILLER: Yes.

19 MR. KENNEDY: could you place this in a point of
20 time?

21 MR. BARCLAY: Well, I believe it is about in the
22 period that we are talking about -- not really, but back in
23 1969, '70, and '71.

24 MR. KENNEDY: Thank you.

25 MR. BARCLAY: Not too much in '71.

1 MR. KENNEDY: What is the relationship of importa-
2 tion asbestos-cement pipe from Japan and your sales?

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

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

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

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

19 MR. MILLER: I don't believe so.

20 MR. KENNEDY: Mr. Miller, in your opinion, do you
21 maintain inventory larger than that of your domestic competitors
22 in the States of Washington and the State of Oregon.

23 MR. MILLER: I know what we maintain, and I have to
24 go on what our people tell us that our domestic competitor
25 maintains, and I would say that they -- from what I understand

7 would have something along the lines of two truckloads, and
8 we would have two boatloads.

9 MR. KENNEDY: Mr. Miller, must you or your competi-
10 tors test your pipe locally before it is acceptable in a
11 certain place?

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

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

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

18 MR. KENNEDY: Why don't you bid?

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

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

24 MR. MILLER: May I refer that question to Mr.
25 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

1 but I think it is an extremely small share of the business. 198
2 We are trying to maintain prices . get prices that, as much
3 as we can, for our product. I do not believe we are
4 materially hurting them.

5 MR. KENNEDY: All right.

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

11 Mr. Barclay also keeps tabulations.

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

14 MR. KENNEDY: Yes.

15 COMMISSIONER PARKER: It is Exhibit No. 2?

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

20 COMMISSIONER PARKER: Could you give counsel a copy?

21 MR. KENNEDY: Surely.

22 COMMISSIONER PARKER: I understand, Mr. Kennedy, this
23 is merely a reproduction of an exhibit that is already in
24 evidence, and you have done this for purposes of
25 cross examination or redirect examination?

1 MR. KENNEDY: We can find implementation in that.
2 Let me use that a minute. I am going to try to explain what
3 we are doing.

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

11 I don't have a copy of this.

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

14 Exhibit 2, I guess the sheets were sub-numbered?

15 SECRETARY MASON: No, they were not.

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

19 MR. KENNEDY: No, sir. These are five expressly
20 chosen, which were used in direct testimony yesterday, and one
21 other example. Our only purpose at this time is to question
22 the access of some of the information concerning Pacific Water
23 Works' activities, and we hope at a further time to analyze
24 the entire exhibit and point out what we think are in excess.
25 We were thinking of doing this in a form of letter to the

aff, as I know

ve time to go through all of the entries.

Now, this, Mr. Barclay, is an analysis of these
ulations based upon an analysis which he keeps, as a matter
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 Enternite. Now, that was
provided, and "K" is Kubota. That is Japanese.

COMMISSIONER YOUNG: Thank you.

194

(The document above-referred to was marked for identification as Exhibit 10 (Kennedy).)

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.

1 MR. KENNEDY: Pacific Water Works.

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

8 On the next one, August 3, this was a Class 2, which
9 is a contractor-furnished, installed to the public in the City
10 of Olympia. They have the wrong price down there for FWW,
11 they have it as selling for \$3.30 and we actually sold it for
12 \$3.35, and the only 8-inch size, \$1.70. And we actually sold
13 at \$1.80. I would like to point out something further here,
14 and this is the same customer, Tonnesen Construction
15 Company, that bid a job in April to the same city, and they
16 completed this job and it came up for bid, and we had sold it
17 to Mr. Thompson -- and Tonnesen Construction Company on that
18 prior job.

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

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

25 COMMISSIONER PARKER: Proceed.

1 MR. KENNEDY: We're at page three of this exhibit.

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

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

12 I don't have any records with me on prising on this.
13 I didn't have this with me. I can't comment on the prices
14 there.

