STEEL COMPANIES (SUBPENAS)

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

EIGHTY-SEVENTH CONGRESS

SECOND SESSION

ON

REFUSAL OF CERTAIN STEEL COMPANIES TO RESPOND TO SUBPENAS

SEPTEMBER 12, 14, AND 20, 1962

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STEEL COMPANIES (SUBPENAS)

WEDNESDAY, SEPTEMBER 12, 1962

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 10:05 a.m., in room 2228, New Senate Office Building, Senator James O. Eastland (chairman) presiding.

Present: Senators Eastland (presiding), Kefauver, Johnston, McClellan, Ervin, Dodd, Hart, Dirksen, Hruska, Keating, Fong, and Scott.

Also present: Thomas B. Collins, counsel, of the Committee on the Judiciary.

Horace L. Flurry, counsel, Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary.

(Present at this point: Senators Eastland (chairman), presiding, Kefauver, Johnston, McClellan, Hart, Dirksen, Keating, Fong, and Hruska.)

The CHAIRMAN. Let us have order.

Gentlemen, we have rules about picture taking.

If you want some pictures, take them now, and there will be no more during the hearing.

This public hearing is called pursuant to agreement reached at the Judiciary Committee meeting of September 7 to hear representatives of the four steel companies who refused to comply with subpenas issued by the Antitrust and Monopoly Subcommittee of this committee dated August 21, 1962, requiring the corporations and the individuals named therein to appear before the Antitrust and Monopoly Subcommittee on August 31, 1962, and to bring with them and produce to the subcommittee certain specified records and documents described in those subpenas dated August 21.

All four corporations, through their executive officers, notified the subcommittee that they would not appear on August 31 and produce the requested records.

Thereafter, on August 31, the Subcommittee on Antitrust and Monopoly met in open hearing for the purpose of having the subpenaed witnesses appear and to receive from them the returns of subpenas issued on August 21. Later, on the same day, the Subcommittee on Antitrust and Monopoly, meeting in executive session, by majority vote reported a resolution to the full committee calling for contempt citations to be reported to the Senate against the four noncomplying corporations for their failure to appear before that subcommittee and produce the specified documents.

At its meeting of September 7 the full Committee on the Judiciary decided to defer action on the contempt resolution of the subcommittee until the full committee had an opportunity to hear the noncomplying steel companies in a public hearing.

Today this committee is meeting for the purpose of hearing the views of the noncomplying steel companies in order that it may arrive at a determination as to whether the contempt resolution voted by the subcommittee, should be approved by this committee.

The full committee, therefore, is prepared at this time to hear a witness speaking for all of the corporations, or individual witnesses representing each corporation.

I would like to know who is representing Bethlehem Steel.

Mr. BROMLEY. May it please the Chairman, my name is Bruce Bromley of the New York Bar. I am counsel for Bethlehem Steel Corp.

There are here, in addition, each one of the subpenaed individuals from that corporation: Mr. Homer, its chairman; Mr. Martin, its president; Mr. Brugler, its comptroller.

I represent the corporation and the three individuals, and I say again the three individuals are here present in this room before your committee.

The CHAIRMAN. All right.

Mr. Patton, who is representing Republic Steel?

Mr. PATTON. Mr. Chairman, my name is Thomas F. Patton. I, as the president, will represent Republic Steel. Mr. George M. Feiel, our vice president and comptroller, is present; and Mr. H. C. Lumb, our vice president and legal counsel, is present. We will represent Republic Steel.

The CHAIRMAN. All right.

Who represents National Steel?

Mr. MILLSOP. Mr. Chairman, I am Thomas E. Millsop, chairman of the board of National Steel Corp. Mr. George Stinson, the vice president and secretary of the corporation, is also here. He was under subpena. And Mr. Reed, our general counsel, is with us.

The CHAIRMAN. Who represents Armco?

Mr. JOHNSTON. Mr. Chairman, my name is Logan T. Johnston. I am president of Armco. With me is Mr. Reichelderfer, vice president; Mr. Correa, vice president and counsel. We represent Armco.

The CHAIRMAN. The chairman has a letter from United States Steel Corp. which I have been requested to place in the record. It is dated September 12.

DEAR SENATOR EASTLAND: By reason of your chairmanship of the Judiciary Committee and because of your interest in our position with respect to the subpenas issued by the subcommittee, I am prompted to reiterate our feeling with respect to such subpena.

As we advised Senator Kefauver in our letter of August 10, 1962, United States Steel Corp. always has objected to the furnishing of detailed cost data and does so in this instance. We believe even the modified request involves release and dissemination of highly confidential information which could have serious adverse effects, especially in the light of our foreign competition.

Even though we did not refuse to comply with the modified request because of prior negotiations with the subcommittee staff, now that the issue is before your committee, we believe we should urge the committee to weigh seriously the consequences of requiring the information to be furnished.

Very truly yours,

ROGER BLOUGH.

(At this point in the proceedings, Senator Dodd enters the hearing room.)

The CHAIRMAN. Gentlemen, have you agreed on someone to present the case for the steel companies?

Mr. PATTON. Mr. Chairman, in accordance with the suggestion of yourself, the four companies have designated me to make a presentation which will incorporate the considerations and factors deemed relevant by all four of the companies here.

The CHAIRMAN. I will recognize Senator Kefauver.

Senator KEFAUVER. Mr. Chairman, most of these witnesses have given notice that they would not appear at the subcommittee meeting on August 14 where they were in default at the hearing.

They said, among other things, that they had been advised by their attorney or they felt that they might be waiving some right that they might want to raise against the subpenas by appearing.

Just what right that might have been, I have been unable to figure out or ascertain, but do I understand by their appearance here that they are waiving any such rights as may exist?

Mr. PATTON. Senator Kefauver, I will ask Judge Bromley, who sits to my right and who is counsel for Bethlehem, to reply to that request, if it is in order.

Senator KEFAUVER. I think the witness himself is the one who——

The CHAIRMAN. Well, the Chair is going to rule that a witness can always turn to, and confer with, his attorney. We even give Congress that right.

Senator KEFAUVER. I do not know whether Judge Bromley is speaking as attorney for Republic, also.

STATEMENT OF THOMAS F. PATTON, PRESIDENT, REPUBLIC STEEL CORP.; ACCOMPANIED BY H. C. LUMB, VICE PRESIDENT, DIRECTOR OF LAW AND CORPORATE RELATIONS, AND BRUCE BROMLEY, COUNSEL

Mr. PATTON. He will be speaking as attorney for Republic, sir, in answering that question.

Mr. BROMLEY. Senator Kefauver, Mr. Chairman, and members of the committee, I do not construe this occasion of such a nature that our appearance here constitutes a waiver of any of our rights. That was my position, sir, as you indicated with respect to the August 31 hearing at which we did not appear.

I advised them, and I state now, that, in my opinion, had they then appeared, they would have waived the fundamental objection to that subpena, sir, that it was not a subpena ad testificandum, but was a subpena duces tecum, which the law, in my opinion, is perfectly clear, does not require the personal appearance of the person subpenaed since the primary purpose of the subpena was to obtain books and records which had prior thereto been refused, and a full and complete statement as to our reasons was on the record. I did advise that there might be a waiver involved there. I still think there might have been.

I do not think that there is any waiver involved here.

Senator KEFAUVER. Mr. Chairman, I respectfully disagree with the counsel, but that is a matter we can argue later.

Mr. BROMLEY. Surely.

Senator KEFAUVER. But is the appearance of the witnesses here today for the purpose of determining whether they are going to produce the records?

The CHAIRMAN. No, sir.

Senator KEFAUVER. I think their appearance——

The CHAIRMAN. Senator Kefauver, when you were present in the Judiciary Committee it was decided there to request the appearance of the people who had been subpenaed, and that same day I got letters from them requesting that they be given an opportunity to appear.

Senator KEFAUVER. Well, I had understood in conversations with you, Mr. Chairman, before the meeting and in the discussion at the full Judiciary Committee meeting last Friday that they, or some of them, had requested the opportunity of appearing.

The CHAIRMAN. They had. And I also stated that I had a request from this committee to invite or to request the representatives of the steel industry and these people who were subpenaed to testify.

Senator KEFAUVER. Then are they here at their request, which has been accepted by the committee?

The CHAIRMAN. The facts are that they are here at their request, and they are here at the request of the committee.

Senator KEFAUVER. They requested and the committee accepted their——

The CHAIRMAN. No, sir.

Now, in which order I do not know. One company asked me before the meeting that morning if they could appear.

Senator JOHNSTON. Mr. Chairman, I think it should be made clear, too, that this committee is here seeking information and only information.

We are not here to waive any rights that the subcommittee might have. Neither are we asking the steel companies, as I understand it, to waive any rights that they might have, but we are here trying to find out just what the true facts are in the matter, and why they did not appear.

Senator KEFAUVER. Then, Mr. Chairman, as I understand it, they asked to appear, and then the committee invited them to appear.

The CHAIRMAN. I said one steel company that morning before the meeting informed me that they would like to appear. I told you that I also had requests from members of this committee to request them to appear.

Now, the committee requested them to appear, and later I got letters, I believe, from all the companies stating they desired to appear.

Mr. Patton, proceed, sir.

Senator MCCLELLAN. Mr. Chairman?

The CHAIRMAN. Yes?

Senator MCCLELLAN. May I ask a parliamentary inquiry?

Is there now pending before the full committee a resolution and report of the subcommittee requesting that these companies be cited for contempt, and that certain individuals be cited for contempt?

Has that not been——

The CHAIRMAN. I had understood so. Senator Kefauver can answer that.

Senator KEFAUVER. Thank you, Mr. Chairman.

Senator McCLELLAN. The record should show.

Senator KEFAUVER. Yes, I think the record will show that the subcommittee, on its meeting of August 31, voted 5 to 2 to find the companies and the individuals who defaulted in appearance in contempt of the subcommittee, and recommended to the full committee that it cite them for contempt before the Senate.

The CHAIRMAN. I am informed by the staff that the matter has never been submitted to the committee. It never received a report from the subcommittee, the staff informs me.

Senator McCLELLAN. Pardon me, I am trying to get this parliamentary situation correct.

Do I understand no report has yet been submitted by the subcommittee?

The CHAIRMAN. That is what the staff informs me.

Senator KEFAUVER. No, the report was fully submitted, together with the proceedings before the subcommittee.

The CHAIRMAN. Mr. Collins is checking and he is a staff member.

Senator KEFAUVER. I saw the report that was submitted.

Senator McCLELLAN. One more question, Mr. Chairman.

I am here today at this meeting of the committee under the impression that the subcommittee had acted.

The CHAIRMAN. They have acted.

Senator McCLELLAN. And had voted to cite these people and the companies for contempt and had made such a report to the full committee with a request for the full committee's approval.

Am I correct?

Senator KEFAUVER. That is correct, to my understanding.

Senator McCLELLAN. Well, I am proceeding on that assumption.

The CHAIRMAN. My information is that the subcommittee voted to cite these companies. The staff informs me—is that correct, Mr. Davis?

Mr. DAVIS. Mr. Chairman, there was a printed report, a printed hearing on this matter. There was a letter that was referred to the committee stating the vote was 5 to 2. It is not a report under the circumstances.

Senator McCLELLAN. What is that?

Mr. DAVIS. A letter merely stating that the subcommittee had voted 5 to 2.

Senator McCLELLAN. What I am trying to find out, is there anything pending before the full committee in the nature of a report and recommendation from the subcommittee?

Senator KEFAUVER. If I may answer, the letter referring the matter to the full committee from the subcommittee enclosed the resolution passed by the subcommittee.

Mr. DAVIS. No, sir.

Senator KEFAUVER. Yes, it did. And asking the full committee to act, together with a printed copy of the hearings and proceedings before the subcommittee.

The CHAIRMAN. What about that, Mr. Davis?

Mr. DAVIS. The letter was received, but not the resolution.

Senator KEFAUVER. It was attached to the resolution, Mr. Davis.

Senator McCLELLAN. Mr. Chairman, all I want to do is to get this thing in its proper perspective so we will know actually what is at issue.

I thought that was the situation, and I think the full committee has the right and the duty to make such inquiry as it may desire in order to determine the respective merits involved in the action of its subcommittee and its recommendations, and, thus, to inform itself as to what its duty is, whether to approve and follow the recommendations of the subcommittee or to reject them.

I thought we were here to hear these people.

Let them state their reasons for not complying with the subcommittee's request.

That is what I thought we were to hear.

Senator KEFAUVER. Will the Senator yield?

Senator MCCLELLAN. Yes, I yield.

Senator KEFAUVER. In addition to the letter to the full committee, it was accompanied with a formal report, proceedings against Bethlehem Steel, and others.

Mr. Kefauver from the Subcommittee on Antitrust and Monopoly submitted the following report. Then it goes on to cite the creation of the committee, the jurisdiction, the issuance of the subpena, what happened, and then in the body of the report was the language of the contempt proceeding voted on by the committee.

Senator HRUSKA. Would the Senator yield?

Senator KEFAUVER. I yield.

Senator HRUSKA. The fact is, if my recollection is correct—and I will ask Mr. Flurry, the counsel, to corroborate it, because I think he will—that that report was brought by him to the committee room a few days ago or last week. It was not distributed. It was taken back from whence it came.

Mr. Flurry can speak to the point if he wishes.

It was not distributed to members of the committee, nor was it transmitted to the clerk of the committee, Mr. Davis.

Senator KEFAUVER. Well, I do not know what Mr. Flurry wants to say.

Senator DIRKSEN. Let us hear from Mr. Flurry.

The CHAIRMAN. Let us hear from him.

Mr. FLURRY. Senator Hruska stated the matter correctly, but it was my understanding that the matter had been referred to the committee before the meeting on that day.

Senator HRUSKA. But not the report.

I would suggest, Mr. Chairman, there is no use getting all excited about this; there was a letter of transmittal. There was no document attached, according to the clerk. The Senator from Tennessee says there was a copy of the resolution.

I suggest he hand it to the chairman forthwith and let it be considered filed with the committee, and we can go on with the business.

The CHAIRMAN. That is exactly what I am suggesting.

Senator KEFAUVER. Very well.

The letter, the report, which includes a copy of the resolution, together with the proceedings before the subcommittee dated August 21.

The CHAIRMAN. Do you have the resolution?

Senator KEFAUVER. And before the subcommittee on August 31.

The CHAIRMAN. Do you have a resolution citing them?

Senator KEFAUVER. Yes, I have the resolution citing them for contempt.

The CHAIRMAN. All right.

You can file that.

Senator KEFAUVER. That will be filed.

The CHAIRMAN. Proceed.

Is there anything else?

Senator MCCLELLAN. Mr. Chairman, I request that copies be provided to members of the committee.

The CHAIRMAN. Yes.

Mr. PATTON. Mr. Chairman, I take it that copies of my statement which have been filed with your clerk have been distributed to the members of the committee and are available to you as I proceed.

Mr. Chairman and other distinguished members of the Senate Judiciary Committee, as I said, my name is Thomas F. Patton and I am president of Republic Steel Corp. I am here today, as you know, at my own request and at the request of the committee, and I, at the outset, would like to say that I am most grateful to the committee for its willingness to take time to hear me, especially when I know you are all extremely busy with highly important legislative matters.

It is my understanding that the committee has expressed a desire that a presentation of the matters here involved be made by one individual rather than by representatives of each of the four companies. Accordingly, as a result of discussions with the executives of the other three companies present here today I will be making my presentation on behalf of Republic in such a manner as to incorporate the considerations and factors deemed relevant by the other three companies.

I suggest that it may expedite the orderly presentation and analysis of this matter if I am permitted to read my statement in full, and after this has been done I can answer any questions which members of the committee may want to ask.

The eight other executives of the four companies named in subpenas are here in person and will be available for any questions which you may want to address to them.

May I emphasize that my purpose is not to deal with the legal questions involved, important as they are, but to discuss the business considerations which have made this matter a problem of paramount importance and concern to us, the companies involved.

Counsel tells me that the subpenas issued by the subcommittee may well be invalid, first, because they are so burdensome as to constitute an unreasonable search and seizure in violation of the fourth amendment to the Constitution and, second, because they do not serve any proper legislative purpose of the subcommittee. But I am not here to ask you to give us an opportunity to litigate these issues in the courts. I am here seeking to persuade you that the subpenas, irrespective of their validity, should not be enforced because enforcement would seriously damage the steel industry of this country.

I want you to understand that we have the deepest respect for the Senate of the United States and the authority of its committees. We are sincerely convinced, however, that the furnishing of the material which has been subpenaed would seriously harm not only us but our country. We, therefore, are pleased that we have the opportunity to present this matter before this full committee in order that the wisdom and experience of all its members may be brought to bear on a question which we deem to be of vital concern to our whole economy.

In order that you may understand the origin of our concern and the nature of the dangers which we feel would be encountered by the steel industry if the disclosures were to be made may I sketch briefly for you the present status of the steel industry in the United States. Unfortunately the picture is not a bright one. Competition from competing materials and from steel produced in foreign countries is becoming increasingly severe. The industry is operating at about 50 percent of its estimated capacity, steelworkers are laid off in substantial numbers, the profits of the steel companies have been declining seriously and we have no assurances that the end of this decline is in sight. Several steel companies, including my own, have already been forced to reduce dividends in order to conserve cash for the modernization and improvement of their plants, so necessary to their survival.

May I submit, Mr. Chairman, that this industry and my company are in enough trouble competitively without having the situation aggravated through the disclosure of production costs.

The charts contained in my statement dramatically show what has been happening to the steel industry profits during the decade of 1950–60. If you will look at this chart you will see that it reveals that during this period net profit as a return on invested capital has declined by almost 50 percent. So for the American steel industry, gentlemen, there is a serious earnings squeeze.

In 1961 the average rate of return on stockholders' investment in the American steel industry was less than two-thirds of that of all manufacturing industries, and currently it is about one-half. This is true despite the fact that since World War II the industry has spent $15 billion for capital improvements and every effort has been made to enforce tight cost controls.

Clearly, this is a time when the steel industry should not be exposed to the threat of public disclosure of confidential cost data. Such disclosure we submit would give an unfair advantage to foreign competitors, and might I say that combining the figures on the basis suggested by the subcommittee, or on any other basis, would not mitigate in the slightest the harmful effect of the disclosure.

A product-by-product breakdown of the American steel industry's costs, whether published by groups of three companies or even 12 companies, would be invaluable to foreign competitors engaged in penetrating our markets.

I would like to emphasize in this connection that the information required from us is cost—not price—information. While prices may change, a foreign competitor who is aware of the average cost of American mills of producing a particular steel product has a specific target for planning his sales campaign, and taking our markets away from us.

Our ability to compete with foreign-made steel, sold both abroad and in our own domestic markets, has already been gravely impaired, mainly because of the building of modern steelmaking facilities abroad and because of the wide disparity in employment costs as between American steel companies and foreign steel companies. Foreign steel companies have employment costs of about one-third or one-fourth of ours here in the States.

Let me give you an example of what happens when foreign producers invade our markets. I am informed by Mr. Logan T. Johnston, president of Armco Steel Corp., that Armco's Houston, Tex., plant is the largest integrated steel plant in the gulf coast area, normally

employing about 4,000 persons. Its production includes wire products: basic wire, field fence, barbed wire, nails, staples, galvanized wire, and bailing wire.

In 1955 this plant produced 64,000 tons of these products. Imports through the Houston port that year were only 17,000 tons.

But last year, 1961, imports had quadrupled to 76,000 tons while Armco's Houston production had dwindled to 20,000 tons.

Because of this, Armco's employees at Houston are losing 800,000 man-hours of work a year, the equivalent of 400 jobs.

Imports have also made serious inroads in Armco's production of reinforcing bars, rods, and mesh at this same plant. These have resulted in the loss of an additional 400,000 man-hours of work a year, or 200 more jobs.

These 600 jobs represent 15 percent of the plant's normal work force and represent a loss of approximately $4 million annually in payrolls in that one community.

This example is presented to illustrate the basic problem which confronts one company at one plant, but the same problem exists at other plants of Armco as well as plants of almost every other member of the steel industry.

As an indication of the importance the foreign steel producers attach to the confidential character of product cost data, the kind that we are requested to present here, I call your attention to the fact that the High Authority of the European Coal and Steel Community is not permitted to obtain manufacturing cost data from the participating companies without the explicit permission of such companies; and even in the United Kingdom, where the Government is directly involved in the making of steel prices, it is a criminal offense to make such cost data public.

Our deteriorating position in world steel markets is shown by the fact that the American steel production has dropped from 46 to 26 percent of world steel production since 1950. Although American steel production has not shown any material increase, world production during that period has doubled, increasing from about 200 million to almost 400 million tons a year, and it is slated to rise to 500 million tons by 1965. This, of course, includes the tremendous expansion in the Iron Curtain countries, where steel production rose from 39 million tons in 1950 to almost 120 millions tons in 1961. Who knows when these same Iron Curtain countries will move into world steel markets as they already have moved into oil and aluminum, and how pleased they would be to have our costs.

The growing impact of the export-import picture on the American steel industry is shown by the chart contained in my statement on page 7, which demonstrates that since 1958 our country, previously a net exporter of substantial quantities of steel, has been a net importer of steel, and there are attached to the statement other charts dealing with specific products.

For instance, one chart shows that in the case of merchant wire products, imports have increased from about 4.8 percent of total industry shipments in 1950 to 73 percent in 1961. In the case of concrete reinforcing bars, imports have gone from 3.6 percent of industry shipments in 1950 to approximately 24 percent in 1961. Imports of wire rods have risen sharply since 1957, when they were 5.7 percent of industry shipments, to 48 percent in 1961.

It has been estimated that if we had maintained our 1953–57 average participation in world export trade, and had been able to prevent further import erosion, we would have shipped 6 million more tons than we actually shipped during 1961. This means a loss of $1.2 billion in annual sales volume, a loss of 50,000 jobs, and a loss of over $300 million in wages annually, for American steelworkers.

In addition to the grave consequences which disclosure of the information called for by the subpenas would have with respect to competition from foreign steel producers, there would also be a serious domestic impact. Producers of aluminum, plastic, glass, paper, and other materials competing with steel would have for the first time steel-cost information which could prove of great benefit to them and great damage to us, in the steel industry. So it seems to us, gentlemen, that the steel industry's problems should not be made more difficult by requiring steel companies to make burdensome and competitively damaging disclosures of confidential cost information. We believe on the contrary that Government and business should be working shoulder to shoulder to provide this country with the healthy, growing, and prosperous steel industry that is so essential to our national security and a sound national economy.

And may I say that a big stride in this direction and in restoring the confidence of the business community can be taken by this committee by relieving us of the serious competitive threat to which these subpenas have exposed us.

May I, as an official of Republic Steel Corp., state that we have taken the position that we have in this matter because of our responsibility to our nearly 47,000 active employees and the 11,000 other employees who have been laid off for some months because of lack of business, and because of the stewardship entrusted to us by our more than 100,000 shareholders, located in all the States of this Nation, and because of the obligations we owe to the many communities in which our plants are located and to the thousands of other Americans who indirectly depend upon our company for their daily living and well-being.

Before I conclude, let me speak briefly about the failure of the nine subpenaed officials to appear at the hearing of the subcommittee on August 31. As you know, the subpenas that were served on us as individual officers of the four companies here involved were served some time after the companies had made their respective decisions to decline to furnish the information called for in the April subpenas addressed to the corporations only, and after the chairman of the subcommittee had been advised of these decisions by letters stating the companies' reasons in considerable detail.

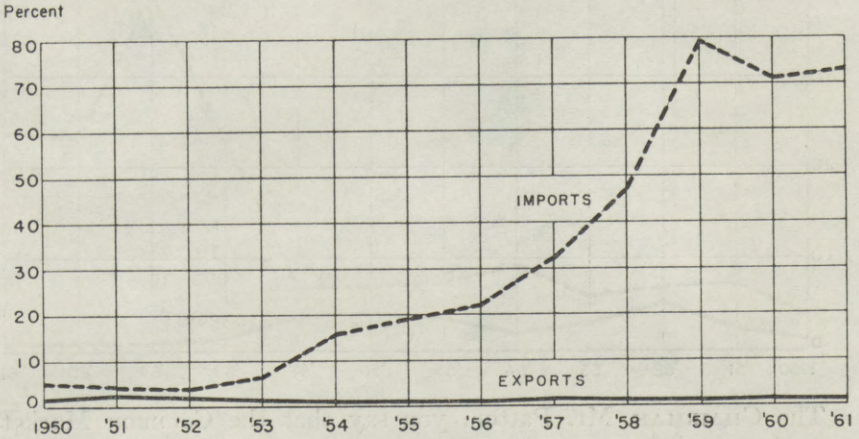
The clause in the printed subpena form referring to testifying was stricken out before the subpenas were served on us as individuals. We were not called upon to testify, but only to produce records. Counsel advised us that, inasmuch as we had already declined to produce records, we need not appear. I assure you gentlemen that there never has been any intent on the part of anyone connected with the steel companies in this proceeding to defy the Senate of the United States or its subcommittees in any manner whatsoever. I again want to thank the chairman and the members of the committee for according us the courtesy of this presentation, and to offer for the record copies of this statement.

Thank you.

(The charts follow:)

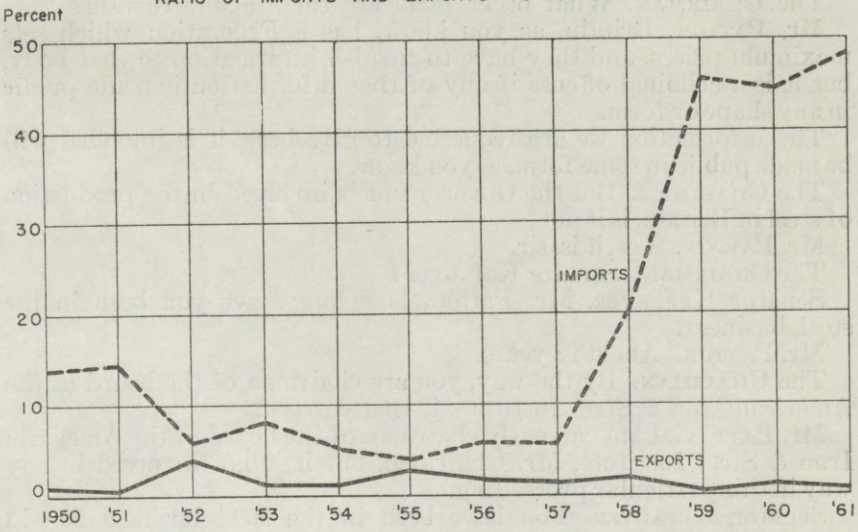
MERCHANT WIRE PRODUCTS (Nails, Barbed Wire, Fence)

RATIO OF IMPORTS AND EXPORTS TO INDUSTRY SHIPMENTS



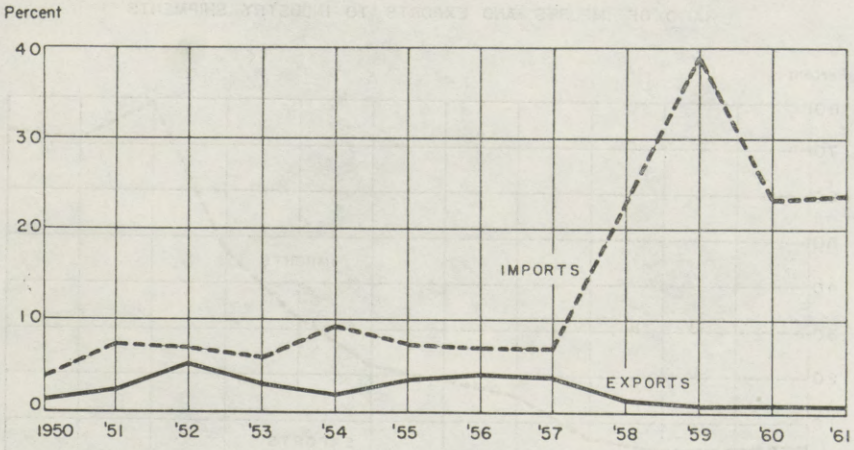
WIRE RODS

RATIO OF IMPORTS AND EXPORTS TO INDUSTRY SHIPMENTS



CONCRETE REINFORCING BARS

RATIO OF IMPORTS AND EXPORTS TO INDUSTRY SHIPMENTS



The CHAIRMAN. Mr. Patton, you say that the Common Market cannot get costs?

Mr. PATTON. Sir?

The CHAIRMAN. Did I understand you to say that the Common Market could not get costs of the companies in the countries that are members without the consent of the company?

Mr. PATTON. That is right.

The high authority who is in charge of the steel industry cannot get these costs unless the companies explicitly agree to give them.

The CHAIRMAN. What other facts are there about Britain?

Mr. PATTON. Britain, as you know, has a Federation which sets maximum prices, and they have to furnish information to that body, but it is a criminal offense if any of that information is made public in any shape or form.

The information we are requested to give here, it is intended will be made public in some form, as you know.

The CHAIRMAN. But the Government is involved in the production of steel in Britain, is it not?

Mr. PATTON. Yes, it is, sir.

The CHAIRMAN. Senator Kefauver?

Senator KEFAUVER. Mr. Patton, how long have you been in the steel business?

Mr. PATTON. About 28 years.

The CHAIRMAN. By the way, you are chairman of the board of the American Iron & Steel Institute, is that correct?

Mr. PATTON. I am currently chairman of the board of the American Iron & Steel Institute, Mr. Chairman, but it is not involved in any way in this particular proceeding.

Senator KEFAUVER. You have been in the steel business 20-odd years?

Mr. PATTON. Yes, sir.

Senator KEFAUVER. And, of course, I am sure you are familiar with the history in the last 50 years, at least, of the steel industry.

Mr. PATTON. Generally.

Senator KEFAUVER. And what has happened in connection with the various major litigations and Government policies?

Mr. PATTON. I think, sir, I am generally familiar.

Senator KEFAUVER. You are familiar with the fact, Mr. Patton, that in the late 1900's, 1918 and 1919, that when the Government brought suit against Big Steel, United States Steel, under section 2 of the Sherman Act to dissolve or break up part of the corporation, that the company introduced cost data for the purpose of showing that a breakup would make the company less efficient?

Mr. PATTON. I am not familiar, but I must say in all candor that conditions in the steel industry were entirely different in those days than they are today, and there may have been considerations involved there which are not involved here in any manner whatsoever.

We are in two different periods.

Senator KEFAUVER. In this decision in 251 U.S. 417 back in 1920, the United States Steel Co. itself brought forth the cost data stated to show that it might be less efficient if there was some dissolution of the steel company.. That was one of the major points considered by the court in its 5 to 4 decision.

That is a matter of record.

Mr. PATTON. Whatever you state to be the record, sir, I accept as the record.

Senator KEFAUVER. You were with United States Steel during the war days—I mean with Republic Steel during the war days of OPA?

Mr. PATTON. Yes, I was.

Senator KEFAUVER. You had a comptroller and accountant named Mr. John Bricker, did you not? I do not know if he is related to the former Senator or not.

Mr. PATTON. No, sir, we never had such a man as the comptroller. I do not recall.

Senator KEFAUVER. He was an official of one of the steel companies.

Mr. PATTON. Not of Republic, Senator.

Senator KEFAUVER. That was my understanding.

Anyway, the record does show that he came down as an official of OPA, and that he worked with the accountants of all of the steel companies in getting up a form for the steel companies to submit cost data to the OPA. You are familiar with that?

Mr. PATTON. I am familiar with such forms at that time.

Senator KEFAUVER. I have here one of the forms that the steel companies themselves, working with Mr. Bricker, prepared during OPA days.

This was the form that was used when the original subpena of April 14 was sent out, on the theory that you kept your books in such a way as to make the answering of these questions not burdensome because you had answered them and worked them out that way yourself back in the 1940's.

I might say parenthetically that later on when some suggestions of burden were made, a great many things were left out.

The companies were asked to report by companies and not by plants, so that this form was very much simplified in consultation with John Tenant, counsel for United States Steel.

And, by the way, was not Mr. Tenant in touch during this time with your counsel?

Mr. LUMB. He was.

Senator KEFAUVER. He kept you advised?

Mr. LUMB. He did.

The CHAIRMAN. OPA days were not operated under a competitive economy.

Mr. PATTON. May I say I was waiting for the Senator to finish, and then I hoped I would have an opportunity to comment on this statement.

Senator KEFAUVER. Counsel for Republic—I wanted to see if he was not familiar with the fact that this was the original plan.

And then later on a simplified form was shown you by Mr. Tenant.

Mr. LUMB. That is correct.

And it was attached to letter of July 2, in fact.

Senator KEFAUVER. Yes, July 2 is correct.

Mr. PATTON. Senator, may I have the privilege of making an observation on what you have just stated?

Senator KEFAUVER. Oh, yes.

Mr. PATTON. You must realize—and I am sure that all of the members of the committee realize—that the OPA was an instrumentality of the Government set up during a wartime period when business was not done as it is in a normal manner in a free, competitive society such as we have today. Things were changed because the country's very life was at stake, and it is quite a different situation in peacetime when we do not have price control, and we are trying to operate in a free economy.

The things that are permissible in wartime certainly should not be permissible in the normal course of business in peacetime in the operation of a free enterprise economy such as I hope we have here.

Senator KEFAUVER. Yes, thank you, Mr. Patton.

I bring out the point to show that we had reason to believe that the giving of information in the subpena would be feasible and when it developed it would be burdensome, we changed the type of form.

Mr. PATTON. May I suggest, Senator——

Senator KEFAUVER. I take it——

The CHAIRMAN. Wait just a minute.

Mr. PATTON. May I say, Senator, that our comptroller advises me that to get the information, no matter how simple the form may seem, would cost our company a minimum of $78,000.

Senator KEFAUVER. Well, that is surprising, Mr. Patton, in view of the estimates given to us by other companies and the ease with which they could get it up.

(At this point in the proceedings, Senator Eastland leaves the hearing room.)

Senator KEFAUVER. But, in any event, Mr. Patton, within the limits of OPA prices, you did compete within wartime one with the other. The steel companies did continue to try to get what business they could during wartime.

Mr. PATTON. During the wartime business was allocated sir. The Government told us what business we had to take and what we should do at each mill, and we were not selling in competition with anyone.

Our entire production was placed on allocation under Government orders for the wartime purposes.

Senator KEFAUVER. Are you aware of the fact, Mr. Patton, that during OPA days and after the war your company and all steel companies did submit to OPA very detailed cost data in support of your various applications for price increases?

Mr. PATTON. That was the only way available during war days for us to get an increase in price to cover increased costs.

The Government set up OPA, set up certain rules and procedures, and we made application from time to time for price increases in accordance with the rules and regulations established by OPA during the war period.

(At this point in the proceedings, Senator Eastland entered the hearing room.)

Senator KEFAUVER. I was here in the House of Representatives during that time.

I did not hear a big hue and cry that your voluntary submission of cost data to OPA for the purpose of getting price increases was going to subject you to giving information that you held dear.

Mr. PATTON. Senator, it is my recollection that the cost data we furnished to OPA was absolutely confidential and was not to be made public in any manner.

Senator KEFAUVER. Well, you are quite wrong about that, sir.

Mr. PATTON. If I am, I—

Senator KEFAUVER. After the war was over—and I think we have some copies of this—suppose we give Mr. Patton one and other members of the committee, if we have some.

Mr. PATTON. In any event, times were so different.

Senator KEFAUVER. The President of the United States, sir, decided it would be a good thing to save for posterity some of the methods used during the wartime period and after the war so that under Mr. Henry A. Peal typical cost data was stated, as submitted by the companies in support of their applications for price increases.

It was published in May 1949, in a consolidated form based upon the size of the company or the production of the company.

You will see in great detail all types of operations. I heard no hue and cry that this was giving away confidentiality when this was published.

The CHAIRMAN. Senator Kefauver, are you asking a question?

Senator KEFAUVER. Did you make any hue and cry as to the publication of this?

Mr. PATTON. May I call your attention, Senator, with all due respect, to the fact that this document which you handed to me reads:

As can be summarized and released within the legal requirements of confidentiality imposed by statute.

Now, I do not purport to know all the details, but I do say with all the sincerity at my command that times are entirely different now when the American steel industry is struggling for survival against world competition that did not exist at that time, and that you would not get the damaging effect even in those days by making things public that you will today to the American steel industry.

There is no real comparison.

Senator KEFAUVER. We will come to that.

The CHAIRMAN. This was published in 1949. Now, what years did it include?

Senator KEFAUVER. It includes some typical years, 1944.

The CHAIRMAN. Back during OPA?

Senator KEFAUVER. It picked out the ones for publication, the 9 months ending September 30, 1944.

The CHAIRMAN. Well, it was published 5 years later, then.

Senator DIRKSEN. Mr. Chairman, on this point I think the statute or the provision of the statute that set up OPA ought to be inserted.

I remember the discussion we had in the House of Representatives at that time, which was a nondisclosure of cost data, and the language here bears that out. It says:

Within the legal requirements of confidentiality imposed by statute.

Senator KEFAUVER. I have no objection to it being inserted, and I would like to have this report inserted.

The CHAIRMAN. They will both be inserted.

(The documents referred to are as follows:)

OFFICE OF TEMPORARY CONTROLS

OFFICE OF PRICE ADMINISTRATION

ECONOMIC DATA ANALYSIS BRANCH

OPA ECONOMIC DATA SERIES

No. 17. Survey of Steel Manufacturers: Production Costs Per Net Ton of Selected Carbon Steel Products, 9 Months Ending September 30, 1944

This is the 17th of series of publications through which the Economic Data Analysis Branch plans to make available to other Government agencies and to interested parties in commerce and industry as much of the generally useful economic and financial information submitted to, and collected by, the Office of Price Administration as can be summarized and released within the legal requirements of confidentiality imposed by statute.

This study was prepared by Mr. John A. Bricker, Jr., formerly head of OPA's Steel Mill Products Accounting Section, assisted by Mrs. Miriam B. Kagan and Mr. Everett L. Hopkins. Mr. Murray Rafsky assisted in organization of the tables and Mr. Frank S. Howell reviewed the study. Grateful acknowledgment is made to Mr. Peter G. Franck, formerly Division Economist of the OPA Industrial Price Division, for his assistance in planning the study.

HENRY A. PEEL, *Chief.*

MAY 1947.

INTRODUCTION

This study presents, for the first 9 months of 1944, weighted average detailed costs of selected carbon steel products. Insofar as the conversion stages through which the material passed could be made comparable, a total cost is shown for such conversion stages, beginning with and including the cost components of the ingots used, and continuing to the finished product.

The basic data for this study were collected by the Office of Price Administration through the use of a series of special purpose cost forms prepared with the advice and cooperation of the controllers subcommittee of the OPA General Steel Advisory Committee. The cost forms were designed, insofar as possible, to conform to the accounting practices used by the industry, and to facilitate the tabulation of items of cost for the entire industry on a comparable basis. Data were, in most cases, submitted on a plant basis.

The industry sample of 22 basic carbon steel producers accounts for over 85 percent of total carbon steel capacity. The companies included are representative both as to size and geographical distribution. The greater portion of

the sample is accounted for by fully integrated companies, none of which is a single line producer. For the purposes of this study a company is considered fully integrated if it mines its own ore, coal, and stone; produces its own coke; and operates its own blast and open-hearth furnaces. Many of the product summaries are largely accounted for by the volume of the larger fully integrated producers.

Cost data for the first 9 months of 1944 were collected in sufficient detail so that the cost components of all products could be reconciled to the operating statements of each company reporting. The period covered represents one of maximum capacity operation under a wartime product mix, and involved virtually full operation of all new facilities built during the war. The product mix during the period was, of course, conditioned by War Production Board directives.

Costs as submitted have been adjusted to eliminate both (a) the excess amortization of emergency facilities over estimated normal depreciation, and (b) any variation of the transfer price at which materials were charged over actual cost for raw materials transferred between units of an integrated company.

Product costs developed in this study are accumulative from and include ingot cost. They have been calculated by applying the yield in each conversion stage to the cost components of the preceding conversion stage and adding thereto the costs in the given conversion stage.

To secure a weighted average of cost components for the products it was necessary to combine many of the conversion stages of companies having highly refined departmentalization, in order to obtain comparability with those companies which were not so completely departmentalized. It was necessary also to combine the costs of pack mills and continuous mills in developing weighted average costs for sheets.

In arriving at their reported costs for the period covered, many manufacturers used ingots priced at varying figures. In order to place such manufacturers on a comparable basis with those who used one ingot price throughout, it was necessary to develop average ingot prices weighted by quantities used. The only volume figure available was tonnage of finished product sold and it was therefore necessary to compute the usage of variously priced ingots on the basis of yields at successive stages. It is not thought that this procedure significantly affected the cost calculations.

Cost components tabulated for the products consist of gross material less scrap and other credits, net material, operating labor, other direct production costs, plant overhead and selling, general and administrative expenses. Operating labor as shown includes only that portion of labor directly expended on production. Other production costs include labor as well as materials and purchased services or commodities. Plant overhead and selling, general and administrative expenses are allocated on a per net ton basis in accordance with the methods of the producers concerned.

Production costs per net ton of selected carbon steel products, 9 months ended Sept. 30, 1944

Item	1. Sheared plates—						2. Strip mill plates (unsheared)—		
	4 companies with finishing facilities of less than 1,000,000 net tons.			8 companies with finishing facilities of more than 5,000,000 net tons.			4 companies with finishing facilities of more than 5,000,000 net tons.		
	Ingots	Blooms, billets and slabs	Sheared plates	Ingots	Blooms, billets and slabs	Sheared plates	Ingots	Blooms, billets and slabs	Strip mill plates (unsheared)
1. Yield, this operation (percent)		91.05	79.91		83.58	82.63		83.85	86.56
2. Cumulative yield from ingot (percent)			72.76			69.06			72.58
3. Gross material	$22.17	$24.35	$30.47	$20.02	$23.99	$29.27	$20.63	$24.63	$28.45
4. Less: Steel scrap	.85	2.38	7.15	.68	3.68	7.62	.74	3.74	6.76
5. Excess of market over actual cost		.01	.01	.36	.42	.51	.29	.35	.41
6. Net material	21.32	21.96	23.31	18.98	19.89	21.14	19.60	20.54	21.28
COST ABOVE MATERIAL									
7. Operating labor	1.87	3.18	6.47	1.30	2.12	4.08	1.23	1.91	4.01
8. Other production cost	6.26	9.35	15.55	5.00	8.26	16.74	4.62	6.91	12.70
9. Total cost above material	8.13	12.53	22.02	6.30	10.38	20.82	5.85	8.82	16.71
PLANT OVERHEAD									
10. Operating administrative expense	.65	1.19	1.88	.11	.18	.68	.10	.15	.29
11. Taxes and insurance	.20	.33	.65	.09	.19	.50	.11	.18	.36
12. Depreciation	.18	.32	.98	.40	.75	2.02	.34	.60	1.15
13. Amortization of emergency facilities [1]	.48	.73	.73	.02	.03	.86	.04	.10	.57
14. Total plant overhead	1.51	2.57	4.24	.62	1.15	4.06	.59	1.03	2.37
15. Manufacturing cost	30.96	37.06	49.57	25.90	31.42	46.02	26.04	30.39	40.36
16. Selling, general and administrative expense			1.82			1.18			1.50
17. Total cost			51.39			47.20			41.86
18. Number of net tons	582,543	530,390	423,861	6,104,575	5,101,887	4,215,766	1,668,685	1,399,141	1,211,089

Item	3. Universal plates— 6 companies with finishing facilities of more than 5,000,000 net tons.			4. Hot rolled bars— 6 companies with finishing facilities of more than 5,000,000 net tons.			5. Wire rods 5 companies with finishing facilities of less than 5,000,000 net tons.		
	Ingots	Blooms, billets and slabs	Universal plates	Ingots	Blooms, and billets	Hot rolled bars	Ingots	Blooms, and billets	Wire rods
1. Yield, this operation (percent)	----------	84.95	90.22	----------	80.09	90.09	----------	84.71	94.59
2. Cumulative yield from ingot (percent)	----------	----------	76.64	----------	----------	72.16	----------	----------	80.13
3. Gross material	$21.00	$24.67	$27.34	$20.18	$25.76	$28.12	$20.48	$24.18	$25.75
4. Less: Steel scrap	.46	3.07	4.98	.73	4.85	6.51	.47	3.24	4.15
5. Excess of market over actual cost	.47	.55	.60	.46	.62	.64	.02	.03	.03
6. Net material	20.07	21.05	21.76	18.99	20.29	20.97	19.99	20.91	21.57
COST ABOVE MATERIAL									
7. Operating labor	1.15	1.84	3.71	1.35	2.66	5.50	1.53	2.96	5.55
8. Other production cost	4.36	6.82	11.89	5.12	10.61	19.02	4.98	8.39	12.36
9. Total cost above material	5.51	8.66	15.60	6.47	13.27	24.52	6.51	11.35	17.91
PLANT OVERHEAD									
10. Operating administrative expense	.07	.12	.32	.13	.29	.72	.26	.69	1.00
11. Taxes and insurance	.08	.15	.40	.09	.21	.55	.07	.17	.27
12. Depreciation	.30	.53	1.83	.43	.86	1.87	.26	.70	1.28
13. Amortization of emergency facilities [1]	.09	.10	.50	.02	.07	.46	----------	----------	1.00
14. Total plant overhead	.54	.90	3.05	.67	1.43	3.60	.59	1.56	3.55
15. Manufacturing cost	26.12	30.61	40.41	26.13	34.99	49.09	27.09	33.82	43.03
16. Selling, general and administrative expense	----------	----------	1.05	----------	----------	1.12	----------	----------	1.77
17. Total cost	----------	----------	41.46	----------	----------	50.21	----------	----------	44.80
18. Number of net tons	1,612,244	1,369,600	1,235,702	3,189,037	2,554,140	2,301,086	108,084	91,560	86,602

Footnotes at end of table, p. 23.