15 The next one, September 25, Lagoon Water District.
16 This is a Class 2 contractor furnishing installed to a public
17 owner, and we did furnish Kubota on it, PWW, at \$1.73, I
18 believe that is --- \$1.16. But our actual price to the con-
19 tractor was \$1.78 and \$1.18.

20 The next one ---

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

24 MR. BARCLAY: This is an interesting question. We
25 feel that we offer service. We have a company that can offer

1 a complete water system, as Mr. Miller said earlier.
2 Although I don't know the veracity of the Certain-Teed figures,
3 I showed them bidding. I just have my own. But we had
4 material in stock and we were able to furnish the complete job
5 immediately and that included meters, valves, fittings, and
6 et cetera. And getting this was one of the larger jobs that
7 we had, and getting the material on the job site, as he wanted
8 the pipe, the mix of pipe, and he did not want all the pipe
9 shoved out there at one time.

10 COMMISSIONER LEONARD: Thank you.

11 MR. BARCLAY: The next one, 10/1/70, Gold Bar,
12 Washington, Class 2, Kubota. Again, our prices, the prices
13 of PWW, Kubota, 78¢ on the 4-inch; we sold it at 75¢, 3 cents
14 cheaper. Six-inch, \$1.14 -- we sold at \$1.12, and wherein
15 they show 8-inch price of \$1.56 and \$1.78 is what we had and
16 what our actual figure was.

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

22 We have one more, Mr. Deutsch didn't use yesterday,
23 and that is 6/26/69. That's Black Lake Boulevard, and again
24 that is the City of Olympia. It is a contract to furnish and
25 install, and we used both "K" and "R" on that job. It again

1 stated our figures wrong. We sold at \$3.51, \$1.04, and \$1.23.

2 Also, I notice that the total amount is a little off. They

3 have a little over \$5600, and the actual amount would be a

4 little over \$8,000, and that stands corrected. This was a

5 kind of an interesting comment down there, to say, and I quote:

6 "Wilder said after he had placed order, that if we
7 could have met FWW price that he would have given us the job.

8 Stan and I felt the job was too small to ask for price, in

9 keeping with H. L. Olson's request." That is a couple of

10 truckloads there. We appreciated that business there.

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

14 MR. BARCLAY: In confidence.

15 MR. KENNEDY: Also, for Class 2, those would corres-
16 pond to the classes?

17 MR. BARCLAY: Yes.

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

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

22 COMMISSIONER PARKER: Surely; proceed.

23 MR. MILLER: I hope the Commission will understand
24 that the recent increases that we have had in cost, in purchas-
25 ing pipe overseas, and particularly in Japan, the increase in

1 freight rates, the yen devaluation and the surcharge, they are
2 all worth mentioning for our account. These things that I
3 have just mentioned represent an increase in our cost in the
4 neighborhood of 25 percent over what they might have been in
5 June of 1971.

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

8 COMMISSIONER PARKER: Does that complete your
9 statement?

10 MR. MILLER: Yes; it does.

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

13 COMMISSIONER MOORE: No questions.

14 COMMISSIONER PARKER: Commissioner Young?

15 COMMISSIONER YOUNG: Yes. I am a little confused.

16 We have instances where you have obtained business
17 with a little higher price. And the last witness
18 testified that the prices of your
19 company have been a little lower in order to get the business.
20 He stated three to five percent, and we had earlier testimony
21 that the price might have to be discounted a little more than
22 that.

23
24 Is it reasonable to get a job with a higher bid?
25 Would you describe further those services and then indicate

1 whether or not this is an exception -- whether or not there
2 is a rule considered to be a standard practice?