Production costs per net ton of selected carbon steel products, 9 months ended Sept. 30, 1944—Continued

Item	5. Wire rods (continued)—			6. Manufacturers' wire							
	5 companies with finishing facilities of more than 5,000,000 net tons			5 companies with finishing facilities of less than 5,000,000 net tons				4 companies with finishing facilities of more than 5,000,000 net tons			
	Ingots	Blooms and billets	Wire rods	Ingots	Blooms and billets	Wire rods	Bright and galvanized wire	Ingots	Blooms and billets	Wire rods	Bright and galvanized wire
1. Yield, this operation (percent)		82.21	92.97		87.76	92.89	98.33		84.60	94.01	93.88
2. Cumulative yield from ingot (percent)			76.43				80.15				74.66
3. Gross material	$22.01	$27.34	$30.50	$18.64	$21.24	$23.32	$24.96	$20.76	$25.69	$29.38	$33.05
4. Less: Steel scrap	.63	4.47	5.41	.48	2.45	3.51	3.90	.73	4.31	4.42	4.80
5. Excess of market over actual cost	.54	.65	.70	.08	.09	.10	.10	.15	.17	.18	.20
6. Net material	20.84	22.22	24.39	18.08	18.70	19.71	20.96	19.88	21.21	24.78	28.05
COST ABOVE MATERIAL											
7. Operating labor	1.13	2.17	4.76	1.67	2.90	5.59	11.19	1.26	2.29	3.58	8.28
8. Other production cost	4.70	9.15	14.86	5.24	8.23	12.73	20.18	5.15	10.04	12.43	32.85
9.9 Total cost above material	5.83	11.32	19.62	6.91	11.13	18.32	31.37	6.41	12.33	16.01	41.13
PLANT OVERHEAD											
10. Operating administrative expense	.10	.25	.60	.27	.65	.82	1.38	.19	.41	.46	1.79
11. Taxes and insurance	.08	.21	.51	.16	.32	.53	.85	.12	.32	.40	1.04
12. Depreciation	.18	.45	1.34	.29	.56	1.42	2.15	.29	.76	.90	2.28
13. Amortization of emergency facilities [1]			.67				2.81				1.48
14. Total plant overhead	.36	.91	3.12	.72	1.53	2.77	7.19	.60	1.49	1.76	6.59
15. Manufacturing cost	27.03	34.45	47.13	25.71	31.36	40.80	59.52	26.89	35.03	42.55	75.77
16. Selling, general and administrative expense			1.38				2.28				3.03
17. Total cost			48.51				61.80				78.80
18. Number of net tons	810,852	666,587	619,72	114,557	100.534	93,384	91,821	667,164	564,442	530,606	498,106

Item	7. Nails and staples— 8 companies with finishing facilities ranging from less than 1,000,000 net tons to over 5,000,000 net tons					8. Barbed wire 6 companies with finishing facilities ranging from less than 1,000,000 net tons to over 5,000,000 net tons					
	Ingots	Blooms and billets	Wire rods	Process wire	Nails and staples	Ingots	Blooms and billets	Wire rods	Process wire	Galvanized wire	Barbed wire
1. Yield, this operation (percent)	----------	85.17	93.73	97.70	96.16	----------	84.49	93.77	97.66	99.31	99.42
2. Cumulative yield from ingot (percent)	----------	----------	----------	----------	75.00	----------	----------	----------	----------	----------	76.39
3. Gross material	$20.27	$24.16	$26.92	$27.73	$29.00	$20.62	$25.02	$27.97	$28.64	$31.90	$32.08
4. Less: Steel scrap	.61	3.51	4.02	4.30	4.87	.67	3.80	4.15	4.37	4.81	4.90
5. Excess of market over actual cost	.13	.14	.15	.16	.16	.11	.13	.15	.15	.15	.15
6. Net material	19.53	20.51	22.75	23.27	23.97	19.84	21.09	23.67	24.12	26.94	27.03
COST ABOVE MATERIAL											
7. Operating labor	1.31	2.35	4.16	6.80	13.31	1.22	2.21	3.75	5.80	9.79	13.69
8. Other production cost	5.06	9.00	12.32	17.74	30.95	4.99	9.28	12.37	17.56	20.64	23.62
9. Total cost above material	6.37	11.35	16.48	24.54	44.26	6.21	11.49	16.12	23.36	30.43	37.31
PLANT OVERHEAD											
10. Operating administrative expense	.18	.41	.50	.80	1.68	.15	.33	.41	.74	.97	1.90
11. Taxes and insurance	.12	.28	.40	.71	1.35	.12	.26	.36	.68	.96	1.46
12. Depreciation	.26	.62	1.02	1.71	3.03	.26	.67	.99	1.75	2.21	3.10
13. Amortization of emergency facilities [1]	----------	----------	----------	----------	1.70	----------	----------	----------	----------	----------	1.66
14. Total plant overhead	.56	1.31	1.92	3.22	7.76	.53	1.26	1.76	3.17	4.14	8.12
15. Manufacturing cost	26.46	33.17	41.15	51.03	75.99	26.58	33.84	41.55	50.65	61.51	72.46
16. Selling, general and administrative expense	----------	----------	----------	----------	3.04	----------	----------	----------	----------	----------	3.53
17. Total cost	----------	----------	----------	----------	79.03	----------	----------	----------	----------	----------	75.99
18. Number of net tons	300,685	256,095	240,041	234,507	225,498	125,646	106,158	99,541	97,215	96,540	95,983

Footnotes at end of table, p. 23.

Production costs per net ton of selected carbon steel products, 9 months ended Sept. 30, 1944—Continued

Item	9. Woven wire fence (galvanized farm)— 4 companies having finishing facilities ranging from less than 1,000,000 net tons to more than 5,000,000 net tons					10. Bale ties (single loop, wire)— 6 companies having finishing facilities ranging from less than 1,000,000 net tons to more than 5,000,000 net tons				
	Ingots	Blooms and billets	Wire rods	Galvanized wire	Woven wire fence	Ingots	Blooms and billets	Wire rods	Process wire	Bale ties
1. Yield, this operation (percent)		84.97	94.58	98.23	99.34		84.71	93.68	97.54	98.76
2. Cumulative yield from ingot (percent)					78.42					76.45
3. Gross material	$20.75	$24.19	$26.05	$29.65	$29.85	$20.40	$24.73	$27.73	$28.84	$29.21
4. Less: Steel scrap	.28	2.87	3.56	4.59	4.72	.67	3.74	4.09	4.37	4.57
5. Excess of market over actual cost	.21	.24	.25	.26	.26	.11	.13	.14	.14	.14
6. Net material	20.26	21.08	22.24	24.80	24.87	19.62	20.86	23.50	24.33	24.50
COST ABOVE MATERIAL										
7. Operating labor	1.33	2.44	4.70	11.29	17.21	1.21	2.19	3.82	6.75	14.47
8. Other production cost	4.82	8.73	11.66	16.76	20.33	4.93	9.02	12.09	18.06	32.30
9. Total cost above material	6.15	11.17	16.36	28.05	37.54	6.14	11.21	15.91	24.81	46.77
PLANT OVERHEAD										
10. Operating administrative expense	.18	.53	.62	.83	1.11	.16	.36	.45	.80	1.94
11. Taxes and insurance	.11	.24	.30	.60	1.00	.12	.28	.37	.69	1.28
12. Depreciation	.10	.24	.42	.72	1.45	.27	.69	1.00	1.78	2.65
13. Amortization of emergency facilities [1]					.15					1.42
14. Total plant overhead	.39	1.01	1.34	2.15	3.71	.55	1.33	1.82	3.27	7.29
15. Manufacturing cost	26.80	33.26	39.94	55.00	66.12	26.31	33.40	41.23	52.41	78.56
16. Selling, general and administrative expense					2.71					3.68
17. Total cost					68.83					82.24
18. Number of net tons	44,224	37,577	35,541	34,911	34,680	38,409	32,535	30,479	29,730	29,362

Production costs per net ton of selected carbon steel products, 9 months ended Sept. 30, 1944—Continued

Item	11. Hot rolled sheets (all gages)— 4 companies with finishing facilities of more than 1,000,000 net tons but less than 5,000,000 net tons			7 companies with finishing facilities of more than 5,000,000 net tons			12. Galvanized sheets (all gages)— 4 companies with finishing facilities of more than 1,000,000 net tons but less than 5,000,000 net tons			13. Cold rolled sheets (all gages)— 5 companies with finishing facilities of more than 1,000,000 net tons		
	Ingots	Blooms, billets, slabs, coils, bars, and strip	Hot rolled sheets	Ingots	Blooms, billets, slabs, coils, bars, and strip	Hot rolled sheets	Ingots	Blooms, billets, slabs, coils, bars, and strip	Balvanized sheets	Ingots	Blooms, billets, slabs, coils, bars, and strip	Cold rolled sheets
1. Yield, this operation (percent)		84.39	85.27		82.53	85.12		83.55	89.09		81.67	87.57
2. Cumulative yield from ingot (percent)			71.95			70.25			74.43			71.52
3. Gross material	$20.66	$24.53	$28.76	$20.11	$24.38	$29.95	$20.49	$24.57	$39.88	$21.53	$26.48	$33.30
4. Less: Steel scrap	.45	3.47	6.34	.72	3.96	7.47	.50	3.55	5.46	.49	3.95	7.63
Excess of market over actual cost	.11	.13	.15	.33	.40	.46	.10	.12	.14	.50	.61	.70
6. Net material	20.10	20.93	22.27	19.06	20.02	22.02	19.89	20.90	34.28	20.54	21.92	24.97
COST ABOVE MATERIAL												
7. Operating labor	1.42	2.65	6.93	1.25	2.38	4.21	1.41	3.47	10.79	1.39	3.28	8.88
8. Other production cost	4.34	8.14	14.29	5.14	9.55	18.15	4.50	9.04	22.84	4.53	9.68	17.15
9. Total cost above material	5.76	10.79	21.22	6.39	11.93	22.36	5.91	12.51	33.63	5.92	12.96	26.03
PLANT OVERHEAD												
10. Operating administrative expense	.35	.67	1.45	.09	.16	.46	.31	.64	2.58	.17	.40	.92
11. Taxes and insurance	.12	.26	.52	.10	.21	.73	.12	.34	.97	.09	.25	.78
12. Depreciation	.34	.78	1.70	.30	.55	2.45	.35	1.13	3.34	.18	.52	2.43
13. Amortization of emergency facilities [1]	.37	.57	1.33		.01	.46	.23	.57	2.02	.11	.43	.99
14. Total plant overhead	1.18	2.28	5.00	.49	.93	4.10	1.01	2.68	8.91	.55	1.60	5.12
15. Manufacturing cost	27.04	34.00	48.49	25.94	32.88	48.48	26.81	36.09	76.82	27.01	36.48	56.12
16. Selling, general and administrative expense			1.81			1.21			2.97			1.87
17. Total cost			50.30			49.69			79.79			57.99
18. Number of net tons	1,124,303	948,771	808,973	3,264,046	2,693,735	2,292,896	323,453	270,241	240,749	812,416	663,488	580,996

[1] Adjusted to reflect normal depreciation on such facilities.

NOTE.—Finishing facilities refers to total finishing facilities of each company.

Source: Data submitted on OPA Forms 674-530, A, B, C, and D, steel mill cost analysis worksheets.

OPA STATUTORY PROVISIONS

Section 202(h) of the Emergency Price Control Act of 1942[1] provides:

"The Administrator shall not publish or disclose any information obtained under this Act that such Administrator deems confidential or with reference to which a request for confidential treatment is made by the person furnishing such information, unless he determines that the withholding thereof is contrary to the interest of the national defense and security."

Section 4(c) of the Emergency Price Control Act of 1942 provides:

"It shall be unlawful for any officer or employee of the Government, or for any adviser or consultant to the Administrator in his official capacity, to disclose, otherwise than in the course of official duty, any information obtained under this Act, or to use any such information, for personal benefit."

Section 205(b) of the Emergency Price Control Act of 1942 provides, in part:

"Any person who willfully violates any provision of section 4 of this Act, * * * shall, upon conviction thereof, be subject to a fine of not more than $5,000, or to imprisonment for not more than two years in the case of a violation of section 4(c) * * * or to both such fine and imprisonment. * * *"

Senator KEFAUVER. Let me say that you make the point that this was prepared in connection with having due regard for confidentiality.

I want to make the point that this contains very much more detail than anything we ever called for and which we planned to present, as set forth in our letter of July 2.

Mr. PATTON. May I say that on the face of that—and I think, Mr. Chairman, you made the same point—that this was data relating to 1944 which was published in May of 1947, 3 years after the fact. It would not have nearly the impact on the current——

The CHAIRMAN. Were not conditions different at that time than they were during wartime?

Mr. PATTON. Yes, sir.

Senator KEATING. Mr. Chairman, would the Senator yield for a question on that point?

Senator KEFAUVER. Yes.

Senator KEATING. Did you face in 1944 the competition from foreign steel companies that was taking jobs away from American workers which you do today?

Mr. PATTON. We did not, Senator.

In 1944, the entire production of the American steel industry was being channeled into our defense effort. We were working at practical capacity.

Since that time world conditions in the steel industry have changed dramatically.

Modern steel plants have been built in many of the countries around the world, just as modern and more modern in many respects than our own.

They have copied our techniques of mass production. They have labor costs one-third to one-fourth of our American labor costs, with the result that they now have steel that they are selling in world markets, and they are, month after month, underselling us and taking from the American steel industry markets that we traditionally enjoyed for years in foreign countries, and have even invaded our own domestic markets here in America, as is illustrated, taking business from us right in the very towns where we have our plants operating, sir.

Senator JOHNSTON. Mr. Chairman?

[1] 56 Stat. 23; 50 U.S.C. App., secs. 901–946.

Senator KEFAUVER. If I may just clear up the point about the OPA matter. Competition was beginning in 1947 when this report was published, showing in great detail costs, and I recall no fuss about the matter at the time, Mr. Patton, from the steel companies.

Mr. PATTON. We were not faced with this problem of foreign competition. We were not faced with competition from competing materials until after the Korean war, and after the Korean war there was a drastic change in the steel industry.

It had new competition from competing materials and increasingly severe competition from foreign-made steel.

Senator KEFAUVER. May I also call your attention to this fact:

You made the point that this being published 3 years later, after 1944, did not give it much——

The CHAIRMAN. Let us straighten the record. I understood it was 1949.

Senator KEFAUVER. May 1947.

Part of the costs that we wanted for comparison reasons was to show what had happened percentagewise, at least, in connection with raw material costs, wage costs, costs of coke, and profit from 1954 to 1961—1954 data.

That is a pretty long time ago.

Also, I assume that the earliest even the 1961 figures could ever be made available for any purpose would be 1963, which would be 2 years afterwards.

So that there is here a considerable time gap also.

Mr. PATTON. But it is a more serious situation, Senator, even with the time gap, because in the days of 1944 and 1947, we did not have to worry about this competition from abroad. We did not have to worry about the competing materials that were taking our markets. Today we do and, believe me, our profits and our unemployment situation illustrates how drastic it is to us.

The CHAIRMAN. Back in those days you were not reducing your dividend.

Mr. PATTON. No, sir, we were not. We were increasing our dividend.

Senator KEFAUVER. Mr. Patton, so far as I know in reading the papers you are the only steel company that has reduced the dividends. Does that have anything to do with your selection to appear?

Mr. PATTON. No, Senator, that is not the fact. Wheeling Steel Corp. has reduced its dividend, Lukens Corp. has reduced its dividend, Pittsburgh Coke & Chemical Co. has reduced its dividend and if you look at the profits of the steel companies for the last quarter, you will see that a number of them did not earn enough to cover their dividend, and I am sorry to have to say that when you look at the earnings of the current third quarter when they are published they are going to look even worse.

The CHAIRMAN. You say that is the third quarter, that it will be worse?

Mr. PATTON. Yes, sir.

Senator KEFAUVER. Mr. Patton, according to the best information we have from the Steel Community High Authority, the export prices

for U.S. exports of steel to third countries are something over 30 percent higher than the Common Market export prices. Is that correct?

(At this point Senator Scott entered the hearing room.)

Mr. PATTON. I could not be sure, but I assume that in many cases our prices are higher because we have much higher labor rates and other production costs than we find in other countries.

Senator KEFAUVER. I do not want to go into the history but I would insert "Steel Export Base Prices to Third Countries" in the record, Mr. Chairman——

The CHAIRMAN. Did you finish your answer?

Mr. PATTON. Yes, sir.

The CHAIRMAN. All right, sir.

Senator KEFAUVER. That they are something over 30 percent higher. Now, Mr. Patton——

Mr. PATTON. Pardon me, did I understand you to say that their prices were 30 percent higher than ours?

Senator KEFAUVER. No, your export prices to third countries were 30 percent higher.

Mr. PATTON. That may be a generalization, but we still get some business in rough tough competition by cutting our prices as low as theirs, and we oftentimes have to take it at a loss.

Senator KEFAUVER. You can go down the list of their prices and your prices.

Senator HRUSKA. Will the Senator yield?

Senator KEFAUVER. You will see they are about 30 percent or more higher.

Senator HRUSKA. It is my understanding you want that as part of the record.

Senator KEFAUVER. Yes.

Senator HRUSKA. May I suggest that the witness be given an opportunity to scan it and in due time produce for the record such comment as he might want to make analyzing and commenting on that information.

The CHAIRMAN. I understood he had a copy.

Senator KEFAUVER. He has a copy.

Senator HRUSKA. After all, he is confronted with some highly technical information. I do not imagine he carries around in his head most of the details, that it would be necessary to set out after analyzing it and trying to verify the situation, in all fairness I suppose any witness should have that opportunity.

Mr. PATTON. Thank you, Senator. I would appreciate the opportunity if it is in order to be granted.

The CHAIRMAN. It will be admitted into the record.

(The information follows:)

Steel export base prices to third countries,[1] January 1962

[U. S. dollars per metric ton, f.o.b. port of embarkation]

Product	European Community	United States	
		In United States dollars	In percent of ECSC prices
Concrete reinforcing bars	$80.50	127.00	158
Merchant bars	95.00	126.30	133
Structural shapes	94.50	126.30	134
Wire rod	89.00	146.15	164
Heavy plates	90.50	118.60	131
Hot rolled sheets [2]	110.50	141.75	128
Cold rolled sheets [3]	118.50	156.75	132

[1] The pricing bases of the Community and the United States are sometimes somewhat different, especially for sheets. The above prices for the latter take into account extras that make them almost comparable. Price of Thomas steel for the Community and of basic steel for the United States.
[2] (2.75–3 mm.).
[3] (1 mm.).

Source: Haute Autorité, Communauté Européenne du Charbon et de l'Acier, "Dixiéme Rapport Général sur l'activité de la Communauté," (1er fév. 1961—31 janv. 1962), Edition Provisoire, Luxembourg, 1962. See table 47 of the Statistical Annex.

Senator KEFAUVER. I think the figures will show that they are 30 percent or more higher in third countries. Mr. Patton, why are your prices 30 percent higher than the Common Market mills?

Mr. PATTON. In the first place, you are stating something as a fact which I do not know, and I do not think that I ought to be asked to comment on something of which I am not sure of the basis.

I would like to do exactly what has been suggested by Senator Hruska, and have an opportunity to examine this document and file with the committee appropriate comments.

Senator KEFAUVER. Well, you can look at the comparisons here and see the percent. You have been saying you are losing the market, you are being priced out of the market. So why are you losing the export market?

Mr. PATTON. We are losing the export market to foreign competition because, as I said, in the period since the end of the Korean war, they have built new modern steel mills and are paying labor rates one-third to one-fourth of those paid here, and it is impossible for us to have the costs we do here and to have the same prices, except when we want to meet competition which may result in an actual loss to us as these foreign countries.

Senator KEFAUVER. In our 1957 hearing it was established as I recall that your greatest cost in producing steel is ore and scrap, that your second greatest cost is coking coal, and that your third greatest cost is labor. Admittedly, American labor costs more, although its productivity is higher than European labor.

Mr. PATTON. It used to be, but I would not concede that any more with their modern plants, in many cases they have greater productivity than we do.

Senator KEFAUVER. By all the statistics I have seen, unit labor productivity is higher than it is in the Common Market countries.

Senator KEATING. In the steel industry?

Senator KEFAUVER. In the steel industry.

Mr. PATTON. You say that, sir, but I have grave reservations that that is a fact in the European Community.

Senator KEFAUVER. You say labor costs are higher here. Now a greater cost is the raw material. You get your raw material, your iron ore, from Labrador, do you not?

Mr. PATTON. We get a portion of it. We get the great bulk of our iron ore from Minnesota.

Senator KEFAUVER. From the Mesabi Range in Minnesota.

Mr. PATTON. And there we had, together with Armco, to invest some $200 million in the wilderness to put in a taconite plant which enabled us to take cheap rock containing 23 percent iron and to beneficiate it up at a very expensive investment to a product that is now about 63 percent iron, and that is the kind of thing that the American steel industry is doing and has to do to remain competitive, make big capital investments.

Senator KEFAUVER. How does your cost of ore compare with the cost of ore for the European Steel Community?

Mr. PATTON. I would imagine ours was higher, Senator.

Senator KEFAUVER. Well, do you know?

Mr. PATTON. I do not know, but I do know that there is much ore sold abroad at prices less than we have to pay here in America.

Senator KEFAUVER. Don't you know that they have to buy a great deal of their ore in Sweden and pay a very high price?

Mr. PATTON. It so happens that we are interested in an ore mine in Liberia that sells a lot of ore to Europe and other countries, and I know that the selling price of that ore to those companies is cheaper than the price that we can realize on our Minnesota ores here.

Senator KEFAUVER. I am talking about the big sources which are Sweden and Spain.

Mr. PATTON. Sweden is not a big source of ore but, of course, it is a source.

Senator KEFAUVER. It is a high grade.

Mr. PATTON. It is a specialty ore in Sweden.

Senator KEFAUVER. But anyway, you do not know about what their cost of ore is to make a comparison with yours?

Mr. PATTON. I know—I happen to be chairman of the board of the Liberia Mining Co. in which Republic Steel Corp. has a substantial stock interest. In that capacity I know that that company, mining ore in Liberia, is selling that ore in world markets at prices considerably less than we in Republic are paying for ore mined and beneficiated here in America.

Senator KEFAUVER. I am talking about the cost of European producers from the sources they rely upon, principally Sweden and Spain.

Mr. PATTON. Those are the purchasers of the Liberia ore, producers in Germany, Italy, and Holland.

Senator KEFAUVER. As to coking coal, is it not true, that coal is shipped from the United States because of our better coal mines, our mechanization, to Europe and sold competitively in Germany, for instance, in competition with Ruhr coal, because they have to go so deep in the ground and their veins are so thin?

Mr. PATTON. There has been some American coke and coal shipped to European countries. I think if you will examine the record you will find that there is not much of it being shipped right now. It

so happened that I was down to our coal mines myself just 2 weeks ago on a visit, and in that vicinity, I was with Mr. Raymond Sylvatti, head of the Island Creek Coal Co., who had been shipping considerable tonnage of coal to Europe and he was lamenting the fact that that business had disappeared.

Senator DODD. Will the Senator yield for a question?

Senator KEFAUVER. Yes.

Senator DODD. Do you know the cost of ore to the European producers and do you know what they have to pay for coking coal?

Mr. PATTON. I know the price at which European producers are buying ore from the Liberian Mining Co.

Senator DODD. My point is you are in business here. Do you know what it costs them per ton of ore and ton of coking coal?

Mr. PATTON. No. We would have to estimate that. We have no way of knowing their costs. We do not know what their contracts are or what their prices are in contrast. I only happen to know of one particular company of which I happen to be an officer.

Senator KEFAUVER. How would you estimate your comparison of coke and coal costs in this country with those in the Common Market, Mr. Patton? Is it not true that your costs are very much lower?

Mr. PATTON. That their cost is very much lower?

Senator KEFAUVER. That your cost is very much lower for coke and coal.

Mr. PATTON. I am not prepared to say at this time.

I would be glad to look into the matter and find out. I could not answer that question, sir.

Senator KEFAUVER. But you have made a statement about the total cost of production here and total cost of production there, and there are quite a number of elements going into that that you do not know about.

Mr. PATTON. Oh yes, but the big element is labor. That makes the difference.

Senator KEFAUVER. Our hearings showed that it was the third element, Mr. Patton.

Mr. Patton, in the hearings in 1957 Mr. Blough and I believe Mr. Homer, who was with you then and I am glad Mr. Homer is here now—where is Mr. Homer? He is a very nice fellow.

Mr. BROMLEY. He is right here.

Senator KEFAUVER. It was stated that they felt that the demand for steel was rather inelastic, that they would have the same demand almost regardless of price as of that time. Is that your feeling?

Mr. PATTON. My feeling is that the demand element in the steel industry is not as important a factor in price as it is in the consumer industries because the demand for steel is a derived demand.

We sell a lot of steel if the people buy a lot of automobiles, we sell a lot of steel if the people buy a lot of canned fruit, and we have not much control over that. But I will say, Senator, that we are doing everything we know how today to encourage the end use of steel products so that that derived demand will be as great as we can possibly encourage it to be.

Senator KEFAUVER. Mr. Patton, I think it is a matter of great concern and it is a very sad situation that here in the United States the

steel companies are operating at 50 percent of capacity. You said 50 percent. I thought it was a little more than that at the present time.

Mr. PATTON. Substantially 50 percent I would say.

Senator KEFAUVER. At one time I remember it got down to 35 percent or 40 percent. I notice, sir, that I asked Mr. Blough, as I recall, why, in the face of that situation, prices were not reduced so that you would operate at 90 percent of capacity and capture some of the foreign market.

Your per unit cost of making a ton of steel would be less manifestly if you were operating your plant more fully, and I never did get a very satisfactory answer except the argument that the demand was inelastic, that price did not make very much difference.

Why isn't that done? I have a chart here which I would like to put into the record, Mr. Chairman.

The CHAIRMAN. Let him answer the question.

Mr. PATTON. I think I answered the question as far as I was concerned, that the demand element in the steel business is not the important factor that it is in the consumer industry business, that our business has to depend in the long run on the steel bought from us by people who make and sell automobiles, by people who make and sell canned goods, by people who make and sell refrigerators, and stoves and other household necessities, by people who build roads, and over those things we do not have very much control.

As I said, however, in recent years the steel industry is doing everything it can and increasing its advertising to encourage its consumption of steel by end years, and we are doing that because some of our markets are being taken for the same applications by aluminum in some cases, by plastics in others, and we are trying to convince the consumer, the householder, that he is better off using a steel-made product than an aluminum-made product or a plastic-made product or a glass-made product.

Senator KEFAUVER. Well, sir, in connection with the inelasticity of the demand for steel, the U.S. share of the world steel market since 1954 has gone down from 25 percent to about 12 percent, has it not? This accounts for a substantial part of our deficit in the balance of payments, about a third. If you would reduce your price and operate the companies at a larger capacity, would you not maintain part of that market?

Mr. PATTON. There is no guarantee whatsoever that if you reduce prices you are going to get more business.

Senator KEFAUVER. This chart shows that in the Common Market countries when the demand lessens their price goes down and they go out and get a larger part of the market. It is called "Steel Export Base Prices to Third Countries." I would like to ask that you have permission to comment on it at your leisure.

(The above material is inserted at p. 27 of this hearing.)

Mr. PATTON. Thank you, Senator. I will be happy to do that.

The CHAIRMAN. It will be admitted.

Senator KEFAUVER. You can keep that one, Mr. Patton.

Mr. PATTON. Thank you.

The CHAIRMAN. We will furnish the reporter another one for the record.

Senator KEFAUVER. Mr. Patton, I wanted to ask you if you were aware of the fact—and I want to state that this is the situation—that I think the Antitrust and Monopoly Subcommitee has tried to be reasonable in not asking divulgence of material classified as confidential, even though it has a right to do so, because under the legal cases it is not privileged.

Senator SCOTT. Mr. Chairman, I have a little difficulty hearing.

Senator KEFAUVER. I say under the legal cases cost data is not privileged. The courts have a right to get it and so far as the records show the committees of Congress have the right to secure it.

But one reason why we wanted you to appear here on August 14 was to see if you had a convincing argument as to any damage that might be inflicted upon you—and frankly you do not know the costs abroad. If you had a convincing argument I was willing to recommend a compromise to the subcommittee or to the full committee, and I think most of the subcommittee would have gone along. In addition to furnishing the material directly to Mr. Campbell, the Comptroller General of the United States, and requiring that he return it immediately so that it would not be in his possession for anybody to see or to subpena, there could have been used a multiplier so as to make the material entirely unintelligible for anybody else, to any other producer. No one would know your level of costs because it would be multiplied or divided by some factor unknown to anybody except Mr. Campbell. But you did not appear and give us an opportunity of making that suggestion. I was also willing to recommend, and I think it would largely serve the purposes of the subcommittee to have Mr. Campbell put the returns in percentages rather than in actual figures. That is the reason we wanted you and Mr. Homer and these other gentlemen to appear and to give us an opportunity to see if we could work the matter out with you.

(At this point Senator Ervin entered the hearing room.)

The CHAIRMAN. Wouldn't you have complied with the subpena if you had simply to mail the documents to Mr. Campbell?

Mr. PATTON. It is our understanding on the advice of counsel that we would have.

The CHAIRMAN. Did it require your presence?

Mr. PATTON. No, sir; not as we understand it from our counsel.

The CHAIRMAN. Yes, and you think those documents would have done the industry grave damage had you done that?

Mr. PATTON. I hope, sir, that my statement made to you today will illustrate the kind of damage we believe that the industry will suffer if this kind of information is made public, no matter in what form, whether it be percentages or indexes or any other form. These are intelligent people, and they will get the key, and they will get the information no matter how it is given.

Senator KEFAUVER. Mr. Patton, of course after you said that you did not expect to appear, I sent you a telegram, and I am sure you received it as did all the other witnesses.

Mr. PATTON. Yes, we received it, Senator.

Senator KEFAUVER. Stating that regardless of your intention to comply, that the subpena directed you to appear. Part of the reason I wanted you to appear and I think the subcommittee, was to have an opportunity of hearing your complaints about the method employed in grouping the material, and making alternative suggestions or seeing if you had a suggestion.

Certainly percentages would not give foreign competitors any cost figures, would they?

Mr. PATTON. We are fearful that no matter in what manner the information is published, the statisticians of our home competitors and the statisticians of our foreign competitors are going to figure it out.

They are shrewd and great analytical people.

Senator KEFAUVER. For the life of me, I cannot see how percentages would give anybody any information.

Mr. PATTON. Percentages have to start from some base, Senator, and they will soon figure out the base.

Senator KEFAUVER. Start from 100. One thing that we wanted to try to find out, Mr. Patton, is whether the antitrust laws should be amended so as to make dissolution more easily attained by the Department of Justice, whether that would impair efficiency or not.

We wanted to have some comparison of small companies. We wanted to see whether in the last 6 years since 1954 the increase in wages was responsible percentagewise or costs of raw materials were responsible or whether profits were responsible.

The CHAIRMAN. Do I understand now that one of the purposes was legislation to make it easier to dissolve different steel corporations? Is that one of the legislative purposes?

Senator KEFAUVER. That is one of the studies that the committee has been considering ever since Judge Hansen, the head of the Antitrust——

The CHAIRMAN. Excuse me, is that——

Senator KEFAUVER. Judge Hansen, the head of the Antitrust Division under President Eisenhower's administration, recommended that the Clayton Act criteria be placed in section 2 of the Sherman Act.

That is, the test of a substantial lessening of competition or creating a monopoly, would be applied to existing concentration.

There has been a great deal of discussion in the committee. There is a bill pending before the committee at the present time that would do just that.

Senator DIRKSEN. That would do what?

The CHAIRMAN. It would do what?

Senator KEFAUVER. It would apply Clayton Act section 7 standards to the general language of section 2 of the Sherman Act.

The CHAIRMAN. It was to dissolve——

Senator KEFAUVER. No, it was not to dissolve.

The CHAIRMAN. I ask the question now.

As I understood it, that was the statement you made.

Senator KEFAUVER. I said it was to make it possible for the Department of Justice to have a less stringent requirement to meet in connection with dissolution than it now has under section 2 of the Sher-

man Act. That was recommended by Judge Hansen and is in a bill that we have before us.

But I will point out later there are other legislative matters that we have, to which this information is very pertinent.

Now, the other part, Mr. Patton, are you aware that in times past under Senator O'Mahoney that this committee got price and some cost data from General Motors breaking down the divisions of their company, and that the committee, after considering it, decided to study it in executive session and not make it public, and the confidence has been strictly kept?

If you had been here, I am sure—were you aware of that?

Mr. PATTON. No, I was not aware of it, but my observation is, sir, that I would not care to comment on it except to say that the circumstances and the factors involved in their determination in giving the information might be entirely different than the situation confronting our companies here, and we have to make our determination, sir, on the basis of the facts that confront us.

I do not know what is true with other companies.

The CHAIRMAN. Could we recess now until 2 o'clock?

Senator SCOTT. Mr. Chairman, may I ask one question prior to the recess?

The CHAIRMAN. Yes.

Senator MCCLELLAN. Mr. Chairman, I have other committee work this afternoon, and I would like to be present.

The CHAIRMAN. We have a nominee for the Supreme Court tomorrow.

Senator JOHNSTON. I have to be on the floor.

Senator MCCLELLAN. Mr. Chairman, I think there is a great deal involved here, and I want to make this observation. I strongly support and I shall defend the right of the Congress to get any information it needs for legitimate purposes of proper legislation.

Mr. PATTON. We accept that statement 100 percent, sir.

Senator MCCLELLAN. But, at the same time, I do not think we ought to single out one competitor in a broad industry, bring it in here and make it expose all of its costs.

I wonder if this ought not to be applied to the aluminum companies, the paper companies, the glass companies, bring them all in here.

If we are going to go into this field, then the possibilities of such work and inquiries are unlimited and it seems to me we should go all the way unless there is some special reason that can be shown why such inquiries should be limited to the steel industry only.

Senator KEFAUVER. Mr. Chairman, before we recess, I was going to state that the committee has frequently in the past gotten information and then the determination is up to the committee as to whether it uses it in executive session or whether it will make it public.

We got information, price and profit information, from Westinghouse and General Electric.

The decision has not been made in the subcommittee as to whether it would be publicly used, and, if so, how, or whether it would be used in executive session.

One reason why I wanted you here, Mr. Patton, was if you had been here, you would have heard me say on August 31 in a colloquy with Senator Dirksen, I believe, that:

> I want to compliment Senator Hart on the excellent statement he has made and to state publicly that if by any chance any part of the cost data that would be put together and consolidated by the General Accounting Office might be damaging, even though we could have not been legally deterred by the fact, and if it would have had an adverse effect, I am sure that at least in executive session that information would be helpful and later determination could be made as to which parts of it would be put in the public record.
>
> I think the subcommittee can properly devise ways and means to prevent any possible adverse effect, but we do not know what the information is, so we are at a loss to know how to do it.

That will be found at page 18.

Senator KEATING. Would the Senator yield?

Senator SCOTT. Mr. Chairman, I had asked the Senator to yield.

Senator KEFAUVER. I want to say that is the reason I thought you should have appeared.

Mr. PATTON. Senator, may I say, with all sincerity, that we did not appear because we were so advised by counsel that we would prejudice our rights, and that is the reason that we acted in all good faith, with no intention of reflecting on the Senate in any way, shape, or form.

Senator KEFAUVER. Advice of counsel is not, and has never been, an excuse for contempt of the committee.

The CHAIRMAN. I sure do not blame them for not submitting that information.

Senator Scott?

Senator SCOTT. Mr. Chairman, may I ask Mr. Patton——

Mr. PATTON. Yes, sir?

Senator SCOTT. Mr. Patton, what, in your opinion, would be the impact of disclosing of cost figures on employment in the American steel industry and on employment in German, Japanese, and other foreign competitive steel plants?

Mr. PATTON. There is no doubt in my mind, Senator Scott, that if these figures would be disclosed, as I said, foreign competitors would have costs which would be targets for the penetration of our markets by foreign competitors. They would be better able to take business away from us. We would have our steel works working less, and more people out of work, and the towns in which our plants are located would be suffering even worse than they are today.

Senator SCOTT. So that if the view of the subcommittee were to prevail, and I pray that it will not, the effect on Pittsburgh, for example, would be to decrease the number of people working in steel mills. Is this not true?

Mr. PATTON. It certainly is, and I do not believe you were here, sir, when I gave an illustration of what has already happened at the Armco plant in Houston, where, because of the increase in imports, 600 people have lost their jobs, and the community has lost about $1.3 million a year in payroll.

Senator SCOTT. I want to make one additional point, and then I am through.

If figures were disclosed, no matter how much covered by secrecy or by formulas, they would, in my judgment, appear in full in the press for all to scrutinize.

There are no secrets in Washington.

And I want to add——

Senator KEFAUVER. Will the Senator yield?

Senator SCOTT. May I just conclude, and then I will be glad to yield.

I want to add that the economic theory which appears to be behind this demand reminds me of a similar theory: If you keep the cow running full tilt around the field all day, you will improve the quality of the milk. I will be glad to yield.

Senator KEFAUVER. Will the Senator yield to me?

Senator SCOTT. I will be glad to.

Senator KEFAUVER. I want to say I think the Senator has done the subcommittee a grave injustice.

Senator SCOTT. I hope not. I want to discuss that before we are through.

Senator KEFAUVER. The Senate got confidential information from General Motors and decided not to use it.

Senator DIRKSEN. We did not get cost information.

Senator KEFAUVER. We got cost information. The subcommittee got full cost information from the bread industry, which was consolidated by the Department of Agriculture. I have never seen any of it in any column.

Senator DIRKSEN. What has happened to it?

Senator KEFAUVER. I want to say also that Senator Taft, when he was chairman of the Joint Committee on the Economic Report—and I refer to page 91, and I ask that this paragraph be included—he pointed out the great needs of the Congress and of the Senate of the United States, in deciding these issues, for, first, data on the general level and trend of economic concentration, and, second, data on unit cost.

> In regard to the second there has been a longstanding need in Government and private industry for objective data on unit costs.

It goes on to say:

> Second, better information would be of value to the Government in the appraisal of economic conditions. It would provide individual firms with a yardstick with which to compare their own costs in settling of labor disputes. It would provide background data as in the analysis of the relationship between size and efficiency which would be of great value to the development of sound and consistent programs relating to procurement and location of size of plants, antitrust activities, promotion of small business, regional development—

and so forth.

That was a staff report to the committee when Senator Taft was chairman.

Senator HRUSKA. I understood it was a quotation from Senator Taft.

Senator KEFAUVER. No, it was a staff report.

Senator HRUSKA. A staff report, not a statement by Senator Taft.

Senator KEFAUVER. Published by the staff to him when he was chairman.

The CHAIRMAN. I think there is something wrong in the industry when your profits are going down. You say the third quarter will be worse than the second quarter.

Senator Dodd?

Senator DODD. I would like to ask a question.

I think Mr. Bromley perhaps will want to answer it.

As I understood you, Mr. Bromley, you said that your advice to your client was that the subpena did not require a personal appearance. You also said that you thought if they did appear they might waive certain rights.

What rights?

Mr. BROMLEY. As I tried to say a few minutes ago, Senator Dodd, in the first place, they might have waived their right to contend that this was a subpena duces tecum only. That is the first thing they might have waived.

The second thing they might have waived was any defect which may possibly develop in the authorization for the issuance of the subpenas.

Now, there may be other rights, but those I deemed important enough and vital enough that any lawyer who had any familiarity with the law would say: "Don't you go there because you are not required to go."

Senator DODD. This morning you made clear you were not waiving any rights in your appearance?

Mr. BROMLEY. That is right.

Senator DODD. Could you not have done so on the occasion when you were asked to appear there the first time?

Mr. BROMLEY. I do not think when you are asked to appear under a subpena.

Senator KEATING. Mr. Chairman, may I ask one question?

Mr. PATTON. Sir?

Senator KEATING. I have more interest in Buffalo and Lackawanna and other areas of New York State than I have in Houston or Pittsburgh.

Mr. PATTON. That is understandable, sir.

Senator KEATING. Do you have plants in New York?

Mr. PATTON. We have a large steel plant at Buffalo. We have iron ore mines in Port Henry. We have iron ore mines at Shandagen up in the Adirondack Mountains, all in New York State.

We have a plant at Troy, N.Y., also.

Senator KEATING. Can you give me any information regarding, with any degree of accuracy such as you have given with regard to Houston—as to the number of jobs which, in your judgment, would be affected in the State of New York by the revealing of your cost data to foreign competitors?

Mr. PATTON. I will be glad to get that information for you. I can say with confidence that jobs would be affected, and that our plant at Buffalo, which is already just limping along——

Senator KEATING. You have laid off a lot of men?

Mr. PATTON. Oh, we have a substantial number of people laid off at Buffalo. Our plant at Troy, N.Y., is completely closed down for lack of business. Our iron ore mines in Port Henry are down, and our mines at Shandagen are operating very intermittently, all because the steel industry is not operating at a healthy rate, and largely due to the fact that we have lost business both abroad and here at home to foreign competitors.

Senator ERVIN. Mr. Chairman, I would like to make one suggestion which I think would contribute some illumination to the hearing,

and that is, it seems to me that in order to determine whether the evidence sought to be subpenaed is relevant to any legislative proposal pending before the subcommittee, that the subcommittee should be requested to supply the members of the full committee with the record of any bills pending before the subcommittee which, in the judgment of the staff or the members of the subcommittee, would show that the information sought is relevant to a pending legislative proposal.

Senator KEFAUVER. Mr. Chairman, I think the Senator is right, but it has already been supplied.

Senator ERVIN. I am sorry, I could not get here earlier. I keep so busy these days I cannot get anything done.

Senator KEFAUVER. If the Senator will read the hearings before the subcommittee of August 21, of which he has been supplied a copy, and also August 31 before the subcommittee, he will find a full statement of the legislative studies.

Senator ERVIN. I was not asking about legislative studies. I was asking about bills. I would rather read bills than a legislative report, so I can make my own judgment.

Senator KEFAUVER. We will send you the bills. The bills are referred to by number.

Senator HART. Mr. Chairman, I wonder if I could make a comment since Senator Kefauver commented on something I had said in an earlier hearing and, for the life of me, I could not remember what it was.

It occurs to me now.

I had suggested on the return date of that subpena that it was really a conflict between two principles, neither of which were offensive, and both of which were decent.

It is the principle that protects an enterprise against disclosure of secrets which would be destructive. There is a principle that authorizes the Congress to obtain that information which is necessary in order that it act wisely.

In such a setting, it seems to be a problem of determining the priority between these principles.

It is not quite as easy as either extreme suggested, as I see it, and rarely is that true anywhere.

But, in order that you could better appreciate the problem that faces a member of this committee and the subcommittee particularly let me breiefly suggest that perhaps you, or if not you, some of the members of the Iron & Steel Institute, feel that one of your competitive problems is the antitrust laws.

One of your difficulties is that the antitrust laws in 1962 are neither responsive to today's economy, useful in the protection of the public, and are, in fact, harmful in your efforts effectively to compete in the new kind of world that you describe.

Well, now, if a member of the committee feels that way—and I do—then you can understand why a member of the committee would want to find out by testing this subpena the extent to which we can get information which will bear on the question of is size efficient; what competitive consequences would follow if this kind of change were made in the antitrust laws as against this.

This is the reason behind the feeling that as between these two principles, you are more inclined as a legislator to resolve it in terms

of getting the information which you, wisely or unwisely, feel would enable you more intelligently to respond to what I think is a paramount problem that faces the business community and Government.

The fact is that our antitrust laws are just horse and buggy, and we have got to change them, make some very basic overhauls.

It would seem to me that the kind of information that we were proposing to obtain would be helpful in wisely meeting what I think is a legislative responsibility.

I make that comment only to suggest that there seems to me to be some logic and reason in our approach.

Having made that self-serving statement, let me assure you that I was not one who felt that you had defied the Congress.

Mr. PATTON. We never had any such intention.

Senator HART. This was your instrument or your approach of testing which of these two principles ultimately would prevail.

Mr. PATTON. Senator, may I comment that conceding fully, as we do, the right of Congress and its committees to get proper information for legislation, in our particular, unique situation, is it of such pressing importance that you would do something that we feel might kill the patient in effecting a cure, or is it something that you would be happy to say that we who are entrusted with the running of these businesses have intimate knowledge of the damage that this information could do to our companies, and would accept our firm and sincere conviction that this is damaging material, and that in your wisdom you men who are entrusted with the welfare of this country of ours, in your wisdom we would hope that you would not require us to give this information which we feel so deeply is harmful to our companies, to our industry and even to our country.

Senator HART. Mr. Patton, anticipating we may be adjourning and hopeful it will ease tensions if any have developed, the very first hearing that I participated in as a member of the Antitrust Subcommittee bore on the question of requiring corporations to notify in advance any intention to change prices, and Mr. Blough for United States Steel and Mr. McDonald for the Steelworkers were the witnesses, and we discussed at great length with them how you run a steel business and a steel union. The next set of hearings involved bills to affect the operation of professional baseball and football. I had happened to have been an active participant in companies in those fields, and I sat here and listened to us discuss with Joe Cronin and Ford Frick and others how to run baseball and football, and I thought back to my performance in the first set of hearings and I have always tried to remember this experience.

We, I know, are forced to ask questions which to somebody who lives and has lived for 27 years in the industry sound nonsensical, but we have this responsibilty that I am talking about and it is one that concerns each of us, and though we take varying positions it is not I think that our sincerity is any less than the fellow with whose position we happen to agree.

Mr. PATTON. We respect the fact that your sincerity is just as great or greater than ours, but we do want you to know how deeply we feel about this type of information.

The CHAIRMAN. Senator Hruska.

Senator HRUSKA. Mr. Chairman, I am so pleased that I was preceded in my remarks by the very sage remarks of both Senator Hart and Senator Ervin. There are the two principles to which Senator Hart refers. There is still another principle, however, which I think the witness' testimony bears heavily upon, and that is the principle of self-preservation, which we should pay some attention to, not for the steel companies as such but for the Nation and its well-being, the matter of jobs, for example, the matter of deficit payments, the matter of outflow of gold and the crippling of a very strong and necessary national resource, namely, the steel industry.

Now insofar as we get into the matter of legalistic theories and concepts, that is one thing. Another, however, with which this committee will be very heavily charged is the matter of policy. Is it good policy to ask for information that will infringe and have such a heavy impact on this principle of self-preservation? Will the recital of the pendency of a bill or six bills which would have some relation to this type of information, will the pendency of such bills be enough? That is not the test in a court proceeding as I understand it.

First of all, in a court proceeding whenever confidential or trade secret information is required the court first determines whether or not there is occasion for requiring the production of such evidence and testimony. Now here we do not have that. We put the cart way before the horse, and that is not the way to draw a wagon. We have not gone into the philosophy or the wisdom or the propiety of any of these pending bills, so that we did not determine in any way whether if they would achieve everything that is claimed for them they would be the proper kind of legislation that we would want to achieve. If that were gone into first and that preliminary question determined and decided, and then we would come to a point that is described by the Senator from Michigan; namely, then we would have to weigh these two principles and see which of them would prevail over and above the other. But I do think there are those two separate categories of decision with which the subcommittee is confronted. One is legalistic to be sure. The other is a matter of policy.

The CHAIRMAN. Gentlemen, is there any reason in continuing over until Friday? I have had this request from Senator McClellan who cannot be here. We will meet at 10 o'clock Friday morning.

(Whereupon, at 12:30 p.m., the committee adjourned to reconvene at 10 a.m., Friday, September 14, 1962.)

STEEL COMPANIES (SUBPENAS)

FRIDAY, SEPTEMBER 14, 1962

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 10:22 a.m., in room 2228, New Senate Office Building, Senator James O. Eastland (chairman) presiding.

Present: Senators Eastland, Kefauver, Johnston, McClellan, Ervin, Hart, Hruska, Keating, Fong, and Scott.

Also present: Thomas B. Collins, counsel of the Committee on the Judiciary.