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

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

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

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

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

8 COMMISSIONER YOUNG: Beg your pardon?

9 MR. BARCLAY: One penny lower.

10 COMMISSIONER YOUNG: Low bidder.

11 COMMISSIONER PARKER: Just by any amount?

12 MR. BARCLAY: Yes, sir.

13 COMMISSIONER YOUNG: All right; I understand it.

14 Go ahead, please.

15 You were going to describe some other instance?

MR. BARCLAY: On the contractor -- perhaps I should ²⁰²

1 describe my work a little bit. We tried to develop the market,
2 the market in our area, to a service that we could cover, or
3 offer. As estimator, what this means on these contractors,
4 installed jobs, we will request prints and specifications from
5 their engineers or owners, whoever is issuing them, and I don't
6 know, but I am sure you are familiar with bidding procedures.
7

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

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

23 This is a service some of them said that they would
24 take our quote and figures on a job without looking, or without
25 making their own take-off. This is a reputation that we have

1 built, that we are accurate and thorough and they don't have
2 to do anything with it because we stand behind our work 100
3 percent, and they don't have to pay more money for material
4 afterward because we forgot something. If we don't quote it
5 right or don't have the right type material, we pay for it.

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

9 MR. BARCLAY: In advance of the bidding?

10 COMMISSIONER YOUNG: In advance for bidding.

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

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

21 COMMISSIONER YOUNG: What would be the effects on
22 you gentlemen of a dumping duty, the imposition of a dumping
23 duty?

24 MR. BARCLAY: I think Mr. Miller could answer that

1 MR. MILLER: We have pipe that has come in, since, --
2 I believe they call it withholding of an appraisalment -- we
3 have had additional tonnage coming in that we had to bring in
4 because we had it on order from Kubota. If we were to be
5 faced with an anti-dumping --

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

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

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

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

23 COMMISSIONER YOUNG: When you say "legitimate" --

19 24 MR. MILLER: What we consider reasonable.

25 COMMISSIONER YOUNG: Yes. So then, if, regardless

1 of whether there is a dumping duty imposed, it is the
2 practice of the Japanese manufacturer in the future, such that
3 they will charge the same for exports as they do at home, and
4 would this put you out of the business of importing AC pipe?

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

8 COMMISSIONER YOUNG: Now, both of you gentlemen are
9 with PWV, aren't you?

10 MR. MILLER: Yes.

11 MR. BARCLAY: Yes.

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

17 MR. BARCLAY: Correct, sir.

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

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

1 COMMISSIONER YOUNG: Then the competition on pipe ²⁰⁶

2 in general terms, is no more deeper than on the other
3 items that you handle as a group?

4 MR. MILLER: As far as the result of the final
5 selling price, no.

6 COMMISSIONER YOUNG: Thank you.

7 I have one suggestion for Mr. McDuff. Apparently,
8 some little mixup has come about in the prices,
9 listed on the sheets. I think this was unintentional, and
10 Would you check, and would Certain-Teed people verify the
11 prices on these exhibits to see if they are correct, and
12 if there are any errors in their bids, and furnish the correct
13 information to the Staff?

14 MR. MC DUFF: We will. I would like to go to this
15 one where we appear to be the low bidder. These pipes have
16 not been -- they do not appear to be Certain-Teed prices.

17 I will do specifically this: we would have to
18 appear there to have been the low bidder. We do not know that
19 to be true.

20 COMMISSIONER YOUNG: If each of you gentlemen would
21 do this, perhaps it would serve a useful purpose; if there
22 are any incorrect figures, have them corrected.

23 MR. MC DUFF: You have to appreciate what the
24 source of information that you have been gathering is; that we
25 do not have access to their records.

1 COMMISSIONER YOUNG: I understand that.

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

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

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

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

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

21 MR. DEUTSCH: Yes.

22 COMMISSIONER YOUNG: I understand. Thank you very
23 much.

24 MR. PHILLIPS: I think they have coded these by
25 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: To 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

1 price and Certain-Teed price. You will see on the next sheet, also
2 Johns-Manville salesman indicated that he was unable to get
3 any information whatsoever as to the Certain-Teed price, and
4 you will notice that on the last sheet there is an indication
5 that he was unable to get any information whatsoever as to the
6 Certain-Teed price.

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

14 In the situation here, it was Japanese pipe.

15 COMMISSIONER LEONARD: Thank you.

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

18 (Whereupon, at 4:05 p.m. the Commission recessed,
19 and adjourned at 4:10 p.m.)

20 COMMISSIONER PARKER: Are you ready to proceed?

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

22 MR. PARKER: I guess we are ready for cross examina-
23 tion by the domestic industry.

24 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. 210

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 Kubota to not to export more than this tonnage to the United States in this year and future years?

MR. KENNEDY: What 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.

2 rude, and no one else needs me, I am asking if I might be
3 excused?

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

7 MR. VOSS: Thank you very much.

8 COMMISSIONER PARKER: You may proceed, Mr. Phillips.

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

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

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

15 MR. KENNEDY: I assume it would be.

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

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

20 MR. PHILLIPS: Thank you.

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

24 MR. PHILLIPS: I understand, but it is much easier
25 for Kubota to give us the information.

1 MR. KENNEDY: Yes, and also for me.

2 COMMISSIONER PARKER: Does this complete your ques-
3 tions, Mr. Phillips?

4 MR. PHILLIPS: Yes.

5 COMMISSIONER PARKER: Mr. Deutsch?

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

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

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

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

25 MR. DEUTSCH: So that it is correct then, that this

1 letter in no way makes any representation to the Tariff
2 Commission that the 9,600 tons will be brought in at fair
3 value?

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

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

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

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

12 MR. DEUTSCH: Nineteen, Seventy.

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

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

20 MR. MILLER: I have no idea, sir.

21 MR. DEUTSCH: Again, to either Mr. Miller or Mr.
22 Barclay: what was your price dockside on Class 150 6-inch,
23 8-inch, and 12-inch pressure pipe from Japan in the year 1970?

24 MR. MILLER: We don't have that information, nor do
25 I believe it is -- it is, I believe, confidential information.

1 MR. DEUTSCH: There has been a statement made by
2 Kubota with respect to shipments of asbestos-cement pressure
3 pipe to the United States, beginning in the, I take it, the
4 year 1972, to a reference in the letter of March 21, 1972, to
5 Mr. Kenneth Nason of the Tariff Commission.

6 "We now plan in 1972 to establish our levels of export
7 to the United States, Canada, Guam, and other areas at 1,000
8 metric tons per month." Has a price dockside on Class 150
9 6-inch, 8-inch, and 12-inch pressure pipe from Kubota for the
10 year 1972 been quoted to your company?

11 MR. MILLER: It has not.

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

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

18 Any more questions of the witnesses?

19 (No response.)

20 COMMISSIONER PARKER: If not, the witnesses are
21 excused.

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

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

MR. HEMMENDINGER: I wish to testify briefly, myself,

215
1 Mr. Chairman, more on the law as applied to this case than
2 anything else, and taking my understanding of your comment
3 from the Chairman's last statement that if you feel that the
4 material that I am going to cover would, or rather should be
5 in a brief, I would, of course, respect your opinion.

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

16 We do not contend that plastic pipe and other com-
17 petitive products that are other materials are a part of the
18 industry concerned in this case. We do say that that informa-
19 tion is quite relevant with respect to the areas of competi-
20 tion as to where injury and loss of sales may, in particular
21 situations, be coming from.

22 Now, the other principal statutory point that I
23 would like to make is to simply point out that the statute
24 reads in the present tense, and I think the Commission has only
25 recently, in bicycles from Germany, had occasion to comment on

1 this. We are certainly not concerned with whether or not
 2 importation in 1968 or 1969 was causing injury. The
 3 Commission naturally has to look at the consequences of the
 4 very importations that were studied by the Customs Bureau,
 5 which is to say, to be more realistic, exportation in the last
 6 half of 1970, but it can go further than that.