(Present at this point: Senators Eastland (chairman), presiding, Kefauver, McClellan, Ervin, Hart, Wiley, Hruska, Keating, and Fong.)

The CHAIRMAN. The committee will come to order.

Mr. Patton, do you have anything to add to your testimony of yesterday?

STATEMENT OF THOMAS F. PATTON, PRESIDENT, REPUBLIC STEEL CORP.; ACCOMPANIED BY H. C. LUMB, VICE PRESIDENT, DIRECTOR OF LAW AND CORPORATE RELATIONS, AND BRUCE BROMLEY, COUNSEL—Resumed

Mr. PATTON. Mr. Chairman, we had concluded our presentation and were in the mist of answering questions, and, at your request, we are back here this morning for such further proceedings as you may desire.

The CHAIRMAN. Senator McClellan?

Senator MCCLELLAN. I pass for the moment and will let Senator Ervin proceed.

I have been occupied with other matters.

Senator ERVIN. I will do the same.

The CHAIRMAN. Senator Wiley?

Senator WILEY. I pass.

The CHAIRMAN. Senator Hruska?

Senator HRUSKA. Mr. Chairman, I do not know that I have too many questions.

There is one thing that has been going through my mind since our hearings the other day, the matter of the several assertions from time to time that we have had similar cost information to that which is being requested here given us in previous hearings like on bread and on drugs and automobiles and in previous steel hearings.

Frankly, I have had a search made of the record, and we have not been able to find any such information such as that which is being requested in the hearings here and in the subpena here.

There have been such things as total sales and net profit figures giving total consolidated profits, but nothing by way of unit costs upon specific items such as we have here. The type of information generally, for example, from General Motors and Chrysler and Ford is all of that general category.

In fact, Chrysler in the excerpt furnished me here furnished information along the idea of one of these pie charts.

The CHAIRMAN. Will you wait a minute?

I have the following telegrams to be inserted in the record:

Telegram dated September 11, 1962, from Jones & Laughlin Steel Corp., Avery C. Adams, chairman of the board;

Telegram dated September 12, 1962, from Colorado Fuel & Iron Corp., Leonard C. Rose, president;

Telegram dated September 13, 1962, from Inland Steel Co., Joseph L. Block, chairman of the board; and

Telegram dated September 14, 1962, from Kaiser Steel Corp., J. L. Ashby, president.

(The telegrams referred to are as follows:)

PITTSBURGH, PA., *September 11, 1962.*

Hon. JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee,
New Senate Office Building,
Washington, D.C.:

As we have previously written Senator Kefauver we believe that publication of our confidential product cost-and-profit data as proposed by the Subcommittee on Antitrust and Monopoly would have serious and adverse effects on Jones & Laughlin Steel Corp. Particularly because of the competitive advantage it would give foreign producers. We hope that your committee will not take any action that would have the effect of authorizing the subcommittee to require that kind of data from us or any other steel company.

AVERY C. ADAMS,
Chairman of Board of Directors,
Jones & Laughlin Steel Corp.

NEW YORK, N.Y., *September 12, 1962.*

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate,
Washington, D.C.:

The Colorado Fuel & Iron Corp. respectfully urges that submission of steel production costs pursuant to the subpenas duces tecum issued by the Subcommittee on Antitrust and Monopoly would be contrary to the national interest. As a company which produces a line of products in which foreign competition is particularly severe, we believe that the compilation of cost data would seriously and immediately injure our shareholders, our employees, and the communities in which they live.

Although the Colorado Fuel & Iron Corp. is not one of the four companies which are formally contesting the subpenas, we have a vital stake in the outcome of this matter. We have not joined in formally contesting the subpena which we received, only because we feel that the issue is adequately raised by the test cases of the four companies which are already before you and because it appears that intervention of additional companies would serve merely to complicate procedures and thus to delay a prompt decision on the question. Pending resolution of the test cases, we have not submitted data pursuant to the subpena, but we will be forced to do so if the final decision in the test cases requires compliance. Production costs have always been our most closely

guarded trade secrets. To put these costs in the hands of our foreign competitors would give them an unfair advantage. For they would then know just how much to bid in order to take any particular business from American steel mills; they would know which of their facilities to expand or improve because they would know where American steel mills are most vulnerable. Compiling cost data in groups of several companies, as the subcommittee proposes, will not lessen the value of the information in the hands of our foreign competitors. On the contrary, compliation of data by groups of companies will merely simplify the task of foreign steel producers by providing them with a neatly packaged average cost analysis of each major product. This will be particularly harmful because foreign steel companies and their governments take special pains to assure that we have no access to their production costs.

It is important to note that the steel products in which foreign competition is most severe are generally the products which require the most man-hours to manufacture. Therefore compliance with the subpenas will adversely affect our ability to sell the very products which provide the most jobs. This will have a serious impact upon employment in communities in the eight States in which our major plants and mines are located.

We urgently solicit your favorable consideration of the position of the steel companies in the test cases.

(Signed) LEONARD C. ROSE,
President.
HOWARD HOLTZMANN.

CHICAGO, ILL., *September 13, 1962.*

Senator JAMES O. EASTLAND,
Chairman, Committee on the Judiciary, U.S. Senate, Senate Office Building, Washington, D.C.:

Publication of steel costs would be harmful to competitive position of American steel industry and consequently to employment of steelworkers. It would also be contrary to the concepts of our free economy. Therefore, strongly urge that request of your subcommittee for this information be withdrawn.

JOSEPH L. BLOCK,
Chairman, Inland Steel Co., Chicago, Ill.

OAKLAND, CALIF., *September 14, 1962.*

Hon. JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee,
Washington, D.C.:

We understand that at your hearing on September 12, members of the committee expressed considerable interest as to the impact of foreign competition on the American steel industry, and as to whether disclosure of the cost data required by the subcommittee subpena would confer a competitive advantage on foreign steel producers.

Kaiser Steel Corp., which markets its products primarily in the Western States, is experiencing unprecedented competition from foreign sources. A substantial and steadily increasing share of the Western steel market is being taken by foreign steel producers.

As indicated in our letter to the subcommittee dated August 10, we think publication of the product cost data requested by the subcommittee, no matter how the data is coded before publication, will give invaluable information to our foreign competitors, and could place us at a further disadvantage in competing with them.

KAISER STEEL CORP.,
By J. L. ASHBY, *President.*

Senator HRUSKA. I do not know if the witness has any knowledge of the information given to this subcommittee 5 years ago in the steel hearings or not.

Have you, Mr. Patton?

Mr. PATTON. Senator Hruska, we have made a little research into this subject, and, with your permission, I will read just very briefly as much as we can find with respect to the three situations you re-

member or you mention, and I think you will find that they are quite different from the situation confronting us today.

With respect to the automobile industry, I would like to call your attention to a statement which appears on page 124 of the report dated November 1, 1958.

The CHAIRMAN. What report?

Mr. PATTON. The report of the subcommittee, Senator Kefauver's subcommittee, which the subcommittee issued.

Senator KEFAUVER. May I ask what report?

Mr. PATTON. This is the report issued by your subcommittee dated November 1, 1958, following your investigation of the automobile industry, and I refer to page 124, and I quote from page 124 of that report.

It reads as follows:

> Inasmuch as the companies refuse to supply the subcommittee with breakdowns of their unit costs, no definitive figures on costs can be presented.

That is as much as we have been able to find on that.

In the report dated June 27, 1961, which the subcommittee issued following its investigation of the drug industry, the subcommittee stated at page 6 of that report, and I quote:

> Companies which were represented at the subcommittee's hearings were reluctant to disclose production cost data relating to specific products. It has been possible, nevertheless, to utilize other data to arrive at meaningful estimates of such production costs for a number of pharmaceutical products which were discussed in the course of the hearing.

So, apparently, there was nothing given there.

Now, with respect to the bread situation, of course, may I point out that bread is a local product sold in local markets and is not subject to foreign competition in any way like we are subjected to with respect to steel.

The subcommittee's report dated August 27, 1960——

Senator HART. If I could interrupt just to protect myself, the assumption you make is not accurate, as Judge Bromley knows, if you live across the river from Canada.

Mr. PATTON. I accept that competition, Senator, but I know that it is not like the competition we have in steel.

Senator WILEY. That is still an American product.

Mr. PATTON. May I just read the subcommittee's report following the bread industry investigation. The report dated August 27, 1960, stated this:

> It is important to realize that, unlike steel or automobiles, bread is a perishable product sold predominantly in local markets.

That is all, sir, we have been able to find on these three specific items.

Senator HRUSKA. In each of those instances, however, is this not true:

Certainly, it was true in the steel case, with which you are familiar, the hearings of 5 years ago, that whatever information was given was by way of agreement and consent; it was not pursuant to subpenas?

Is that correct?

Mr. PATTON. That is my understanding, sir.

Senator HRUSKA. It is my recollection that that same is true in the bread industry and also in the drug industry, and it was not informa-

tion of this type. Now I think it worthwhile to make that clear, Mr. Chairman, because I do not think we should labor under the apprehension that we have precedent here for the type of information which is being sought.

Senator KEFAUVER. Mr. Chairman, is that the end of the Senator's questions on that point?

Senator HRUSKA. On that point, yes.

Senator KEFAUVER. Then I would like to be heard, Mr. Chairman.

The CHAIRMAN. Proceed.

Senator KEFAUVER. On that point, Mr. Chairman, I call attention to the report of the subcommittee on administered prices on bread published August 27, 1960. Page 113 shows how the separate information by nine companies was submitted to an expert in the Department of Agriculture, consolidated and published in very much the same way as our original suggestion here.

They may not have as much foreign competition but they certainly have local competition and they have many other problems. It will be seen at page 113 that there is a breakdown of production costs in more detail than we have agreed to with the companies here.

The production costs, ingredient costs, packaging and wrapping, compensation, bakery plant employees, compensation company officers, depreciation expense, taxes other than income and social security, other costs and expenses. Then we have a breakdown of distribution costs, compensation, delivery employees, delivery expenses, expense other than wages and salaries, advertising and promotion, all of which is broken down in that detail on page 113.

Senator HRUSKA. Would the Senator yield?

Senator KEFAUVER. It is true that in the bread industry we told the bread companies——

Senator WILEY. He asked you to yield.

Senator KEFAUVER. Let me finish the explanation about bread and I will. [Continuing:] That we could subpena the information but we would prefer to get it of course by request rather than by subpena. Rather than having a subpena for the information served upon them, the bread companies agreed to furnish the information, which was then consolidated and grouped, and shown in more detail than was asked for of the steel industry and agreed to with some reluctance by U.S. Steel and the others——

The CHAIRMAN. Could I ask you a question? I understood you to state that you got cost information from General Motors. Is that correct? Did I understand you correctly? Did you get cost data from them?

Senator KEFAUVER. The information we got, and I will explain exactly what we got, can be translated into costs by mathematical calculation. What was subpenaed from General Motors when this committee was under the Chairmanship of Senator O'Mahoney was data on the profit and loss and costs for their various divisions during a particular time. Ordinarily they have their information consolidated.

We got the costs and profit and loss statement of the various divisions. Then with the public information as to the number of vehicles or street cars or buses that were made by any particular division, it is

simply a matter of dividing the number into the information we got to get the unit cost and unit profit per vehicle of the various divisions of General Motors.

Senator HRUSKA. If the Senator would yield, I would like to read exactly what was gotten, and it will be seen from its very face, from the agreement that was entered into with General Motors and from the data given that it could not have resulted in unit costs of the kind, production costs of the kind we ask here.

I am reading now from pages 2553 and 2555 of the hearings in the automobile industry case:

Senator KEFAUVER. Mr. Dixon, will you explain what General Motors will furnish to us?

Mr. DIXON. Yes, Mr. Chairman.

As you know, prior to these hearings we have carried on some degree of negotiations with the four automotive manufacturers that are going to appear and testify here, requesting certain information pertaining to profits and other related matters. In order to preserve, Mr. Chairman, as much as possible, of the confidentiality of the figures we requested, we have had several meetings and have come to this understanding: General Motors has agreed to furnish us information that will disclose for the years 1954, 1955, 1956, and 1957 the net profits before taxes and net profits after taxes on their automobile manufacturing business, which would include all passenger vehicles together with their trucks. This information will include unit and dollar sales representing the total sales of U.S.-made vehicles with optional equipment to dealers, both to Canada and overseas. The profit figures are the corporation's total consolidated profits from the cars, truck, body, assembly, and parts divisions, which are applicable to these sales.

We will therefore get for these 4 years the sales and value, the total costs. We will have net profits before taxes, the amount with the percentage of sales. We will have net profit after taxes with the amount and percentage of sales. We will have the units sold. Of the units sold, we will have the total cost, net profit before taxes, net profit after taxes.

And I submit, Mr. Chairman, that is not what is being requested here.

Senator KEFAUVER. With all due deference, my friend from Nebraska is not talking about the same hearing that I was talking about. He is talking about the hearing of the 85th Congress, 2d session, on automobiles. He has read from the report of the subcommittee, which I have here, in the 1958 hearing. The occasion that I was talking about was in 1955 when Senator O'Mahoney was chairman of this subcommittee and when we did secure the breakdown of profit and loss from General Motors by divisions.

Senator HRUSKA. But not by unit, was it?

Senator KEFAUVER. It is very easy to derive unit figures when you have the profit and loss by divisions, because the number of vehicles made in that particular division is a matter of public record. You divide the number of units made into the profit or loss made in that particular division and, of course, you have the profit and loss per automobile.

Senator HRUSKA. On the contrary, Mr. Chairman, I submit that is very fallacious reasoning. In any division they not only have automobiles, they have parts, they have a mix. There are all kinds of automobiles, even of the Chevrolet kind or the truck kind, and in this instance what the steel industry is being asked to give is specific items with specific production costs.

You can use the figures and divide the number of units produced into the profit and you will get a figure all right, but it will not be produc-

tion costs of the type that we get here. It is a very fallacious type of reasoning.

Senator KEFAUVER. In any event, we did get the figures on costs and profit and loss of the Buick Division, the Chevrolet Division and the various and sundry divisions, from which staff advised me there was enough information to get the per unit figures by simple mathematics. I would also call the Senator's attention to the fact that even in the 1958 hearing to which he has been referring if he will look at page 19 of the report of November 1, 1958, he will find at page 129 that they did give the committee by subpena or otherwise, I am not sure if I remember which——

Senator HRUSKA. There was no subpena.

Senator KEFAUVER. The average price and profit per unit at actual 1957 output was submitted. That is what they gave us. Then from other data that was secured or furnished the overhead expense, materials, and other direct costs, hourly rated labor were calculated, all of which will be found on the table at page 129.

Senator HRUSKA. But that was as a result, was it not, Senator Kefauver, of the information furnished which I have read about from the hearings. The actual computation was not furnished by them by unit. It was a matter of computation from the information given you by them.

Senator KEFAUVER. No. You will find on page 125 the actual unit information which was furnished by General Motors Corp. for the years 1954, 1955, 1956, and 1957.

The CHAIRMAN. I think it is obvious that the automobile industry does not face the foreign competition and they do not have the type of competition domestically that the steel industry faces. I think it is an entirely different problem altogether.

Senator KEFAUVER. Mr. Chairman, respectfully the automobile industry would not agree to that.

The CHAIRMAN. Maybe they would not, but that is my judgment about it.

Senator KEFAUVER. Well, you see the number of foreign cars around the streets.

The CHAIRMAN. Yes, but you are talking about 1957.

Senator KEFAUVER. I am talking about 1955 and 1956.

The CHAIRMAN. All right; that is even worse.

Senator KEFAUVER. The information is furnished in detail on page 125. What they furnished and other information secured is set forth on page 129.

Mr. ERVIN. Mr. Chairman, if I may interject myself at this point, with all due deference to my two learned friends in the discussion of precedents, I think that the crucial question and the only question pending before the committee at this time is whether or not any legitimate congressional purpose is to be served at the present moment by the production of the information called for by the subpenas.

Senator KEFAUVER. Mr. Chairman, I agree with Senator Ervin. But Senator Hruska challenged a statement that I had made, and there was precedent for the furnishing of either unit costs or other material from which unit costs and cost breakdowns could be calculated. Now I also used two other examples in the discussion the other day. One

was in connection with Westinghouse and General Electric. I stated there that we subpenaed in addition to their overall profit or loss by the companies, profit by division. The idea was to try to show whether those divisions in which there had been price fixing had made more money or less money than those divisions in which there had been competition. We secured that information. I reported the information we had to the subcommittee. The subcommittee has under consideration what use will be made of the information. It has not been made public. No decision has been made as to what use will be made of it.

I also said that we secured from the drug industry certain cost data that enabled us to calculate reasonably accurately although conservatively the production cost of certain drugs. The information that we subpenaed was the bulk sales contracts where one drug company would sell prednisone, for instance, to another drug company in finished bulk form.

(At this point in the proceeding Senators Johnston and Scott entered the hearing room.)

Senator KEFAUVER. From that, after getting outside estimate as to the cost of bottling and labeling it was possible in prednisone and in quite a number of other drugs to figure almost exactly, in one case exactly, what the unit cost of making a particular capsule was. So that there are a number of precedents.

Senator HRUSKA. Would the Senator yield on the drug cost?

Senator KEFAUVER. Yes.

Senator HRUSKA. All of us know what those were.

I think in all fairness it should be said that that was a computation and a highly unfair and misleading type of calculation.

Frankly, it was designated in each instance as a markup, not as a profit.

The press and others have immediately, the lay people have said: "Well, if it is an increase from $1.50 to $15—the $1.50 being this limited cost per 100 pills and it was sold for $15 to the druggist—that is a profit of 1,500 percent or 1,000 percent."

But in the fine print to the footnote there was always this qualification:

That that cost did not include research, plant cost and maintenance, general overhead, advertising, warehousing, detail men, selling expense of all kinds, taxes, and a host of other things.

So we can get figures here, I am sure, from the annual statements of these steel companies.

We can get figures, and the production, and we can come out with all kinds of computations.

How accurate they will be and how much they will serve by way of purpose is something else again, and that is certainly what is true in the drug hearings.

And I might say in the drug hearings at page 7856 Mr. Dixon said this:

> Mr. Chairman, in keeping with the practice of this subcommittee and in an attempt not to get into matters which are considered by industry members as highly competitive and as trade secrets, we have chosen another avenue to get information which we thought of interest to the subcommittee. We did not ask for cost data for any individual product which, in my opinion, could be held to be a competitive trade secret. But we did ask for certain basic information. We asked for the bulk sales that were made between these individual companies.

And it is on that that the computation was made.

Senator KEFAUVER. Yes; and it was sufficient to make the computation, and the distinguished Senator does the committee an injustice.

The calculations that were made were the manufacturing costs of production, having nothing to do with selling expense or profit.

In every case the calculations made by the staff of the subcommittee were above what turned out to be the actual cost of production.

In the case of making a tetracycline antibiotic tablet, the subcommittee calculated that the cost was about 3 cents a tablet.

It turned out that Bristol made the tablet actually in finished form, including its allocated share for research, overhead of their manufacturing plant, for 1.7 cents.

That was the material that came from Bristol.

The same is true in the case of corticosteroids.

The subcommittee overestimated the cost, and it turned out to be less than the subcommittee had actually estimated.

Senator WILEY. Will the Senator yield?

Senator KEFAUVER. I am very happy to yield.

Senator WILEY. Judge Ervin, in my opinion, hit this issue right on the head.

He called it a congressional purpose.

(At this point in the proceedings, Senators Eastland and Johnston leave the hearing room.)

Senator WILEY. Now, in my opinion, we are not back in 1955. We are facing a situation where the world is entirely changed, and we might say, does it serve a congressional purpose if we damage the public interest.

We have something else involved here in this age of the "New Frontier," as the President calls it. I have just returned a little over a week ago from the northern part of my State where the iron mines are all shut down. I have just read the wires that have come in from these various companies in which they very decidedly make the point that foreign competition is a dangerous thing at this time.

Now, we do not have to close our eyes to what we can see around us anywhere, not only in steel and iron, but we have built the world up to become competitive with us. And the situation is that the public interest here is to me a very serious element.

In other words, if we go ahead and damage these great institutions that employ thousands and thousands of men, they have to close down, the impact upon our society, every segment of it, is something that we cannot measure. And that is why, instead of living back in the past ages of 1955 when the world had not been rejuvenated economically as it is now, we are living today in 1962, where we have got a competitive issue that is tremendous.

It is a public issue.

Congress will have to face it when it takes up this trade law.

It will have to consider the question of protecting the industries of this country.

Now, if, as a matter of fact, as these wires contend, that foreign competition is a fact, and giving foreign nations, foreign businesses, the facts that they would get it if they were compelled to give them here would damage American industry, well, I feel that there should be no subpena issued.

(At this point in thep roceedings, Senators Eastland and Johnston enter the hearing room.)

Senator KEFAUVER. Mr. Chairman, I think Senator Ervin has it right, and if nobody else has any questions——

The CHAIRMAN. Well, we have got to call on others.

Senator Keating?

Senator KEFAUVER. Well, let me respond to Senator Wiley's statement.

Mr. Patton did say that iron mines were closed down, men were laid off in many cities, that local steel business was being lost to foreign trade and to foreign competitors, and that business here was being lost to foreign competitors, and that our steel plants were only operating at 50 percent of capacity.

I am sure Mr. Patton would agree that this subcommittee had nothing to do with the plight that you have gotten yourself into.

We have not asked for—your plight is not due to any cost data being asked.

Mr. PATTON. We hope you will not make it worse, Senator, by making us reveal confidential data. It is bad enough now.

Senator KEFAUVER. The trouble you have had, I think, Mr. Patton, is that since 1902 you have had an administered price industry in which you do not compete pricewise. If you ever start competing pricewise and get your rate of production up, as I shall bring out through questions, you will be able to not only keep your business, but you will be able to meet competition, and you would not have to lay off men.

You would not have to close up mines.

You would not have to be a sick industry.

But those are questions that I want to get to after a while.

Mr. PATTON. I must say, as head of the steel company which I am privileged to head, we are in the most intense competition of any industry that I have any knowledge of. If there ever was competition, it exists in the steel industry.

The CHAIRMAN. Senator Keating?

Senator KEATING. Mr. Patton, when did foreign competition become a major factor in the steel industry?

Mr. PATTON. It began to emerge in about 1955, late, or beginning in 1956, and it has gotten increasingly worse year by year.

As Senator Wiley indicated, as these new, modern plants were being completed, and as the years go by, it is going to get much more severe than it is even now, Senator.

Senator KEATING. Did I understand correctly at the last hearing that the steel industry was operating at about 50 percent capacity?

Mr. PATTON. Somewhat. A little over 50 percent of capacity, generally; yes, sir. That varies from company to company, as you know.

Senator KEATING. Has that figure been going down steadily since 1955 or 1956?

Mr. PATTON. It has varied from year to year, but may I say that since 1955, we had in 1955, 117 million tons of steel production in this country.

Never since that year have we begun to approach that.

And since 1957, the average has been more in the neighborhood of 100 million, so that, as I pointed out, we have been static in produc-

tion more or less in this country, while the rest of the world is increasing enormously at the same time.

Senator KEATING. What has been the best year since 1955?

Mr. PATTON. I think it was one year we had 112 million tons. I think that was in 1956.

Senator KEATING. Do you have the figures since 1956 right at hand?

Mr. PATTON. May I look just a minute?

I think maybe I do.

It was in 1956 we had 115 million.

In 1957 it dropped to 112 million.

And in 1958, which was a depression year, it dropped to 85 million.

In 1959, it was 93 million.

In 1960, it was 99 million.

And in 1961 it was 98 million.

Senator WILEY. How much?

Mr. PATTON. 98 million.

Senator KEATING. And in 1962 do you have an estimate?

Mr. PATTON. Of about 98 million or less, so that we made no increase at all.

Senator KEATING. At the last hearing I inquired about unemployment at your Buffalo plant, and, if possible, with regard to the Bethlehem plant at Lackawanna.

Are you able to furnish those figures now?

Mr. PATTON. We are able to furnish you some figures that I think will serve to answer the question that you have in mind, sir.

Senator KEATING. Would you do so?

Mr. PATTON. Yes, sir.

In the New England-New York market area served by the New York State steel plants, there was an increase in imports of steel mill products of 345,000 net tons in 1961 over 1955.

This is equivalent to full-time employment for more than 2,900 steelworkers for an entire year.

At current rates the payroll and employee benefits for these 2,900 steelworkers would total over $23 million annually.

Now, for full employment figures, because of this and other causes, I have them, if you would like them, for the plants.

Senator KEATING. I would like the employment figures for the plants, yes.

And let me preface it by this:

I know there has been a drop, because I know the Buffalo situation. and I know it is severe, and that there have been a lot of steelworkers laid off.

Now, what is the major reason for that layoff?

Mr. PATTON. There are a number of reasons. One of the important reasons is the reason I just mentioned:

The 345,000-ton increase in the import of steel.

There may be some other factors such as business in this country itself may be a little slow.

And also there have been changes in equipment.

But one of the real important factors is the fact that 345,000 tons of steel that we used to sell in this area is now being sold in our markets by these foreign steel producers.

Senator KEATING. In percentage figures, can you give us any idea of what 345,000 tons means? How much of an increase in foreign

steel in the market of the northeastern United States does that represent?

Mr. PATTON. I would have to get those figures for you, sir, but it is an important item, as you can see.

Senator MCCLELLAN. Senator, will you yield for clarification?

Senator KEATING. Yes.

Senator MCCLELLAN. This 345,000 tons, is that for the entire United States?

Mr. PATTON. No, sir.

This is the area served by the steel plants located in the State of New York. It is mainly New York State and the New England area.

Senator MCCLELLAN. That is all I wanted to know. Go ahead.

I did not think you were talking about the entire United States.

Mr. PATTON. Oh, no.

It is much, much greater for the entire country, but Senator Keating was asking about the plants located in New York State.

Senator KEATING. This is what you might call, if you wanted to be uncharitable, a parochial interest.

Well, can you say whether it is closer to 5 or to 50 percent?

Mr. PATTON. I would be glad to get that for you, sir, but I do not have it. I can get it for you, and I will be glad to furnish it to you, but it is a very important element.

Senator KEATING. It is substantial.

Mr. PATTON. A very significant element.

Senator KEATING. I would like to have it specifically.

The CHAIRMAN. Senator McClellan said he desires the same figures for the entire United States.

Senator MCCLELLAN. I want to get the entire figures for the United States. If it cost 2,000 jobs in this particular area, that much increase—that is just 1 year's increase, is that right?

Mr. PATTON. Yes. Senator McClellan, I have that in my statement, and I will be glad to repeat it right now.

Senator MCCLELLAN. If it is in the statement, it is all right.

Senator KEATING. It would be good to place those figures in the record at this point.

(Subsequently, the following material was received for insertion in the record:)

At the hearing on September 14, 1962, Senator Keating wished to know (at p. 36 of the printed hearings) the meaning of the increase of 345,000 tons in foreign imports in the New York-New England area between 1955 and 1961 referred to by Mr. Patton at page 51. The increase of 345,000 tons is an increase of 230 percent in that period because the foreign imports in the market referred to were 150,000 net tons in 1955 and by 1961 had risen to 459,000 net tons.

At the hearing on September 14 Senator McClellan stated (p. 52 of the printed hearings) that he would like figures for the entire United States similar to the figures Mr. Patton had supplied for the New York State-New England market area. The imports of steel mill products into the United States increased from 973,000 net tons in 1955 to 3,164,000 net tons in 1961, or an increase of 2,191,000 net tons, or 225 percent. This is equivalent to full-time employment for 18,500 steelworkers for a year. At current rates the payroll and employee benefits for the steelworkers would total over $145 million annually.

Senator MCCLELLAN. Put it in now and get it in perspective.

Senator JOHNSTON. Do you have it year by year?

Mr. PATTON. No, I do not, but if you will permit me, sir, I will tell you what I do have, and if you would like something else, I will be glad to get it in addition for you.

I stated, and I repeat, it has been estimated that if we had maintained our 1953–57 average participation in world export trade and prevented further import erosion, we would have shipped 6 million more tons than we actually shipped during 1961.

This means a loss of $1.2 billion in annual sales volume, a loss of 50,000 jobs and a loss of over $300 million in wages annually to American steel workers.

Senator MCCLELLAN. But that does not tell us——

Senator KEATING. That is not the answer.

Senator MCCLELLAN. That does not tell us how much more steel was imported into the country last year.

Senator KEATING. That is the point.

Senator MCCLELLAN. You have got 345,000 tons increase in steel imports in a certain area.

Mr. PATTON. We can get you the import figure very easily, Senator.

Senator MCCLELLAN. That is what we were asking for to get it all in at this point.

Senator KEATING. You do not have that.

Senator MCCLELLAN. You are talking about shipping steel; you are talking about exports in your 6 million tons?

Mr. PATTON. Yes.

Senator MCCLELLAN. Let us get it all together.

Three hundred forty-five thousand tons in the northeast area? Now, let us get the same tonnage for the United States.

Senator SCOTT. If the Senator will yield——

Mr. PATTON. May I call your attention to the chart on page 7 of my statement, Senator McClellan.

Senator MCCLELLAN. Very well.

Mr. PATTON. It shows that there has been an increase from 1954—I am looking at this—from about 700,000 tons up to about roughly 3,200,000 tons, the chart would indicate.

Senator MCCLELLAN. That is over a period of about 10 years. But you give 345,000 for a given area increase last year.

Senator KEATING. No; not last year.

Mr. PATTON. No, no. That is from 1955, sir.

Senator MCCLELLAN. From 1955?

Mr. PATTON. Yes, sir.

Senator MCCLELLAN. Now, what is the increase for the same period all over the United States?

Mr. PATTON. As I say, it goes, looking at the chart, from about 700,000 tons up to about 3,200,000 tons.

Senator MCCLELLAN. That will be 2.5 million tons increase?

Mr. PATTON. Yes, sir.

Senator MCCLELLAN. In the same period?

Mr. PATTON. Yes, sir.

Senator MCCLELLAN. Throughout the United States.

Senator KEATING. In other words, there has been more than a 100 percent increase?

Mr. PATTON. Oh, yes.

Senator SCOTT. If the Senator will yield, may I request that you also give us a breakdown of the Pennsylvania area in terms of increases in imports and loss of employment?

Mr. PATTON. I will be glad to do that, Senator Scott.

(Subsequently the following material was received for insertion in the record:)

At the hearing on September 14 Senator Scott asked that Mr. Patton furnish a breakdown as to the Pennsylvania area similar to that which Mr. Patton had furnished with regard to the New England-New York market area in a response to a question by Senator Keating on September 12.

Pennsylvania is the largest steel-producing State in the United States. Steel production in Pennsylvania greatly exceeds the demands of the nearby market area, and the plants there ship steel products into many parts of the United States. It is therefore impossible to secure accurate figures showing the extent to which production and employment in steel plants in Pennsylvania have been affected by imports into the United States. In 1961 the production of steel ingots in Pennsylvania was 22.9 percent of the entire U.S. production. Assuming that the steel plants in Pennsylvania are affected by national imports in that ratio, the national imports allocable to Pennsylvania were 223,000 net tons in 1955 and 725,000 net tons in 1961, an increase of 502,000 net tons. This is equivalent to full-time employment for 4,200 steelworkers for an entire year. At current rates the payroll and employee benefits for these 4,200 steelworkers would total over $33,500,000 annually.

The CHAIRMAN. Senator Keating?

Senator KEATING. Mr. Chairman, in my view, we have three questions here, one of which might be called the amenities, one of which is legal and one of which is a matter of policy.

When this subpena was issued asking that these people appear and bring with them certain books, as a Senator I would have preferred it if they had had the courtesy to appear and, if they were so advised, to decline to produce the documents.

They were advised by one of the ablest and most prominent lawyers in New York State and the country, Judge Bromley, not to appear. Judge Bromley has sat on the highest court in New York. He has disagreed with positions advanced by me and has agreed at times to those positions.

I now disagree with his conclusion that these company officials would have waived any rights by appearing before the subcommittee without their documents.

I do that with considerable humility because of the standing and stature of Judge Bromley.

However, that deals with the amenities.

We pass now to the legal question. In my judgment, this subpena is clearly a subpena duces tecum. If it had included the words "to appear and give evidence"—if those words had not been struck out—I would not have had a moment's hesitation in voting the citation for contempt after the officials failed to appear. Mr. Patton in his appearance before the full committee has been extremely cooperative and helpful, and certainly has made it very clear that neither he nor the others who failed to appear before the subcommittee intended any discourtesy to a Senate committee. His appearance before us has served to vitiate any issue with regard to his not appearing before the subcommittee.

I have a profund respect for the investigative process of a congressional committee. They are essential to the operation of the Congress and to effective government.

The legal question is whether the documents sought to be produced are pertinent to an authorized congressional inquiry and whether the production of them would serve a legitimate legislative purpose.

In my judgment, if this committee and the Senate were to vote a contempt citation in this case, the court would hold that the documents in question are pertinent to the inquiry and should be produced, and the named individuals would be held in contempt.

Parenthetically may I say that I have long favored a bill, and I hope that this case will give added impetus to it, which would permit these contempt cases to be tried as civil rather than criminal matters. I will not go into it now, but I hope our committee at some time will act on this bill.

The final issue, in my judgment, is the question of policy. This question would not be involved in any court proceeding. If these subpenas are valid, it would be no defense in a court case to say that it is not good policy to require them to comply.

That is a problem which rests squarely on the shoulders, first, of this committee and then of the Senate.

On this point, I believe that a convincing case has been made that to require these companies to produce the unit costs of their operations would seriously interfere with their ability to cope with foreign competition.

The effect on domestic competition also is important, but I am most concerned with the jobs of American steelworkers which are lost by the invasion of our markets by foreign steel firms. I am satisfied at this point, although I shall not make a final conclusion until the hearings have terminated, that thousands of jobs of American steelworkers would be lost, as they have been already, as a result of the information foreign competitors would obtain under these subpenas—information which under the law of many foreign countries, it would be a criminal offense to disclose; namely, the unit costs of production.

It, therefore, appears to me at this point that as a matter of policy it would be unwise and not in the national interest if we were to force these companies to reveal the unit costs of each of these items. Unemployment in this country is serious enough now and I do not intend to do anything which would make it worse.

Therefore, unless my position becomes changed by later evidence, I am inclined on the ground of policy, and that ground only, to vote against a contempt citation.

Senator KEFAUVER. Will the Senator yield for a question?

Senator KEATING. I yield.

Senator KEFAUVER. I would hope that the Senator and other members of the committee would withhold judgment on the policy question until the full case has been developed.

Senator KEATING. That I will do, I assure the Senator.

Senator KEFAUVER. A lot of evidence has not been presented and until I have had the opportunity of questioning Mr. Patton as to the authenticity of his general conclusions that he has made in his statement—I have many questions to ask and many facts to bring out, and the whole presentation has not been made.

Senator KEATING. I have already indicated that my final position will be based on all the evidence and I assure the Senator that my views at this point are tentative opinions. However, in fairness, I

wanted my analysis of the matter, as I see it at the moment, to appear on the record.

The CHAIRMAN. Senator Fong?

Senator FONG. Thank you, Mr. Chairman.

Mr. Patton, when you received this subpena with the words "to testify" crossed out and you presented it to your counsel, did you come to the opinion that this was merely and solely for the purpose of presenting documents to the committee, rather than testifying?

Mr. PATTON. Yes, sir.

I was so advised by my counsel.

Senator FONG. Did you have any opinion as to whether you were required to testify?

Mr. PATTON. I was told by my counsel I was not required to testify; that the sole burden of the subpena was to produce certain documents.

Senator FONG. And your subpena did have the words "to testify" crossed out, is that correct?

Mr. PATTON. Yes, it did, Senator.

Senator FONG. Mr. Patton, you are familiar with our court procedure where a defendant in court is asked a question that may incriminate him and he pleads the fifth amendment?

Mr. PATTON. I am, Senator.

Senator FONG. Do you feel that your situation is somewhat akin to that of a defendant in a court of law where he is asked to incriminate himself?

Mr. PATTON. I hope I never see the day, sir, when I have to plead the fifth amendment.

Senator FONG. From the standpoint of your corporation in which you are asked to divulge information which goes to the heart of your operation which does convict you, do you feel that this is almost the same type of situation that a defendant finds himself in?

Mr. PATTON. It is, in our opinion, a request that would require us to waive basic rights of the company which I am privileged to head, and I would not do that unless I was compelled to do it.

Senator FONG. In other words, you do not want to plead the fifth amendment.

Mr. Patton, you did state that you had tremendous foreign competition and that you also faced domestic competition from the plastic, the aluminum, and the glass businesses. You have not, however, given us an insight into whether there is competition among the four companies which are now standing together before us.

Mr. PATTON. Senator, there is the most serious and active competition that you could ever imagine in this industry. Each company is out fighting for every order that it can get and trying as hard as it can to take that order from any other company, including the four companies here or any other company in the steel business.

We are going to get an order in our company if we can get it. We need it.

(At this point Senator McClellan leaves the hearing room.)

Senator FONG. I was alluding to this:

You four companies are now standing together before this committee pleading a cause which is common, but in the field of competition, if you were to disclose your costs as the cost of Republic Steel in its operations, and Bethlehem was to present its figures, how

would that affect competition in the steel industry in the United States?

Mr. PATTON. It would be a serious situation for each of us, because if Bethlehem Steel knew Republic's costs for a particular product, and they know that we are selling that product to a particular customer, they could go in with a target knowing what they have to meet.

We could not afford to go below our costs for very long or we would go broke, as I said.

It would harm competition and hurt the individual companies.

Senator FONG. Would you or could you foresee a situation in which, if these costs were known by the four companies which are before us this morning, that there would be an elimination of competition among the four of you?

If you knew Bethlehem's costs and Bethlehem knew your costs and you knew Armco's costs, would you not be able to more or less quote the same price?

Mr. PATTON. Oh, you could, yes, sir. That would be possible, but it would not be probable, I want to make that clear.

But we would certainly know what the target was that we had to face to get that business.

Senator HRUSKA. Will the Senator yield on that specific point?

Senator FONG. Yes.

Senator HRUSKA. Perhaps it is a question for Judge Bromley but I would like to ask you, Mr. Patton, would it be legal for the 4 companies or the 12 companies to exchange cost data, the type of which we are concerned with here today.

Mr. PATTON. It would not. I am advised by counsel that that would be illegal.

Senator HRUSKA. Under what statute?

Mr. PATTON. Under the antitrust statutes.

Senator HRUSKA. Thank you. Thank you, Senator Fong.

Senator FONG. Now Mr. Patton, you spoke of this tremendous competition from foreign sources. Could you tell us as to whether you have contributed to this tremendous competition, that is, American companies going abroad, building their plants over there, having their products sent back to the United States giving us this competition. Could you give us some idea as to whether Republic Steel, Bethlehem Steel and the other steel companies have contributed to this competition?

Mr. PATTON. Speaking for my own company, sir, we have no steel operations anywhere outside of the United States. We do have iron ore mines, raw material properties where we have to find those where the Lord put them in the ground. We do have some of those. But we have not any steelmaking facilities abroad.

All of our steelmaking facilities are in the United States, and whatever foreign competition we engage in is engaged from plants located in the United States with respect to products located in the United States which we offer for sale all over the world.

Senator FONG. Do you know whether other companies have plants abroad?

Mr. PATTON. I do not think there is a single steel company that has a steel plant abroad.

I have read in the paper about two little operations that some of the smaller companies are getting into over there. But they are not basic steel plants as I understand it.

(At this point in the proceedings Senator Eastland left the hearing room.)

Senator FONG. Now you have given us some figures as to the amount of imports that come into the United States, and you state on page 8 that imports have increased from 4.8 percent of total industry shipments in 1950 to 73 percent in 1961. In the case of concrete reinforcing parts imports have gone from 3.6 percent of industry shipments in 1950 to approximately 24 percent in 1961, and wire rods have increased since 1957 from 5.7 percent to 48 percent in 1961.

Now have these figures been increased since then, from time to time?

Mr. PATTON. They are getting worse year by year, sir.

Senator FONG. With all things being equal, and say that Congress passes no substantial changes in the law on the matter of tariffs, if there is no change in the pattern of wage increases and of costs in foreign countries and in the United States, how can you project this picture for us as to how stiff the competition is going to be for American industry?

Mr. PATTON. It is going to get increasingly severe. As I say, you haven't seen anything yet. These new plants over there are just beginning to get into operation, and in many countries up to now they are producing steel in these plants which is needed for consumption in their home markets.

(At this point in the proceedings Senator McClellan entered the hearing room.)

Mr. PATTON. But just as soon as their production gets up to a situation where it will enable them to take care of the needs of their home market, they will have a lot of additional steel available for export, and that steel is going to meet American steel in world markets, and there is no more fertile ground for them to sell in than right here in the United States, the greatest consumption country of steel in the world. So we will get worse from year to year both in competition abroad and in competition in our own markets, sir.

Senator FONG. Realizing that, what is the industry doing to forestall that competition in the U.S. market?

Mr. PATTON. As I pointed out, the American steel industry has invested $15 billion in the last period of time in an effort to put in new modern equipment that is going to help reduce costs.

(At this point in the proceedings Senator Eastland entered the hearing room.)

Mr. PATTON. So that we can get our costs down to a point where we will be able to compete on some kind of an equal basis with the foreign competitors.

Senator FONG. So your only relief outside of legislation or increase in wages in foreign markets is your ability to cut costs, is that correct?

Mr. PATTON. It is our ability to cut costs and our ability I hope, through the millions of dollars we are spending for research, to find better ways, better steels, if you please, find a steel that is going to be lighter, that will do a job, that will therefore cost less than the steel that we have had to use heretofore.

For instance, sir, if we could build a bridge out of steel with a type of steel that would require half the tonnage that we have to have today, that bridge would be half the cost, and if we can get that kind of steel in this country, and the foreigners cannot get it as well, because we hope that we will have better research, that too will help us in this situation.

Senator FONG. Thank you, Mr. Patton. After listening to you there is a question in my mind as to what we are asking, Does this amount to unreasonable searches and seizures and whether you are not being placed in the same position as a defendant in a court of law when he asked to convict himself? Even though we should find that this does not amount to unreasonable searches and seizures there is a general policy question which this committee has to act upon.

Thank you.

Mr. PATTON. Thank you, sir.

The CHAIRMAN. Senator Scott?

Senator SCOTT. Mr. Patton, in your judgment would surrender of such confidential data be meaningful if not accompanied by the testimony of the involved companies?

Mr. PATTON. Yes, it would.

Senator SCOTT. You say it would. Would you explain that?

Can you merely submit data without offering testimony?

Mr. PATTON. Well, you would have to explain what it meant, of course.

Senator SCOTT. If you are denied the opportunity to explain by the omission of the words "to testify or to give evidence," then the raw data becomes subject to the "tender mercies" of the subcommittee, does it not?

Mr. PATTON. Yes, sir.

Senator SCOTT. Then any explanation or any condemnation which the subcommittee wished to make of your figures would be, by its very nature, ex parte without benefit of explanation or evidence, is that not so?

Mr. PATTON. It would, sir.

Senator SCOTT. I conclude by saying that this is a most undemocratic procedure. That is all.

Senator MCCLELLAN. Mr. Chairman, I would like to ask two or three questions. I will not be able to be here this afternoon if you want to continue on.

The CHAIRMAN. Proceed.

Senator KEFAUVER. I have quite a number of questions.

Senator MCCLELLAN. I understood that Senator Kefauver had quite a number of questions.

The CHAIRMAN. You said you cannot be here this afternoon?

Senator MCCLELLAN. I cannot, and I have just a very few.

Senator KEATING. Would the Senator yield for the insertion of a telegram from the Colorado Fuel & Iron Corp. in the record?

The CHAIRMAN. That is in the record.

Senator KEATING. Does the telegram which is in the record deal with the plant in Buffalo, N.Y., or is it a more general telegram?

The CHAIRMAN. It is a general telegram.

Senator KEATING. I would like therefore to put this telegram in the record. It points out that since 1956, when foreign competition

became a significant problem, employment at this plant has fallen from 1,755 people to 1,340, a loss of 400 jobs. It urges that the company's efforts to meet foreign competition—

not be handicapped by giving foreign competition the unfair advantage of knowing our most intimate cost secrets.

Mr. Patton, have you offered for the record the Bethlehem Steel figures?

Mr. PATTON. I do not believe I gave the figures in the plant.

Senator KEATING. I do not mean to interfere with Senator McClellan.

Mr. PATTON. I can do it very quickly, sir.

Senator KEATING. Is the memorandum which you have in your hand suitable for introduction in the record?

Mr. PATTON. If you would care to.

Senator KEATING. That deals with the loss of jobs.

Mr. PATTON. Yes, it does.

Senator KEATING. In both your plant in New York State and the New England States——

Mr. PATTON. Yes, in the Bethlehem plant.

Senator KEATING. Then I would ask that those two matters be made a part of the record.

The CHAIRMAN. They will be.

(The memorandum and telegram referred to are as follows:)

RESPONSE TO SENATOR KEATING'S REQUEST

In the New England-New York market area, served by New York State steel plants, there was an increase in imports of steel mill products of 345,000 net tons in 1961 over 1955. This is equivalent to full-time employment for more than 2,900 steelworkers for an entire year. At current rates the payroll and employee benefits for these 2,900 steelworks would total over $23 million annually.

Employment in New York plants

	1955	Current	Decrease
Bethlehem-Lackawanna	18,000	13,000	5,000
Republic:			
Buffalo	3,500	2,600	900
Brooklyn (S. & T.)	400	300	100
Adirondack Mines	1,050	250	800
Total, Republic	4,950	3,150	1,800
Total	22,950	16,150	6,800

NEW YORK, N.Y., *September 13, 1962.*

Hon. KENNETH B. KEATING,
U.S. Senate, Washington, D.C.:

The Colorado Fuel & Iron Corp., which operates at Buffalo the largest steel wire plant in the State of New York, respectfully urges that submission of steel production costs pursuant to the subpenas issued by the Subcommittee on Antitrust and Monopoly would greatly endanger employment in the Buffalo area.

You have already heard testimony concerning the seriousness of foreign steel competition and the unfair advantage which foreign steel mills would enjoy if they were permitted access to traditionally secret production costs. We vigorously endorse that testimony. Steel wire such as we manufacture at Buffalo is one of the product groups which has been subjected to the most severe foreign competition. Although it is not possible to determine with mathematical precision the exact direct or indirect effect of foreign competition on employment

it is significant to note that average employment at our Buffalo plant was 1,755 in 1956 before foreign competition was a major factor. By June 30, 1962, when the effects of foreign competition were being felt employment had dropped to 1,340, a loss of more than 400 jobs. This loss in jobs affects the prosperity of hundreds of local businesses which serve our employees and is thus magnified manifold throughout the Buffalo community.

Today the jobs of the remaining 1,340 employees at our Buffalo plant are entirely dependent upon our ability to sell wire products in the face of increasing foreign competition. We are making every effort to meet that challenge and we urge that we not be handicapped by giving foreign competitors the unfair advantage of knowing our most intimate cost secrets. The situation at our Buffalo plant is repeated at our major plants and mines in seven other States and is typical of the problem throughout the steel industry.