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

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

23 The Kubota letter is relevant in that connection
 24 also and let us say, without getting into some of the questions
 25 that we didn't have answers for a few minutes ago, that the
 object of that letter was to deal with the question of

211
1 availability, and it bears upon the -- it confirms the point
2 that was made by Mr. Kennedy that they have turned some of
3 their capacity over to other products which, by the way, if
4 it has not been said, are for the domestic market in Japan,
5 and, therefore, when you face the question of the likelihood
6 of injury, you do have, I think, before you the fact -- infor-
7 mation of the availability of pipe from Kubota, that in 1972
8 and henceforth it will be limited by reason of their own
9 business decisions.

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

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

24 Their competitor volunteered a statement which
25 that Certain-Teed operating in the

1 California area, and 90 percent of it was at capacity, and the
2 inference is that it is pretty good.

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

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

14 Now, we have attempted to put together some picture
15 of the market. You know, they compared their capacity with
16 the statistics on imports.

17 If you take for 1971, just taking
18 the figures given in this hearing, two plants of Certain-Teed
19 in California add up to 89, 89,000 tons, and then you have
20 some testimony which is hard to put your finger on from Johns-
21 Manville that one-quarter of their capacity in California was
22 unused and, therefore, -- and that was 60,000 tons.

23 This suggests their capacity must be around 240,000
24 tons in California, and the five-year average was 180,000 tons.
By this, 75 percent would be 135,000 in some of the other areas.

1 we do have some testimony that '71 was higher, so we got 219
2 180,000-plus. Then you add to that -- I have taken the
3 figures from the two questionnaires, which are confidential,
4 and I made an estimate for another Japanese import and I came
5 up with 12,000 tons.

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

8 comes to around four percent. There have been a lot of
9 figures, a lot of suggestions that it is much bigger. The
10 Staff will verify this with much better data than I have.
11 That is what you look like if you take it regionally. As a
12 matter of fact, we agree with Johns-Manville quite seriously on
13 that point.

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

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

25 Now, you come to Johns-Manville's position and they,

1 they don't claim anything much about lost sales as injury.
2
3 They are claiming their prices have been depressed.

4 I think it is important to take a minute to look at
5 the looseness and extravagance of the kind of information that was
6 offered to you. If a rate-making body or some other economic body
7 had to decide what the cause of the price depression was in a partic-
8 ular product, they could take expert testimony for six months and yet
9 we have this conclusion offered to you no explanation. Taking a
10 particular key product the price as of ten years ago was
11 \$2.30 a foot and now it is down to \$2.00 they say.

12 It is suggested to the Commission that you should
13 draw the inference that imports is the reason for this, less-
14 than-fair-value imports at that, when we're going -- they
15 don't even tell you when it dropped to that neighborhood of
16 \$2.00. It could have been nine years ago, and this is not
17 anything worthy of the Commission's attention.

18 Now, I do want to suggest something that the
19 Commission must take a good look and that is the Antitrust
20 case against those two companies, and I am not saying this to
21 cast any stones, or even to ask the Commission, as the
22 Justice Department has been known to do, to give weight to it,
23 to the interest of the economy and the consumer and the
24 competition that comes from imports.

25 You have your own statute that you go by and we

1 understand that there is some question of just how you put
2 that consideration into the computer, but that case was began
3 about 1962, if my information is correct, and it was a
4 criminal proceeding, and we are talking about something on the
5 public record now, and it was a criminal procedure against
6 these two companies which was based, in part, on charges of
7 price-fixing; in part, on charges of specifications -- where
8 are my notes on that -- I want to be exact.

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

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

17 MR. PHILLIPS: Fine.

18 MR. HEMMENDINGER: I believe that the second count,
19 in effect, was a major charge, that they conspired to discour-
20 age imports by encouraging specifications by public bodies that
21 discriminated against imports.

22 Now, the District Court decided in favor of these
23 companies. They were acquitted. Therefore, I am not making
24 any suggestion that there was any wrong done or there is
25 any wrong being done. What I am saying, those of you who are

lawyers 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

1 material, clearly in line with what the GATT says on this
2 subject. There was a time when most of the present Commission
3 members were not on the Commission, and it seemed to mean
4 almost nothing. We used to say in our part of town that it
5 was an automatic finding if some of those decisions were
6 correct. The Commission has recently
7 been trying to scrutinize the cases and trying to make a real
8 determination if injury has been caused, in a meaningful sense.