Although the Colorado Fuel & Iron Corp. is not one of the four companies which are formally contesting the subpenas, we have a vital stake in the outcome of this matter. We have not joined in formally contesting the subpena which we received only because we feel that the issue is adequately raised by the test cases of the four companies which are already before you and because it appears that intervention of additional companies would serve merely to complicate the procedures and thus to delay a prompt decision on the question. Pending resolution of the test cases we have not submitted data pursuant to the subpena but we will be forced to do so if the final decision in the test case requires compliance.

We urgently solicit your assistance. If you deem it appropriate I will appreciate inclusion of the text of the telegram in the record of the steel hearings of the Judiciary Committee.

Respectfully yours,

LEONARD C. ROSE,
President, Colorado Fuel & Iron Corp.

Senator MCCLELLAN. Mr. Chairman, I have just three or four questions so that I may have facts that I think I need for consideration. This may already be in the record, but if so, I would like you to state again how many different steel companies are there in the United States producing steel that would be affected or be involved in this issue?

Mr. PATTON. Twelve were subpenaed here, but there are in the neighborhood of, to the best of my recollection, about 90 steel companies in the country.

Senator MCCLELLAN. You mean 90 companies actually producing and manufacturing steel?

Mr. PATTON. In some form or other, that is my understanding, yes, sir.

Senator MCCLELLAN. The 12 that were subpenaed I suppose are the major companies?

Mr. PATTON. That is my understanding, sir.

Senator MCCLELLAN. Now then, which company—I do not care particularly for the name, I suppose it is United States Steel—which of the companies produce the most? First I will ask you what is the overall production in this country now.

Mr. PATTON. The overall production last year, sir, was roughly 98 million ingot tons, and it is anticipated, at least in our own company, that substantially the same tonnage will be produced this year.

Senator MCCLELLAN. All right, let me ask you then what is the total capacity? You say it is only running at about 50 percent of capacity.

What is the total steel capacity of this country?

Mr. PATTON. We have not had capacity figures as such for the last 2 years, but I would judge that the capacity of the country today is in the neighborhood of 160 million ingot tons.

Senator McClellan. Now how much of the present production or last year's production was produced by the company producing the most percentagewise?

Mr. Patton. I would not be in a position to answer that. I would think that that would be the United States Steel Corp.

Senator McClellan. I would think so though I do not know.

Mr. Patton. And I would have to look at their annual report, sir, to see what they produced, but that figure is a public figure that is available in their annual report.

Senator McClellan. I am sure these figures are available. I would like to have in the record at this point the total production which you have given of say 98 million tons last year, the 12 major companies, the names of the 12 major companies producing steel, the percentage of that total that each one of them produced, and then the percentage, the remaining percentage produced by all others.

Now there has just been handed me by counsel for the subcommittee, a memorandum showing that United States Steel produced 28 percent and that it was the largest producer.

Mr. Patton. I would expect that to be the fact, yes, sir.

Senator McClellan. It had 28 percent of the total capacity in the United States. And then it goes on down, Bethlehem was next with 15 percent, Republic, yourself, I believe was 8 percent plus.

Mr. Patton. Yes, sir.

Senator McClellan. Jones & Laughlin 5 plus, National 4 plus, Armco, 4 plus, Youngstown, 4 plus, Inland, 4, and then the others are all smaller. He advises me that these are the 12 companies subpenaed.

Senator Kefauver. Yes.

Senator McClellan. They have a total capacity of 82 percent of the total capacity of production in the United States. Now I do not know this. Can you add to this, giving us the percentage of capacity of each of these 12 companies, that they have, then give us the percentage of the total production of last year that each one of them produced, and supply that for the record at this point. My though, that these figures will rather clearly indicate that there is no steel monopoly in this country unless there is agreement between the different steel companies with respect to selling price, because certainly there is no monopoly in production and no monopoly in capacity.

There can only be monopoly, it seems to me, in restraint of trade if these companies get together and undertake to fix a price. I may be wrong, but I thought this is important here if we are studying monopolies.

(Subsequently, the following material was received for insertion in the record:)

At the hearing on September 14, in answer to a question by Senator McClellan (at p. 120-A of the transcript), Mr. Patton stated that there were to the best of his knowledge 90 steel companies in the United States. The facts are that the iron and steeel industry in the United States in 1961 consisted of 85 producers of raw steel for ingots and castings.

At page 122 of the transcript Senator McClellan asked Mr. Patton to furnish for the record the names of the 12 major companies producing steel, the total amount produced by each of them and by the entire industry in 1961, the percentage of that total produced by each one of those 12 and the percentage produced by all others.

At page 123 of the transcript Senator McClellan asked for similar information with regard to capacity.

Attached hereto as schedule A is a table giving the information requested at page 122 and attached hereto as schedule B is a table giving the information requested at page 123.

SCHEDULE A

Production and shipments of U.S. steel industry in 1961

	Ingot production (net tons)	Percent of total	Shipments of finished steel products (net tons)	Percent of total
United States Steel	25,169,000	25.7	16,791,000	25.4
Bethlehem	14,944,000	15.2	10,045,000	15.2
Republic	7,251,000	7.4	4,905,000	7.4
J. & L	5,577,000	5.7	3,797,000	5.7
National	6,123,000	6.2	3,966,000	6.0
Armco	5,359,000	5.5	3,830,000	5.8
Youngstown	4,334,000	4.4	2,816,000	4.3
Inland	5,254,000	5.4	3,658,000	5.5
Kaiser	2,165,000	2.2	1,403,000	2.1
Colorado F. & I	1,535,000	1.6	1,025,000	1.6
Wheeling	1,666,000	1.7	1,183,000	1.8
McLouth	1,554,000	1.6	1,184,000	1.8
Total	80,931,000	82.6	54,603,000	82.6
All other	17,083,000	17.4	11,523,000	17.4
Grand total	98,014,000	100.0	66,126,000	100.0

Source: The foregoing information has been derived principally from the annual reports of the named steel companies. The figure for "All other" has been calculated by subtracting the total figures for those 12 companies from the industry totals as published by American Iron & Steel Institute in its Annual Statistical Report, 1961.

SCHEDULE B

Capacity of U.S. steel industry in 1960 (steel for ingots and castings)

	Net tons	Percent
United States Steel Corp	41,916,000	28.2
Bethlehem	23,000,000	15.5
Republic	12,742,000	8.6
J. & L	8,125,000	5.5
National	7,000,000	4.7
Armco	6,800,000	4.6
Youngstown	6,750,000	4.5
Inland	6,500,000	4.4
Kaiser Steel	2,933,000	2.0
Colorado F. & I	2,837,000	1.9
Wheeling	2,400,000	1.6
McLouth Steel	2,040,000	1.4
Total	123,043,000	82.9
All other (73)	25,528,000	17.1
Grand total	148,571,000	100.0

Source: "Annual Capacities of Coke Ovens, Blast Furnaces, and Steelmaking Furnaces," published as of Jan. 1, 1960, by American Iron & Steel Institute.

Senator MCCLELLAN. Now let me ask you one other thing. Do you, as President, or does your company know, let us say, the cost of production of these other 11 companies?

Mr. PATTON. We certainly do not.

Senator MCCLELLAN. Do you exchange that information? Is that a professional or industrial courtesy that each competitor extends to the other, telling how cheap we can prduce this and we have found a method of cutting here and so forth? Do you get all that information from each other?

Mr. PATTON. No, sir; we do not exchange that information.

Senator KEATING. There is no such courtesy between you fellows, is there?

Mr. PATTON. Each one is out to get all the business he can.

Senator MCCLELLAN. Of course, I can appreciate if Republic develops some technique of making better steel and making it cheaper, it might be some advantage to your competitors to share it with you. Does no proper ethics in business suggest that when you spend your money and develop something like that that you share it with your competitors?

Mr. PATTON. If we find something that we think is advantageous to us, it will be awfully difficult to get us to share it with any competitor that we are trying to compete with.

(At this point in the proceedings Senator Scott left the hearing room.)

Senator MCCLELLAN. In other words, competition means just that, that if you can develop something better you are entitled to the benefits from it.

Mr. PATTON. We certainly are. Unless we get a patent and they are willing to pay us a fee for using that approach.

Senator MCCLELLAN. Does that apply also to your foreign competitors?

Do you know their costs of production?

Mr. PATTON. We do not, sir.

Senator MCCLELLAN. And in England, I believe they cannot give it to you without committing a crime?

Mr. PATTON. That is right, sir.

Senator MCCLELLAN. Have you any way of getting their costs of production comparable to what is happening here to give them the benefit of your costs of production?

Mr. PATTON. We do not.

Senator MCCLELLAN. In other words, you contend that if you are compelled to make these disclosures that are requested here by the committee even though they may be grouped, that you will actually be compelled to give information to your competitor that your competitor can use to your adverse advantage.

Mr. PATTON. That is exactly our position, sir.

Senator MCCLELLAN. Now, tell me how your competitor is going to be able to take any information that is developed here by your giving your cost records and so forth to this committee. How can they take that and utilize it to an advantage for them and to a disadvantage to you and to the steel industry in this country?

Mr. PATTON. Let me give you an illustration. Take the case of concrete bars that was mentioned here. If they know what the cost to Republic of making concrete bars is, and there is a big job up, they know that Republic will not, if it is going to survive, be able to quote on that job at a price less than its cost. So they will know that if they come in and quote a price somewhat less than our cost, they are very likely to take that job away from us.

Senator MCCLELLAN. In other words, they are able to better anticipate what you are compelled to bid?

Mr. PATTON. Yes, sir.

Senator MCCLELLAN. And if they know that you are going to try to place a bid so at least you won't lose money, you hope you may make

a little profit, they know how to judge that, and then they are able, as I understand you, to take that knowledge into account and to underbid you.

Mr. PATTON. They are, sir. They would be.

Senator MCCLELLAN. Would you be able, if you had the same information as to their costs, would you be able to better compete with them on the same basis?

Mr. PATTON. We surely would.

Senator MCCLELLAN. Now I am wondering whether—I think we will need some profit and I won't make a final conclusion at the moment, but if you will state representing all of the steel companies—and there are many of them who have different amounts of production and sales, and so forth—if you state this as a representative of all of the steel companies, not just Republic but representing all of them—somebody is telling me you do not represent but four.

Mr. PATTON. I am speaking in behalf of the four companies which are here. I can state as a matter of business practice, however, Senator, that the situation that you just so clearly explained would be applicable to any steel company.

Senator MCCLELLAN. Very well. I am going to limit it to the four.

Mr. PATTON. No, sir. It would be applicable to any steel company.

Senator MCCLELLAN. At the moment I am going to limit it to four.

Mr. PATTON. Thank you.

Senator MCCLELLAN. Whom you say you represent. But I want to lay down here now at this point, without accepting 100 percent your judgment in the matter—I am sure you will give us your best judgment—without accepting that at the moment, I want to lay down the proposition here now that if there is any steel company in the United States in business operating, whether they are listed among the 12 or any others, who contend that your statement here made with reference to what the effect is that this might have and the advantages it might give to foreign competition, if they disagree with it, I want them, if they will, to supply that disagreement for this record. Otherwise, I shall assume in my deliberations that the steel industry at least is unanimous in this viewpoint. Then I want——

The CHAIRMAN. Senator McClellan, in addition to the four we have had wires from a number, including United States Steel, that it would gravely damage them.

Senator MCCLELLAN. All right, but I assume that he says it would damage all of them and maybe some of them have wired in as you say and that will go in the record. But I think we ought to get right at the crux of this thing. If we are convinced, and at this point I wanted to submit the proposition that if there is anybody who can refute this testimony, who can offer anything to refute it and to disprove the assertions and contentions you here and now make, I think they ought to come before us and give us their figures and show how, or give us a logical explanation of why and how this could not possibly operate to the disadvantage of the American steel industry.

Unless that can be done convincingly, then, we have to resolve, this committee, and possibly the Senate has to resolve this issue. First, I lay down the premise that I take the position that the Congress of the United States has the right to get this information from them.

Beyond any doubt it has the power, it has the right and in some instances may have the duty to do it. That is a premise and that is an authority that if you contest that, I wholly disagree with you. Now having that right and having that authority and the duty under some circumstances to do it, then we are confronted here with a state of facts that I have just outlined. We have got a sick industry. We have got people unemployed who rely upon this industry, upon its operation for a livelihood. We have got an economy that is affected by it. We have got a condition where you are not making progress, you are not moving forward in this industry apparently. You have got a condition where you have the strongest competition. Now we are being asked to bring you in here and cause you to reveal to that competition information within your knowledge that you have developed that will be of further advantage to them.

Now the question arises, To do that under such circumstances, would it be in the public interest?

Senator WILEY. That is right.

Senator MCCLELLAN. You have said it is not in the interests of the steel industry. Then again is it in the public interest, and if it is not, you weigh the authority and the power of the Congress and its duty under some circumstances and you take into account those contending circumstances and say will we be serving the interest of our country to make you produce it or will we be doing a detriment to an industry the consequences of which would be detrimental to our country. That is the issue, and on that basis I intend to decide it, and that is why I call for any competent proof from any source, that will undertake to refute your position.

Senator WILEY. Will the Senator yield?

Senator MCCLELLAN. I yield.

Senator WILEY. Mr. Chairman, I think there is one fact that has not been brought out, at least while I have been attending the meeting. How many men, how many employees are there in the steel industry overall? How many does it amount to approximately?

Mr. PATTON. We have about 600,000 employees I would say, production and maintenance employees, and then we have our clerical and sales forces in addition. I will be glad to get the exact figure for you from one of the men here.

(Subsequently, the following material was received for insertion in the record:)

At the hearing on September 14 Mr. Patton stated (at p. 130 of the transcript) that he would secure for Senator Wiley the exact number of employees in the iron and steel industry. Mr. Patton also stated that he would secure for Senator Johnston the figures that he requested as to the number of people employed "in the past years" (at p. 139 of the transcript). The following table supplies the information requested by Senators Wiley and Johnston:

Total number of employees in U.S. iron and steel industry

1955	624, 764	1959	515, 057
1956	620, 734	1960	571, 552
1957	623, 834	1961	523, 305
1958	523, 451		

Source: Annual Statistical Report, 1961, published by American Iron & Steel Institute.

Senator WILEY. I assume that the employees are all unionized?

Mr. PATTON. In the steel industry about 95 percent are unionized, yes, sir; and they are all unionized in some fashion or other, but the

United Steelworkers of America is the bargaining agent for about 95 percent of the employees in the steel industry.

Senator WILEY. We have in America today you know those that have not much time for big business and those that haven't much time for big unions. Now if you have a situation where men, 600,000 or more, are put out of business, that has a direct impact upon the rest of the economy, does it not?

Mr. PATTON. Certainly, sir.

Senator WILEY. So we are talking now about the public interest so well stated by Senator McClellan. Is it your opinion that because of the constant change that has been going on since 1956—you have stated it, but I want it repeated—that the foreign competition, because they have improved their methods is of such a character that if they got the facts that we would have disclosed, could literally take over the business in America in relation to the production of steel?

Mr. PATTON. We have seen what has happened in the past and we have lost year by year our business to foreign competition, and I have every reason to believe that it will continue to get worse as the years pass.

Senator WILEY. That would mean unemployment; that would mean the Government would get less taxes; that would mean more and more contests between big business and big labor, would it not?

Mr. PATTON. It could, sir. We will do everything we can in the steel industry to be competitive, but it is a difficult job, and it should not be made more difficult by making us expose our costs so that we have even more trouble than we have now.

Senator WILEY. You realize that when we speak of a public interest or a public purpose, we are talking not simply then of steel, not simply even of the labor unions, but we are talking about 186 million of the rest of us. You realize that?

Mr. PATTON. Yes, sir. I am sure it has a direct impact on the whole country.

Senator WILEY. In other words, the economy of this country would be so seriously affected if conditions continue the way they seem to be continuing now that the entire economy in this country would have a serious impact?

Mr. PATTON. Yes, sir.

Senator WILEY. Thank you.

Senator KEFAUVER. Will Senator McClellan yield for an observation before he resumes?

Senator MCCLELLAN. Yes.

I just make one other observation, and this may not always be so, but if these conditions are as represented here, unless there is testimony to refute it, this will be one time when the public interest and the interests of an industry are one and the same. There is no difference.

Mr. PATTON. We so concede that, sir.

Senator MCCLELLAN. If your position is correct.

Now, I could not in conscience vote to compel you to disclose something that will hurt the whole economy of our country, if that is true.

As to the question of requiring you to respond to a subpena, I think you have got on the borderline of contempt of Congress, and the only thing I think possibly saves you is the way the subpena was written.

But, at the same time, when a subcommittee once takes action, it takes it subject to the approval of the parent committee, and this is the

place for you to come after you have got the advice you did, to come to this full committee and present your case and give us these reasons so we can have the clear picture of it, because it would be our duty, if we followed the recommendations of the subcommittee, to recommend to the Senate that the Senate hold you in contempt.

I do not think there was ever any willful attitude about this.

I think you might have, I am not sure about this, but I think you might have gone into court and asked that the subpena be quashed. I do not know about that. You might have had that remedy.

But, anyhow, you are here now before us, and it is the duty of this committee to get all the facts and then pass judgment. Thank you.

Senator KEFAUVER. Will the Senator yield before he leaves for an observation?

Senator MCCLELLAN. Yes.

Senator KEFAUVER. I want the Senator to know—he had a good deal to say about the competition between the companies in the industry—that I expect to attempt to show, and I think I can show, by records and documents that there is no substantial price competition between the members of the industry in this country. I wanted the Senator to know that is only one of the things that I will bring out when I have an opportunity.

Senator MCCLELLAN. Senator Ervin said that they could very well get together and fix prices in violation of law and they may have done it; I do not know; I am not trying to argue that either way now. I am talking about making them give information.

Senator KEATING. Would the Senator yield for an observation?

I believe the Senator will find that there are cases holding that you cannot go into court to seek to quash a subpena of a congressional committee on the ground that that would be an interference by the Judiciary with the legislative process. That remedy, therefore, was not open to them in this instance.

Senator MCCLELLAN. I threw it in here—I think the record ought to be clear—I threw the question in here so that——

The CHAIRMAN. The fact in the record is that this is the only recourse they had to test the subpena.

Senator MCCLELLAN. Very well.

Senator KEATING. Would it be helpful to have Judge Bromley reply briefly to that inquiry? Are there such cases?

Mr. BROMLEY. Yes, Senator Keating; 288 Federal 2d 126, Pauling against Eastland, our distinguished chairman, is such a case.

Senator KEATING. Our distinguished chairman was the defendant?

Mr. BROMLEY. He was a defendant.

Senator KEATING. What case was that?

Mr. BROMLEY. That was the *Pauling* case.

Senator MCCLELLAN. I think the record ought to show this. That is one reason I brought it out.

Mr. BROMLEY. Yes, Senator.

But I think it is perfectly clear that no court in our land has any jurisdiction to quash or modify a congressional subpena.

Senator MCCLELLAN. That respects the separation of powers, I assume.

Mr. BROMLEY. Yes, sir.

Senator MCCLELLAN. I wish they would always respect it. There are other cases where they do not respect it, in my judgment.

The CHAIRMAN. Senator Johnston?

Senator JOHNSTON. Mr. Patton, I believe in your testimony you brought out that there is strong competition between you and the other steel companies in the United States and also competition from outside of the United States; is that true?

Mr. PATTON. That is true, sir.

Senator JOHNSTON. Now, then, I notice you said that you produce within the United States 98 million tons annually; is that correct?

Mr. PATTON. Yes, sir; 98 million ingot tons.

I want to make that clear. That is the ingot tons, and then when they are processed down to shippable products, you get the ingot, and in turning the ingot, processing it down to a sheet, for instance, that is sold to an automobile company, you lose about 25 percent of the ingot, so the shipments will not be as high as the ingots.

Senator JOHNSTON. Now, then, how many tons of steel do we use in the United States?

Mr. PATTON. I would have to get the shipment figures, sir, but I think it would be fair to say—of course, it depends on the level of business, but I think it would be fair to say—that it would be about 25 percent; on that basis about 75 million tons of shipments roughly on a 98-million-ingot-production year, the shipments ought to be about 75 million tons.

(At this point in the proceedings, Senator Wiley leaves the hearing room.)

Senator JOHNSTON. What I am getting at is: How much steel is used that is produced in the United States and also out of the United States?

Senator KEATING. Including foreign shipments into the United States?

Senator JOHNSTON. Foreign shipments used in the United States. What I want to get at, what the consumption is in the United States annually of steel.

Mr. PATTON. I will get you that figure, sir.

Senator JOHNSTON. I think that is very important for the simple reason that it shows then the necessity for the production of steel in the United States, and whether or not the steel companies are producing an amount sufficient to supply the demand.

I think your capacity is so that you could, but just what you are getting from the outside.

Mr. PATTON. I understand, sir.

Senator JOHNSTON. Now, then, I believe you say that the companies that you are associated with do not have any steel companies outside the United States?

Mr. PATTON. No basic steel-producing facilities.

Senator JOHNSTON. Now, then, do you know whether or not individuals in the United States or the Government are lending money to produce steel out of the United States?

Mr. PATTON. Yes, sir.

I understand that the U.S. aid programs have been used to help build steel plants in foreign countries, and the extent of that I am not able to tell you about.

There have been loans made to steel companies in South America and in Europe and elsewhere.

Senator JOHNSTON. Now, then, speaking from the laboring man's standpoint, you state that the steel companies have employed somewhere in the neighborhood of 600,000 people; is that true?

Mr. PATTON. That is right, sir.

Senator JOHNSTON. Do you have any figures on the amount of people employed in the past years?

Mr. PATTON. I will get those figures, sir.

Senator JOHNSTON. I think we should have them and show whether or not they have increased or decreased over the years.

Mr. PATTON. We will supply those.

Senator JOHNSTON. I think it would be well to show the amount of steel used in the United States over a term of years, for the simple reason to see whether or not you are producing additional amounts of steel with a smaller number of people employed.

Could you give us that?

Mr. PATTON. We will be glad to try to.

Senator JOHNSTON. I think it would be well since we have gone into this, and we want to see how it affects the employment of people and how it affects our steel industry, because we realize that the steel industry is a very, very important thing not only in time of war, but in time of peace, and we do not want to do anything to see it crippled.

I know I do not, and I do not think any member of this committee does.

Mr. PATTON. Thank you, sir.

(Subsequently, the following material was received for insertion in the record:)

At the hearing on September 14 Senator Johnston stated (at page 139 of the transcript) that he thought it would be well to show the amount of steel used in the United Sates over a term of years. It is not possible to state with precision any figure as to the amount of steel used in the United States in any particular period of time, because there are not published any accurate figures as to changes in inventories. The figure generally used for the purpose is referred to as apparent consumption, which is derived for any given year by adding to industry shipments of finished steel products the imports and subtracting the exports. On that basis, the apparent consumption of steel in the United States from 1955 through 1956 was as follows:

Year	Apparent U.S. consumption (net tons)	Imports included in such consumption	Percent of imports included in such consumption
1955	81,629,601	973,155	1.2
1956	80,244,011	1,340,746	1.7
1957	75,701,730	1,154,831	1.5
1958	58,798,653	1,707,130	2.9
1959	72,096,769	4,396,354	6.1
1960	71,530,692	3,358,752	4.7
1961	67,300,582	3,164,256	4.7

Source: Annual Statistical Report, 1961, published by American Iron & Steel Institute.

Senator JOHNSTON. And this question that happens to be before us, it is a far-reaching matter, and we want to do justice to all the people of the United States, the steel people along with it.

Now, then, speaking of machines, have you installed machines that turn out additional amounts of steel without labor?

Mr. PATTON. Yes, we have put in new equipment in our plants.

We have to, to survive. If we did not invest money in new equipment to help reduce our costs, we would be worse off than we are today.

Senator JOHNSTON. That is one of the facts that you would not like to give away, maybe, to your competitors, is that not true?

Mr. PATTON. That is right, sir.

Senator JOHNSTON. In your testimony a few moments ago, I noticed you said that when you developed steel that is light and, therefore, you put less steel into it, that is one of your big cost items; put less steel into it and make it strong at the same time; you do not want to give that away to your competitors?

Mr. PATTON. Not if we can help it, sir.

Senator JOHNSTON. And you certainly would not want to give it away to a foreign competitor, would you?

Mr. PATTON. No, sir.

Senator JOHNSTON. Where the labor situation already is such that you are caught at a disadvantage there.

Have you in recent years been able to develop in the field that you are connected with, the companies that you are connected with, any saving from the standpoint of the weight of the steel?

Mr. PATTON. Yes. I could give you one striking example, and that is in tin plate.

A new method has been found to make tin plate thinner and stronger so that we are now producing tin plate for the canning industry that is called tintinplate.

And they make a lot more cans out of a ton of steel today than they did before.

That is just one example.

Senator JOHNSTON. That not only benefits you but that benefits the man that purchases also, does it not?

Mr. PATTON. It should, sir.

Senator JOHNSTON. In this field of steel, the Government has gone into the use of a great deal of steel for the building of roads, and, of course, it is very competitive in that field because you are trying to develop something along that line that is even put in the roads themselves and in bridges.

Could this exposure that this subpena has called for do you any harm in that particular field where you are trying to develop?

Mr. PATTON. It would be harmful in our competing with foreign competitors for the bars and the mesh and the other products and the bridge material, structural steel that goes into the road construction program.

It would put us at a disadvantage if they knew our costs.

The CHAIRMAN. Senator Ervin?

Senator ERVIN. I would like to address this question to Judge Bromley.

(At this point in the proceedings, Senator Hruska leaves the hearing room.)

Senator ERVIN. I am not an expert in antitrust laws, but I am under the impression that if several steel companies are in agreement to fix prices and thereby reduce competition, that such action would be a criminal conspiracy as well as a civil conspiracy in violation of the antitrust laws.

Is that impression correct?

Mr. BROMLEY. That is correct, Senator Ervin. It would be what lawyers call a per se violation and a criminal offense as well as a civil wrong.

(At this point in the proceedings, Senator McClellan leaves the hearing room.)

Mr. BROMLEY. Under section 1 of the Sherman Act.

Senator ERVIN. Taking that to be true, there would be no necessity for the committee to obtain this information for the purpose of enacting legislation to make the fixing of prices pursuant to agreements between producers a violation of law, would it?

Mr. BROMLEY. No, sir.

That is completely and adequately taken care of already.

Senator ERVIN. I would like to address this question to either the subcommittee chairman or anybody else on the committee.

The evidence or information sought would clearly be relevant to any congressional proposal to fix by law the prices of steel products or to regulate the amount of profits which the steel companies could make.

Is there in the proposal or does anybody have any idea that the Congress should take a step of that nature?

Senator KEFAUVER. Are you addressing that to me, Senator?

Senator ERVIN. I am addressing it to everybody on the committee.

(At this point in the proceedings, Senator Hruska enters the hearing room.)

The CHAIRMAN. Wait just a minute. I think that first the statement was made before you got here that one of the objects was to make this available for the Department of Justice to proceed with dissolution against the steel companies.

That was one of the legislative purposes, is that right?

Senator KEFAUVER. The legislative purpose was to include additional criteria for the purpose of bringing suits under section 2.

That is one of the legislative purposes.

The CHAIRMAN. Dissolve the steel companies.

Senator KEFAUVER. It is not the legislative purpose to dissolve the steel companies.

The CHAIRMAN. I say enable the Department of Justice to do it.

Senator KEFAUVER. To have an additional criterion in section 2.

But in response to Senator Ervin's question, in the case of *United States of America* v. *Bethlehem Steel Company and United States Steel Company*, I have the indictment here which is pending in the southern district of New York. It was alleged that in open die forging there was a price-fixing conspiracy in which Bethlehem acted as the go-between for United States Steel and certain other companies in agreement on and fixing prices on materials that had, it says here, "combined sales," averaging approximately $100 million a year. These were materials being purchased by the Navy out of which this indictment grew.

This is a price-fixing case where yesterday or the day before the plea was changed from "not guilty" to "nolo contendere."

Senator ERVIN. Which I have always heard to be interpreted as a gentleman's way of pleading guilty.

Senator KEFAUVER. I understand that under nolo contendere, you

just do not contend, and it is usually used for the purpose of preventing the conviction from being a prima facie case in a civil case.

If they plead nolo contendere in a civil case——

Senator ERVIN. It does not cause estoppel or——

Senator KEFAUVER. That is right.

But in connection with section 1 which does have to do with price fixing, this subcommittee is interested in what kind of evidence. One issue is whether the antitrust laws should be changed so as to make illegal per se multiple basing points system which, so far as the customer, the purchaser, of steel is concerned, have the same effect as the illegal Pittsburgh plus basing point system.

That is one of the matters that we do have under consideration and is important from the viewpoint of getting cost data that has been asked for here.

Along that line there is a relative matter of great importance having to do with section 1. We find that in bidding under secret, sealed bids to the Government, Republic very frequently bids to within a thousandth of 1 cent in identical price with some one or more other steel companies, as will be brought out. We have a bill pending before us, on which some hearings have been held, to require the submission of affidavits of noncollusion in those particular situations. This matter will be gone into when I have an opportunity of making a statement and asking some questions.

Senator ERVIN. My fundamental question, though, am I correct in assuming that it is not the objective of any member of the subcommittee to obtain this information with a view to proposing legislation whereby Congress would fix the prices at which steel products would be sold or to regulate the amount of profits which would be obtained on the steel products?

Senator KEFAUVER. Let me say, on the contrary, that my personal feeling is, and it has always been, that I do not want price fixing. I think that prices ought to be regulated by price competition, of which there is practically none in the steel industry. Part of the inquiry is to find out why there is none in the steel industry.

I think I can speak for every member of the subcommittee: Nobody on the subcommittee has any favor at all for any price-fixing arrangement or Government price control. That is not the purpose of asking for this information.

But it is pertinent, I think, to cases where Republic and Bethlehem bid prices on secret bids identical to the thousandth of a cent. Does it happen that costs are the same or just why does it happen, and what can we do about it.

That is part of the inquiry.

Senator ERVIN. I would just like to make a statement. The reason I was interested in the question I just put, because I have just received letters from people making the charge that the subcommittee was desirous of obtaining this evidence as the basis for legislation to fix prices and regulate profits.

Senator KEFAUVER. In that respect, I hope the Senator will answer with a very definite no; every member of this subcommittee is dedicated to the free, competitive-enterprise system.

Senator ERVIN. That was my impression.

Senator KEFAUVER. Competition as a regulator of prices and not any Government price fixing.

Senator ERVIN. I yield to the Senator from New York.

Senator KEATING. Mr. Chairman, in further response to the Senator, if there was a proper legislative purpose in getting this data, the companies, in my judgment, would not defend a contempt citation in court on the grounds of public policy. It is this committee's responsibility, however, to determine whether it would be against public policy to require production of this data despite its pertinency.

We have all been furnished with a copy of the memorandum to Bernard Fensterwald, staff director of the Antitrust Subcommittee from John M. Blair, chief economist. It reads in part:

> If efficiency is assumed to be closely and directly related to size, the appropriate public policies would include such measures as requiring notification and defense before a public body of price increases, imposing some form of public utility rate control, but if size is assumed not to be related to efficiency, dissolution and companion measures designed to promote competition becomes the logical course of public policy. Only by obtaining cost data can an intelligent judgment be made on the merits of this difficult issue.

Now, in my judgment, the production of these documents would be pertinent to an inquiry seeking to make a quasi-public utility out of a steel company.

I would oppose any such legislation to my last drop of blood, as would I am quite sure the Senator from North Carolina and an overwhelming majority of other Senators.

But these documents would be pertinent, to such legislation and the only question therefore is one of public policy; whether we propose, in the face of the unemployment situation in this country and the impact the release of this data would have on unemployment, to force them to produce this data.

That is the decision this committee must make.

Senator KEFAUVER. If the Senator will yield, what is talked about in Dr. Blair's memorandum is a bill that is now pending in Congress. The bill was introduced by Senator O'Mahoney, and there has been a lot of discussion about the matter, as to whether in basic administered-price industries there should be some notice of a price increase before it is put into effect.

Congressman Reuss, of Wisconsin, had such a bill pending.

Senator KEATING. But this refers, among other matters, to a public-utility-type rate control.

Senator KEFAUVER. If you will read the sentence before that, it is in connection with notification and defense of price increases before a public body.

That is what it refers to.

Then, frankly, there have been some authorities who have testified that there should be some public utility rate control.

Dr. Blair has not gone along with that, and I would never support Senator O'Mahoney's bill, which we had before us, if it had the effect which is described by Senator Keating.

(At this point in the proceedings Senator Johnston leaves the hearing room.)

Senator KEATING. I hope the Senator would never support it.

I have great respect for our former colleague, Senator O'Mahoney, but I always differed with him about this when I served on the House Antitrust Subcommittee. But I was commenting on Senator Ervin's question as to whether there was some matter before us to which this evidence would be pertinent. Such matters are before us and suggestions have been made that the steel industry and the auto industry and other be made quasi-public utilities and be required to come to some Government body before they could adjust their prices.

I would oppose such Government price fixing as much as I would a proposal that labor unions had to come before a public body before they could ask for a wage increase.

Senator KEFAUVER. There is nobody on the committee and nobody on the staff who wants to have price control of steel or of anything else.

There has been testimony by other witnesses that that is what they favor.

Senator ERVIN. I would like to make one other observation.

The Senator from New York mentioned the fact that he had a proposal which would enable the parties to raise the question that is being raised here without having to risk contempt proceedings against them to get a solution to the problem before it reaches that point, and I think some procedure of that kind should be developed.

Until it is, though, I will have to confess that when I was engaged in the practice of law, that I always found some consolation in the fact that when I gave one of my clients advice and he took it and it turned out to be wrong, it was my clients who had to go to jail instead of me. That is all.

Senator HRUSKA. Will the Senator from North Carolina yield?

Senator ERVIN. I am yielding the floor.

Senator HRUSKA. I just wanted to make one observation on the matter of this general theory or idea that it would be kind of nice to have public utility type regulation of steel companies and other industries.

In today's New York Herald Tribune I notice an article by David Lawrence, Mr. Chairman, entitled "Probe of Steel Industry May Be an Issue in the Election," and he discusses the very point that was raised by the Senator from North Carolina, and I ask that this article be included in the record so that it will be available for those who might want to indulge in a little philosophizing on that very subject.

The CHAIRMAN. It will be admitted.

(The article referred to is as follows:)

[From the New York Herald Tribune, Sept. 14, 1962]

TODAY IN NATIONAL AFFAIRS—PROBE OF STEEL INDUSTRY MAY BE ISSUE IN ELECTION

(By David Lawrence)

WASHINGTON.—Persecution of the steel industry by "liberal" or "radical" Democrats in Congress has reached the point where even the labor unions are becoming apprehensive that the end result may be more plants closed down and more jobs lost. If present proposals are carired out, it could mean a form of government control of the automobile industry, of aluminum, coal, copper, iron ore and other basic materials and of related manufacturing enterprises.

Some of the radicals have gone so far as to concede that the purpose of their current demand for cost figures from the steel companies to be submitted to

a Senate committee is to determine whether a public-utility system of regulating prices and perhaps also fixing wages, may be desirable as a "public policy" for Congress to enact.

A memorandum authorized for distribution by Senator Kefauver, of Tennessee, Democrat, to the entire membership of the Senate Judiciary Committee says flatly that, if a company seeks efficiency through the size of its operations, it may have to pay the penalty for it in a system of public-utility regulations.

On this point, the memorandum reads as follows:

"If efficiency is assumed to be closely and directly related to size, the appropriate public policies would include such measures as requiring notification and defense before a public body of price increases, imposing some form of public-utility rate control. * * *

"But if size is assumed not to be related to efficiency, dissolution and companion measure designed to promote competition become a logical course of public policy. Only by obtaining cost data can an intelligent judgment be made on the meris of this difficult issue."

The Senate subcommittee memorandum, in effect, declares war on the steel industry and threatens it either wtih laws that would establish a public-utility system of government regulations or a split-up of existing companies into small units, irrespective of whether they will be efficient or make a profit adequte to insure further funds for investment in plant and equipment.

All this is being done in the face of statements from steel industry executives that net profits in their rate of return on invested capital have declined in the last 10 years by almost 50 percent. Thomas F. Patton, president of Republic Steel Corp., said to the committee:

"A product-by-product breakdown of the American steel industry's costs, whether published by groups of three companies or even 12 companies, would be invaluable to foreign competitors engaged in penetrating our markets."

Mr. Patton testified also that disclosure of cost data would have a serious domestic impact in that producers of competitive products "would have for the first time steel-cost information which could prove of great benefit to them and great damage to us in the steel industry." Describing current conditions in the steel industry, Mr. Patton added:

"Wheeling Steel Corp. has reduced its dividend, Lukens Corp. has reduced its dividend, Pittsburgh Coke and Chemical Co. has reduced its dividend, and if you look at the profits of the steel companies for the last quarter, you will see that a number of them did not earn enough to cover their dividend, and I am sorry to have to say that when you look at the earnings of the current third quarter when they are published they are going to look even worse."

Mr. Patton predicted that, if foreign competitors could get the cost figures of American steel companies, they "would be better able to take business away from us—we would have our steel works working less, and more people out of work, and the towns in which our plants are located would be suffering even worse than they are today."

Senators Scott of Pennsylvania and Keating of New York, Republicans, asked whether plants in their respective states would be affected and received the reply that the impact would be serious everywhere if foreign competitors obtained access to the cost data of American companies.

Whether President Kennedy approves of the direction which the Kefauver subcommittee now has taken is not yet known. Last April he supported the efforts of the Tennessee Senator to undertake an inquisition into the affairs of the steel companies. There were reports around the Capitol then that Mr. Kennedy told Senator Kefauver bluntly "to go after" the steel companies. But the situation since last spring has changed for the worse. Unemployment in the steel industry has increased, and investors are suffering a loss of dividends as profits have been steadily reduced.

It looks now as if the Democratic party candidates for Congress generally may be adversely affected if the President continues to stand behind the Kefauver committee's crusade. There have been rumors that the White House and the steel-union leaders are taking another look at the whole situation. For it could become a potent issue in the current congressional campaign.

Senator KEATING. Will the Senator yield for a comment to my colleague from North Carolina?

I am happy to say that the Justice Department has just enthusiastically approved of the proposal which I have made for deal-

ing with contempt cases, and I hope, if time permits, that my bill will be discussed in our committee this year.

The Department agrees with me that it is wrong in cases in which there is no criminal intent to be forced to resort to a criminal prosecution in order to test the validity of a committee's questions or requests for documents.

Senator HART. Mr. Chairman, if I may for the record indicate that as a member of the Antitrust Subcommittee, I voted against the preprice notification proposal that was discussed, but I did vote in the citation for contempt by the subcommittee to recommend it.

I am anxious to hear developed reasons that would balance the objections that are being voiced now by the steel companies. You can be desirous of getting this basic cost information, as a member of the Antitrust Subcommittee, quite without reference to any public utility overtone or implication or proposal.

I was exposed to very little economics in school. There are an awful lot of economic maxims that float around, and I notice from the commendatory smiles of the audience that everyone of the steel people here agree with your proposition that you do compete intensely on price.

We can think we do things and yet objective analysis might lead us all to a discovery that we really were kidding ourselves.

I, for one, as a member of the Antitrust Subcommittee think that one of your problems in meeting foreign competition may well be the inadequacy of our own antitrust laws.

I am sure you will assign as one of the reasons the tax laws, the labor laws an maybe the antitrust laws.

Now, if we can do it without a greater damage being done to the industry, to find out exactly what your costs are, not out of idle curiosity, but to find out what relationship there is between cost and price in the steel business.

I would like to know what effect capacity, its utilization or lack of utilization, has both on cost and price, and, without any reference to dissolution, I would like to be able to find out your costs to find out just how precise this maxim is that the bigger you are, the more efficient you are.

All of these things bear on the responsibility of the Antitrust Subcommittee to evaluate the appropriateness of the antitrust laws today.

I am as much a politician as anybody else here. I always scream in protest against anything that may cost anybody a job, but I would like to find out how many consumers were able to get products cheaper because into the Buffalo market there came foreign steel.

These, I think, are wholly appropriate inquiries if we can insure that we can get it without doing you damage, and at one stage 8 out of the 12 companies thought that in the formula that had been developed by the subcommittee the information could be given us which would enable us to make this kind of judgment without doing damage.

Maybe I oversimplify that a little, but that was the impression we got.

So I would hope that the record will begin to be balanced now by some inquiry as to what pluses may be obtained by the production of basic cost information.

I am sure that the subcommittee's chairman intends to do that.

The CHAIRMAN. I am going to run for 10 minutes. Senator Kefauver says he desires to go about 10 minutes today and an hour tomorrow, is that right?

Senator HART. Mr. Chairman, could I ask Mr. Patton just one specific and very small question?

I have been sitting here and wondering for 2 days now. You cross-fertilize in this business. I mean you went to work—I mean somebody went to work for Republic and then 10 years later turned up in Bethlehem and 20 years later was in Armco.

How does he brainwash himself from the cost knowledge that he has obtained someplace else?

Mr. PATTON. Well, he does not, but as the years go on, what he knew the costs were 5 years ago is of no particular importance now.

Senator HART. But a sales fellow, does he not step out of Armco on Monday and into Bethlehem on Tuesday?

Mr. PATTON. I am very doubtful whether any salespeople know what the costs are even in their own companies.

Senator HART. This is not a problem in business at all?

Mr. PATTON. No.

Cost is a very jealously guarded figure in companies.

Senator KEATING. Of course, that same thing is true in our free enterprise economy of anybody who leaves one competitor and goes to work for another in any industry.

Senator HART. I had assumed that, and that is the reason for my question.

Senator HRUSKA. As a matter of fact, it is a subject with which this commiteee is somewhat concerned. The conflict-of-interest bills that are before us deal with Government employees going into private employment on subjects with which they had dealt while they were in Government service.

It is a common problem.

Senator HART. I take it both Senator Keating and Senator Hruska recognize the reason for my questioning.

It did occur to me and I suspect to them that somehow or another this may not be the entire mystery that heretofore has been portrayed.

The CHAIRMAN. Gentlemen, I am going to meet tomorrow. Do you desire to recess now or go on?

Senator KEFAUVER. Mr. Chairman, I would like to go on for a few minutes and then either tomorrow or Monday, whatever the Chair wishes.

The CHAIRMAN. The committee is going to meet Monday in executive session.

Senator HRUSKA. You are not going to meet Monday?

The CHAIRMAN. Yes.

Senator KEFAUVER. Then may I ask a few questions, Mr. Chairman?

The CHAIRMAN. Go ahead.

Senator KEFAUVER. Mr. Patton, was there some kind of steel association or other kind of steel meeting held in the last few days at the Sea View Country Club in Absecon, N.J.

Mr. PATTON. The annual fall meeting of the members of the American Iron & Steel Institute, the officer members, was held the last few days at the Sea View Country Club in Absecon, N.J. It is an annual meeting that has been going on for years.

Senator KEFAUVER. Did you attend such a meeting?

Mr. PATTON. I went up for 1 day, yesterday; yes, sir.

Senator KEFAUVER. I see. Was the subpena before this committee a subject of discussion?

Mr. PATTON. I reported briefly myself on what went on at the hearing; yes, sir.

Senator KEFAUVER. Were all the principal steel companies represented at that meeting?

Mr. PATTON. Most of them were represented there; yes, sir.

SenatorKEFAUVER. This was a regular annual meeting.

Mr. PATTON. Yes. We have been holding this meeting regularly for years.

Senator KEFAUVER. What is the name of the association?

Mr. PATTON. The American Iron & Steel Institute.

Senator KEFAUVER. And it meets once a year? It meets once every year or every so often?

Mr. PATTON. Oh, no. We have a spring meeting in New York and a fall meeting at Absecon, N.J., each year.

Senator KEFAUVER. I see. Now, Mr. Patton, Mr. Homer, in testifying before the subcommittee in 1957, had this to say. This is somewhat of a summary of a larger statement he made on the subject at page 548:

> The second unwarranted assumption is that a decrease in the price of steel last July would have resulted in an increase in the basic demand for our steel products. This assumption overlooks one basic fact. The price of our steel is so low today, about 7 cents a pound—

which would be about $140 or $150 a ton—

> that it accounts for a very small part of the costs incurred by our customers in producing finished products made from steel. Thus a $5-a-ton reduction say, in our steel prices last July, would not have any significant effect in increasing the sales by our customers of those finished products. Let me give you a few examples—

and so forth. Then at other places Mr. Blough testified at considerable length along the same line, and you in your testimony on Wednesday at page 49 of the transcript said:

> My feeling is that the demand element in the steel industry is not as important a factor in price as it is in the consumer industry because the demand for steel is a derived demand.

And then you went on to say that you sell it to automobile companies and so forth. You said further on page 52 that—

> There is no guarantee whatever that if you reduce prices you are going to get more business.

That is your general feeling and that of Mr. Homer, Mr. Blough, and others, I take it?

Mr. PATTON. What I stated in that record is my general feeling.

Senator KEFAUVER. Mr. Patton, if the demand for steel is relatively inelastic, price has nothing or very little to do with it, as you have said, and as Mr. Homer and Mr. Blough have said, and others have said. But you say then that the foreign competitors are beating you to death because of lower prices. How can the two statements stand together?

Mr. PATTON. Why it is as simple as anything to me.

Senator KEFAUVER. Let me explain my question so you can answer. You say that the price of steel does not make much difference as to the demand that you are going to have for your product.

Mr. Blough, in April of this last year, even said that raising the price $5 would make it more competitive, and yet you have lost more than half of your foreign market because of lower prices by foreign countries. You are complaining here bitterly about those lower prices from foreign countries. The two arguments do not seem to stand together.

Mr. PATTON. Well, they do to me, sir, if I may explain.

Senator KEFAUVER. Very well.

Mr. PATTON. Here is a certain volume of steel business. Now the question is, How much of the going business are we going to get and how much of the going business are the foreigners going to get? It is the piece of the pie, not the size of the pie that is really of concern to us. There is a certain millions of tons of steel and we want to have it in this country and we do not want to have the foreigners come in and taking it away from us. Now I made it perfectly clear that we in the steel industry—and this is one of the things if you please, we were very anxious to do at our fall meeting. How can we get the consumer to buy products made out of steel so that the pie will be bigger and we will have more steel to sell, and we are working very hard at that and that was the basic thing we talked about at this meeting.

We have got a big steel campaign. We are putting on campaigns in department stores all over the country: "Use stainless steel utensils instead of aluminum utensils," "Use products made out of steel instead of out of glass."

We want to make the pie bigger, sir, and we will do everything we can to do that. But we are worried, no matter what the size of the pie may be, as to what share of the pie we are going to get.