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

18 You gentlemen have an important position in formu-
19 lating the trade policy of the United States.

20 Thank you very much.

21 COMMISSIONER PARKER: Thank you, Mr. Hemmendinger.

22 Any questions of Mr. Hemmendinger, Mr. Young?

23 COMMISSIONER YOUNG: Yes, sir.

24 You said that the imports would be an advantage to
25 the domestic producers in the marketplace, that it would be an

1 advantage to these two companies because they were being
2 scrutinized continuously by the Justice Department in connection
3 with Antitrust actions.

4 MR. HEMMENDINGER: Essentially; yes.

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

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

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

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

1 MR. HEMMENDINGER: I meant to suggest -- I meant to
2 suggest that material which is in the GATT, which expresses
3 the international obligations of the United States is
4 consistent with the way the statute was applied for a long
5 time by the Tariff Commission. I am not sure --

1 I think there have since been times
2 when they have gone back to it, and I don't think you can read
3 the word "material" in there. I am just giving injury some
4 solid meaning not equivalent to not negligible.

5 COMMISSIONER YOUNG: Thank you.

6 COMMISSIONER PARKER: Mr. Leonard?

7 COMMISSIONER LEONARD: No questions.

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

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

12 COMMISSIONER PARKER: Do you want to ask any ques-
13 tions of Mr. Hemmendinger?

14 MR. PHILLIPS: I have no questions.

15 COMMISSIONER PARKER: Thank you, Mr. Hemmendinger.
16 You are excused.

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

22 MR. PHILLIPS: It has been a long day and I have a
23 train to catch, and I will put most of my legal argument in my
24 brief, but I would like to just make the point that is, in
25 fact, antitrust was a problem and it was balanced or more than

1
2 We instituted this case. We have no fears on that score, and
3 we do feel that we have been injured by this. We have no
4 Antitrust in this area, and the case referred to was one that
5 was brought on extremely narrow grounds. It was not a product
6 asbestos-cement business in that sense, and I would like the
7 Commission to know that we are the instigators of this action
8 before the Treasury and we feel our interests have been injured
9 and our interest in being here are on those matters.

10 MR. DEUTSCH: I just have a brief statement.

11 MR. PARKER: Thank you, Mr. Phillips.

12 Mr. Deutsch?

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

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

24 And there are no inferences, I believe, that Mr
25 Hammendinger is entitled to from those actions, which were

1 brought -- decided in favor of Johns-Manville. There is an
2 inconsistency in the argument that Mr. Hunsendinger presented
3 to you. He argued to you that because of some particular
4 position that Johns-Manville needed competition, of the
5 dumped asbestos-cement pipe from Japan.

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

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

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

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

25 COMMISSIONER PARKER: Does that complete your

1 statement?

2 MR. DEUTSCH: That completes my statement.

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

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

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

13 MR. DEUTSCH: I see.

14 COMMISSIONER PARKER: It is also suggested that
15 briefs related to the investigation, I have two dates here,
16 the first date being Wednesday, April 5th, and the second date
17 being the following week, the following Wednesday, April 12th,
18 and I know that that may seem to be a relatively short period
19 of time. We do have a time limitation -- so if there is
20 no objection -- is the earlier date objectionable to either
21 side?

22 MR. KENNEDY: Not to either side.

23 COMMISSIONER PARKER: April 5th for briefs.

24 MR. DEUTSCH: The date for the following additional
25 briefs is what?

1 COMMISSIONER PARKER: That is two days after the
2 date of corrections of the transcript, and I don't think that
3 would bear directly upon the preparation of your briefs.

4 MR. DEUTSCH: When does the reporter deliver the
5 transcripts?

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

8 MR. DEUTSCH: I have no objections.

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

12 Thank you very much.

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

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