Senator KEFAUVER. Very well, sir. Let us talk about the pie for a minute. Your steel exports since 1955 have gone down by $400 million. That used to be part of your pie. You said that foreign companies had taken about 2½ million tons of steel here in the United States over what they did have in 1955. That used to be part of your pie. Foreign automobiles are in some cases underselling domestic automobiles, so you are losing part of your pie to companies manufacturing steel for Volkswagens, Renaults, and what not. What they are competing with you on, and what part of the pie they are going to get and you are going to get depends on price, does it not?

(At this point in the proceedings Senator Ervin left the hearing room.)

Mr. PATTON. Yes, price is the basis, price and service and delivery and all the other elements that go into making a sale. They are all elements of competition, quality.

Senator KEFAUVER. Yet you say and the others say that the demand for steel is inelastic and price has little or nothing to do with the amount of steel that you are going to sell or that will be sold.

Mr. PATTON. I say that we in the steel business have no real control over the amount of steel that is sold. We can try to help it, but the

ultimate test is what the consumer is going to buy in the way of products made of steel.

Senator KEFAUVER. You immediately went along with the suggested price in April that was announced by Mr. Blough, $5 increase a ton. How is that going to make you more competitive?

Mr. PATTON. I said in a public statement that I made at the time that if United States Steel thought it could get $6 a ton more for its steel, we in Republic were willing to test the marketplace and see if we could get it because, believe me, Senator, Republic Steel needed a higher price for its steel than it was getting, and I think the subsequent events have borne that out.

The CHAIRMAN. How much did you cut your dividend?

Mr. PATTON. We cut the dividend by a third, from $3 to $2, sir.

The CHAIRMAN. What was your earnings for the last quarter?

Mr. PATTON. Our earnings last quarter were about $9 million, sir.

The CHAIRMAN. What is that a share?

Mr. PATTON. 63 cents.

Senator KEFAUVER. Mr. Patton, it does not really make sense to me that you are keeping your prices high, insisting that the price has nothing to do with the demand for steel, while at the same time you are complaining about the loss of business to foreign companies because they have lower prices. Is that not what you are doing?

Mr. PATTON. No. My position makes real sense to me.

Senator KEFAUVER. Are you losing business to foreign companies because they have lower prices?

Mr. PATTON. Certainly we are losing it, but we cannot afford to sell at prices that are going to result in a loss to us or we won't be in business to be competing with these people very long, Senator.

Senator KEFAUVER. It was in the testimony before that your break-even point is about 33 percent or 35 percent of plant capacity in the case of steel, that your cost of making a ton of steel decreases as your rate of operation increases. Is that not correct?

Mr. PATTON. Let me start by saying that we have no break-even point. Our break-even point changes from day to day and week to week, depending upon circumstances and costs. And, of course, if we have a higher volume, we will have better costs. There is no doubt about that. But we won't have better costs, sir, it won't do us one bit of good, sir, to sell our products on the basis that the more you sell the more you are going to lose.

Senator KEFAUVER. The more you sell the lower your cost of production is going to be and the more opportunity you have of making even a larger profit.

You were talking about last year. Last year you made 7.8 percent on net worth after taxes, 5.9 percent on sales after taxes, operating at 57 percent of capacity, according to the statistics we have here from Moody's Investment Service, and Standard & Poor's Corp.

Mr. PATTON. Sir?

Senator KEFAUVER. I say last year made——

Mr. PATTON. Whatever our annual report shows we made, yes.

Senator KEFAUVER. If that figure is not correct, it will be corrected, but your report shows, according to them, that at a 57-percent operat-

ing rate, you made 7.8 percent after taxes on net worth. That is nearly 16 percent before taxes. You made 5.9 percent on sales after taxes, operating at only 57 percent. Do you know of any other industry that can do that?

Mr. PATTON. Again, I do not want to confuse things, but our annual report—you just cannot divide the tons and get it. We are in a lot of things that do not involve steel as such. We even sell aluminum windows to complement our steel things in some respect.

We are in mining. We sell iron ore, we sell other things, and you just cannot say that that was the steel end of the business.

Senator KEFAUVER. Well, this is per ton shipped and the tonnage shipped is from Moody Investment Service or Standard & Poor's. My question is, Mr. Patton, if you were not in a monopoly or an oligopoly industry or an administered price industry, you would, with all these people being out of work and the loss of the market that you are talking about, have some reduction in price. You would thus get more of the market and make more money, too.

Mr. PATTON. I think I made my position perfectly clear that we are competing in every way we know how, and that the amount of steel that is to be used ultimately will be determined by the number of products and the value of the products of the end use, and we will do everything we can to help the end use, but I do not think that a change in price will have any material effect on the end use.

Senator KEFAUVER. May I just lay the basis of one other question?

The CHAIRMAN. All right. I had agreed to go to 12:30. It is 10 minutes over that.

Senator KEFAUVER. Mr. Patton, as I have studied the steel industry since the creation of United States Steel in the early 1900's, about 1902, this has been an industry of identical prices or substantially so. There has been no price competition to speak of except that which was brought on in the early 1930's. There was the big steel case in 1920 that I referred to; later on Pittsburgh plus was knocked out by the Federal Trade Commission in 1924. Then you resorted to the multiple basing point system which insofar as the purchasers of steel were concerned made no difference from the result in the illegal Pittsburgh plus basing point. And up to this time there has been no real price competition between American steel companies, is that not correct?

Mr. PATTON. I respectfully disagree.

Senator KEFAUVER. Then we will go into the figures this afternoon.

The CHAIRMAN. No, sir. We are going to adjourn now until tomorrow morning at 10 a.m.

Senator KEFAUVER. Mr. Chairman, I have a statement I would like to put into the record at this point.

The CHAIRMAN. Yes, sir; you may include that. Furnish them a copy.

(The statement in full of Senator Kefauver follows:)

STATEMENT BY SENATOR ESTES KEFAUVER BEFORE JUDICIARY COMMITTEE ON SUBPENAS ISSUED TO STEEL COMPANIES AND THEIR EXECUTIVES

The Senate has directed the Antitrust and Monopoly Subcommittee to make studies of problems of concentration and monopoly and to make proposals for the strengthening and more effective administration of the antitrust laws as needed in the interest of maintaining a healthy competitive free enterprise system. To do this, it is necessary that the subcommittee have the facts upon which to base its work and recommendations. As with all committees and subcommittees of the Congress, without sufficient facts we would be legislating in the dark.

The subcommittee's program for 1962 was contained in Senate Report 1139 of the 87th Congress which accompanied Senate Resolution 258, the basic authorization of the subcommittee for this year. The statement of the approved program began as follows:

> The subcommittee's plans for this year are again wide in scope and represent its planned effort to find an answer to the fundamental problems confronting our Nation's free enterprise economy.
>
> (1) Foremost among these is the problem of administered prices, and the related problem of price leadership and "price followship" * * *.

The last point in the program was:

> (13) The subcommittee continues to receive an unusual number of complaints concerning practices in certain industries, including the basic metals industries, the electrical manufacturing industry, the transportation industry, the poultry industry, the meatpacking industry, and others. The subcommittee will continue to keep a close watch on developments in these industries.

As everyone knows, steel is the bellwether of our economy. The subcommittee, in a previous hearing in 1957, found that there was an identity of prices in steel. Whether this identity results from collusion or monopoly power, the latter seeming to be the case, it is immaterial insofar as its effect upon the purchasers of steel. In any event, there is no price competition. The subcommittee feels that cost data, at least in a form showing relative importance, is absolutely necessary for the fruitful consideration of the complex problems with which the subcommittee is faced and essential to it for any intelligent legislative recommendations.

In addition to the general study of administered prices in which cost data are so vital, for a number of years the subcommittee has also been considering the strengthening of the Sherman Act with respect to dissolution. Indeed, it was the recommendation of Judge Hansen during the Eisenhower administration that the standards of section 7 of the Clayton Act be applied to existing concentrations under section 2 of the Sherman Act. Further, the subcommittee now has before it a bill, S. 3167, which would accomplish this purpose. For several years, a number of the members of the subcommittee, including myself, have long considered such a recommendation. Implicit in such a recommendation is the consideration of whether dissolution would impair efficiency. Therefore, it is important to know whether the production costs of the large companies are lower than those of the smaller companies. The relationship of size to efficiency is an essential consideration to any legislation dealing with monopoly.

In its hearings the subcommittee has found that in many major industries, including steel, sealed bids to Government agencies and others are identical. The President has ordered Government agencies to report such identical bids to the Department of Justice. The subcommittee has considered a bill to require such reporting; indeed the House of Representatives has passed such a bill. Where mills which are located within relatively close proximity of each other and which have widely different production costs, charge identical delivered prices at a given point of destination, it raises serious questions as to whether they are really competing with each other.

The subcommittee has had before it—and has been making a continuing study of—whether advance notification of price increases by certain large corporations in concentrated industries, such as steel, would be in the public interest where price competition is not responsive to varying costs in such an industry. Some hearings on a proposal of this kind have already been held.

These are among the issues and the problems which are being considered by the Antitrust Subcommittee, over which it has jurisdiction, and in which the securing of cost data is essential for the performance of its legislative responsibilities.

Further, in its inquiry into the bread industry, the subcommittee secured certain cost data. Likewise, the subcommittee secured certain cost data from the drug industry and unit profit figures from the automobile industry.

These cost data were contained in reports of the Judiciary Committee to the Senate on these investigations. Being on notice of the use of cost data by the subcommittee, the Senate renewed the subcommittee's authority to conduct such investigations and charged it with the responsibility of making legislative recommendations.

However, I should add parenthetically that, had these precedents not existed, a majority of the subcommittee members believe that the obtaining of such cost data now is essential to its carrying out of its legislative responsibilities.

The steel companies have been fully apprised of all of these matters of jurisdiction, legislative purpose, and pertinency.

As a strictly legal matter, as cost data is pertinent and necessary to a valid inquiry of this subcommittee, the issue of confidentiality is no defense to the nonproduction of material. However, as a policy matter, the subcommittee has been fully aware of and sympathetic toward the attitude of companies in general in not wanting their individual cost data made public because of competitive considerations. For example, in the bread investigation, a method was worked out for the grouping and consolidation of cost data by the Department of Agriculture, so that the cost data of no one company could be identified. This arrangement worked out to the satisfaction of both the bread companies and the subcommittee.

In the proposal to the members of the subcommittee made by me as chairman for the issuance of the original subpenas in this present steel investigation, it was made clear that a similar arrangement would be followed. I proposed that the data be sent to the Comptroller General of the United States, and that he would group and consolidate the material in such a manner that no individual company could be identified.

The subpenas that were issued also gave the 12 companies the alternative of furnishing the information by filling out a form which was the same form that had been used in furnishing cost data to the OPA in the 1940's. It was assumed that the companies kept their books in such a manner as to make compliance with the form relatively easy.

A number of the companies informed the subcommittee that they had changed their method of accounting and that filling out the OPA forms would be burdensome. To meet this objection, the staff of the subcommittee held a series of meetings with Mr. John S. Tennant, counsel for United States Steel. Mr. Tennant said he was in contact with counsel for all of the other companies except one, which has agreed to furnish the information.

As a result of these meetings, a simplified form was worked out which was agreeable to the subcommittee and eight of the steel companies. Although objecting to the subpenas, the eight companies indicated their readiness to comply on the return date of August 14, 1962.

The other four companies indicated they would not comply and asked for a formal meeting of the subcommittee to vote on quashing the subpenas. Although the subpenas had been originally issued only after approval of a majority of the subcommittee, I granted their request. At a meeting on July 25, 1962, the subcommittee reconsidered the questions of its jurisdiction, its legislative purpose, and the pertinency of the data to its inquiry. It then formally voted against quashing the subpenas.

The full action of the subcommittee was made known immediately to the four companies. Yet there was no compliance by them on the return date, August 14.

A meeting of the subcommittee was held on August 21 to consider what action should be taken with respect to the four noncomplying companies. I, as chairman of the subcommittee, recommended that they be given a new chance by the issuance of new subpenas and that a full record of all all proceedings and corespondence be sent to each of them so that they would be on full notice. Also I recommended that their officers, whom we thought would have control of the records, be subpenaed to appear and supply the material required or state in person their objections to compliance. Their personal appearance was required in order that the subcommittee would have an opportunity of considering the objections and of meeting them, if it could be done without thwarting the work of the subcommittee.

I would like to make perfectly clear that the subcommittee has no interest in punishing individuals. What we want is the subpenaed material. The subcommittee has found that the companies and their officers are in contempt for not appearing and furnishing the material, but the basic offense is in not furnishing the material.

A resolution finding the individuals in contempt solely because they did not appear would not be of help to the subcommittee. I would like to stress again that it is the cost data that we need and want to perform our legislative function.

I requested the chief economist of the subcommittee to prepare a memorandum on the purposes of obtaining cost data from the steel companies and answers to objections on the grounds of confidentiality, burdensomeness, and value to foreign competitors. I have covered

most of these points in a summary fashion, but I ask that the memorandum be printed in full at this point in the record.

However, since the question of value to foreign competitors has played such prominence, I shall read three paragraphs on that topic.

Value to foreign competitors—the argument that the disclosure of cost data, even in group totals, would be harmful to the American industry in its competition with foreign producers has certain elements of plausibility, which, however, can be discounted on several grounds. Behind this argument is the widely held assumption that costs per ton are significantly higher in the United States than in Europe. Given this assumption the argument can plausibly be made that knowledge of the actual level of U.S. costs would enable foreign producers to price their product below U.S. costs—but above their costs—thereby eliminating U.S. competition.

But the assumption that steelmaking costs are higher in the United States than in Europe is questionable. Labor costs, it is true, are materially higher in the United States, even despite the higher productivity of the American industry. But the reverse appears to be true of both iron ore and coking coal, both of which are more important elements in the cost structure than labor. If European costs are not significantly lower than American costs, knowledge of the latter would be of little value to foreign producers.

In the second place, without supplying cost data to the subcommittee—or to anyone else—the American steel industry has been rapidly losing its share of world markets. This in turn has been an inevitable result of the fact that the export market prices of U.S. steel producers have been approximately 30 percent above the export prices of European steel companies. If, through the presentation of cost data, it became evident that U.S. export prices were excessive in relation to costs, any resultant reductions in prices would tend to increase the U.S. share of world markets.

Finally the argument presumes that total unit costs are constant regardless of the rate of output. While the U.S. steel industry has continualy insisted that demand for its products is inelastic, it can hardly contend that lower export prices would not have given it a greater share of the rapidly expanding world market for steel. Had it secured an additional volume of orders from abroad, its unit overhead costs—and thus its total unit costs—would have declined. Just as costs help to determine prices, so also do prices have an influence on costs—an economic reality which is completely overlooked in this "foreign competition" argument.

In conclusion I would like to call attention to a recent statement by Senator Hart before the subcommittee. He said that he felt that our antitrust laws were outmoded and inadequate. I agree with him.

They are not adequate to meet the problem of administered prices.

They are not adequate to meet the problem of overconcentration in many of our most major industries. Big business is getting bigger. Everyday more and more small businesses are being driven to the wall.

It is the duty of Congress to examine these problems and, if possible, develop legislative remedies for them.

The responsibility for recommending remedies has been delegated to the Subcommittee on Antitrust and Monopoly.

A majority of this subcommittee believes it is essential to have certain cost data if we are to recommend intelligently and effectively, especially as to the problems of concentration and administered prices. These are highly complex problems. We cannot operate in a partial vacuum.

We have always done everything possible to meet objections to the form of our requests for data. However, if the Judiciary Committee and the Senate expects us to do an effective job, they must not deny us the tools we feel are essential.

SUPPLEMENTAL STATEMENT BY SENATOR ESTES KEFAUVER, DEMOCRAT, OF TENNESSEE, ON STEEL SUBPENAS, SEPTEMBER 14, 1962

A great deal has been said on the issue of revelation of confidential material.

I wish to point out that the original subpenas provided that the material would be grouped by companies in such a way that the individual cost data of any company would not be revealed. A similar procedure was used in the bread investigation in which the Secretary of Agriculture agreed to analyze and group the data. In the present case, an arrangement was worked out with the Comptroller General of the United States whereby the data would be submitted directly to him, grouped and returned directly to the companies.

Had the representatives of the steel companies appeared before the Antitrust and Monopoly Subcommittee, I was prepared to listen to any detailed arguments they might make, especially as to confidentiality. Had they made a really convincing case, I was prepared to suggest that a deflator or multiplier be added or that the data be stated ultimately in the form of percentages. In my opinion, it would be impossible in any case for anyone to figure out the cost figures of any company.

Furthermore, regardless of the manner in which the material is received, it will still be up to the subcommittee to determine whether or not any part of it should be made public or whether it should be used solely in executive session.

Unfortunately, none of the four companies paid the subcommittee the courtesy of appearing to discuss these matters. They did not communicate with me or the staff in any effort to work out a reasonable solution.

(Whereupon, at 12:40 a.m., the committee recessed to reconvene at 10 a.m., Saturday, September 15, 1962.)

STEEL COMPANIES (SUBPENAS)

THURSDAY, SEPTEMBER 20, 1962

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to recess and subsequent postponement, at 10:35 a.m., in room 2228, New Senate Office Building, Senator James O. Eastland (chairman) presiding.

Present: Senators Eastland, Kefauver, Ervin, Carroll, Hart, Wiley, Dirksen, Fong, and Scott.

Also present: Thomas B. Collins, counsel of the Committee on the Judiciary.

(Present at this point: Senators Eastland, Kefauver, Carroll, and Wiley.)

The CHAIRMAN. Let us have order.

Senator Kefauver?

Senator KEFAUVER. Mr. Chairman, summarizing Mr. Patton's position at our last hearing on Friday, he stated that foreign competitors, particularly competitors among the European steel companies, had lower costs than the American steel industry did, and that, therefore, if American companies gave their cost data to the Comptroller or to anybody else for compilation, it might give foreign competitors an unfair advantage, since they could then set their prices just below U.S. costs and the American firms would be unable to meet their prices.

Is that a proper summary of what you had to say, Mr. Patton?

STATEMENT OF THOMAS F. PATTON, PRESIDENT, REPUBLIC STEEL CORP., ACCOMPANIED BY H. C. LUMB, VICE PRESIDENT, DIRECTOR OF LAW AND CORPORATE RELATIONS, AND BRUCE BROMLEY, COUNSEL—Resumed

Mr. PATTON. Senator, I have no way of knowing the costs of our foreign competitors, and that is one of the reasons, of course, that we do not want to expose our costs to them.

Senator KEFAUVER. Anyway, that was the reason you gave?

(At this point in the proceedings, Senator Dirksen enters the hearing room.)

Mr. PATTON. We take the strong position that the foreign competitors are taking our business away from us, yes, sir, and that we would be damaged by exposing our costs to foreign competitors.

Senator KEFAUVER. It had been developed, I believe—and you were given the table for consideration—that the United States export price of steel to third countries was, I think the table showed, about 30 per-

cent higher than the price at which European competitors were selling to third countries. Is that correct?

(At this point in the proceedings, Senator Fong enters the hearing room.)

Mr. PATTON. We have lost substantial tonnages of steel in foreign markets which we used to enjoy, and we have lost it because the foreign steel companies are selling at prices less than we can afford to sell them, Senator.

Senator KEFAUVER. I believe you said that you expected domestic production here this year to be about the same as it was last year, about 98 million tons?

Mr. PATTON. That is my personal guess, yes.

Senator KEFAUVER. And that the foreign companies are importing about 4 or 4.5 million tons into the United States market, is that what you said?

Mr. PATTON. Into this country?

Senator KEFAUVER. Yes.

Mr. PATTON. They are taking 4 to 4.5 million tons. They are taking more over the world, of course.

Senator KEFAUVER. Yes, but I am talking about this country—you said about 4 or 4.5 million tons?

Mr. PATTON. That is right, sir.

(At this point in the proceedings, Senator Fong leaves the hearing room.)

Senator KEFAUVER. Now, Mr. Patton, I take it that the principal cost items in making a ton of steel are ore, coking coal, and labor; is that correct?

Mr. PATTON. Those are important costs. There are many other costs.

Senator KEFAUVER. I know.

Mr. PATTON. Including taxes and interest on our debt and depreciation on our equipment and a number of items that are important.

Senator KEFAUVER. But I am talking about the basic ingredients in making a ton of steel—aside from taxes, depreciation, and interest, which are relatively minor—they are ore, labor, coking coal?

Mr. PATTON. They are three elements of a number of elements that enter into our cost.

(At this point in the proceedings, Senator Scott enters the hearing room.)

The CHAIRMAN. Well, depreciation is certainly a cost of doing business.

Mr. PATTON. Depreciation is a very important element of our costs. So, might I say, are taxes a very important element of our costs.

Senator KEFAUVER. Yes.

You have, Mr. Patton, one of the summaries prepared by the Office of Price Administration from OPA figures and published in 1947. If you do not have it there, we will furnish you another one.

Do we have some copies for the members of the committee?

Mr. PATTON. I do not have it.

Senator KEFAUVER. This takes the OPA breakdown published in 1947, of detailed costs in making such finished steel products as universal plates and wire rods.

The 11th item, listed on page 2, is hot rolled sheets, which is one of the largest steel production items; is that correct, Mr. Patton?

Mr. PATTON. Where are you reading, Senator?

Senator KEFAUVER. The item listed as hot rolled sheets.

Mr. PATTON. Yes, that is an important steel item.

Senator KEFAUVER. Right below that listing is a cost breakdown of the larger companies, with finishing facilities over 5 million tons. You will find that near the bottom of the last page, page 3. On ingots, for example, the gross material costs seems to be $20.11 per ton. From that are subtracted certain credits, making $19.06.

Is that what the figures show?

Mr. PATTON. You are reading under the item "ingots" now, are you?

Senator KEFAUVER. Yes; just to try to get some idea of——

Mr. PATTON. The ingot is the original steel from which the sheet is made.

Senator KEFAUVER. Yes, I know.

Other processes are listed later on. Anyway, the net material cost was $19.06 for making a ton of ingots at that time?

Mr. PATTON. That is what it shows in this statement as of 1944. Of course, that is only a very small part of the total cost.

Senator KEFAUVER. I understand.

Then the principal material costs, I take it, that go into the making of ingot steel are ore and coking coal.

Is that correct?

Mr. PATTON. We have ore, coal, limestone, all the fluxes that go into the thing, and a number of materials that go in, but ore, coal, and limestone are the three basic materials.

Senator KEFAUVER. Then immediately under that——

Mr. PATTON. Labor.

Senator KEFAUVER (continuing).—Listed as cost above material, item 7, operating labor, is $1.25. Is that what this shows?

Mr. PATTON. That shows that for ingots. I emphasize ingots only.

Senator KEFAUVER. That is correct.

I take it that would be your plant workers? Would that be correct?

Mr. PATTON. Yes.

Senator KEFAUVER. And then it shows other production costs of $5.14.

I take it that would be supervisory personnel, electricity and other expenses in your plants?

Mr. PATTON. I am not familiar with this sheet, but those certainly would be elements that enter into it with other elements.

Senator KEFAUVER. Yes.

And then it shows operating administrative expense, 9 cents; taxes and insurance, 10 cents; depreciation, 30 cents; and total plant overhead, 49 cents, making the total cost of a ton of ingot steel, from which eventually hot rolled sheets are made, $25.94, as of that time?

Mr. PATTON. That is what this sheet shows.

Senator WILEY. What year was that?

Mr. LUMB. 1944.

Mr. PATTON. 1944.

Senator KEFAUVER. These figures were for 1944 and were published in 1947.

Senator WILEY. The world has turned quite a corner since then in every respect.

Senator KEFAUVER. Yes.

Mr. PATTON. Our costs are up very considerably since.

Senator KEFAUVER. And so are your prices.

Mr. PATTON. Prices are up also; yes.

The CHAIRMAN. All prices have gone up, have they not?

Mr. PATTON. All prices.

The price level of 1944 does not compare wtih the price level of today.

The CHAIRMAN. All prices except cotton.

Senator KEFAUVER. I saw a very fine article by the chairman of the committee in which he wrote very convincingly that cotton had to be competitive in the world market to get along.

The CHAIRMAN. I said that is right.

If costs could come down, we could reduce prices acordingly.

Senator KEFAUVER. I think the chairman's remark is very pertinent to the matter we are discussing here, and if there is no objection, I would like to put that article in the record as an exhibit.

Senator WILEY. Will the Senator yield?

Senator KEFAUVER. I will yield, but I would like, Mr. Chairman, to try to finish the particular points I am making.

Senator WILEY. It is right on this point.

Senator KEFAUVER. Very well.

Senator WILEY. As I said, the world has turned many a corner since then, but what I have in mind is in 1947, that is right after the war, that is when these European countries were practicaly all devastated when they did not have the plants that they have now. They have all been built up, and, of course, we realize what is happening now is that you have got competition with a rebuilt Europe, so to speak, and with the wages as they are now and with the fine plants that they have, they are what create the threat to the American industry, not only in steel, but in practically everything else: is that not right?

Mr. PATTON. That is correct, sir.

Senator WILEY. That is all.

Senator KEFAUVER. Mr. Chairman, I would like to finish the subject I have gone into, and I will try to do so very briefly.

The CHAIRMAN. Go ahead.

Senator KEFAUVER. Was the short article by the chairman——

The CHAIRMAN. The same rule applies to steel. When you get the costs down, of course, you can get the price down.

Senator KEFAUVER. Then later on perhaps I can read some of the article for the record.

In any event, this shows the cost of a ton of ingot steel as of that time.

You do not want to have this information go only to your foreign competitors or to your domestic competitor, as well; isn't that so, Mr. Patton?

Mr. PATTON. Yes.

We do not care for any steel company or any producer of a competing material or any foreign competitor to have our costs.

We think they are trade secrets that we are entitled to keep for ourselves.

Senator KEFAUVER. The other day you seemed surprised when I showed you that this OPA data had been published.

Did you not know it had been published?

Mr. PATTON. I did not personally know it had been published.

I do know that when we furnished information to the OPA in connnection with price control, we were—I believe there was a statute in effect making it a criminal offense to make such material public.

I did not realize that later on they were published. I just did not personally know about it.

Senator KEFAUVER. Were you president of Republic Steel in 1947?

Mr. PATTON. Oh, no.

Senator KEFAUVER. What were you then?

Mr. PATTON. I was a lawyer handling labor relations and other matters in those days.

Senator KEFAUVER. If you did not even know about this OPA report revealing cost data to your domestic and then few foreign competitors, it certainly could not have hurt you very badly, could it, Mr. Patton?

Mr. PATTON. Oh, no, I think that it has been put quite well. Times are quite different today than they were in those days.

Senator KEFAUVER. Very well.

Mr. PATTON. We did not have the competition either from foreign competitors or from competing materials that we have today.

The CHAIRMAN. Is it not true that business conditions in 1962 would not apply in 1955?

Mr. PATTON. Oh, yes, they are entirely different.

Senator KEFAUVER. In any event, as of 1944, the material costs for steel ingots, according to this document, were $19.06.

Operating labor costs were $1.25, other production costs were $5.14; your plant overhead, including taxes, depreciation, amortization, and operating administrative expense was 49 cents; making a total cost of production of ingots for the eventual making of hot rolled steel, $25.94, of which material costs alone—primarily ore and coking coal—were $19.06.

Now, Mr. Patton, in your statement on page 5, in talking about foreign competition, you go on to say:

> While prices may change, a foreign competitor who is aware of the average cost of American mills of producing a particular steel product has a specific target for planning his sales campaign—

and so forth. At the end of the next paragraph, you make the definite statement, without any limitation so far as I can see:

> Foreign producers have employment costs of about one-third or one-fourth of ours.

That is your statement, is it not?

Mr. PATTON. Yes.

Senator KEFAUVER. What do you mean by that, Mr. Patton?

Mr. PATTON. I mean that if you will look in our annual report or the annual report of any other steel company—I have mine in front of me—you will find a table showing a lot of historical data, and at the bottom you will see employment data, and we have employment costs of $381,746,000 in 1961; per hour, $4.23.

Looking at the reports, of foreign steel companies and the published figures, we find that their figures are only one-third or one-fourth of that.

Senator KEFAUVER. I know, but you are talking about employment costs, I take it, for producing a ton of steel, are you not?

Mr. PATTON. I am talking about their hourly wages, just as this is per hour. I would not know what their cost is of producing a ton of steel.

Senator KEFAUVER. No, but you say employment costs, Mr. Patton.

Mr. PATTON. That is right, the hourly costs.

Senator KEFAUVER. You do not say the hourly rate is one-third or one-fourth. You refer to employment costs.

Mr. PATTON. Employment costs are the wages, the fringe benefits, the other things that go in to make up an employment cost.

Senator KEFAUVER. Mr. Patton, if you employ one man who can make 2 tons of steel a week, are you not better off than if you had to employ two men to produce this output?

Mr. PATTON. The less men you employ per ton of steel, the better off you are to the extent that you have got lower employment costs. That will be offset to a large degree, however, by the fact that to eliminate the man you had to make a big investment in capital equipment that you have to pay for.

Senator KEFAUVER. In any event, by virtue of the equipment in the plant or the ability of the workers, if you have a higher productivity per man, then you are better off if you can employ one man to make 2 tons of steel a week than if you have to employ two men to make this steel.

Mr. PATTON. Senator, I want to make this perfectly clear. The fact that you employ one man against two does not prove anything in and of itself. We had to, in order to get down to one man, make a tremendous investment in a new mill. We have to pay interest on the money we borrowed for that mill, to buy that mill. We have to pay additional depreciation on that mill. We have to get profits to pay back the money we borrowed in addition to the interest, so that it is not as easy to say, well, if you have one man you are better off than if you have two. That just is not the fact.

(At this point in the proceeding Senators Eastland and Scott left the hearing room.)

Senator KEFAUVER. I am talking about your situation as of now or as of the last few years. If you have a higher productivity per man, why you are better off than if you have to employ a lot of people to make that ton of steel, are you not?

Mr. PATTON. I again restate what I said. You are only better off if your investment and the cost of your investment is less than the cost of the additional man that you have.

Senator KEFAUVER. Yes, Mr. Patton, I get back to the fact that your statement on page 5 does not say that foreign wage rates are one-third or one-fourth of ours. You refer to employment costs.

Mr. PATTON. Exactly, as I say, in our annual——

(At this point in the proceeding Senator Eastland returned to the hearing room.)

Senator KEFAUVER. I would take it by that statement that you mean to include the employment costs for making a ton of steel?

Mr. PATTON. No, that is not what it means. It is just correlative to what we use in the American published reports of all companies. We show our employment costs, how much does it cost per hour, and that

includes the wages we pay, the amount we have to set up to pay these men who take paid vacations to which they are entitled, the social security taxes we have to pay, the unemployment taxes we have to pay, the pensions we have to set up for, the insurance and health program that we have to pay. That all goes in, Senator, to make up the total employment costs.

Senator KEFAUVER. Then let me make it clear. In talking about employment costs, you are not talking about how much your cost of labor is for making a ton of steel as compared with the cost of labor per ton in a——

Mr. PATTON. No, I do not know what their cost is.

Senator KEFAUVER. Just a minute.

Mr. PATTON. And I hope they do not know what ours is.

Senator KEFAUVER. Let me state my question, Mr. Patton. In talking about employment costs, you are not talking about how much it costs you for labor to make a ton of steel here as compared to Europe?

Mr. PATTON. I am talking just as I said, that the labor, the employment cost that goes into our operations is considerably higher per hour than the European——

Senator KEFAUVER. You are talking about the hourly wage rate then, and not about labor costs per ton of steel.

Mr. PATTON. I am talking about how much we have to pay them per hour, sir, and theirs is one-third to one-fourth of ours, considerably less.

Senator KEFAUVER. I must say that I interpreted your reference to employment costs to mean how much you have to pay labor to make a ton of steel.

Mr. PATTON. No, it has a considerable bearing on our total costs, but it is not meant to be——

Senator KEFAUVER. Anyway, as to what you can sell a ton of steel for, the employment costs for making a ton of steel is the important thing, is it not?

Mr. PATTON. It is an important thing; yes sir.

Senator KEFAUVER. Very well.

Are you acquainted with Mr. Meyer Bernstein? Do you know him well?

Mr. PATTON. I know Meyer Bernstein. I have dealt with him in the past in labor negotiations. He is a representative of the Steelworkers Union.

Senator KEFAUVER. You know him as a reliable, competent economist?

Mr. PATTON. In my dealings with him I found him to be a reliable person.

Senator KEFAUVER. You know, Mr. Patton, that for a number of years Mr. Meyer Bernstein made a detailed study of the wage rates, employment costs, and productivity for European and Japanese steel companies, do you not?

Mr. PATTON. If he did, I have never seen them. I take it for granted as you stated that he did, but I have never seen them.

Senator KEFAUVER. He did and he was called as a witness before the House Ways and Means Committee where he testified on April 5, 1962. In his statement—and Mr. Chairman, I ask unanimous consent that this be inserted in the record.

The CHAIRMAN. Very well.

(The statement referred to is as follows:)

EMPLOYMENT COSTS AND FOREIGN TRADE

Statement by Meyer Bernstein, international affairs director, United Steelworkers of America, before the House Ways and Means Committee on the proposed Trade Expansion Act of 1962, April 5, 1962

My name is Meyer Bernstein. I am international affairs director of the United Steelworkers of America. I am glad to have this opportunity to appear before this committee because our organization has always supported trade liberalization within the free world, and we now wholeheartedly support H.R. 9900.

In February of 1950 I went to Germany on loan from my union to the State Department to serve as labor liaison officer in the Ruhr. I remained in Germany until September of 1952. In June of 1953 I returned to Europe, this time in behalf of the United Steelworkers of America to serve as our representative to the European Coal and Steel Community and the unions associated with that organization. I remained in Luxembourg until December of 1955 when I was transferred to Geneva to serve for a year as assistant to the president of the International Metalworkers' Federation, a trade secretariat to which my union is affiliated.

You will note that after the completion of my Government duty, I returned to Europe for an additional period of 3½ years in an official capacity for my own union. Our purpose was threefold: First, to encourage and assist wage policies and programs which would help raise living standards of metalworkers in Europe. Secondly, to study foreign industry conditions, particularly within the European Coal and Steel Community, and to ascertain the effect upon our own steel industry in the United States. And, thirdly, to help strengthen the democratic labor union movements abroad and their ties with the United States.

PROBLEM OF INTERNATIONAL LABOR COST COMPARISONS

It is out of this experience and the continuing exchange of information from the sources I developed in Europe during that period and in Asia and Latin America subsequently that I wish to discuss the question of international labor costs comparisons as a factor in foreign competition.

There is probably no aspect of H.R. 9900 which is so little understood and concerning which there is so much eloquent confusion. I can speak with some confidence on the matter, for my indoctrination began with the same set of false notions and half truths. At the outset I, too, made the standardized hourly comparisons and drew hasty provisional conclusions. But as I dug more deeply into the whole body of facts, I realized how erroneous surface indications were. Let me share with you my findings.

I was chiefly interested in two prime questions: First, how did the average foreign worker fare in comparison with his American counterpart—i.e., what were his earnings and benefits with respect to ours?

Because of the wide disparity in workweeks and employment stability, hourly comparisons taken alone were misleading. Information on the relative purchasing powers of the respective national currencies on the basis of both our market baskets and theirs, plus data on significant social legislation, would also be necessary to provide worthwhile international standard of living comparisons.

STEEL WAGES AND FOREIGN COMPETITION

The second question was of equal concern to my organization. What were employment costs to the employer and what effect did they have on his competitive position?

In a sense, this question also dealt with earnings and benefits, but from an entirely different standpoint. Obviously, hourly earnings—that is, the wage rate plus shift and weekend premiums, overtime, and the like—or even hourly employment costs, that is the foregoing plus the cost of all other fringe benefits such as vacations, hospitalization, pensions, and so forth calculated on an hourly basis, tell little in themselves, not only because of differences in productivity (i.e., number of hours of work necessary to produce the same unit of product) but also because of differences in workweeks, differences in hours paid for but not worked, etc.

International differences in wages or employment costs then have an effect on relative competition positions only when taken together with the relative

number of hours worked or paid for per unit of product. A low hourly wage or employment cost producer has no labor cost advantage over a high wage or employment cost producer if his productivity is proportionally lower. That is the low wage producer gains in hourly costs; but he loses this advantage in having to pay for more hours. The two elements must be taken in conjunction. Furthermore, other cost factors must also be compared. And finally the comparison must be made on a company by company basis, for it is the individual producer that is the competitor, not the country.

It was with these thoughts in mind that I inaugurated in 1956 a comparative and comprehensive study of the hundred largest steel companies of the free world. These companies accounted for 85 percent of the total steel produced outside of the Soviet orbit. I prepared this study for a conference of the Iron and Steel Department of the International Metalworkers' Federation. For the first time we now had detailed information on every major steel company in the free world, from which could be made comparisons of all the financial items which entered into the relative competitive position of each company. The basic information was the kind which we in the United States normally prepare for our negotiatons with employers.

The IMF has since that time held another conference of its iron and steel department, in 1959 and has one scheduled for May of this year This same study has been enlarged and brought up to date for each meeting by the economist of the IMF headquarters at Geneva, Mr. Carl Casserini, with assistance from myself.

I should like to summarize the main conclusions of these studies:

(1) The United States is head and shoulders over the rest of the world in productivity and in hourly earnings and hourly employment costs. Combined, these result in total employment or labor costs which are only marginally lower in other countries than they are in the United States.

(2) The profit ratio of the American companies with respect to both net worth and sales was generally higher than that of foreigners. (This is particularly true in the case of a nonrecession year.)

(3) Cost of materials was substantially higher abroad than in the United States. (This applies to all of the main raw materials: coal, iron ore, power, and transportation.)

(4) A major consideration in pricing policy in foreign lands is the maintenance of full employment; an objective which has not entered American pricing determinations.

STATISTICAL SHORTCOMINGS

The best measurement for point (1) above would, of course, have been labor costs per unit, which would be expressed in terms of hours per unit of product times average employment costs per hour. We know the total hours worked in the steel industries of most countries, including our own, but these total hours data are in themselves inadequate without information on the product mix and the types of steel produced in the different countries, which vary considerably. We produce more high quality steel proportionately than other countries; cold rolled sheets are major American export items. Man-hours going into these valuable products therefore cannot reasonably be equated with man-hours going into concrete reinforcement bars, a large import item. Furthermore, man-hours going into alloy steels cannot be put on a par with man-hours going into Thomas steel, a cheap method not used in the United States, or other inexpensive steels. For a meaningful comparison we must therefore also have a breakdown product by product and process by process. Unfortunately, such information is not reliably available any place, not even in the United States. Furthermore, as will be explained later, the European steel industry pays for vastly more hours not worked, and therefore not included in the statistics cited below, than we do.

There are other shortcomings, again tending to upgrade the appearances of foreign productivity and downgrade ours. Our definition of the steel industry is more comprehensive than Europe's. Our steel plants begin the manufacturing stage at an earlier process than is common abroad. Coke works are almost always in the steel plant here, and thus included in steel industry total hours; whereas in Europe such works are generally located at the coal mines, and the hours worked are accounted for in that industry. Then, too, we include more finishing operations in steel than do the Europeans. Nevertheless, a comparison of average hours per ton of product would give a general indication of the advantage we enjoy.

In 1960, the six members of the European Coal & Steel Community produced 50,770,000 metric tons of steel products, requiring 1,007,900,000 man-hours of labor or 20.2 per metric ton. During the same year we produced 64,545,503 metric tons of steel products, requiring 862,665,000 man-hours, or 13.4 per metric ton. And curiously enough, the biggest exporter to the United States—Belgium—had the highest man-hours per ton, 23.0. Belgian employment costs are among the highest in the world, even higher than those of many companies in the United States.

Another useful measurement, which is enhanced in value because it is available with respect to most individual steel companies of the free world, is labor costs as a percentage of sales. For this we find the following national averages for 1960:

	Percent		*Percent*
United States	39.6	Sweden	21.3
Canada	33.8	Norway	20.3
Belgium	31.2	Austria	19.5
South Africa	26.5	Luxembourg	19.5
Great Britain	23.2	Mexico	16.4
Italy	22.6	Japan	12.7
West Germany	21.6	Holland	12.0
France	21.3		

Even this measurement, however, leaves much to be desired. The employment costs, of course, include all employees in all operations for all levels, right up to the president or chairman of the board. Other shortcomings of this measurement are as follows:

(*a*) The American companies are generally more integrated; that is, they have more operations and, therefore, more employees included in the consolidated statement, thus adding to labor costs here.

(*b*) American industry includes all fringes. In Europe, many fringes are not included because of peculiarities in their financing. Housing, for example, is in large measure paid for out of taxes or tax benefits, which are not reflected in labor costs there.

(*c*) During the periods covered in our latest report, the American mills were operating at recession levels while the Europeans and Japanese were going at optimum rates.

All these factors had the effect of raising the American percentage while reducing the foreign, but even so, the differences in labor costs among American companies were almost as much as the differences between the American national average and the foreign national averages. Furthermore, a number of American companies—some fully integrated—had lower labor costs than their European competitors. Differences in labor costs, then, were not nearly as significant as claimed.

On balance, then, steel from the United States is—or, at the discretion of our producers, can be—competitive with that of foreign countries. There is a small employment cost advantage abroad which is more than counterbalanced by a materials cost disadvantage. Greater pricing flexibility practiced abroad is motivated largely by social and legal considerations which are absent here.

EMPHASIS ON FRINGE BENEFITS ABROAD

The disparity in hourly earnings averages is indeed substantial. The average European's hourly income is normally one-third to one-fourth that of an American worker. The Europeans, however, work more hours per week. But a more important difference is to be found in the multitude and extent of fringe benefits provided for abroad by law or collective bargaining agreement. Social security in other industrialized countries is more widespread than here, and contain programs unknown in the United States.

FAMILY AND HOUSING ALLOWANCES

France and Italy, for example, are leaders in the field of family allowances. There the state imposes a tax of approximately 15 percent of the total wage bill of each employer and then reallocates this money among married employees on the basis of the size of their families. It is perfectly possible to have two workers, one a married man with a large family and the other single, employed side by side, both with the same seniority, doing exactly the same job at the same rate, and receiving the same wages directly from the employer. In the

case of the single worker his wages would constitute his total income, whereas the married man, working beside him, would receive a supplemental check from the family allowance fund administered by the government. This check could be just as large as his direct wages from the company. Furthermore, if the latter worker were laid off or ill, his family allowance would continue. In other words, a nonworking family man could have a bigger income than a single man remaining on the same job.

Housing allowances under law, and housing construction under company policy—for which tax credits are given—are also common abroad. Furthermore, supranational agencies like the Coal and Steel Community have vast housing programs. Social security abroad also includes medical care and hospitalization, again with more comprehensive coverage than in the United States.

It may be said that the European percentages are higher because the base is lower and that the absolute figures for the United States are really higher. In general, that is true. But also true is the fact that the European benefits to the worker are much greater than our own. Let me explain.

MEDICAL CARE

Under our steelworkers' contracts, the steel companies must provide the full cost of a medical program which they estimate costs more than 15 cents an hour. This program, though expensive, is still inadequate. And any steelworker taken seriously ill must put out of his own pocket a large share of the hospital costs. Hospitalization under our contract is limited to 120 days with a $300 maximum surgical schedule. A man with a major illness would, therefore, get little comfort from such a program.

In Europe, where the companies undertake full medical care irrespective of cost, the benefits for the worker are infinitely greater. Consider, for example, the case of the Fiat steel and auto plant in Italy. There, the company, under a private equivalent of the social security requirement, makes available to its emyloyees comprehensive medical care. Fiat has its own hospitals and clinics and its own staff of 600 doctors to look after the 188,000 employees and dependents included in their program. Coverage is complete for everything from first aid for a cut finger to cancer.

I have myself visited the Fiat medical facilities, and at my request was given a case study involving what we describe as a catastrophic illness. I wanted this information to make a comparison of benefits at Fiat as compared to those in the United States, since in the United States the cost of catastrophic illness is one of our chief problems. The case study given to me was the complete record of a worker who was originally employed by Fiat in 1949. From that time, up to the fall of 1961, he was ill a total of more than 1,400 of 4,380 days in the elapsed period.

He spent a total of 570 days in the hospital on 14 separate visits. He spent 277 days during 10 convalescent periods in a convalescent hospital maintained by the company. He spent 120 days at a clinic for hydrotherapy during a total of eight treatment periods. He spent 194 days in additional convalescence away from home. He spent 15 days in a company rest home in the mountains and he spent 312 days at home. In other words, he was under medical care or convalescent for 4 solid years out of the 12 he has been on the company's payroll, and all of this treatment and care was made available to him free by the company.

Under the labor agreement, full salary is paid up to the first 4 months of illness, and after that half salary for the remaining months.

Fiat illustrates, too, a number of other benefits which a company can make available to workers on a really lavish scale without prohibitive costs. For example, Fiat has vacation facilities in the mountains and at the seashore for the children of employees. Equivalent accommodations in the United States are so expensive as to be practically prohibitive for workers. Fiat also maintains an old folks' home and five children's nurseries in the city of Turin. In addition, Fiat has an extensive housing program, a sports program, and other recreational benefits.

SOCIAL WAGE SYSTEM IN JAPAN

The same type of extensive welfare program is to be found in Japan, where it is the practice of the large steel companies to provide hospitals and health centers for the care of the workers and their dependents; to provide houses and apartments for employees; to establish cooperative department and food stores, offering commodities at large discounts; to provide commuting allowances for

workers from their homes to the plants and back; to provide rest homes, vacation resorts, and other recreational facilities. All of these services and benefits are offered either free or at nominal charge.

For example, a typical Japanese steelworker lives in a company apartment of moderate size with all conveniences, including bathroom, veranda, and so forth. It is well furnished with refrigerator, washer, and TV. His basic rent is approximately $6 per month, and in addition, he pays some 66 cents a month for water, a little less than $3 for gas, and a maximum of $2 a month for electricity.

The wage system in effect in Japan could be called a social wage; that is, additional earnings are provided to workers based on service with the company, family status, dependents, and so forth. A young unmarried man entering the Japanese steel industry is paid a relatively low starting rate, with this amount being increased yearly based on the factors mentioned above, plus yearly negotiated increases until at the time of retirement at age 55, the workers may earn in excess of $200 a month. Upon retirement, a worker at Yawata Steel Co., the largest in Japan, for example, receives a lump-sum payment equivalent to 83 times his monthly pay at the time of retirement.

But most important, the Japanese steelworker having permanent status, unlike his U.S. counterpart, is not subject to layoff, short workweeks, or reduced hours, but is guaranteed full employment 52 weeks a year, giving the worker a sense of real economic security.

In most European countries paid vacations are longer and paid holidays more numerous than in the United States. In France the minimum legal vacation period is 3 weeks. In Belgium it is 12 days, with double pay for the last 9; that is, the Belgian worker gets 12 days vacation each year, but is paid for 21 days. In Luxembourg, Germany, Belgium, and Italy paid holidays range from 10 to 17 days per year. Almost all European countries provide for what is called compassionate leave; that is, time off for marriages, births, or deaths.

EMPLOYMENT SECURITY AND CODETERMINATION

Much more significant, however, than these benefits is employment security as practiced in Europe under law, custom, and collective-bargaining agreement. Layoffs are unusual in countries where the welfare state has been established. Germany, France, Italy, and other countries have laws limiting the power of an employer to lay off workers even in the case of reduced operations.

Take Germany, for instance. Before an employer may layoff more than 49 persons during the course of a month, he must file a petition with the state labor office explaining the need for such a reduction in forces and at the same time he must file a statement by the "works council," a sort of European equivalent of our local union, setting forth the position of labor with respect to this proposed move.

It is true that the purpose of this law is simply to delay layoffs and that eventually the employer could bring about the desired layoffs. In practice, however, this occurs only rarely. One of the reasons for this is that other laws in Germany—and to a limited extent elsewhere—give labor a very large role in establishing management-employment policy. Most outstanding in this field is the principle of codetermination in effect in Germany under which in all large enterprises labor has at least one-third representation on the company board of directors and in the steel and coal industries plus certain other government owned or controlled enterprises labor has a share of power as large as that of the owners or managers.

In every steel and coal company half of the membership of the boards of directors are named by labor. In a number of steel companies a labor man is in fact chairman of the board of directors. In return for this, however, management has a slight majority in membership. In other companies, an employer representative would be chairman of the board, but then labor would have the majority.

The management board—that is, the officers—consists normally of only three to five persons of coequal rank and in each case the top officer in charge of labor relations (the arbeitsdirektor) is a union man named by the union. He has management authority greater than that of a vice president in charge of labor relations in a U.S. company for he also takes part in decisions passed on by the whole board in other matters as well.

For example, the president of the Metalworkers' Union of Germany is vice chairman of the board of directors of the Krupp-owned Rheinhausen Steel Co.,

and a former union district director is arbeitsdirektor. In such a setup we can well understand why the companies practice moderation in layoff.

In preparation for a study I made, I wanted to obtain an actual case of a layoff with its petition to the state labor office. I had a difficult time. Most of the arbeitsdirektoren told me that they didn't even ask for permission to layoff. During the recessions—and they have had them in Germany just as in the United States but on a much smaller scale—they simply transferred workers around, using them in construction or for other internal improvements.

In February of this year, the Salzgitter Co. announced that as a result of its modernization program and other changes a number of workers had become superfluous. But it said nobody would be laid off. In order to take up this slack, the company would depend on attrition alone; that is, workers who retire, or quit, or die would not be replaced.

AMERICAN STEEL COMPANIES UNDER FOREIGN LABOR CONDITIONS

Let me close by referring once more to the concept of a real wage or employment cost comparison and what we as a labor union are doing about it.

All of the major American steel corporations have opened iron ore operations abroad. These same companies continue to operate their iron ore mines in the United States. This provides us with a wonderful opportunity to use actual examples of labor costs for the same operations for the same company in the United States and abroad. The results are most interesting when we consider the levity with which these same companies make use of the international hourly wage or employment cost comparison.

The United States Steel Corp. and the Bethlehem Steel Corp. both have subsidiaries in Venezuela, both are under collective-bargaining agreement with the mine workers' union there. Both these companies have similar mines in the United States, which are under collective-bargaining agreement with my union. In the U.S. mines, the minimum wage is $2.285 an hour compared with the minimum of 77.6 cents an hour in Venezuela. The maximum in the United States is $3.825 an hour compared with $1.847 in Venezuela. So far, there would seem to be some truth in the hourly wage comparison, but now look at the hours paid for. The American workers work a 5-day week and, assuming the best of all possible conditions, he would therefore be on the job 49 weeks, on vacation an average of 2 weeks, and on holiday a total of 7 days. He therefore would be paid for 262 days per year; that is, 51 weeks at 5 days each plus seven holidays.

The Venezuelan miner working for the same company has recently been put on an alternate 5- and 6-day workweek; that is, one week, he works 5 days and the other week he works 6 days. But in both cases the pay is the same; that is, he is paid for 6 days. In addition, Venezuelan law and the American companies' collective-bargaining agreements provide for full pay for Sundays not worked 52 weeks a year. In other words, these American steel companies pay their miners in Venezuela for 365 days a year at full rates although the miner works a total of only 249 days; that is, 26 weeks at 5 days and 26 weeks at 6 days less 30 days' vacation and 7 days' holiday for everyone.

Nor is this all. Again under law and collective-bargaining agreement, the American steel companies pay a profit-sharing bonus of 60 full days' pay per year.

Summing up, then, an American miner gets a higher wage per hour but only for 262 days per year. The Venezuelan worker gets a lower wage per hour but for 425 days per year.

Actually, because of additional time off with pay for compassionate leave and for other causes, the Venezuelan miner works no more days in the course of a year than his American counterpart employed by the same company but he gets paid for over 60 percent more days in the course of the year.

Furthermore, it is only the American miner with the highest seniority who gets full-time employment in the American mines. For the last 3 years we have been in a recession, and the mines have been operating only part time, with most of the miners on short workweeks. In Venezuela, on the other hand, the employers are not permitted to reduce the workweek or to lay off workers in spite of the fact that production, as at home, dropped considerably. To be exact, iron ore produced in Venezuela was reduced by 25.27 percent in 1961 as compared with 1960. The United States Steel Corp. down there attempted to readjust its working force to meet this lower demand, but Venezuela had laws governing such things. Furthermore, the collective-bargaining agreement had a clause

guaranteeing work stability. The result was that the Secretary of Labor forbade the company to make the changes. In spite, therefore, of production reduced by a quarter, United States Steel in Venezuela was required to maintain the same work force, all continuing to receive 7 full days' pay each week for 52 weeks.

This is without doubt an unusual case, but it does illustrate that care must be used in making hourly wage cost comparisons.

A LABOR POINT 4 PROGRAM

Nevertheless, we as a union are aware that earnings of workers abroad generally are not as high as they could be. This affects the competitive status of their employers only to a limited degree because of the lower productivity abroad. But productivity is increasing all over the world, and it is our purpose to help our sister labor organizations in other countries not only maintain their pace but to catch up with us.

Let me give you one simple example; namely, Japan. In times past, the Japanese steelworkers' union was limited in its effectiveness, first, because it was highly political in its objectives; and second, because it did not make full use of its economic strength. One of the reasons it did not bargain with full vigor was that it had been persuaded that it was impossible to strike a steel mill for extended periods of time without doing so much damage to continuous equipment that it would take 6 months or more to resume full operations after settlement of a strike.

This was their belief. But when they observed right after our strike of 116 days in 1959 that we were able to resume a high rate of operations within a matter of 2 weeks and that no appreciable damage to our equipment had been suffered, the Japanese steelworkers' union realized that they had been laboring under a misapprehension. Accordingly, they addressed a request to our union through the International Metalworkers' Federation. They wanted us to send them two experts who could explain how to shut down a steel mill in a strike without damaging the equipment and permit a resumption of work immediately after settlement.

We were more than happy to comply, and we sent two of the best experts in the field. These two Americans made a tour of the Japanese steel plants with the Japanese steelworkers' union and they explained how we did such things at home. This was a kind of private point 4 program.

This was in 1960. The results were obviously most worthwhile for the union can now bargain from a much stronger position. Previously the companies only had to fear a token strike of a few hours. Now they could be faced with a real shutdown. Following up on this advantage just a few months ago, the Japanese steelworkers union addressed another request to us. Their new collective bargaining was just getting underway and they had been informed that the companies would propose an American type job evaluation program, so again the Japanese asked for our help. They wanted a job evaluation expert who would teach them how to protect their interests. Furthermore, they wanted another American who could advise them on negotiating strategy. We were happy to comply with both requests, and two associates of mine left for Japan on the day that we began our own negotiations in Pittsburgh. The Japanese union was happy to make full use not only of the talents but also of the publicity value of these two men.

We have received a warm letter of thanks from the president of the Japanese union extolling the value of this visit.

A FAIR INTERNATIONAL LABOR STANDARDS PROGRAM

I could cite many other examples of the kind of cooperation my union has offered to other labor organizations abroad. In our own program of international upward harmonization of wages, hours, and working conditions, it is our purpose to eliminate differences in labor costs as a factor in international competition. The International Metalworkers' Federation has been much concerned with this subject also, and we have over the course of the past few years drawn up a program which we think will deal adequately with the unusual case of unfair competition based on labor. The essential element is that we could use a proposition of the General Agreement on Tariffs and Trade which is known as the Havana Charter. This provides that member states will undertake an obligation to achieve and maintain full and productive employment and to eliminate unfair labor conditions which substantially disrupt international trade.

The heart of the IMF proposal is to the effect that we would propose machinery to be created to provide for a complaint procedure on allegations that a given country is not complying with fair international labor standards.

It is proposed that a basis of complaint be established if both hourly and unit labor costs in exporting firms are unjustifiably below those in the same industry in the complaining country.

If such a charge should be made, there would be a confrontation between the domestic producer claiming he is hurt by low-wage foreign competition and the exporting producer. Both would be required to furnish data necessary to sustain or disprove the allegation. We would hope thereby to take labor cost comparisons out of the hands of the propagandists and put them into the sphere of serious and factual study, which is where the subject belongs.

Senator KEFAUVER. He goes on to point out, Mr. Patton, that contrasting hourly or daily wage rates is not a fair comparison as between American and foreign steelworkers, that in foreign countries there are a great many more fringe benefits. Workers there are paid more for days not worked, they are paid a family allowance, they are given longer hospitalization, they have kindergarten programs and sometimes even housing projects which the company pays for, and they get many other benefits which make the comparable hourly wage rate an unfair comparison.

Mr. PATTON. That is his opinion, I take it.

Senator KEFAUVER. Yes, and he bases it upon facts.

Mr. PATTON. I assume there are a lot of other opinions of other people that have written articles on the same thing with which I am not familiar.

Senator KEFAUVER. In his summary of his main conclusions, he says that the United States is head and shoulders above the rest of the world in productivity, hourly eranings, and hourly employment costs. He goes on:

Combined, these result in total employment or labor costs which are only marginally lower in other countries than they are in the United States. The profit ratio of the American companies with respect to both net worth and sales was generally higher than that of foreigners. (This is particularly true in the case of a nonrecession year.) Cost of materials was substantially higher abroad than in the United States. (This applies to all of the main raw materials: coal iron ore, power and transportation.) A major consideration in pricing policy in foreign lands is the maintenance of full employment; an objective which has not entered American pricing determinations.

(At this point in the proceeding Senator Hart entered the hearing room.)

Senator KEFAUVER. You would place some credence in what Mr. Bernstein had to say about the matter, would you not?

Mr. PATTON. I have to be candid and say, Senator, that in my dealings with the Steel Union in bargaining sessions they produced all kinds of statistics on their side, and we produced all kinds of statistics on our side.

We never agreed with theirs and they never agreed with ours.

Senator KEFAUVER. Yes; I know. But this is not a bargaining meeting at which he was testifying. He was testifying before the Ways and Means Committee of the House as a result of his very lengthy and detailed study of the steel industry in other countries.

Mr. PATTON. But those are the same figures that we disagreed with.

Senator KEFAUVER. Mr. Patton, you are familiar with the fact that representatives of four of the countries that are members of the High Authority of the European Coal and Steel Community came to the United States in 1957 and made a detailed study of productivity and other factors relating to costs, are you not?

Mr. PATTON. I am familiar with a booklet that they put out, yes.

Senator KEFAUVER. You will see the names of the members of the

team, Mr. Langlois and Mr. Montjoie, of France; Mr. Santman, of Holland; Mr. Spitzer, of Germany; Mr. Van de Steene, of Belgium; and Mr. Zonchello, of Italy; together with their staffs and others. As a result of their study they published this document which we have here and of which you have a copy.

Mr. PATTON. Yes.

Senator KEFAUVER. On page IV they say:

Since the main body of the annexes consists of a description and analysis of the principal departments of the companies visited by our team, based on material provided by our American hosts themselves, it was felt that there was no need to translate these annexes in full in this English version of our report.

So you did provide information to the members of this European High Command team that came to the United States in 1957?

Mr. PATTON. They did not come to our company.

Senator KEFAUVER. I say the steel industry generally did cooperate in providing information to the representatives of the members of the High Authority.

Mr. PATTON. I only know what I see in here. I see that they listed that they had visited certain steel companies in this country, yes.

Senator KEFAUVER. On page IX it is indicated that Mr. Johnston participated in this study.

Mr. W. H. Johnston, chairman of the American Steel Institute's Foreign Relations Committee and vice president of the Bethlehem Steel Corp., who made himself personally responsible for working out the program and was a most attentive host and guide to the team throughout their stay in the United States.

Mr. LUMB. I cannot find where you are reading from, Senator.

Senator KEFAUVER. On page IX of the introduction.

Mr. PATTON. Nine of the introduction.

Senator KEFAUVER. IX is at the top of the page.

Mr. PATTON. Oh, I see; yes, I see.

Senator KEFAUVER. And then they went on to say:

Four companies were good enough to receive the team for a sufficient length of time to enable them to make a thorough study of the matters with which they were concerned; namely, the United States Steel Corp., Bethlehem Steel Corp., Inland Steel Co., and Lukens Steel Co.

They went on to say these companies were very cordial and cooperative.

Do you see that there?

Mr. PATTON. Yes; I see that. That is in the report.

Senator KEFAUVER. And then, sir, if you will turn to page 262, you will find their conclusions with reference to productivity and employment costs in the United States as compared with the Steel Community of Europe. I would ask, Mr. Chairman, that page 262 with the table on the following page, 263, be inserted in the record.

The CHAIRMAN. That will be done.

(The page and table referred to are as follows:)

PERSONNEL, BY OCCUPATIONAL CATEGORIES

We are, then, concerned only with personnel at the works. The figures are given, respectively, in absolute terms (table I); per thousand employed (table II); per million net tons annual ingot capacity (table III).

For purposes of approximate comparison, with all due reservations as to working hours, ancillary activities, etc., we have appended the corresponding figures for a group of seven European plants as at January 1, 1958, also expressed (table II) in relation to estimated production capacity in net American tons.

I. Although this is not actually within our terms of reference, and is in any case only too well known to us, we may note first of all (table I) the low average

productivity of the European group, only 124 tons a year per man employed, as against Fairless with 355, Lackawanna with 290, Indiana Harbor with 280, and Sparrows Point (less processing shops) with 210 for all activities together.

Even plants as highly concentrated as Bethlehem and Lukens, where 30 to 35 percent of the personnel are employed on production outside of iron and steel proper, are ahead of us with 164 and 132 tons a year respectively.

And great combines like United States Steel and Bethlehem Steel, with their mines and their many noniron and nonsteel activities (shipbuilding, railroad track work, public works, transportation, nonferrous metals, etc.), nonetheless record, overall, higher steel productivity rates than ours, with 140 and 130 tons a year, respectively.

Taken by itself, the Steel Division of Bethlehem Steel, which over and above its five varyingly concentrated steel plants also includes a very large constructions division, even so rates an average steel productivity of 195 tons a year.

These figures speak for themselves. It is, however, fair to add that on the basis of the usual wage levels, personnel charges in percent of revenues are much the same as in Europe (cf. pt. 1).

TABLE I.—*Total personnel as of Jan. 1, 1957*

	European group (Jan. 1, 1958)	Fairless	Bethlehem plant	Lackawanna (Jan. 1, 1958)	Sparrows point (Jan. 1, 1958)	Inland Steel (Indiana Harbor)	Lukens Steel
Executives:							
Managerial	388	----------	160	75	90	1,420	310
Foremen	1,903	----------	980	1,050	1,710		
Technicians	125	----------	500	155	250	680	90
Administratives	208	----------	210	60	70	190	50
Total, management	2,624	720	1,850	1,340	2,120	2,290	450
Technicians	1,322	----------	----------	----------	----------	280	150
Administratives	4,242	----------	----------	----------	----------	1,170	850
Total, nonexempts	5,564	1,150	2,020	1,400	1,900	1,450	1,000
Total personnel paid by the month	8,188	1,870	3,870	2,740	4,020	3,740	1,450
Workmen paid by the hour	40,057	4,300	19,050	16,800	25,500	15,800	4,220
Total personnel	48,245	6,170	[1] 22,920	19,540	[2] 29,520	19,540	[3] 5,670
Production capacity (thousand tons per annum) [4]	6,000	[5] 2,200	3,750	5,700	6,200	5,500	750
Average productivity (net tons per annum per person employed	124	355	[1] 164	290	[2] 210	280	[3] 132

[1] Including forge and foundry personnel (nearly 6,000).
[2] Including tube and wire mill personnel, etc.
[3] Including shaping and boiler shop personnel.
[4] Estimated in net American tons.
[5] Has since risen to 3,000,000; corresponding movement of personnel not known.

Senator KEFAUVER. I will not read all of it, but just the pertinent parts:

(1) Although this is not actually within our terms of reference, and is in any case only too well known to us, we may note first of all (table 1) the low average productivity of the European group, only 124 tons a year per man employed, as against Fairless with 355, Lackawanna with 290, Indiana Harbor with 280, and Sparrows Point (less processing shops) with 210 for all activities together.

Do you see that, Mr. Patton?

Mr. PATTON. Yes, of course this was 5 years ago, you realize, and a lot of new plants have come into operation and are coming in every day and you won't find anything like that today I will venture to say.

Senator KEFAUVER. We will come to that a little bit later on. And then down at the bottom, sir, you see the paragraph:

These figures speak for themselves. It is, however, fair to add that on the basis of the usual wage levels personnel charges in percent of revenues are much the same as in Europe (cf. pt. 1).

Table I on the following page, Mr. Patton, shows that for the European group, average productivity in net tons per year, per person employed, is 124 tons. Do you see that?

Mr. PATTON. I see the figures here and on the page; yes, sir.

Senator KEFAUVER. Then they show the figure of 355 tons per year per person employed at the Fairless plant of United States Steel on the Delaware River.

Mr. PATTON. Yes.

Senator KEFAUVER. Then they show for the Bethlehem plant at Bethlehem, 164 tons, with a footnote that this includes nearly 6,000 forge and foundry personnel who are not steelmakers, which results in lower productivity per man-hour.

Lackawanna, which is a Bethlehem plant, has 290 tons per year per man as compared with the European average of 124. And then Sparrows Point, 210 tons, with a footnote, "including tube and wire mill personnel," who are not steelworkers. Then Inland Steel's Indiana Harbor, with 280 tons per year per man. Lukens Steel is not really comparable because it specializes in making heavy plate, such as armorplate for the Navy, shows 132 tons, and this includes shaping and boiler shop personnel.

A combined table is on page 269, which I ask, Mr. Chairman, be also inserted in the record.

(The page referred to is as follows:)

(i) A minor, though not negligible difference (24 percent) in the case of the executives;

(ii) Practically no difference in the case of the administratives; and

(iii) A very substantial difference (four times the number) in the case of the technicians.

This conclusion is further confirmed by the fact that in our tables European personnel is shown rather on the low side, owing to our working hours, and American personnel somewhat higher than it really is owing to the fact that some of the plants also engage in activities outside of the iron and steel sector proper. The real differences would therefore be greater.

The comparison is rendered more accurate if we confine it to the three plants of Lackawanna, Sparrows Point, and Indiana Harbor, all of which at the time rated much the same capacity: the average for the three was 5,800,000 net tons, very close to the total capacity of the European group as a whole, which may be estimated at 6 million tons.

Personnel per million net tons annual capacity (groups of 6,000,000 tons)

	European group		American average (3 plants)		American group in percent of European	
Executives	383	405	248	312	65.0	77
Technicians	22		64		290.0	
Administratives	35		19		54.0	
Management	440		330		75.0	
Nonexempts	930		270		29.0	
Total, personnel paid by the month	1,370		600		44.0	
Workmen paid by the hour	6,680		3,300		49.5	
Total, personnel	8,050		3,900		48.5	

Senator KEFAUVER. Here are two groups of plants with comparable tonnage—6 million tons. The total personnel of the European group for producing 6 million tons was 8,050 people. Do you see that?

Mr. PATTON. That is the figure that is shown there; yes, sir.

Senator KEFAUVER. And the American total for 3 plants, was 3,900 workers per year to produce 6 million tons. They go on to show that the percentage of the American group required to produce 6 million tons, as compared with European, was only 48.5 percent.

Mr. PATTON. Yes. Could I make an observation, sir?

Senator KEFAUVER. Yes.

Mr. PATTON. These people came over here and visited four of the most efficient plants in the American steel industry. They are comparing their entire plants, good, bad, and indifferent, with four very fine American steel plants, and why didn't they compare them with the average of the American steel industry? I do not see what this proves.

Senator KEFAUVER. Mr. Patton, Lackawanna is an old plant.

Mr. PATTON. Oh, Lackawanna is one of the great steel plants of the world.

Senator KEFAUVER. None of the American plants included were among our newest plants. Some of these plants produce specialty steel, where production is necessarily low per man-hour.

Mr. PATTON. Maybe they were in some of these European plants including that, I do not know.

Senator KEFAUVER. Anyway, their conclusion is they compared comparable plants to comparable plants in Europe.

Mr. PATTON. I do not see that in here. They compared their industry with specifically named plants.

Senator KEFAUVER. The plants compared were Lackawanna, Sparrows Point, and Indiana Harbor. The total for the three was very close to the capacity of the European group as a whole, 6 million tons.

Mr. PATTON. And I repeat that Lackawanna, Sparrows Point, and Indiana Harbor are three of the great and most efficient steel plants in America.

Senator KEFAUVER. Why should these particular plants, then, be worrying about foreign competitors?

Mr. PATTON. We have got many, many steel plants in America besides those three that are not nearly as efficient as those three.

Senator KEFAUVER. The paragraph in the middle of page 269 says:

> This conclusion is further confirmed by the fact that in our tables European personnel is shown rather on the low side, owing to our working hours, and American personnel somewhat higher than it really is owning to the fact that some of the plants also engage in activities outside of the iron and steel sector proper. The real differences would, therefore, be greater.

Do you see that paragraph?

In any event, Mr. Patton, this study was conducted with the assistance of Mr. Johnstone, who was chairman of the Foreign Relations Committee of the American Iron and Steel Institute for the purpose of getting an accurate view of the American steel industry.

I am sure Mr. Johnstone would agree that that was the purpose of their visit here.

Senator DIRKSEN. Will the Senator yield?

Senator KEFAUVER. I yield, but I would like to try to finish up this point.

Senator DIRKSEN. I would like to interpose one thing in the record at this point.

Senator KEFAUVER. Very well.

Senator DIRKSEN. Because this is where it should be done.

Mr. Chairman, I submit that there is being introduced into this record exhibits, statements, opinions, conclusions from records, and data that are not available to the committee, nor are the authors of these statements available to the committee.

There is no way of conducting cross-examination. There is no way of getting firsthand information in an individual case of this kind where the members of the committee might well cross-examine those who make these statements.

It would be entirely possible to impeach this testimony or at least to throw new light on it if the authors of these statements were before the committee, and since they are not, I just want the record to show what that situation is.

The CHAIRMAN. I think the Senator is exactly correct. I do not believe that it means very much.

Senator KEFAUVER. I would be very happy to go to Europe.

Senator DIRKSEN. I will be glad to vote the money to send you.

Senator KEFAUVER. But I might say to the Senator from Illinois——

(At this point in the proceedings, Senator Dirksen leaves the hearing room.)

Senator KEFAUVER (continuing). That the chairman said he was not going to let us call a number of witnesses in connection with these hearings.

The CHAIRMAN. Yes, sir.

I told you that I had conferred with a number of members of the Judiciary Committee. We had limited the steel companies to one witness, and we were going to let you finish your examination of Mr. Patton and let you call one witness, to treat you exactly as the steel companies have been treated.

No special privileges to either of you.

Senator KEFAUVER. The Senator from Illinois was making the point that these distinguished leaders—and I am sure Mr. Johnston will agree that they are reliable and thoughtful men whose purpose was to make a factual report on which they were given this information—ought to be here.

The CHAIRMAN. Proceed.

Mr. PATTON. May I point out, Senator, if you will look in the chart on my statement, page 7, you will see it was just in 1957 that we have had a terrific dropoff in exports and that it is from that date that we were being plagued more and more by imports, and I do not care what this study shows.

The fact is that we are suffering very badly from imports and lack of exports, and that we are being undersold by the European steel companies.

Senator KEFAUVER. Your point is even though this might have been correct in 1957, that the situation has changed substantially?

Mr. PATTON. There have been a number of new plants come into existence.

The CHAIRMAN. Wait a minute, Mr. Patton.

Are you leaving the impression that this was correct in 1957?

Mr. PATTON. Oh, no, sir.

I think just on its face it is comparing a whole industry with three plants out of thousands of plants in America.

Senator KEFAUVER. Their purpose in coming here was to study a cross-section of the American steel industry, and they worked with the American Iron and Steel Institute. I am sure Mr. Johnston tried to see that they studied a fair cross-section.

Mr. LUMB. Armco would like to have the record corrected that the Mr. Johnstone you are talking about is a Mr. Johnstone of Bethlehem.

Senator KEFAUVER. That is right.

Mr. LUMB. The Johnston that is here is Mr. Logan Johnston of Armco.

Senator KEFAUVER. I thought Mr. Johnston, sitting with Mr. Homer, was Mr. Johnstone of Bethlehem.

Mr. PATTON. That is Mr. Logan T. Johnston, president of Armco Steel.

Senator KEFAUVER. I see.

We have several Johnstons in the steel industry.

Very well, you say that conditions have changed very greatly. On this point, we will present a table, Mr. Patton; the basic documents for the table are available. With your permission they will not be copied in the record but made a part of the files for comparison.

The CHAIRMAN. Very well.

(The documents may be found in the files of the subcommittee.)

Senator KEFAUVER. This table shows, Mr. Patton, that in the steel industry from 1958 through 1961, average hourly earnings, taking 100 as a starting point, have gone up in the United States to 109.7; in West Germany, to 114.7; in Belgium, to 110; and in Luxembourg, 108.6. Productivity in the United States has increased from 100 to 108.9; in West Germany to 115.3; Belgium, 114.7; Luxembourg, 114.

(At this point in the proceedings, Senator Dirksen enters the hearing room.)

The CHAIRMAN. I think you ought to explain who compiled this table.

Senator KEFAUVER. This table was compiled by the economic staff of the Antitrust and Monopoly Subcommittee, taking the output per production worker from the OEEC, from the report of the High Authority, and from the Bureau of Labor Statistics in the United States, which are all official statistics.

Insofar as unit wage costs, the documents will be filed with the committee for study by anyone who has any question about these figures.

Unit labor costs, taking 100 in the United States to start with, they are up to 107.7; West Germany, 99.5; Belgium, 95.9; Luxembourg, 94.4.

So, Mr. Patton, the average hourly earnings have gone up more in these countries than they have in the United States since 1958.

Mr. PATTON. The statement speaks for itself; whatever it shows, it shows.

Senator KEFAUVER. But productivity in these countries has gone up about in the same proportion, so there has been little change in the unit labor costs for making a ton of steel. And the same is true of the United States.

Mr. PATTON. You are only talking about one element of cost here, sir. This is just hourly earnings.

We have a number of elements of costs besides employment costs.

Senator KEFAUVER. So do they, sir. We will talk later about some of those other elements. We are talking about labor right now.

Senator DIRKSEN. Well, the witness ought to be permitted to answer at this point.

Mr. PATTON. Well, sir, labor is just one part of our costs.

As I said, we have all kinds of costs in addition to labor. We have our material costs, our power costs. We have the cost of the interest on the money we have to borrow. We have the cost of the depreciation which is the wearing out of the plant. We have the cost of taxes that we have to pay the local and State governments, and then we have the Federal income taxes.

We have any number of elements of cost besides labor.

Senator KEFAUVER. I know that, Mr. Patton, but a few minutes ago you made quite a point about the figures for 1957. You said that since that time the situation had changed drastically, and that therefore the 1957 findings by these distinguished gentlemen who came here and found that productivity is more than twice as high in the United State as in Europe are no longer true. But this table shows that changes in hourly earnings and changes in productivity since then have about offset each other in Europe and the United States.

Mr. PATTON. It does not disprove in any way, shape, or form the fact that their rates are a lot lower than ours, and if you start at 100 for us at $4 and start at 100 for them at 75 cents and show there is no change, I do not think that makes much sense, does it?

Senator KEFAUVER. You said that your situation has worsened since then.

The CHAIRMAN. What has happened to your export business?

Senator KEFAUVER. May I finish my question, Mr. Chairman?

The CHAIRMAN. I thought he was talking about the loss of markets. That was one thing.

Senator KEFAUVER. We are talking about labor costs at the present time.

I would like to be permitted to stay with this until I finish it. Then we will go to something else, whatever else you want to go to.

The reason I show this is that you made the point that there had been a great change since 1957 in connection with labor costs.

Mr. PATTON. I made a great point, sir, that there has been a terrific change in connection with our situation in world trade in the way of imports and exports, and there has been.

The CHAIRMAN. That is the way I understood what you said.

Senator KEFAUVER. The record will show what you said. This simply shows that since 1958 there has been little change both here and abroad.

Mr. PATTON. Not in exports and imports.

Senator KEFAUVER. Insofar as unit labor costs are concerned.

Mr. PATTON. I do not recall making any statements about unit labor costs.

Senator KEFAUVER. Mr. Patton, you may be aware that this document was not only printed in English, but it was printed in French in a more detailed manner, is that right?

Mr. PATTON. Well, I do not know what it was printed in. I can only read it in English. I know it was printed in English.

Senator WILEY. You know it was printed.

Senator KEFAUVER. Here is the French version of the report and I would have hoped that Mr. Johnson of Bethlehem—he is not here today—would be here.

Mr. BROMLEY. No, Senator, he is not here.

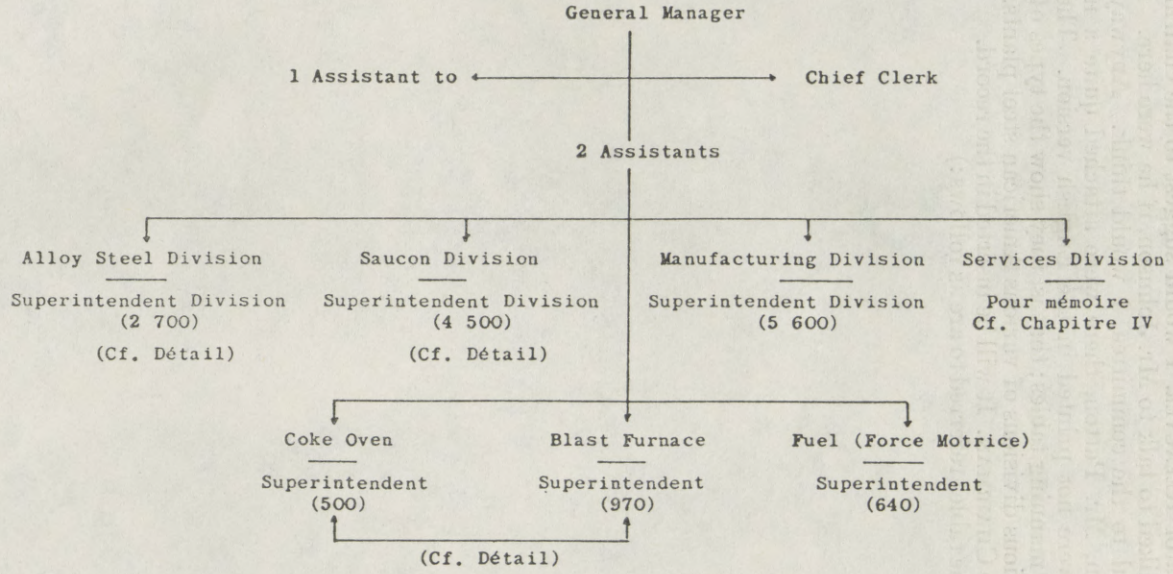
Senator KEFAUVER. I would suggest to the chairman that I would have liked to talk to Mr. Johnson, if he were here. It would be very helpful to the committee, I would think. Anyway, in the French version, Mr. Patton, there were attached quite a number of tables that were not printed in the English version. These are what are called manning tables; that is, they show the types of manpower used in various divisions of various American steel plants.

The CHAIRMAN. It will be inserted in the record.

(The tables referred to are as follows:)

Manufacturing Division

SERVICES de FABRICATION - BETHLEHEM Plt - B.S.C.

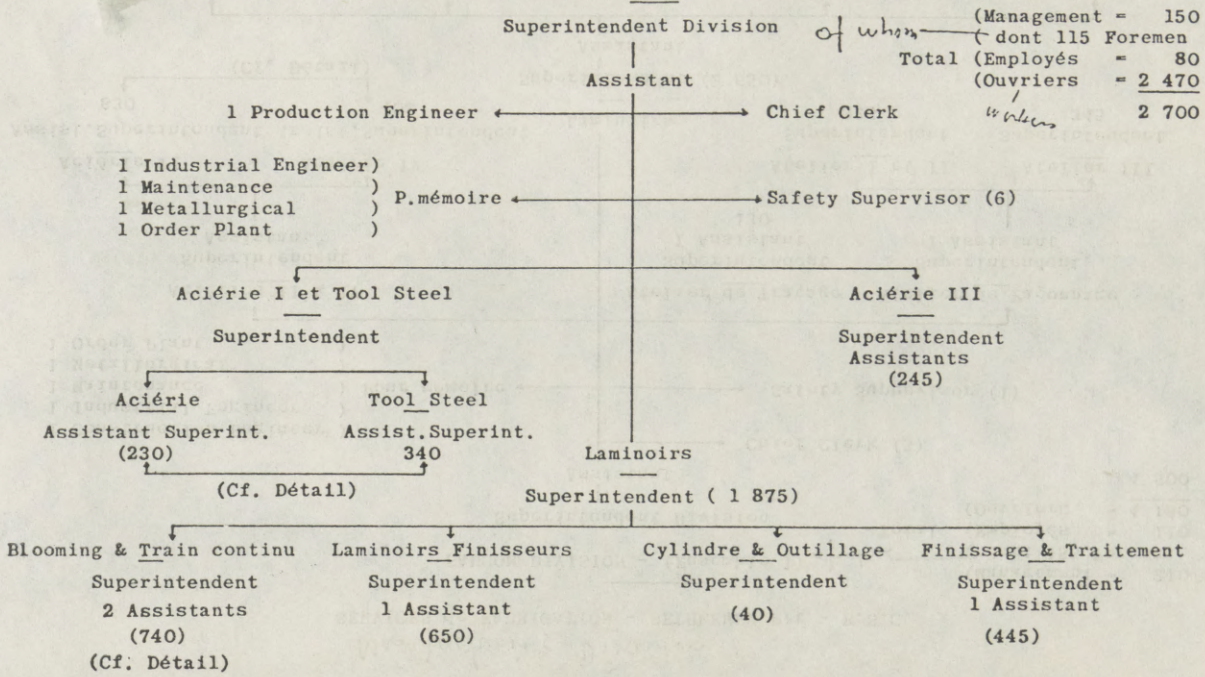


NOTA : Tous Services fonctionnels non mentionnés (Cf, Titre II)

Manufacturing Division

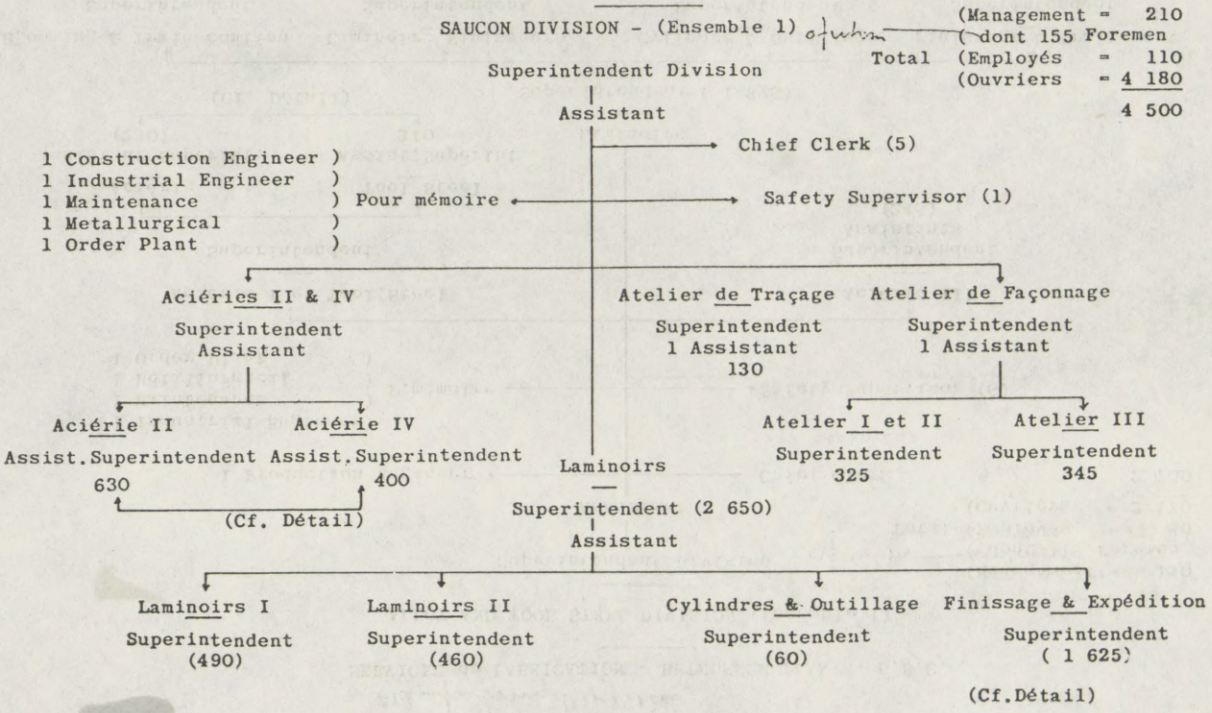
SERVICES de FABRICATION - BETHLEHEM PLANT - B.S.C.

ALLOY AND TOOL STEEL DIVISION (Ensemble I)



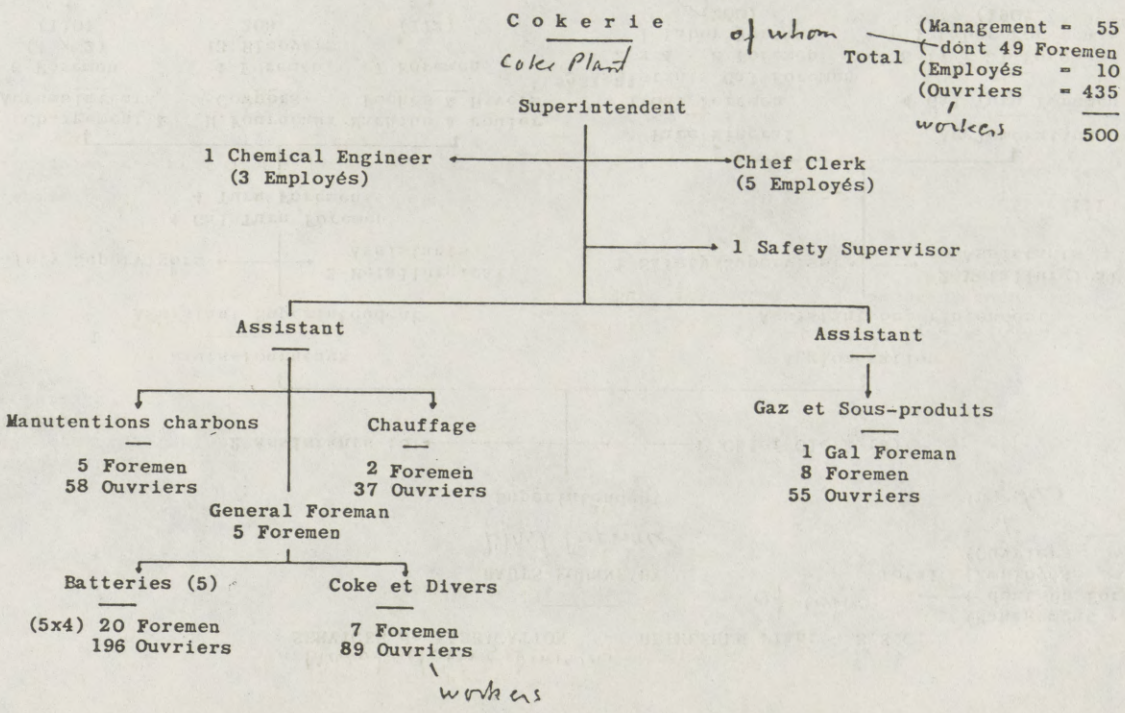
Manufacturing Division

SERVICES de FABRICATION - BETHLEHEM Plt - B.S.C.



Manufacturing Division

SERVICES de FABRICATION - BETHLEHEM Plt - B.S.C.



Manufacturing Division

SERVICES de FABRICATION - BETHLEHEM Plant - B.S.C.

HAUTS-FOURNEAUX

Blast Furnaces

Total (Management = 75
of whom dont 65 Foremen
(Employés = 10
(Ouvriers = 885
970

Superintendent

2 Assistants to — Chief Clerk (3)

Hauts-Fourneaux

Assistant Superintendent

2 Safety Supervisors — 2 Metallurgical Assistants

4 Gal Turn Foremen
4 Turn Foremen

Chargement & Accumulateurs	H. Fourneaux Cowpers	Machine à couler Poches & Divers
8 Foremen (4 x 2) (110)	4 Foremen 13 Bloovers 208	7 Foremen (172)

490 (Ouvriers)

Agglomération

Assistant Superintendent

1 Safety Supervisor — 2 Metallurgical Assistants

Parc Minerai	Agglomération
1 Gal Foremen 2 Assistants Gal Foremen 2 x 4 = 8 Foremen 1 Labor Foreman (200)	4 Gal Turn Foremen 8 (4 x 2) Foremen 1 Labor Foremen (190)

390

The CHAIRMAN. What statements are they?

Senator KEFAUVER. They are what are called manning tables.

The CHAIRMAN. Who compiled them?

Senator KEFAUVER. They were compiled by the same people who wrote the report that we have been talking about.

The CHAIRMAN. Compiled by the staff?

Senator KEFAUVER. No, this is taken from the French version of the High Authority report. They go into the matter of how many people of what skills work in the coke ovens, how many in the blast furnaces, how many in the alloy steel division, and so on. This is a detailed statement of personnel, is it not, Mr. Patton?

Mr. PATTON. I only know what I see, and it looks to me that it is just detailing the force in one single plant.

Senator KEFAUVER. That is right, plant by plant. It was made for a number of plants.

Now, Mr. Patton, take the one on page 372. It shows for a coke oven plant 49 foremen and 435 workers and a total personnel of 500. Then there are the superintendents, assistants, and the entire breakdown of the workers in the plant. The other tables are for plants where the information was listed in the same way.

I have taken four examples of Bethlehem plants here. It would, of course, be very simple to take the public records as to the wages of these people in the various divisions of the company, multiply that by the number of people employed, and divide by the number of tons produced, and get in that way for this particular plant the wage cost per ton of steel.

Mr. PATTON. This is the Bethlehem plant situation, and I hestiate to make any statements about Bethlehem. I will speak about the Republic plant, and I do not see where anybody would get any public information that would tell anybody what our total wage and salary roll was in a particular plant.

I do not understnd how anybody would get that as a matter of public record anywhere.

Senator KEFAUVER. Wage rates are a matter of public record, are they not?

Mr. PATTON. Why, no.

In an individual plant? Why, of course not. The matter of public record is our total employment costs for the entire company.

Senator KEFAUVER. I know, but what I said was that the wage rates for the various skills is a matter of public record.

Mr. PATTON. For the production and maintenance employees, but you show here management, 55; foremen; all the supervisors. I would hope that that is not a matter of public record. It would not be in our company.

Senator KEFAUVER. The point that I am trying to get at is that they are broken down as far as the production workers are concerned as to the skills and the number in that skill. Their wage rates can be ascertained from the records. Multiply the number in each skill by the amount that they are paid and divide by the production and you have your unit employment cost.

Mr. PATTON. Senator, that is an utter impossibility, with all due rsepect. We have practically every man in our plant on an hourly rate plus a tonnage rate, and the wages vary from day to day and week to week, depending on the tonnage that man puts out.

You cannot take any figure and do that.

And all of our supervisors are on an incentive basis. There is no standard rate that you can use here either for the wage earners or for the supervision.

It depends to a very large degree on the incentive compensation which varies with tonnage and with the capacity at which the plant is working and with efficiency and with everything else, sir.

Senator KEFAUVER. Mr. Patton, the records of the Department of Labor give very detailed information as to the average wages of the various skills.

But, in any event, the point I want to make, Mr. Patton, is that Mr. Johnstone for the American Iron & Steel Institute and the four individual companies furnished your foreign competitors detailed information relating to wage costs and other costs of production, which you refuse to give to a committee of the Congress.

Mr. PATTON. That Mr. Johnstone will have to answer. I was not there. I would be very greatly surprised if that is the case.

The CHAIRMAN. Gentlemen, there is a rollcall vote in the Senate. We will have to recess subject to the call of the Chair.

Senator DIRKSEN. Mr. Chairman, may I suggest that the Cuban resolution is set for 12 o'clock after this rollcall.

The CHAIRMAN. We can come back after that. We will come back at 1:30.

(Whereupon, at 11:40 a.m., the hearing was adjourned, to reconvene at 1:30 p.m., the same day.)

AFTERNOON SESSION

Present: Senators Eastland, Kefauver, and Ervin.

The CHAIRMAN. Let us proceed.

Senator KEFAUVER. Mr. Chairman, for the time being that is all the questions I had on the subject of wage costs.

The CHAIRMAN. Are we going to wind up before this evening?

Senator KEFAUVER. I will move along as rapidly as I can.

Mr. Patton, in the discussion this morning on the OPA steel cost summary which we had here, you said that coking coal is one of the sizable items in the cost expense of steel production.

STATEMENT OF THOMAS F. PATTON, PRESIDENT, REPUBLIC STEEL CORP., ACCOMPANIED BY H. C. LUMB, VICE PRESIDENT, DIRECTOR OF LAW AND CORPORATE RELATIONS, AND BRUCE BROMLEY, COUNSEL—Resumed

Mr. PATTON. One of the principal ingredients, yes.

Senator KEFAUVER. Coking coal, as far as mine working conditions and wages, is mined pretty much as in bituminous or anthracite coal generally, is it not?

Mr. PATTON. In this country? As far as I know the wages in our mines in Pennsylvania are the same as in other mines.

Senator KEFAUVER. That is true in other countries, is it not?

Mr. PATTON. I do not know.

Senator KEFAUVER. I think the information we have is that they do run along about the same rate and the same conditions. Do you

want to give us any approximate estimate, Mr. Patton, of what part in making——

Senator ERVIN. Let me see if I understand the Senator's statement. Does the Senator mean to say that the miners in England or Czechoslovakia or in the Ruhr get the same wages as miners in the United States?

Senator KEFAUVER. No; I did not mean to say that.

The CHAIRMAN. That is what I understood.

Senator KEFAUVER. That is not what I meant to say and I am sure that is not what Mr. Patton said. I meant to say that in the United States, in the mining of coking coal the wage rates and so on were about the same as in the coal industry generally.

Mr. PATTON. Senator, you this morning referred to this document entitled "Management Organization and Methods in the American Iron and Steel Industry," and while I do not place very much credence on it at all because right in the document at page 261 it is stated: "Vague and fragmentary though we found our records to be when we came to evaluate them," so it cannot have much basis, I would point out that on page 89 this is stated, and it has to do with what you just asked here. I am reading from page 89 of that document:

"Future problems"—what we have to face in this country:

The conclusion would appear to be that notwithstanding its very high productivity and the substantial advantages it derives from integration, mass production, and specialization, the American iron and steel industry is handicapped, (*a*) by its selling prices which are low in relation to the general price level in the United States, (*b*) by its wage rates which are higher than anywhere else in the world, and indeed higher than in any other industry except mining—

and then skipping down to the last full paragraph on the page:

Despite its past profits which enabled it to write off its fixed assets at a higher rate and over a shorter period, and despite the fact it is still paying dividends, it is beginning to be considered—

that is the steel industry—

one of the least promising fields for capital investment.

I would just like to get that in the record from this same document.

The CHAIRMAN. Yes, sir.

Senator KEFAUVER. Very well. I think that the page and a half ought to be a part of the record and I will ask that that be made a part of the record, Mr. Chairman, which includes the parts that Mr. Patton read.

(The information referred to is as follows:)

FUTURE PROBLEMS

1. INVESTMENT

The conclusion would appear to be that notwithstanding its very high productivity and the substantial advantages it derives from integration, mass production, and specialization, the American iron and steel industry is handicapped—

(*a*) By its selling prices, which are low in relation to the general price level in the United States;

(*b*) By it wage rates, which are higher than anywhere else in the world, and indeed higher than in any other industry except mining;

(*c*) By its raw material costs, and more particularly by the price it has to pay for ores, which are often imported from far away sources;

(*d*) By the fact that it has to obtain a much better return on its capital than would be the case almost anywhere else (though it still falls below the return in certain other sectors such as the oil industry).

These various factors explain why in spite of all the industry has done to economize, its net eranings (available for reinvestment) in relation to its total revenue work out of much the same level as own own.

Obliged as it is automatically to adjust its production to current requirements, the industry does not appear to be particularly well placed to withstand without risk, a major recession like the one in 1957–58, and even less so a strike like the one in 1959.

This is to it all the more reason for maintaining its selling prices at their boom level.

Despite its past profits, which enabled it to write off its fixed assets at a higher rate and over a shorter period, and despite the fact that it is still paying dividends, it is beginning to be considered one of the least promising fields for capital investment.

This is likely to interfere seriously with the development programs which it nevertheless still feels it will have to carry out.

Here as elsewhere, it is coming to be thought that the "new" plants are unlikely to pay their way, as we were told quite openly.

This is all the more unfortunate since in order to adapt themselves to the situation the big companies at any rate are considering it necessary to step up the capacity per unit of their plants still further.

Ten million tons is now regarded as a possibility, if not at present actually as a desideratum. Gary and Sparrows Point are on the way to such a capacity, with 8 million already reached or about to be. Fairless was planned with a view to reaching the same level one day, though not, it would seem, for some considerable time yet.

But a new 10-million-ton plant would today cost more than $3 billion. Where is the capital to come from?

So, like our own, the American iron and steel industry is having to fall back on extensions to existing plants, which may cost more in the end, but the outlay can at least be spread over a longer period.

The big companies are in fact proceeding along these lines, though of course on a big scale, with extension programs, in some cases providing for production increases of more than a million tons a year within 2 years (e.g., Gary and Sparrows Point). The medium-size and small companies, which do not have the same resources, are likely to be seriously embarrassed by the fresh adjustment which may be demanded of them.

Senator KEFAUVER. There are some other statements telling of the difficulties that they are having in their own steel production.

Mr. PATTON. I think you would have to read the entire book to get the full sense of it.

Senator KEFAUVER. The entire report is available and has been filed with the committee although not reproduced entirely in the record because it is too voluminous.

Senator ERVIN. If I might make an observation, the thing that we do not have available on which we need much more is time, and that is particularly true in the closing days of the Congress.

Senator KEFAUVER. If the Senator is looking at me, which I do not think he is——

Senator ERVIN. I was just making a general observation.

Senator KEFAUVER. I am a man who takes very little time.

Senator ERVIN. I was just speaking about thhe general unfortunate condition in which all of us now find ourselves.

The CHAIRMAN. Proceed.

Senator KEFAUVER. Are you familiar with Mr. Louis Lister's study about the Coal and Steel Community of Europe which was published in 1960 by the Twentieth Century Fund?

Mr. PATTON. I am not. I have never seen the book.

Senator KEFAUVER. For your information—and I would like at the end of this part of the colloquy, Mr. Chairman, to put in a memorandum prepared by two economists of this subcommittee for Mr. Fen-

sterwald, giving reference to the matters I have talked about—Mr. Lister finds that the average investment required in Europe to develop an underground mine is from $30 to $40 per ton of capacity compared to roughly $8 per ton in the United States, and the citation for this is given. He points out the fact that in Europe the veins of coal are narrow, the coal is very deep in the ground, that it is expensive to get out, and that there is practically no strip mining such as we have had to a substantial extent in this country.

May this memorandum be inserted?

The CHAIRMAN. You can attach the book. I think it ought to be the whole document. I do not know who the man is. I do not know what he knows about it, just somebody at one time wrote a book. I do not see where it is pertinent, but if you want to file it with the committee, that will be all right but we are not going to pay for printing it in the record.

Senator KEFAUVER. Mr. Chairman, I do not want to place the entire book in the record. It is too voluminous. It can be filed with the subcommittee for reference for anybody to check on it if they want to do so.

The CHAIRMAN. That is exactly what I am saying.

(The document referred to is as follows:)

MEMORANDUM

SEPTEMBER 13, 1962.

To: Mr. Bernard Fensterwald, Jr., staff director.
From: John M. Blair, chief economist, and Walter S. Measday, economist.
Subject: Coal: U.S. and foreign cost.

The largest single element of cost in the production of pig iron or molten iron charged into steelmaking furnaces is the coke consumed as a fuel and a reducing agent. Coke costs, in turn, depend primarily upon the value of the coal carbonized. It is in this area that the United States has perhaps its greatest margin of advantage over foreign steel producers. The reasons for this advantage are both geological and technological.

Coal mining in Europe is far more difficult than in the United States. The European deposits are found at much deeper levels than those in the United States; average depth of underground bituminous mines in the United States is about 400 feet, while the averages in the United Kingdom and various Western European countries range from 1,200 to 2,600 feet, with some mining operations getting close to the 4,000-foot level.[1] Of equal importance, U.S. seams are both level and thick, while European seams are moderately to steeply sloped and thin. Poor floor and roof conditions in European mines make necessary far more extensive timbering than is required in the United States. And mine gas and water are much more serious problems in European mining operations than in this country. All of these factors taken together have the result illustrated by Lister's findings (for the late 1950's) that the average investment required in Europe to develop an underground mine is from $35 to $40 per ton of capacity, compared to roughly $8 per ton in the United States.[2]

Further, much of the bituminous reserve of the United States is found close enough to the surface to be mined by stripping or the recently developed auger method. From less than 10 percent of production in 1940, surface mining has developed to the point where more than 30 percent of the Nation's bituminous output is provided from this source. In contrast, except for a small amount of British output and a portion of West German lignite production, surface mining is unknown in Europe.

Supplementing, and in part made possible by, its geological advantages, American coal mining has benefited from a far more rapid rate of technological progress than has been the case in Europe. There has been considerable engineering research, both publicly and privately financed, directed toward improvement in

[1] Cf. Louis Lister, "Europe's Coal and Steel Community," Twentieth Century Fund, 1960, p. 93.
[2] Ibid., pp. 93, 94.

mining methods and mechanical mining equipment. At the same time, an unusually high degree of union-management cooperation has facilitated the introduction of the improved techniques. Thus, by 1960 in the United States, more than 95 percent of the production of bituminous coal was mechanically cut or mined by continuous mining machines, while 86 percent was mechanically loaded.[3] European mines, on the other hand, still depend primarily upon hand labor. Only 34 percent of Europe's 1959 production was mechanically cut, and less than 23 percent was mechanically loaded.[4]

The geological and technological advantages of the United States are translated into productivity levels which must be considered phenomenal in terms of European conditions. Table 1 illustrates comparative output per man-day for the United States and six European coal-producing nations in 1953 and 1960. The data may be considered as effectively referring to bituminous output.[5] U.S. output per man-day had by 1960 approached 13 tons; by contrast, West German production, highest of the countries shown, was less than 2 tons per man-day. Output per man-day for the six European nations, as a group, was less than one-eighth (12.2 percent) than in the United States.

The trend illustrated by comparison of the 1953 and 1960 data is equally important. There have been heavy public and private investments in European coal-mining operations, and these have borne fruit in a substantial rise in labor productivity (24 percent from 1953 to 1960 in the nations shown). U.S. productivity, however, has risen at a far more rapid rate, with the result that the margin of the U.S. advantage over Europe has been steadily rising. Because of the differing rates of productivity increases in the two areas, output per man-day for the six countries listed fell from 15.4 percent of the U.S. output in 1953 to 12.2 percent in 1960.

Improvements in U.S. productivity have more than kept pace with labor costs, which account for more than half of total costs. Despite an increase of 38 percent in hourly employment costs (wages and supplements), employment costs per ton of bituminous coal produced declined by more than 15 percent from

TABLE 1.—*Coal production per man-day, selected countries, 1953 and 1960*

	Output per man-day (net tons)	Percent of United States		Output per man-day (net tons)	Percent of United States
1953			*1960*		
United States	8.17	100.0	United States	12.83	100.0
United Kingdom	1.34	16.4	United Kingdom	1.56	12.2
West Germany (including Saar)	1.21	14.8	West Germany	1.77	13.8
France	1.02	12.5	France	1.34	10.4
Belgium	.84	10.3	Belgium	1.12	8.7
Netherlands	1.09	13.3	Netherlands	1.25	9.7
Poland	1.44	17.6	Poland	1.55	12.1
Average, 6 European countries	1.26	15.4	Average, 6 European countries	1.56	12.2

NOTES.—(*a*) U.S. data are based on combined bituminous and lignite production. Lignite accounted for 0.7 percent of total output in 1960. European data are for "hard coal," including bituminous and anthracite but excluding lignite. Anthracite included in production of the countries listed amounted to 6.8 percent of total output in 1960 (Bureau of Mines, 1960 Minerals Yearbook).

(*b*) Underlying employment data are in general for production and related workers, underground and at the surface. Belgium and United Kingdom productivity, however, is slightly understated by reason of inclusion of supervisory employees.

(*c*) 1953 data for West Germany and the Saar have been combined weighted by respective outputs, for comparability with the 1960 data.

Sources: U.S. data from the Bureau of Mines, Minerals Yearbook. European data from United Nations, "Quarterly Bulletin of Coal Statistics for Europe," converted from metric tons to net tons.

[3] U.S. Bureau of Mines, 1960 Minerals Yearbook.

[4] U.N. Economic Commission for Europe, "The Coal Situation in 1959–60" (Geneva, 1961), p. 10.

[5] As noted in table 1, there is some difference in industry definition between the United States (Bureau of Mines data) and Europe (U.N. Economic Commission for Europe). U.S. data are based on "bituminous coal and lignite," while European data are for "hard coal" (bituminous and anthracite). Since lignite included in U.S. data is less than 1 percent of the total, while anthracite included in the European data is less than 7 percent of total "hard coal" for the six countries listed, it may be safely assumed that comparative data reflect differences in productivity for bituminous coal alone.

1953 to 1960.[6] In contrast, it is clear that European labor costs per ton of coal were rising significantly over this period.[7]

ABSOLUTE COST OF BITUMINOUS COAL IN U.S. AND EUROPE

An indication of the absolute magnitude of the U.S. advantage is provided by a U.N. study of 1958 costs per ton of coal in five countires.[8]

The U.N. findings, converted to dollars per short ton, are as follows:

Belgium:	
Total cost	$16.81
Labor cost	9.09
France:	
Total cost	13.38
Labor cost	8.29
West Germany:	
Total cost	12.52
Labor cost	6.76
United Kingdom:	
Total cost	10.49
Labor cost	6.60
Poland:	
Total cost	8.52
Labor cost	3.83

For the same year (1958), the Bureau of Mines reported an average value at the mine of $4.86 per short ton of bituminous coal. In other words, production costs for the countries shown (covering 88 percent of all European production outside the U.S.S.R.) exceeded the total value per ton of U.S. coal by margins of from 75 percent in Poland to 246 percent in Belgium. Indeed the total cost of U.S. coal is substantially below average direct labor costs per ton alone in Europe.

COKING COAL

The foregoing discussion of bituminous coal establishes the fact of a wide margin of U.S. superiority over Europe in production costs. This margin exists, too, in the relative costs of coking grades of coal.[9] The principal U.S. deposits are found in Pennsylvania and West Virginia, which produce approximately 70 percent of the Nation's coking coal. These two States, with Kentucky, Alabama, and Tennessee account for more than 90 percent of total production. There is a similar geological concentration of deposits on the European Continent. Despite a wide dispersion of coal deposits, the bulk of coking grades is to be found in the Ruhr Valley. The Ruhr provides some 70 percent of the European Coal and Steel Community's requirements for coking coal.

The margin between United States and European coking coal prices is illustrated in table 2. Estimated average annual U.S. prices for U.S. metallurgical coking coal, f.o.b. mine, rose from 1953 to 1957 but have declined since the latter year. Ruhr prices, on the other hand, showed little change from 1953 to 1957, but have risen considerably since 1957. As a result, in 1961 the U.S. price averaged 7.5 percent higher than in 1953, while Ruhr prices were more than 20 percent above their 1953 level.

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[6] Cf. U.S. Department of Labor Bulletin No. 1305, "Technological Change and Productivity in the Bituminous Coal Industry, 1920–60" (published November 1961), tables 27A, 28, and 29.

[7] Data available for 1954–60 show the following increases in employee compensation and output per man-shift: (1) United Kingdom, output per man-shift, 13.6 percent; earnings per shift, 37.9 percent; (2) West Germany, output per man-shift, 42.5 percent, hourly compensation (wages and supplements), 56.7 percent; (3) France, output per man-shift, 23 percent; (4) Belgium, output per man-shift, 30 percent; hourly compensation, 38.8 percent; (5) Netherlands, output per man-shift, 17.6 percent; hourly compensation, 58.2 percent; (6) Poland, output per man-shift, 8.9 percent; average monthly earnings, 69.3 percent. Output data from U.N. Quarterly Bulletin of Coal Statistics for Europe. Hourly compensation (wages and supplements) for ECSC countries from the Statistical Office of the European Communities. Statistiques Sociales. Earnings data for the United Kingdom and Poland from the International Labour Office, ILO Yearbook.

[8] United Nations, "The Coal Situation in Europe in 1959–60" (prepared by the Secretariat of the Economic Commission for Europe), Geneva, 1961.

[9] Coking grades: Grades of bituminous coal which, on the basis of volatile content and structure, will produce a satisfactory coke in terms of heating value, physical strength (especially important in blast furnace operation) and ash residue.

TABLE 2.—*Coking coal—Comparison of United States and Ruhr price levels, 1953–61*

[Prices in net tons, f.o.b. mine]

Year	United States	Ruhr
1953	$5.97	$11.46
1954	5.64	11.04
1955	5.62	11.19
1956	6.19	11.37
1957	6.64	12.20
1958	6.59	13.15
1959	6.50	13.15
1960	6.45	13.13
1961	6.42	13.78

NOTES.—(1) U.S. average annual price, f.o.b. mine, for "bituminous coal, metallurgical." Reported directly by Bureau Labor Statistics for 1955–57. The 1953–54 prices estimated by use of index for "bituminous coal." From 1958, prices for "bituminous coal, metallurgical" have been estimated by combining Bureau Labor Statistics new series for "high volatile" and "medium and low volatile," weighted by U.S. consumption (65 percent high volatile, 35 percent medium and low volatile).

(2) Price for coking fines reported by European Coal and Steel Community. High Authority for April of each year (June in 1955) converted from metric tons to short tons, less applicable taxes.

Sources: United States from Bureau of Labor Statistics data; Ruhr from annual reports, High Authority, European Coal and Steel Community.

The disparity between United States and European coal values at the mines is carried forward into substantial differences in prices delivered to coke ovens. The average (delivered) value of coal carbonized in U.S. oven-coke plants in 1960 was $9.89 per short ton, with substantial variations from State to State depending upon transportation distances.[10] For purposes of comparison, a good example is Pennsylvania; with coke ovens located relatively close to coal supplies, the average delivered value of coal was $8.45 in 1960. This may be contrasted with an average 1961 price of $14.33 a short ton for Ruhr coal delivered to Ruhr coke ovens.[11] Indeed, the surprising measure of the U.S. advantage is that U.S. coking fines can be delivered in many centers of the European Coal and Steel Community at lower prices than locally available coal. This is demonstrated in table 3, a tabulation of estimated delivered prices of coking fines in various steelmaking centers.

Aside from coking coal used for steelmaking in the Ruhr and mined in the Ruhr or the Netherlands and that used for steelmaking in one Belgian steel center (Seraing) and mined in the Netherlands, U.S. coal was delivered at lower prices at each of the steelmaking centers than coal from any of the European coal mining basins. Even in the Ruhr itself, U.S. coal at $15.93 a metric ton is approximately competitive with Ruhr coal at $15.67 a ton.

The case of Belgium is rather interesting since it is the major exporter of steel products to the United States. Although Belgium is an important coal producer, the price of U.S. coking coal delivered to the coke oven plants in Belgium's main steel-producing centers is lower than the price of Belgian coal from any of the three coal-producing basins. Thus, U.S. coal shipped through Emden, Bremen, or Hamburg can be delivered in Peine (near the border of East Germany) at a price lower than the coal from the Ruhr.

[10] U.S. Bureau of Mines, 1960 Minerals Yearbook.

[11] "High Authority," aid-memoire of June 25, 1962, transmitted to the subcommittee by the Department of State.

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TABLE 3.—*Delivered prices of coking coal in certain metalworking centers by area of origin (latter part of 1961)*

[List price without taxes (coal CECA) or average price 1961 (United States of America); dollars per metric ton]

Destination	West Germany		Netherlands	Belgium			France		United States	
	Ruhr	Saar		Campine	Liege	Charleroi	Nord/Pas-de-Calais	Lorraine	Belgium-Netherlands (Antwerp/Rotterdam/Amsterdam)	West Germany (Emden/Bremen/Hamburg)
Germany:										
Ruhr	15.67	----------	15.13	17.20	17.50	17.70	16.88	18.68	15.93	17.38
Peine (Ilsederhutte)	17.84	23.07	16.78	21.00	21.31	22.70	23.06	22.08	17.18	16.46
Netherlands: Ijeuiden (Hoogoven)	17.22	21.93	15.22	17.63	17.40	17.61	17.75	18.60	14.68	----------
Belgium:										
Gand (Sidemar)	17.10	21.34	15.18	16.45	16.93	16.92	16.88	18.96	14.68	----------
Seraing (Cockerill)	17.25	23.37	14.93	15.73	16.80	18.40	17.38	18.82	15.68	----------
Charleroi	17.75	21.84	15.28	16.36	18.40	16.80	16.88	19.07	15.68	----------
Italy: Carnigliano	[1] 21.72	[1] 26.23	[1] 20.26	[1] 21.28	[1] 21.59	[1] 22.00	[1] 21.00	[1] 24.46	[2]	[2]

[1] By sea.
[2] Geneva direct $14.61 by sea.

Source: High authority, aide memoire, Luxembourg, June 25, 1962, transmitted by covering letter of Department of State, July 9, 1962.

COKE

It is exceedingly difficult to make any transition from coal to coke prices, for purposes of international comparison. In the United States and most other steel-producing countries, there is practically no market which would provide any guide. Thus, in the United States in 1960 more than 93 percent of the blast furnace coke utilized was produced by the steel company which consumed it; less than 7 percent was sold by merchant plants.[12] In such circumstances the price of coke is largely a bookkeeping transaction dependent upon the accounting practices of the steel companies. Average receipts for the small amount of merchant sales to blast furnaces in 1960, for example, were $15.82 a ton, while average value assigned by blast furnace operators to their own coke charged was $18.02 a ton.[13] A further complication is introduced into "assigned" coke values, in the absence of any wide market, by the question of the relationship between the value of the coke itself and the value of coke chemical byproducts.

Under these circumstances, the most which can be done is to indicate the cost of the coal required per ton of coke produced. The 1960 U.S. average coal cost per ton of coke was $14.03, with considerable geographic variation depending upon distance from coal sources. Thus, the leading oven coke-producing State, Pennsylvania, with oven and mines in close proximity, had coal costs of $12.20 per ton of coke, while the second producer, Indiana, which secures most of its coking coal from Kentucky and West Virginia, had an average cost of $15.89 in 1960.[14]

Data are not available to permit any sort of European average comparable to the $14 coal cost per ton of coke reported by the Bureau of Mines for the United States. Some idea of the range of costs in various E.C.S.C. centers may be secured from the prices shown in table 3 above. With a coke yield of 75 percent,[15] and an average 1961 delivered price of $14.22 a short ton, Ruhr coke ovens have coal costs of about $19 a ton of coke produced. With domestic (Campine) or imported U.S. coking fines, Belgian coke ovens would have about the same coal costs as Ruhr ovens. Using Ruhr coal, the Belgian costs would be slightly over $20 per ton of coke. France, which is deficient in coking grades of coal, imported 28 percent of her coke in 1960, as well as 25 percent of the coal used to make oven coke within the country. Even allowing for the reasonable level of Lorraine coal in local steel centers ($14.43 a short ton at Thionville), the cost of imports, for blending must raise the French cost of coal to well over $20 per ton of coke.

In short, it is evident that the average cost of coal required to produce a ton of coal in the European Community is at least $20, or some $6 higher than average coal costs in the United States. This is a sizable margin, and one which, in view of relative trends in mining efficiencies in the United States compared with Europe, is likely to increase in the future.

Senator KEFAUVER. I will now comment on some of the tables contained in the memorandum.

(At this point in the proceeding, Senator Wiley entered the hearing room.)

Senator KEFAUVER. Mr. Patton, I think you have been supplied with one of these tables (table 3 of the memorandum) which shows the delivered price of coking coal from the United States to the principal steel producing centers of Europe as compared to the price that they have to pay for coking coal from their own mines.

You will find, I believe, that in every instance but two, U.S. coking coal is sold at a lower delivered price at the mills of Europe than coal mined and produced in Europe itself.

Belgium, I believe, is the principal exporter of steel into the United States. For Belgium, when the coal is received from the Ruhr at the Gand (Sidemar) plant, the price is $17.10 a metric ton. Delivered from the Saar, the price is $21.34; from the Netherlands, $15.18; and

[12] U.S. Bureau of Mines, 1960 Minerals Yearbook, pt. II, p. 211.
[13] Ibid.
[14] U.S. Bureau of Mines, 1960 Minerals Yearbook.
[15] The ECSC average (computed from the U.N.'s Quarterly Bulletin of Coal Statistics) for oven coke is somewhat higher than the U.S. yield of 70 percent in recent years, reported by the Bureau of Mines.

delivered from Belgium, $16.45, to $16.93, and $16.92; from France, $16.88 from the Calais region, and from Lorraine, $18.96. Yet American coking coal is delivered at the same places through Antwerp, Rotterdam, and Amsterdam, at $14.68 a ton.

What do you have to say about that.

Mr. PATTON. I am not finding the table that you are talking about. But, Senator, may I respectfully say this——

Senator KEFAUVER. It follows page 10 of the memorandum.

The CHAIRMAN. What is that?

Mr. PATTON. May I respectfully observe, Senator, that we were invited here to testify as to why we thought it would damage us to disclose our confidential costs to our foreign and other competitors. Now we can go into all costs and price philosophy and everything else and be here for weeks but we come back to the situation that what we are here to talk about is why we do not think it is advisable to require us to disclose our confidential costs.

I am perfectly willing to be here as long as you want, but I really do not know what this adds to a determination of that question, sir.

(At this point in the proceedings, Senator Scott enters the hearing room.)

Senator KEFAUVER. Mr. Patton, it is very clear to me that you made a very drastic statement here disparaging the subcommittee and saying that the submission of data requested by the subcommittee, even with the safeguard of not revealing the identity of any single company, would be damaging to the steel industry and to the country.

You were complaining that you did not want to submit your cost data in any form because of your foreign competitors, who had lower costs and who could set their prices below your costs if they knew what your costs were and thus take away your markets.

Mr. PATTON. I said they had lower prices and they do. I do not know what their costs are, but they have lower prices, and we are meeting it in the marketplace every day.

Senator KEFAUVER. But I would think, sir, if you are going to come here and condemn the subcommittee and particularly its chairman for doing damage to the country, you ought to have documentation for your accusation.

Mr. PATTON. I think we have filed a very full documentation of what we are talking about.

Senator KEFAUVER. I think you should have documentation as to their lower per-ton employment costs, their lower per-ton coking coal costs, their lower per-ton ore costs and all the other items that go to produce a ton of steel.

Mr. PATTON. I still say with the greatest of respect, I see no relevance to the cost.

I do not care what their costs are. They are taking the business away from us by lower prices, and we do not want them to get our confidential costs and have a target with which to take more of our business away from us by knowing the price at which they can meet, require us to lose business.

Senator KEFAUVER. I understand from your statement that you were in an unfavorable competitive position and they were winning out in foreign markets because their costs were lower, and therefore you were having a hard time competing with them.

Mr. PATTON. We are.

Senator KEFAUVER. Your general statement was that it would be damaging to the steel companies and to the country for cost data to be revealed in any form. I would think that you would have some documentation to show that your costs are higher than theirs.

Mr. PATTON. I do not see that costs have anything to do with it, sir. We are meeting a price, not a cost.

The CHAIRMAN. The price, that is the whole point as I see it. I do not see that this is pertinent.

Senator KEFAUVER. Mr. Chairman, I am sorry to disagree with you. The witness said that he could not meet the price abroad because their costs were lower; and that publishing this data might give them a "target" below which they would set their prices. But if their costs were the same or higher than yours, that is a different picture.

Mr. PATTON. Not to me, it is not. I have no idea of what their costs are.

I know that we are being confronted by a price, not a cost, by a price in the market, regardless of what their costs are.

They are selling in this market in these United States at prices lower than we are. I do not know what their costs are, but I do know that if they get our costs, they will have a target at which to shoot to take more business away from us.

Senator KEFAUVER. The Antitrust and Monopoly Subcommittee—may I finish my question—is interested in this: If your costs are the same or lower than those of the European companies, and, yet, they are underselling you, we would like to know why you continue to run at only 50 percent of capacity, why you do not get your prices down and be competitive?

Mr. PATTON. I can only read into that, sir, the fact that you want to control our prices.

Senator KEFAUVER. I do not want to control your prices.

Mr. PATTON. You denied that the other day; sir.

Senator KEFAUVER. I just want to have price competition in the steel industry, in the United States, which it has not had in a long, long time.

Mr. PATTON. I respectfully disagree. We have intense competition.

Senator SCOTT. Mr. Chairman, may the Senator yield so I can pose an inquiry?

Senator KEFAUVER. I yield.

I wanted to try to finish the particular subject I was on, but you go ahead.

Senator SCOTT. Mr. Chairman, I would like to raise the point whether we are here to consider whether or not these companies are to be required by the full committee to respond to the subpena or whether we are here to consider whether the companies are prepared to go into partnership with the subcommittee or whether we are by this line of questioning attempting to secure without action on the part of the subcommittee the same information which the companies say that they ought not to be required to furnish under these circumstances and at this time.

So may I inquire whether or not a motion is in order or a point of order would apply that the questioning be responsive and be germane to the purpose for which we have met; namely, whether or not these companies should respond to the subpena.

(At this point in the proceedings, Senator Hart enters the hearing room.)

Senator KEFAUVER. May I undertake to answer the Senator.

All of the information that has been brought out this morning and all that will be brought out this afternoon is in the public domain.

Mr. Patton has stated here that what the subcommittee feels it needs would do great harm to our country. He feels that foreign steel costs are lower, so much lower, that American industry cannot compete and sell to foreign markets.

If European costs are higher or if they are the same, I cannot see any advantage to them if they know what American steel costs are. So I want to find out if the witness has any documentation for his rash and drastic statement that the subcommittee wants to do harm to our country.

The CHAIRMAN. He made a statement and he gave his reasons last week, as he did today.

They are meeting a foreign price in the marketplace and they cannot let them have their costs. Senator Wiley, what is your idea?

Senator KEFAUVER. May I finish, Mr. Chairman?

The CHAIRMAN. Yes.

Senator KEFAUVER. I am trying to test whether Mr. Patton is just making his own individual statement based upon his individual thoughts that American steel was not in a position to compete and, therefore, was losing its foreign markets, or whether he had some facts to back it up. So far I have found that he has practically no documentation.

Mr. PATTON. I respectfully disagree. I think that we have fully documented our case.

Senator KEFAUVER. I fully intend to ask the witness about the documentation that we have, which is in public documents available to us and to everyone else.

The CHAIRMAN. Senator Wiley?

Senator WILEY. I have listened to the line of questions. I feel that within the limit of the particular resolution, that if the purpose of these questions is to seek to prove that there is some kind of a conspiracy among the companies in America, that is one thing.

I wonder sometimes if we as a committee are really putting on a three-ring circus or whether we are seeking to find something out which is that the price that the steel companies are charging is excessive.

Now, if that is the case, that is not any of our business unless we can prove that there is some kind of a conspiracy. I personally feel that the Judiciary Committee has a real function in many cases, but I personnally also feel that in the state of the world at present, with Cuba, with Berlin, and with the Near East, that this is no time for us to arrange things so that we will put probably a segment of our business out of business, where we will have labor out of work.

I think we have got a big job, and that is to maintain the peace.

I doubt very much whether we are doing it as we should be doing it in this committee.

I am sincere about that.

There is no particular reflection on anybody, but I do feel as an ordinary Senator that we have certain functions to perform here, and

I would like to know within what segment of the resolution we are proceeding.

If I get the answer, then I could answer the question that has been propounded. Where are we in relation to the authority that authorizes us to put our nose into the steel business?

Senator KEFAUVER. Mr. Chairman, all we want is the truth.

The CHAIRMAN. Senator Ervin?

Senator ERVIN. The thing that concerns me, Mr. Chairman, is that I personally cannot see the relevancy of this testimony to anything pending before the committee.

Of course, if we go into this testimony, then we have to go into the testimony about the value of plants, the differences, if any, whether the differences in matters of taxation or the cost of labor are relevant, and, frankly, I think we could continue the search for truth into a very laudable undertaking, but we have got some duties to perform.

Frankly, I think if we go into the matters in this detail, that this committee can still be sitting here until the last lingering echo of Gabriel's horn trembles in the ultimate silence.

I would like to know exactly what it is that the committee or the subcommittee is preparing to do in the way of legislation which makes the disclosure of this cost data and the resultant profit data necessary to an activity or a proposed activity of the committee or he subcommittee.

(At this point in the proceedings Senator Carroll enters the hearing room.)

Senator ERVIN. I think I could be told that in a half hour or less so I could understand what it is.

Frankly, I have read everything that has been given me on this subject, even though I have had to sit up at night to do it, and I still am at a loss to know what it is that makes it advisable or desirable for this committee to either issue the citation for contempt against these men or to obtain the information in lieu of such citation.

Frankly, I do not know what it is.

Senator KEFAUVER. Mr. Chairman, would the Senator——

The CHAIRMAN. Senator Hart?

Senator HART. Mr. Chairman, if I could, I would like to hear from Senator Kefauver, who, I think, is in a position best to indicate to us why he is convinced that this inquiry will be helpful in determining whether we should resolve this conflicting pair of principles: the protection of trade secrets and acquisition of information by the Congress on which it can legislate more wisely as a result.

The CHAIRMAN. All right, Senator.

Senator KEFAUVER. Mr. Chairman, somebody spoke of unemployment. Many steelworkers are out of jobs, as we all know. But the reason is that we are producing steel far below full capacity. The situation we have had for a long time in the steel industry is that there will be a bargaining agreement and a wage increase which labor claims is covered by the increase in productivity. Parenthetically, I have been critical of Mr. McDonald and the steelworkers on occasions and have been laid low by Mr. McDonald on one occasion.

Then following that, the companies say that the increase is not matched by the productivity gains and raise the price two or three times what some experts say is necessary to take care of the wage increase. A year or so later, we go through the same process.

Steel affects the overall cost of living and inflationary pressures in this country. In raising their prices, all the steel companies act with substantial uniformity following a leader, and instituting the same increases at the same time.

Because there has been little price competition between them, we have come to the point where the price of steel is so high that our plants are operating at only 50 percent of capacity.

I think the American people are entitled to know the truth as to which is right, the steel companies or labor, as steel prices are forced higher and higher.

The CHAIRMAN. Is it legislation——

Senator KEFAUVER. Let me——

The CHAIRMAN. Or for the people to know the truth. Those are two different things.

Senator KEFAUVER. I will get to the subject of legislation very shortly, if the chairman will give me a minute or two.

The CHAIRMAN. All right.

Senator KEFAUVER. They are entitled to know the truth because we cannot stand this continued go-around either from an international or domestic point of view. If the companies are right that they have to have these increases, they should receive, I think, better and more sympathetic consideration. If they are not right, that is something else.

We also want to know—and it is important for this subcommittee to know—whether the fact that our plants are only operating at 50 percent capacity, whether they cannot compete—even though Mr. Patton does not know if our production costs are higher or lower than the European companies—whether or not that is the result of monopoly and concentration in the steel industry.

The American people are entitled to know the truth. We have bills before us that attack the problem. As to whether those bills will pass or not, or should pass, will depend upon the facts that we get.

We have a proposal before us—there has been a bill—to have a public announcement of intention by major companies when they plan for a price increase.

We are considering a bill requiring corporations that submit identical bids to sign affidavits that they did not talk the matter over beforehand.

For a long time we have had a proposition before us to add other criteria to section 2 of the Sherman Act, intended to make the requirements to effect dissolution less stringent.

We need to know, reconsidering such a measure, whether it would result in a reduction in efficiency.

Senator CARROLL. Will the Senator yield?

Senator KEFAUVER. The only way that we can legislate intelligently on these matters is to get the facts.

Four steel companies have refused to respond to subcommittee subpenas, saying that the data requested would seriously damage the country. That is a very harsh charge to make against the chairman and the members of this subcommittee.

I am asking Mr. Patton to document the charge. He is unable to. I furnish documentation and it is objected to.

If foreign costs of production are high or higher than in the United States, then that will affect the kind of legislation we will want to pass,

because that will show that there is monopoly power in the steel industry which is being used to keep our plants from operating, to turn labor out of its jobs and to cost our American people more than they ought to have to pay for steel.

But if the cost of production in the foreign countries is substantially less than what it is in the United States, then there might be a valid reason for not wanting to have their cost data made public.

My efforts to examine the principal elements which go into the cost of making steel are, I believe, directly pertinent to the matter before us and to the inquiry that this committee and the subcommittee has been carrying on.

Senator CARROLL. Will the Senator yield?

Senator KEFAUVER. If I may yield.

Senator CARROLL. Mr. Chairman, if Senator Hart will permit me to make an observation——

Senator WILEY. A little louder, please.

Senator CARROLL. Some years back this subcommittee held extensive hearings in the automotive industry. At that time we were seeking again cost data. Insofar as the legislative purpose is concerned, I think Mr. Romney of the American Motors Co. testified before our committee, and I am now searching my memory and I think it is in the record, that he felt that the dominance of General Motors over the automotive market was so extensive that they ought to be broken up.

We asked for information, and there was a great dispute then between the automotive industry and labor, and I remember this clearly.

That we said we ought to put labor at one end of the table and the automotive industry leaders at the other end of the table and to find out who is right and who is wrong.

There was great difficulty during that period.

We did not get that.

Then, as the able Senator from Tennessee has said, just before the great steel strike, again we said we ought to put the steel leaders at one end of the table and labor at the other end of the table and find out who is telling the truth—I will not say "telling the truth," but find out what the facts are.

Now, preceding that strike, the able Senator from Tennessee and 20 or 22 Members of the Senate who were not members of this committee, we met in the old Supreme Court. We first heard from all the leaders of steel to see if we could not take some steps to avert that strike, the strike that came, which was a devastating strike.

After that, we had in Dave McDonald and the steel workers, again talking to them. Now, was there a legislative purpose? Yes, there was.

And we urged the President of the United States to take some steps. Then just recently—this has not been something that has just come up quickly, but prior to this last controversy that has arisen, week after week, month after month, we have asked the President and the steel leaders to get together, yes, and the labor leaders, to get together to keep from having another price increase because we thought it would be most damaging to this Nation.

This is what we call the hold-the-line price stabilization, price-wage stabilization.

I want to say for the junior Senator from Colorado why I voted for this citation:

Not in a criminal sense. I recognize that able lawyers can disagree on the points involved here, but I had hoped that this would go to a court and get a judicial opinion of whether or not the lawmakers, the men who make the law, are entitled to this cost data.

Now, why?

If you went into a court of law in private litigation, and the judge ordered you to produce cost data, you would produce it or you would go to jail, I believe, and I think the Supreme Court would sustain it.

This has not happened once. This has happened in many cases that have gone to the Supreme Court.

Now, if the courts can force a disclosure of cost data in an antitrust case because they are interpreting a statute which is passed by the Congress, why is it that the lawmakers themselves may not have access to this?

Now, I want to make it crystal clear that the fact that you gentlemen did not appear and present records, I place no connotation in any sort of a criminal sense here at all. You have a right to dispute this. But, as I read your own record, Mr. Patton—I was not here at the other two hearings, and I now put this question to you: If this committee was so disposed today, the full committee, to order you to produce your cost data, would you do it?

Mr. PATTON. I hope that the decision of the committee is such, sir, that I will never have to face that question. It is a hypothetical question.

Senator CARROLL. You are not answering my question.

Mr. PATTON. I cannot answer at this time.

Senator CARROLL. You have answered it because your counsel on page 18 of the hearings, your counsel has said that you look upon this as a violation of article IV of the Constitution.

Now, if this committee made that request, would you accept it?

Mr. PATTON. That is a management decision, sir, that would have to be made by our company. I am in no position to answer that individually.

But may I say, sir that wholly irrespective of the legal question, we are not inviting a review by the court. We are saying that irrespective of the fact that you have the power, if you so feel that you have, to demand this type of information, would you, as a matter of policy, force us to disclose our confidential costs to the detriment, we believe, and sincerely believe, of our companies and our industry and the public interest of the United States of America?

You men are entrusted with trying to determine what is in the public interest, and we are appealing to you in whom the voters have placed the trust, not to exercise a right, even if you have it, to require us to expose our costs so that we will be at an unfair competitive disadvantage with foreign producers of steel.

Senator CARROLL. Mr. Patton, we understand that. We understand that this is one of the reasons why I said you ought to be able to give an account here openly and publicly. I am in favor of that. I am in favor of your being given an opportunity where this committee can

talk whether it is a policy question, but this is not what I am asking. On page 18 of your testimony you say—

> Counsel tells me—

and I am quoting now—

> that the subpena issued by the subcommittee may well be invalid; first, because they are so burdensome as to constitute an unreasonable search and seizure in violation of the fourth amendment to the Constitution and, second, because they do not serve any proper legislative purpose of the subcommittee.

Now one of the reasons I put the question as I did, because for my own self I think that we have, No. 1, jurisdiction; No. 2, I think there is clearly a legislative purpose; No. 3, I think that this could be pertinent and is pertinent, and I for one was willing to let it go to the courts to see if in all these years if we could not settle this problem once judicially.

I have no desire, I have never had a connection with a steel company. I have never had any quarrel with steel companies, I have no quarrel with the position that you present here today, but it would seem to me if there is any merit that some of us think there is a legislative purpose, then we ought to have access to the cost data. I do not mean access where it would be exposed to competitors, where it would be exposed even to other members of the Government.

For example, I know that some of these steel companies are under indictment. I do not mean furnishing information to aid prosecution, or aid foreigners, or aid competitors, but it would seem to me that there ought to be some way if we have any right to it at all, there ought to be some way that the lawmakers themselves could have access to cost data, I am sure even in executive session.

Now I agree with you this is a policy decision, but it is clear to me from your own testimony that if the composition of this committee were different, and some day it may be, and this is why I think this is a dangerous practice and procedure and precedent, that if the whole committee ordered you, I am convinced you would say, "Gentlemen, we won't give it to you," and we would have to go to court anyway. And I am convinced that if the lower court forced you to do it you would take it to the Supreme Court and there would be a determination.

But it is my judgment after reading some of the decisions, and I leave it to your counsel who has been on both sides, that the court of law, if they ordered you to bring up this cost data, you would be required to do it. They may impound it, but you would be required to do it.

Does your counsel care to comment on that in any sense?

Mr. PATTON. Do I wish to comment?

Senator CARROLL. Yes.

Mr. PATTON. Yes, sir.

Senator CARROLL. You are a lawyer and you have able lawyers.

Mr. PATTON. Yes, sir, I would be very glad to comment on that.

Senator CARROLL. Would a court of law force you to do this, do you think?

Mr. PATTON. What is that?

Senator CARROLL. Would a court of law force you to make a disclosure?

Mr. PATTON. I repeat that I hope that we are not forced to subject ourselves to possible fine or imprisonment in this situation because irrespective of the legal points involved, I hope that we have presented enough evidence to the members of this committee that as a matter of policy you won't require us to face that situation, and I will go on and say that you men have discretion which probably a court would not have if we went before a court. That is why we are here before you. You men, in whom the public policy and the public interest is entrusted, and we are hoping that on the basis of the facts presented to you, you will determine as a matter of policy that it is not in the public interest to require it, and you will not force us to go any further in the matter.

Senator CARROLL. Do you have any idea how this might be done? Will you supply cost data, giving you all the protection that you and the oher companies might need? Do you know how this might be done? Do you have any ideas?

Mr. PATTON. I must say with all sincerity I do not think it can be done.

Senator CARROLL. If you were ordered by a court of law to do it, would it be so burdensome that you could not do it? It has been done in other cases. I do not know that it has been done with the steel companies, but it has been done in some of the big industries.

Mr. PATTON. I hope we never are faced with that situation, and I cannot answer right now, sir.

Senator CARROLL. You as a lawyer, and you are an able lawyer, and you have able lawyers on both sides, if the court would make such an order they would impound the cost data would they not, and they would give you the protection that you want.

Mr. PATTON. I do not know. I really do not know.

Senator CARROLL. Do you think that if the Congress, if we decided as a matter of policy that maybe we ought to have this, if we handle it to give you all the protection that you need, do you think that we in the Senate, and the Comptroller General, we could not give you the secrecy that a court would give you, I mean the privacy of the papers?

Mr. PATTON. I only know, sir, that information which has been given and thought to be given in confidence before has become public. I do not know why or through what reason but it has, and I am very much afraid, sir, that the same thing would happen here.

Senator SCOTT. Mr. Chairman.

Senator CARROLL. I just wanted to let you know for myself the reason why as a lawyer and as a member of this committee that I voted in favor of the citations because I would like to see this dispute settled in court without any desire to put anybody in jail or fine anybody. I would like to see this legal point settled.

I have my own ideas about, it but they may not prevail in a court of law.

The CHAIRMAN. Senator Scott.

Senator SCOTT. Mr. Chairman, on the question of secrecy, I commented at an earlier hearing that nothing is secret in Washington, and that any such data given would appear in the press within 2 weeks, and I would like to say that within 2 weeks I was promptly attacked for having said it, and an impression was given that I should be in some way terrified into silence.

The further impression was given that I was interested in contributions from the steel companies, none of which I have ever received, and I am quite well aware as to how that information got into the press, and I am aware that what I say today will further appear with resultant attacks. Now still proceeding, I hope still unterrified, Mr. Chairman, I would like to go into the question raised by the Senator from Colorado who seems to believe that if you were taken into court, Mr. Patton, that the Supreme Court would affirm the lower court in compelling you to produce this information.

Since most of us are lawyers here, I am sure the Senator from Colorado has read the case of Watkins against the United States, 354 U.S. at page 178, and to lay the groundwork for the decision in that case, I will point out that here also there have been no hearings on specific bills, there has been no effort to proceed in aid of legislation on specific bills. What we have instead is a general investigation, a fishing expedition, and today in an attempt to obtain by indirection what cannot be obtained by direction unless the full committee acts, and I submit that the charter of the subcommittee is by no means specific enough to cover a demand for cost data. Reading from the opinion, this statement is made by the Court:

> An essential premise in this situation is that the House or Senate shall have instructed the committee members on what they are to do with the power delegated to them.
>
> It is the responsibility of the Congress in the first instance to assure that compulsory process is used only in furtherance of a legisaltive purpose. That requires—

so far so good; now resuming the quote—

> that requires that the instructions to an investigating committee spell out that group's jurisdiction and purpose with sufficient particularity. Those instructions are embodied in the authorizing resolution. That document is the committee's charter.
>
> Broadly drafted, and loosely worded, however, such resolutions can leave tremendous latitude to the discretion of the investigators. The more vague the committee's charter is, the greater becomes the possibility that the committee's specific actions are not in conformity with the will of the parent House of Congress.

I am not aware that the charter of the subcommittee specifically extends to cost data or that hearings have been held on specific bills pursuant to the limitations I think wisely imposed by the Supreme Court in this matter. Now I would like to point out that we have only recently been called on to act as a full committee on a similar matter, and this in a matter of weeks pertaining to the drug hearing, and it is interesting to note that the comments come from Mr. Paul Rand Dixon, then chief counsel of the Senate Antitrust and Monopoly Subcommittee, who is now Chairman of the Federal Trade Commission, at page 7856 of the transcript of the drug hearings, likewise in which the distinguished Senator from Tennessee was likewise prominently interested, Mr. Dixon stated as follows:

> Mr. Chairman, in keeping with the practice of this subcommittee—

and I underscore that—

> in keeping with the practice of this subcommittee and in an attempt not to get into matters which are considered by industry members as highly competitive and as trade secrets, we have chosen another avenue to get information which we thought to be of interest to the subcommittee.

We did not ask for cost data for any individual product which in my opinion could be held to be a competitive trade secret, but we did ask for certain basic information. We asked for the bulk sales that were made between these individual companies.

And there is further reference to an exhibit which Dr. Blair was asked to explain.

In prior history going back to the steel hearings on August 12, 1957, Chairman Kefauver requested certain unit costs to which Mr. Blough, chairman of the board of United States Steel, stated as follows:

Senator, we will try to see what we can give you with respect to that, but I again suggest some of the data we consider confidential from the competitive point of view.

And I note that this point was not further pursued by the subcommittee by way of subpena.

The question of confidential cost data was again raised in the automobile hearings through Mr. Curtice, chairman of the board of General Motors, page 2550, at the automobile hearings in 1958. The subcommittee requested cost data. The automobile companies refused to reveal this confidential material. The subcommittee had a brief executive session at which time it was decided that they need not furnish the original material requested but the counsel for the automobile companies and counsel for the subcommittees would work out a plan whereby certain cost data could be obtained which would not be to the detriment of the company, and this was accomplished.

And the bread hearings, substantially the same result. An attempt was made again by the same Senator and again the confidential data inquiry was not pressed.

Now on this question of confidential data, Mr. Patton, suppose the committee had all the cost data which you could give it. Could it still determine the efficiency of operation of a given company or could it determine through the data alone the relative efficiency of operation of the companies in competition with each other?

Mr. PATTON. I do not think so; no, sir.

Senator SCOTT. Would it not be required in order to arrive at a determination of efficiency in production as a determinant of cost that you would have to put monitors in all plants who would be called, I suppose, efficiency experts, to oversee the day-to-day operation of every plant of every company?

Mr. PATTON. It would, sir, and you would have to know every piece of equipment and how the equipment differed from plant to plant and everything else, sir.

Senator SCOTT. Unless you had this commissar system, we will call it, of inspection, is there anything short of that which would accurately and definitively determine these questions of efficiency of operation and relative efficiency of operation among competitors?

Mr. PATTON. I know of nothing, sir.

Senator SCOTT. Mr. Patton, I call your attention now to the hearings in 1957, pursuant to Senate Resolution 57 at page 549. The questioning today has rested, as I undertsand it, on the theory that because you are operating at approximately 50 percent of capacity a revelation of this confidential information might lead to your being able to increase your capacity by lowering prices. In other words, that because you are operating at half capacity, it follows, so this

argument goes, that by lowering prices, you would be able to operate at full capacity. I call your attention to the fact that in 1957 the company testified it was operating at full capacity and exactly the same argument was being made that there was a necessity for an investigation of administrative costs and a desirability for lowering prices, although presumably you could not have increased your capacity substantially. This is where the statement which was made on page 549—Mr. Homer is being examined by Senator Kefauver.

Mr. Homer states:

> The suggestion seems to be based on two assumptions, neither of which is justified as far as Bethlehem is concerned. The first assumption is that at the time we increased our prices we were not operating at satisfactory levels and needed increased production. The fact is that Bethlehem's operating rate throughout the first 6 months of 1957 averaged about 100 percent of our rated capacity, 103.8 in the first quarter, 97.5 in the second quarter, and about July 1 we expected to operate at about 90 percent of the third quarter and about 98 in the fourth quarter.

There seems to me to be some inconsistency in arguing that the need for this investigation and the need for the steel companies to do what the subcommittee thinks they ought to do is based on the fact that you are operating at half capacity. Yet the argument was made that the same need existed, when companies were operating at or near full capacity. Would you care to comment on that?

Mr. PATTON. I can only say that on the basis of what you read, sir—in getting into this area I am only speaking for myself because this is an area that I am not authorized to speak in for any other company, it does seem to me to be a little mysterious as to why it was necessary to get this information if we were operating at full capacity and now it is necessary to get it when we are operating at half capacity. I do not think it is relevant in either event, if you ask me.

Senator SCOTT. I suggest, as I have before, that there must be some other purpose for the investigation which is not revealed by that phase of the testimony, and I think that covers what I had in mind.

I still do not see the relevancy, as Senator Ervin has said, of some of the questions which are being propounded here, and seeking, as I said, to obtain by indirection what the full committee has not yet ruled can be obtained by direction.

I conclude by saying that I still have confidence in the courts of the United States, and I doubt very much, under the present general charter of the subcommittee, that they could successfully compel this revelation, if this were an action before the High Court.

Mr. PATTON. I might say, sir, that in the press release issued Monday, April 16, by Senator Kefauver, the following statement is made, and it bears on what you said:

> In issuing these subpenas, Senator Kefauver emphasizzed that data on cost of production are essential to an intelligent evaluation of the need for price increases.

Senator KEFAUVER. Read on, whether that is due to monopoly power or competition.

Mr. PATTON (reading):

> Once obtained, basic cost information can be used for some time in the future to evaluate future price changes by appropriate adjustments in the principal cost elements.

Senator KEFAUVER. You still did not read it all?

Mr. PATTON. Do you want me to read the whole thing?

Senator KEFAUVER. Let us put it in the record.

Mr. PATTON. I think it is in, but I will be glad to put it in.

Senator CARROLL. Mr. Chairman, in view of the fact that the Senator from Pennsylvania has made reference to my discussion about the law, the *Watkins* case has no application at all to what I was saying to Mr. Patton and his counsel.

The law that I had reference to and the cases I have reference to are summed up in this statement by the American Bar Association, and the title of this and the section of the antitrust law, "Current Data of Interest to Antitrust Lawyers," and I think I am giving a general statement of the law when I say this.

This is the report of this committee:

> Despite the prejudice which may result, the law is clearly established that a party has no absolute right to refuse to disclose information on the ground that trade secrets will be divulged.

Now, this is the law, and in the *Alcoa* case they also wanted cost data because the cost of production was a vital interest in that case.

It is my recollection—I believe I am right in that—that Learned Hand wrote the decision in that case. Now, my point is this:

I am not talking about contempt proceedings at all. I have no interest in contempt proceedings. The real basic question is whether this Senate Judiciary Committee, who are lawmakers, if we have a legislative purpose—and I think we have—whether or not we are entitled to the cost data of major industries who collectively possess great economic strength, to determine whether or not we shall widen the antitrust laws of the Nation.

Now, it may be—we have had these investigations for years, automotive investigation, we have had oil, we have had steel a couple of times, but, basically, it always seems to me we come back to the question, when we get into an argument, sort of a donnybrook here between labor and the steel companies, we cannot really make a determination because we do not have the facts.

We do not have the cost data.

I would be the first to say that I would not want any company to reveal publicly trade secrets which are vital to its operation.

I do not know whether it can be done. I would like to explore it.

I think the courts would hold—this is my private opinion—I think the courts would hold, as I have indicated, that we have jurisdiction. We have legislative purpose.

The question that Senator Kefauver is putting goes to the question of pertinence. This is one of the decisions raised in the *Alcoa* case, the cost of production.

Now, as to the next question, I think we can meet all these standards for a court to make this determination. Now, the court could do this to this committee. The court could say that: "You are asking your powers, the powers that you request are too wide and too sweeping under these circumstances. You have not particularized sufficiently," as I read some of the decisions.

But that is a question and this is why I would like to see a judicial determination.

The court may say: "Your committee under these circumstances, even for a lawmaking purpose, you are not entitled to this sort of information."

This is why the Senator from Colorado has voted as he did in the subcommittee, and this is why the junior Senator from Colorado is going to vote to say that I want this determined, I hope, finally, by judicial bodies so that we will get over this point, and we will keep away from it, and maybe we will not harass you or anybody else from now on, if it is harassment; we will get away from this cost-data issue.

Senator SCOTT. Will the Senator from Colorado yield on that point?

Senator CARROLL. I will be glad to yield.

Senator SCOTT. As I understand the case the Senator from Colorado is referring to, the *Alcoa* case, at that time the action was brought under the Sherman Act because it was alleged that Alcoa had 90 percent of the aluminum ingots at the time.

I do not recall that there appears in the decision any statement in the decision itself that full authority to subpena cost data was recognized.

The Senator has read from an opinion by Judge Learned Hand, but is he referring to an opinion in this case? I think the decision is empty in this case of any such statement.

Senator CARROLL. The *Alcoa* case, as I recall, the cost data was an important consideration in the court's determination as to whether or not it was a monopoly.

Senator SCOTT. But did the words that the Senator read from Judge Learned Hand appear in the decision?

Senator CARROLL. I did not read Judge Learned Hand's decision. I was reading from a report of the American Bar Association.

I said, if my memory serves me correctly, Learned Hand had something to do with that decision. I will be glad to correct the record.

Senator SCOTT. I was just raising the point so that the Senator may be able to refresh himself on the decision, as I know he would like to do.

However, I did want to make the point that the decision to which he refers is not the case here. What we are dealing with here is a Senate subcommittee hearing.

What we are dealing with here is the charter of that Senate subcommittee.

There is no doubt that there is a resolution which empowers the Senate subcommittee to proceed.

My point was that if this matter were a matter of determination by the High Court rather than by the full Judiciary Committee, it is my judgment that they would be guided by the *Watkins* case.

Senator KEFAUVER. Mr. Chairman?

Senator CARROLL. May I finish here for the record, Mr. Chairman?

It will only take a minute, because we want to clarify this point.

I am again reading from this report of the American Bar Association on page 532, entitled "Relevance of Cost Data to Proof of Power To Raise Prices or To Exclude Competition." The committee says:

> In both *United States* v. *Aluminum Company of America*, supra, and the *United States* v. *du Pont*—

This is a 1952 decision—

> the relevance of cost data to proof of the existence of monopoly power was demonstrated. In both cases determination of a relevant market in which monopoly power was alleged to exist was at issue. Stated in another way, the evidence of

monopoly power was in both cases analyzed in terms of whether the availability of products which could be substituted for that allegedly monopolized privilege of the exercise of monopoly power.

Now, I am informed that the Supreme Court itself assigned Learned Hand to write this decision. But, going again to the question not of policy—I agree with Mr. Patton that this committee certainly could determine policy whether it wants to go into this field or not—but on the question of cost data and its relevance to the lawmaking body, I think there can be no doubt, if the Court can demand, as the Court has done, why cannot the Senate of the United States demand it?

Senator KEFAUVER. Mr. Chairman, I would ask unanimous consent that this material from the American Bar Association's Section of Antitrust Law be inserted in the record.

(The document referred to is as follows:)

REPORT OF SHERMAN ACT SUBCOMMITTEE ON COST DATA PROBLEMS IN SHERMAN ACT CASES

The following report was prepared by a Subcommittee of the Committee on the Sherman Act for presentation to that Committee and is reproduced for the information and consideration of interested members of the Section. Miles W. Kirkpatrick served as Subcommittee Chairman and other members included Sigurd Anderson, John T. Chadwell, Steven E. Keane, Marshall P. Madison, George D. Reycraft, Jr., and Taggart Whipple. The Subcommittee was appointed by Cyrus V. Anderson, Chairman of the Sherman Act Committee, who also participated in the preparation of the report.

The views expressed in this report are not necessarily those of the Committee for which the report was prepared and because the report has not been submitted for approval by the Council, or the Section, or the governing bodies of the A. B. A., it cannot under Article X, Section 3 of the Section By-Laws be deemed to reflect the views of the Section or the Association.*

I. INTRODUCTION

The recent decision in *United States* v. *Eli Lilly & Co.*, 24 F. R. D. 285 (D. N. J. 1959), focused the attention of bench and bar on the question which up to then had not been a matter of sharp controversy in antitrust litigation:

> To what extent are costs and profits relevant in Sherman Act cases?

The question is an important one. With antitrust litigation imposing greater and greater demands upon the judicial system,[1] it is critical that no issue be permitted to remain in a case—particularly if its presence means that court and counsel will be concerned with voluminous documentary material of a detailed nature—unless the issue is clearly relevant to the subject matter of the particular action.[2]

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* For the origin of this paragraph see the minutes of the Council meeting held in Washington, D. C., on August 31, 1960, *supra*.

[1] Data showing the number of days, including time devoted to procedural and discovery matters, involved in antitrust litigation in the United States District Courts and before the Federal Trade Commission, are not available in exact detail as such.

[2] The report of the Judicial Conference on *Procedure in Antitrust and Other Protracted Cases*, 13 F. R. D. 62 (1951), emphasized that in the protracted case "such evidence as is merely 'possibly helpful', or which merely supplies 'atmosphere' or 'background' . . . should be strictly excluded from the record." *Id.* at 76. In further admonition the Report states:

> ". . . If irrelevant material is included, the trouble is aggravated. Confusion is compounded in keeping track of the subject-content of such masses. The expenses of reporting and printing are enormous. But those are not

This report will consider first the question of relevance of cost data to proof of Sherman Act violations. There will then be discussed other legal considerations concerning cost data, assuming relevance. Thereafter, consideration will be given to the procedural aspects of obtaining cost data information. Finally, the use of appropriate protective orders in cases where cost data are found to be relevant will be considered.

II. RELEVANCE OF COST DATA TO PROOF OF SHERMAN ACT VIOLATIONS

Whether cost data are relevant to proof of particular offenses under the Sherman Act is a question of acute significance in light of the practical problems attendant upon production, analysis and presentation to a court of such data. This is apparent from the *Eli Lilly* decision, *supra*, requiring defendants, in spite of burdensomeness and other difficulties, to produce sales and cost documents which were held to be of "liminal relevancy". 24 F.R.D. at 291 Such a holding permits the speculation that the court would not order production of documents of some lesser degree of relevance. There may be many cases where the revelance of cost data is so slight that factors of convenience indicate that such data should be excluded. Without attempting definitively to accommodate relevance and burden, we nevertheless are able, on consideration of several litigated cases, to conclude that under certain circumstances, cost data have been determined to be relevant to proof of Sherman Act violations.

It is basic that a defendant's costs, in and of themselves and without other facts, are not in any way conclusive as to violation of the Sherman Act. There must be other evidence; for instance, below-cost selling, without more, is not violative of the Sherman Act, but below-cost selling, in connection with such other factors as the length of time it is continued, the areas involved, and the actual exclusion of competitors, together with the requisite intent, can support a charge of attempted monopolization. Other examples will be considered below. We shall first take up the use of cost data in actions brought under Section 1 of the Sherman Act and then consider the monopolization cases under Section 2.

Before turning to judicial consideration of the relevance of cost information to proof of Sherman Act violations, it is appropriate to define our terms. For present purposes, cost data are those facts

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the most objectionable difficulties. Every fact or alleged fact admitted to a record on behalf of one party requires that the opposite party put in one or more contradictory or explanatory facts, if any there be. And so the material in the record grows in concentric circles." *Id.* at 74.

which describe the costs of a given operation and which permit a determination of profits or losses. We include not only the various individual costs incurred in manufacture and sale of a given product (production costs, transportation costs, etc.) and a total of such costs, but also the existence and extent of profitability of a specific manufacturing operation or total operations. The term "cost data" thus refers to information relating to one product or total operations in terms of a single item of cost or profit or of total costs or profits.

A. Relevance of Cost Data to Proof of Section 1 Violations

Factually, we concern ourselves here with the situation where competing sellers have sold one or more "standardized" or "homogeneous" products at uniform prices. The immediate question is whether the product costs of the sellers during the period of time involved will, under any circumstances, give rise to an inference that the prices were the result of conspiracy. Because ordinarily that question has most often arisen in the context of "standardized" or "homogeneous" products which are sold at uniform prices, we concern ourselves here with that particular problem.[3] The ultimate issue to be resolved is whether such uniform prices are the result of conspiracy among the sellers.

1. *The Economic Bases for Uniform Prices*

We start with the proposition that "a characteristic of a competitive market is that the prices of identical products tend to be identical."[4] That is so because by definition the products of each seller are equally acceptable to buyers; therefore no seller can charge informed buyers higher prices than his competitors, and his competitors will be forced to meet any lower price which he might offer. In the words of Simon N. Whitney, Chief Economist and Director of the Bureau of Economics of the Federal Trade Commission:

> ". . . Sheer self-interest of each seller acting independently can create price uniformity, since each knows that if he charges more than the others his sales will drop toward zero, and if he charges less than his rivals they

[3] The history of antitrust litigation discloses that the issue of price conspiracy involving non-homogeneous products has seldom been before the courts and that there has been no discussion of the relevancy of cost data in such a case. Accordingly, this paper does not attempt to discuss that question.

[4] Stocking, *The Rule of Reason, Workable Competition, and Monopoly*, 64 *Yale L. J.* 1107, 1141 (1955). See also *Sugar Institute, Inc.* v. *United States*, 297 U. S. 553, 600 (1936); *Cement Mfgr's. Ass'n.* v. *United States*, 268 U. S. 588, 605 (1925); *Maple Flooring Mfgr's. Ass'n.* v. *United States*, 268 U. S. 563, 582 (1925); *Pevely Dairy Co.* v. *United States*, 178 F. 2d 363 (8th Cir. 1949), *cert. denied*, 399 U. S. 942 (1950); *United States* v. *Nat'l Malleable & Steel Castings Co.*, 1957 Trade Cases, para. 68,890 (N. D. Ohio 1957), *aff'd. per curiam*, 358 U. S. 38 (1958); *United States* v. *Standard Oil Co. of New Jersey*, 47 F. 2d 288, 316 (E. D. Mo. 1931).

will be forced to meet his price. Uniformity will be restored, but at a less profitable level for all."[5]

The validity of this fundamental economic fact was recognized in the *Report of the Attorney General's National Committee To Study the Antitrust Laws* (1955), as follows:

> "In the sale of basic homogenous commodities, informed buyers will never pay more to one seller than to his rival for identical and standardized goods; some tendency toward price uniformity is hence inevitable, and may equally indicate effective competition and successful collusion" (pp. 215-216).

Thus, assuming conditions of adequate supply and rapid communications among informed buyers, no seller of a homogeneous or standardized product is likely to reduce his price unless he believes that he stands to gain more than a temporary advantage. That is true because the seller realizes that, because of the standardized nature of the product, all other competitors must either meet his price or lose business to him. The seller, therefore, necessarily assumes that his lower price will be met almost instantly and accordingly, unless a temporary gain is acceptable to him, will not reduce his price. Indeed, the seller necessarily realizes that his price cut can also reduce the profit for all in the industry with no long-range advantage accruing to any member.

The point is expressed in Kaplan, *Big Enterprise in a Competitive System* 167 (1954), as follows:

> ". . . With price policy in big business typically directed toward the longer-term considerations of standard costs, average return on investment, and continuing growth, we should expect infrequency of price adjustments to short run fluctuations in demand or costs. Any large sorties from the general market price would be carefully weighed against their potential as well as present consequences. The members of an industry with a few giant competitors, can be expected to have almost instant knowledge of what the other members are doing. Each has resources to match the other's price or merchandising tactics. A selling advantage created by price alone is destined to be short-lived if it is to be merely at the expense of other large competitors. . . . But to supplant large-scale competition by extended price war involves great cost and the hazard of mutual injury without changing the relative market positions. Accordingly, the big corporation will as a rule move ahead on the price front only as it sees the chance of holding the new position."

See *Att'y. Gen. Nat'l Comm. Antitrust Rep.* 331-332 (1955).[6]

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[5] II *Whitney, Anti-Trust Policies,* p. 417 (1958). In other words, where products are interchangeable, cross-elasticity of demand is high and uniformity of price is to be expected under competitive conditions. "In many respects, cross-elasticity of demand is the most important concept in practical pricing. Where cross-elasticity is high, price parity becomes a virtual necessity. If a firm's price is much above its competitors', it cannot get access to the market, and attempts to set prices substantially below competitive parity lead to reductions in competitors' prices. Under such circumstances, substantial uniformity of price is to be expected and market share is largely determined by non-price competition—distribution facilities, promotional efforts, and secret concessions." Dean, *Determination of Pricing Policy Under Competitive Conditions,* in *American Management Association, Marketing Series* No. 75, p. 15, 22 (1949).

[6] See also Beckman-Maynard-Davidson, *Principles of Marketing* 663 (6th ed. 1957); Rostow, *A National Policy for the Oil Industry* 12-13 (1948).

It is therefore apparent that price uniformity in the case of homogeneous or standardized products may be directly equated with the economic forces which stem from the standardized nature of the product itself. Moreover, a seller of a standardized product having a cost advantage over his competitors is confronted, along with his competitors, with the identical economic forces which give rise to the uniform price behavior of such a product. Thus, even though he may consider reducing his price to utilize the advantage of his lower cost, he knows at the outset that competing sellers have no economic alternative except to meet his price reduction in order to continue in business.

It would necessarily follow that the seller of a standardized product in a competitive market sets his prices in accordance with the market and not in accordance with his own actual costs. This is true not only as a matter of economic theory but as a matter of actual practice. It has been found that:

> ". . . Actual costs appear to have little influence on the current structure of prices. Even in companies where the most detailed cost data are available to pricing officials, the typical practice is to base prices on 'standard cost' at some long-run 'normal' output rate. Of course, standard costs will reflect actual cost changes over time, but at any given time, and over the short period of price theory, prices will not bear any necessary or direct relationship to actual, full, direct, or incremental costs in any meaningful sense." Lanzillotti, *Pricing Objectives in Large Companies: Reply*, XLIX *Am. Econ. Rev.* 679, 685, n. 9.[7]

The Subcommittee would point out that in reaching the foregoing conclusions respecting the economic bases for price uniformity, the Subcommittee has predicated its statements on the presence of three factors:

(1) that the product is standardized or homogeneous;

(2) that there is rapid communication among informed and price-conscious buyers; and

(3) that supply is not inordinately unequal to demand during most or all of the period in question.

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[7] To be sure, costs do have a long-range indirect effect on price because the cost-price relationship operates to adjust supply to demand. Bolding, *Economic Analysis* 93 (1941). However, from this indirect relationship of cost to price it cannot be deduced that at any given time differing prices will result from differing costs in the case of homogeneous products. The relative unimportance of even principal items of cost in pricing on the short range is evidenced by the findings in *Minneapolis-Honeywell Reg. Co.* v. *FTC*, 191 F. 2d 786, 790-91 (7th Cir. 1951), *petition for cert. dismissed*, 344 U. S. 206 (1952), in which the evidence showed that some manufacturers who purchased temperature controls (a major item of cost) at high prices charged low prices for completed oil burners and some manufacturers paying low prices for temperature controls often charged their customers high prices for the completed product.

Moreover, if the industry adhered to a particular uniform price over a substantial period of time which involved marked changes in supply and demand, such "sticky" price behavior might constitute a fact from which a jury could infer conspiracy.

2. *Theories Urged in Support of Relevancy of Cost Data to Proof of Price Conspiracy*

The fact that price uniformity may stem from economic forces need not of itself foreclose the possibility that such uniformity resulted from collusion. In moving for the production of cost data in the *Eli Lilly* case, the Government proposed to show that defendants' "unusually high profits" on vaccine sales and the disparate costs involved, when considered with testimony of defendants' officials as to how vaccine prices were set and other circumstantial evidence,[8] would support the inference that defendants' prices were fixed by agreement. In opposition, defendants urged that cost data could not support an inference of conspiracy to fix prices for the reasons outlined in the preceding section of this report, namely, that, assuming rapid communication among informed buyers, prices for a standardized or homogeneous product would tend to be uniform and at a level resulting from market forces rather than the defendants' costs.

The court, specifically noting that the Government did not contend that cost data provided the "only yardstick by which the issue of this case is to be decided," held that the cost data demanded were relevant to the Government's proof.[9] 24 F. R. D. at 291. Further, the court held that the "potential probative value of the cost documents" (*id.* at 293, *cf. id.* at 294) required it to overrule defendants' objections to production: (1) that costs were trade secrets; (2) that admission of cost data into evidence would delay and complicate the trial; (3) that cost data would confuse the jury and prejudice defendants because of profits on sales of vaccine; and (4) that defendants' costs could not be accurately determined or compared.

Against that background, we consider the theories urged by the Government in the *Eli Lilly* case in support of a contention that the actual costs of the standardized products in question can give rise to

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[8] The other evidence relied upon by the Government related to defendants' extremely rigid vertical price maintenance, knowledge by three defendants of the original list price to be set for the vaccine prior to public announcement thereof, defendants' different prices for polio vaccine to customers other than domestic public authorities, and defendants' refusal to give quantity or other discounts or to quote any price other than a delivered price to domestic purchasers.

[9] At the close of the Government's case, the court granted defendants' motions for directed verdicts of acquittal, 1959 Trade Cases, para. 69,536 (D. N. J. 1959). The court did not expressly consider or rely upon the probative value of what cost data were introduced in evidence.

an inference that uniform prices were conspiratorial.[10] It is to be noted that the court did not expressly state which, if any, of these theories it was adopting.

a. *The theory that disparate costs can be considered as some evidence from which to infer that price uniformity resulted from conspiracy*

In the *Eli Lilly* case the Government contended that disparate costs could be considered as some evidence from which to infer that price uniformity resulted from conspiracy. One of its arguments proceeded thus: *Pevely Dairy Co.* v. *United States,* 178 F. 2d 363 (8th Cir. 1949), *cert. denied,* 339 U. S. 942 (1950), held that one of the factors supporting the conclusion that uniform prices of milk were not conspiratorial was the uniformity of defendants' costs; inasmuch as uniform costs were held in *Pevely* to support the inference that uniform prices were not conspiratorial, then disparate costs would give rise to an inference that uniform prices *were* conspiratorial.[11]

It seems clear that the *Pevely Dairy* case does not stand for the latter proposition. Indeed, there is nothing in theory or in fact which supports the assumption that the costs of sellers of homogeneous products will be identical. Thus, the *Attorney General's Committee Report* recognizes that disparate costs and uniform prices are to be expected under conditions of effective competition:

> "Effective competition is therefore compatible either with meeting (or matching) the prices of rivals, or with undercutting them. Furthermore, prices uniform as among the respective sellers may under the pressure of falling demand give way to a period of undercutting, after which price again settles down to uniformity at a lower level. Hence these are not two mutually exclusive patterns, and *price uniformity as of any given short period is not significant, even when the costs of various sellers are widely different from one another*" (emphasis added).[12]

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[10] So-called "administered prices" have recently evoked considerable controversy. See Austern, *Administered Pricing: Economic and Legal Issues,* in *Administered Prices and the Antitrust Laws, The Conference Recorder* 45 (1958). It has been stated that an administered price is a "price publicly announced by the unilateral action of the seller" and that "Most prices are administered, and in this country retail prices are almost universally administered." Adelman, *What Is "Administered Pricing"?, The Conference Recorder, supra,* p. 19. The term "administered price" was originated by Dr. Gardiner C. Means in 1935. The term as used by Dr. Means and others is consistent with competition and therefore does not have any antitrust significance. See Dr. Means' testimony in *Hearing Before the Subcommittee on Antitrust and Monopoly of the Senate Committee on the Judiciary, Part I,* 85th Cong., 1st Sess., at 85, 92 (1957); Wilcox, *Competition and Monopoly in American Industry, T. N. E. C.* Monograph No. 21, p. 121-132 (1941).

[11] See the Memorandum (Mar. 11, 1959) and Reply Memorandum (Apr. 3, 1959) of the United States, filed in *United States* v. *Eli Lilly,* in support of its motion under Rule 17(c) of the Federal Rules of Criminal Procedure for production of documentary evidence prior to trial.

[12] Att'y Gen. Nat'l Comm. Antitrust Rep. 332 (1955).

Because "it is elementary . . . that conspiracies are seldom capable of proof by direct testimony and may be inferred from the things actually done . . .,"[13] it has been urged that cost data may be offered in Section 1 cases as circumstantial evidence of an agreement or conspiracy where complicated pricing systems for the sale of homogeneous products are uniformly adopted throughout an industry without relation to costs:

Adoption of such a complicated pricing system involving, *inter alia*, transportation costs, in *FTC* v. *Cement Institute*, 333 U. S. 683 (1948), was noted by the Supreme Court in its discussion of the facts:

> ". . . And all sellers quote identical delivered prices in any given locality regardless of their different costs of production and their different freight expenses. Thus the multiple and single systems function in the same general manner and produce the same consequence—identity of prices and diversity of net returns" *Id.* at 699.

Among the many factors considered by the Court in drawing the inference that a conspiracy existed were boycotts, disciplinary action against industry recalcitrants, and the fact that the Institute prepared and distributed, and its members used, "freight rate books which provided respondents with similar figures to use as actual or 'phantom' freight factors, thus guaranteeing that their delivered prices . . . would be identical on all sales. . . ." *Id.* at 710. See also *id.* at 716.

Evidence of disparate costs among the repondents was considered in *United States Maltsters Ass'n* v. *FTC*, 152 F. 2d 161 (7th Cir. 1945). Upon appeal from the cease and desist order entered against the respondents, the court had before it Commission findings to the effect that the respondents were members of a trade association having a statistical and price reporting program; that all price changes had been instantly announced and met by all maltsters; and that the respondents had maintained a uniform delivered pricing system notwithstanding considerable variation in respondents' raw material, production, and transportation costs. Although respondents contended that malt was a homogeneous product and that the price would naturally tend to be uniform, the court affirmed the Commission's order.

In neither *Cement Institute* nor *Maltsters* was the finding of conspiracy expressly predicated upon the disparate costs of defendants having uniform selling prices resulting from complicated pricing systems. In both of those cases, however, evidence of differing costs among the defendants having uniform prices was admitted in support of a charge that the pricing systems were adopted and maintained pursuant to conspiracy.

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[13] *Eastern Retail Lumber Dealers Ass'n* v. *United States*, 234 U. S. 600, 612 (1914).

b. *The theory that disparate costs are relevant to negative a possible defense that price uniformity resulted in part from identical costs*

In *Pevely Dairy Co.* v. *United States, supra,* the Court of Appeals reversed price conspiracy convictions on the ground that uniform prices and price changes in the face of almost identical costs and cost changes were consistent with innocence. 178 F. 2d at 371. The undisputed evidence showed that the defendants regularly and carefully evaluated the economic factors bearing upon costs and that each price change followed a uniform change in costs. There was no direct proof of any price-fixing agreement, and mere identity of price under those circumstances was held not to warrant giving the case to the jury. Moreover, in light of defendants' denial of agreement, notwithstanding direct evidence of meetings and price discussions among defendants, promptly followed by uniform price changes, judgments upon a jury's verdict of guilty were recently reversed because the trial court refused to admit defendants' proffered evidence of "similarity of costs, operations, marketing procedures, and other economic factors affecting price changes, alleged to be common to all." *Continental Baking Co.* v. *United States,* 1960 Trade Cases, para. 69,772 at p. 77,040 (6th Cir. 1960).

In the *Eli Lilly* case, *supra,* the Government argued that, since its case would be one of circumstantial evidence, it had to show disparate costs "to eliminate the reasonable hypothesis of innocence that uniform prices were the result of uniform costs." 24 F. R. D. at 289. This contention was based on the holding in *Pevely* that uniform costs and cost changes were factors which could explain uniform prices. The defendants urged that the Government was in fact anticipating a possible defense.[14]

Uniform costs of a homogeneous product do not prove that uniform prices over a period of time were not the result of a conspiracy. That is not to say that substantial and generally identifiable cost changes common to all sellers of a homogeneous product may not occasion and be the reason for uniform price changes. It was this type of evidence that was offered by the defendants in the *Pevely Dairy* case.

It should be noted that only *changes* in general, identifiable costs become relevant in this situation; it is not the absolute cost of the

[14] Plaintiffs in civil cases, whether the Government or private persons, may take advantage of discovery procedures to ascertain whether defendants intend to rely upon costs in explaining their reasons for setting and changing the prices which they have charged. The results of such discovery would in turn at least tentatively set the bounds of relevance. No plaintiff should be permitted to inject the issue into a case on the basis of an assertion that defendants might possibly rely on costs as part of their defense.

product which is involved. Moreover, evidence of cost changes has relevance to the extent that such changes influenced the price makers' decisions.[15] It would appear, therefore, that no adverse inference should be drawn from the fact that a price maker was not primarily motivated by changes in costs; this follows from the facts referred to at the outset of this section, *i.e.*, that competitive pricing of a homogeneous product is based on the market and not on specific costs.

c. *The theory that a high profit margin between the cost of the product and its selling price gives rise to an inference that the price uniformity resulted from conspiracy.*

The Government in *Eli Lilly* initially urged that costs were relevant to show "unusually high profit margins" from which it was asserted that an inference could be drawn that price uniformity resulted from conspiracy.[16] Although the Government later withdrew this contention, Judge Forman nevertheless took occasion to point out that "the irrelevance of profits alone in this case will be a matter for instruction by the court." 24 F. R. D. at 293. See also *id.* at 297. We know of no case which has intimated to the contrary.

It is recognized that acts lawful in themselves may become unlawful when performed in conjunction with other acts and may be considered together with such other acts as evidence of conspiracy. The second *Tobacco* case provides such an example. The Supreme Court opinion, *American Tobacco Co.* v. *United States,* 328 U. S. 781 (1946), dealt only with an interpretation under the monopolization charge. The evidence that over a period of time defendants had increased their selling prices in the face of a dramatic decline in all costs was held to establish that the defendant conspirators had monopoly power over price[17] and exercised that power to monopolize. But it appears that the lower courts may have considered the resulting high profits realized by the defendants as evidence supporting a finding of conspiracy under Section 1 as well as Section 2. *American Tobacco Co.* v. *United States,* 147 F. 2d 93, 104 (6th Cir. 1944).

Likewise, in *United States* v. *Sugar Institute,* 15 F. Supp. 817 (S. D. N. Y. 1934), the court considered charges that the activities

[15] In a conspiracy case, evidence concerning the factors which a price maker states that he relied upon is admissible on the issue of whether he acted independently in arriving at his decision. See *United States* v. *Eli Lilly & Co., supra,* 24 F. R. D. at 293-294. Evidence that a price maker considered changes in his costs may indicate that he acted independently of other sellers. But the fact that changes in costs, among other factors, are considered by the price maker does not indicate that there is any fixed or determinable relationship between prices and costs. See also *United States* v. *Arkansas Fuel Oil Corp.,* 1960 Trade Cases, para. 69,619 (N. D. Okla. 1960).

[16] 24 F. R. D. at 289.

[17] Again only over-all and long-range cost and profit trends were involved.

of an association of sugar producers and sellers restrained competition. The court found that the operation of the Institute restrained trade and tended toward the establishment by agreement of uniform and non-competitive prices. Cost data introduced by the defendants to show no increase in profits in fact demonstrated the contrary and were relied upon by the court, together with other evidence, to show concerted action of the sugar producers and as well the "unreasonableness" of the restraint.

> ". . . the evidence shows that prices for refined as compared with raws have been maintained at levels which tend to negate the prevalence of free competition, and to support the inference of concerted action, with the effect . . . of the rise in margins and profits". *Id.* at 889.

The court also noted that the identical freight rates charged by producers had no reasonable relation to the actual cost of the service performed by the producers. *Id.* at 903.

On review, the Supreme Court affirmed and, in the course of its opinion, considered the cost data. *Sugar Institute* v. *United States*, 297 U. S. 533 (1936). Operation of the Institute's price plan, the Court noted, "tended . . . toward maintenance of price levels relatively high as compared with raws," and when viewed in connection with the restrictions embodied in the Institute's plan on pricing by the various producers, supported the finding that the Sherman Act had been violated. *Id.* at 583.

Those cases considered high profits resulting from high price levels in the face of sharply declining costs along with other factors as evidence which would support a finding of conspiracy. Because the relevance of profits as such has been raised in relatively few cases and because, as has often been stated, each antitrust case is *sui generis*,[18] we do not attempt in this report to outline the various types of cases in which evidence of profits—whether high or low—, together with other types of evidence, may be found to be relevant to the issue of conspiracy.[19] We do emphasize, however, that evidence of the mere percentage of profit, without more, is meaningless.[20]

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[18] *Sugar Institute, Inc.* v. *United States*, 297 U. S. 553, 600 (1936); *Appalachian Coals, Inc.* v. *United States*, 288 U. S. 344, 360-61 (1933); *Nat'l Ass'n of Window Glass Mfgrs.* v. *United States*, 263 U. S. 403, 411-12 (1923); *U. S.* v. *Morgan*, 118 F. Supp. 621, 688 (S. D. N. Y. 1953); *Procedure in Anti-Trust and Other Protracted Cases*, 13 F. R. D. 62, 65 (1951).

[19] Inquiries directed solely to profit margins might be subject to the same objection which applies to the "reasonableness" of price levels. In *United States* v. *Trenton Potteries*, 273 U. S. 392, 398 (1927), the Supreme Court concluded:

> ". . . in the absence of express legislation requiring it, we should hesitate to adopt a construction making the difference between legal and illegal conduct in the field of business relations depend upon so uncertain a test as whether prices are reasonable—a determination which can be satisfactorily made only after a complete survey of our economic organization and a choice between rival philosophies."

See also *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, 229 (1940).

[20] See *United States* v. *E. I. du Pont de Nemours*, 351 U. S. 377, 404 (1956).

B. Relevance of Cost Data to Proof of Section 2 Violations

Section 2 of the Sherman Act establishes the following offenses: (1) to monopolize; (2) to attempt to monopolize; and (3) to combine or (4) to conspire with any other person to monopolize any part of the trade or commerce among the several states, or with foreign nations. The offense of monopolization consists of two elements, the existence of power "to raise prices or to exclude competition when it is desired to do so"[21] coupled with "the purpose or intent to exercise that power."[22] The requisite intent for this purpose is not a "specific" intent to monopolize, but rather a conclusion based on how the monopoly power was acquired, maintained or used. "Deliberateness" is the characteristic of the intent required for proof of monopolization[23] and may be shown by proof that a single seller or a group of sellers drove competitors out of business, *Standard Oil of New Jersey* v. *United States,* 221 U. S. 1 (1911), or combined or conspired with competitors, *American Tobacco Co.* v. *United States, supra; United States* v. *Paramount Pictures, Inc.,* 334 U. S. 131 (1948), or maintained policies intended to discourage, impede or prevent the rise of new competitors, *United States* v. *Aluminum Co. of America,* 148 F. 2d 416, 430, 431 (2d Cir. 1945); *United States* v. *United Shoe Machinery Corp.,* 110 F. Supp. 295, 344-45 (D. Mass. 1953), *aff'd per curiam,* 347 U. S. 521 (1954); *United States* v. *Pullman Co.,* 50 F. Supp. 123 (E. D. Pa. 1943), 64 F. Supp. 108 (E. D. Pa. 1946), *aff'd per curiam,* 330 U. S. 806 (1947). Courts have held cost data to be relevant to the proof of both elements, the existence of "power" and of "deliberateness" in acquiring, maintaining or using such power.

1. *Relevance of Cost Data to Proof of Power to Raise Prices or to Exclude Competition*

In both *United States* v. *Aluminum Co. of America, supra,* and *United States* v. *E. I. du Pont,* 351 U. S. 377 (1952), the relevance of cost data to proof of the existence of monopoly power was demonstrated.[24] In both cases, determination of a "relevant market" in which monopoly power was alleged to exist was at issue;[25] stated

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[21] *American Tobacco Co.* v. *United States,* 328 U. S. 781, 811 (1946).

[22] *United States* v. *Griffith,* 334 U. S. 100, 107 (1948); *American Tobacco Co.* v. *United States, supra,* at 809.

[23] *Att'y. Gen. Nat'l Comm. Antitrust Rep.* 56 (1955).

[24] *Cf.* also, generally, *Att'y Gen. Nat'l Comm. Antitrust Rep., supra,* at 50. The report notes that while profit is not itself determinative of monopoly power, evidence as to profits and prices is usually admitted as relevant to establish power over price or over entry of competitors.

[25] Establishing a "relevant market" and a "line of commerce" are important also in Clayton Act § 7 cases. Thus, cost data have been introduced by both plaintiffs and defendants as relevant to showing the area of effective competition. *United States* v. *Bethlehem Steel Co.,* 168 F. Supp. 576 (S. D. N. Y. 1958); *American Crystal Sugar Co.,* v. *Cuban-American Sugar Co.,* 152 F. Supp. 387 (S. D. N. Y. 1957), *aff'd,* 259 F. 2d 524 (2d Cir. 1958).

another way, the existence of monopoly power was in both cases analyzed in terms of whether the availability of products which could be substituted for that allegedly monopolized prevented the exercise of monopoly power.[26]

In *Alcoa, supra,* defendants urged that imported aluminum prevented Alcoa from exercising monopoly power over domestic aluminum. Judge Learned Hand rejected that position, stating:

> "[S]ubstitutes are available for almost all commodities, and to raise the price enough is to evoke them . . . [W]ithin the limits afforded by the tariff and the cost of transportation, 'Alcoa' was free to raise its prices as it chose. . . ." 148 F. 2d at 426.

Thus, Alcoa's power over price, and as a consequence over the entry of competitors, was limited by its costs, relative to the costs of potential rivals.

In *United States* v. *Corn Products Refining Co.,* 234 Fed. 964, 975-76 (S. D. N. Y. 1916), Judge Hand pointed out in detail the relevance of cost data to determine the existence of monopoly power over sale of a product and whether the availability of substitute products prevents the exercise of monopoly power. Judge Hand indicated that substitute products may be disregarded, even if indistinguishable in character, use or consumer preference whenever their cost of production substantially exceeds that of the product allegedly monopolized; further, inclusion of physically distinguishable substitutes depends on comparative consumer preference and comparative costs of production.[27]

In the *du Pont* case, *supra,* there were no comparative cost data before the court and the relevant product market was determined without reference to such data. The Supreme Court there stated the determinants of the relevant product market, as follows:

> "The 'market' which one must study to determine when a producer has monopoly power will vary with the part of commerce under consideration. The tests are constant. That market is composed of products that have reasonable interchangeability for the purposes for which they are produced —price, use and qualities considered. While the application of the tests remains uncertain, it seems to us that du Pont should not be found to monopolize cellophane when that product has the competition and interchangeability with other wrappings that this record shows." 351 U. S. at 404.

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[26] Determination of the "relevant market," and of the existence of "monopoly power" may be one procedure, for if an alleged monopolist has, in fact, monopoly power over "x" product—can affect the general market price or exclude competitors—there are no interchangeable products for "x" product. If there is a broad relevant market, and other products alter an alleged monopolist's power over "x" product, he may have no monopoly power over that product.

[27] For a more extended analysis of *Corn Products,* a combination and conspiracy to monopolize case, particularly in regard to the test applied in the *Cellophane Case,* 351 U. S. 377 (1952), see Turner, *The Cellophane Case,* 70 Harv. L. Rev. 288 (1956).

Turning to a consideration of the existence of monopoly power—the Supreme Court in *du Pont* held that the facts developed in that record did not support the existence of monopoly power over the relevant market, *i.e.*, flexible packaging materials. Faced with a defense showing of functional interchangeability between cellophane and other flexible packaging materials, in what the Court found to be a price-conscious market, the majority found that evidence of du Pont's high profits and increases in rate of return did not establish the existence in du Pont of monopoly power. The Court stated:

> ". . . Nor can we say that du Pont's profits, while liberal (according to the Government 15.9% net after taxes on the 1937-1947 average), demonstrate the existence of a monopoly without proof of lack or comparable profits during those years in other prosperous industries. Cellophane was a leader, over 17%, in the flexible packaging materials market. There is no showing that du Pont's return was greater or less than that of other producers of flexible packaging materials." 351 U. S. at 404.

Under the circumstance of the *du Pont* case, comparative cost data were not merely relevant to the proof of monopoly power, but critical. It has been suggested that once evidence of substitutability of products is introduced into evidence by defendants, "the Court [in *duPont*] clearly puts on the Government the burden of introducing comparative cost and profit data sufficient to establish the power to exclude competition when it is desired to do so."[28] However, the showing of the existence in the alleged monopolist of monopoly power by means of comparative costs and profits of producers of so-called "reasonably interchangeable" products has been strongly criticized,[29] as requiring an impossibly difficult economic investigation.

2. *Relevance of Cost Data to Proof of Deliberateness of Monopolization*

American Tobacco Co. v. *United States,* 328 U. S. 781 (1946), provides a similarly plain illustration of cost data relevance to proof of power over price, and, as well, recognizes cost data relevance to proof of the requisite intent or purpose to exercise monopoly power. The Big Three Tobacco Companies were convicted of violating both Sections 1 and 2 of the Sherman Act.[30] The Supreme

[28] Turner, *op. cit. supra,* at 303.

[29] Stocking, *Economic Change and the Sherman Act: Some Reflections on "Workable Competition",* 44 *Va. L. Rev.* 537, 570 (1958). Professor Stocking states that "In the hands of experts supplied with detailed data on cost changes, price, and shifts in demand, the concept [of reasonable interchangeability] should prove useful in determining the extent to which substitute products can prevent the exploitation of consumers by would-be monopolists. In the hands of judges in antitrust cases the concept is probably not of much use."

[30] The lower court had found violations by the three companies in four counts under Sections 1 and 2 of the Sherman Act, only the Section 2 conviction of which was reviewed by the Supreme Court. The lower court, it should be noted, in its discussion of the evidence upon which the convictions were based expressly referred to the lack of any relationship between defendants' uniform prices and discounts and their respective costs. *American Tobacco Co.* v. *United States,* 147 F. 2d 93, 103 (6th Cir. 1944).

Court limited its review of the convictions to whether the offense of monopolization required a showing of actual exclusion of competitors. The Court held that proof of a conspiracy was sufficient to show the intent necessary under the statute. That intent, plus proof of the existence only—not exercise—of monopoly power, sufficed to show a violation of Section 2 of the Sherman Act.

In its discussion of the facts which proved the existence of monopoly power, the Court specifically noted relevant cost data. At a time during the depression when the tobacco companies incurred their lowest costs for purchased leaf tobacco, their prices for cigarettes were uniformly raised and the companies achieved record profits. Those basic cost-profit data,[31] together with other facts, *e. g.*, manipulation by the Big Three of their prices in reaction to the challenge of the 10¢ brands of cigarettes, were the foundation of circumstantial evidence upon which the finding of violation was made.

3. *Relevance of Cost Data to Other Section 2 Offenses*

A specific "intent" to accomplish an unlawful result is required for proof of the other three offenses under Section 2, attempt to monopolize and combination or conspiracy to monopolize, although no showing is necessary that monopoly power was in fact achieved. Cost data as discussed above with regard to *American Tobacco* are relevant to proof of the specific "intent" required for these violations of Section 2.

In determining intent, the relevant cost data would be those used in the ordinary course of business by the alleged monopolist or would-be monopolizer, that is, what he thought his costs were rather than his actual costs. Similarly, to the extent that cost data are relevant in Section 1 cases, they are again those costs used by the alleged conspirators, whether or not actual costs. On the other hand, primarily actual costs would appear to be relevant to determine whether an alleged monopolist had power over price and the power to exclude competitors.[32]

[31]The record contained comparative annual unit costs for the defendants and detailed information on profits. See also in the Court of Appeals opinion the reference to admission into evidence of the amounts of bonuses paid to officials of the three companies. 147 F. 2d at p. 118.

[32]When the issues require proof of actual costs, there may be many problems relating to competency, *e.g.*, the accuracy of a defendant's accounting system to determine actual costs, the allocation of joint costs, and the comparison of cost data of different companies having non-uniform accounting systems. On this general subject, see Advisory Committee on Cost Justification *Report to the Federal Trade Commission;* Hogan, *Difficulties in the Determination of Unit Costs of Production,* 37 *U. Det. L. J.* 121 (1959). In proving actual costs or profits, the prosecution would be entitled to rely upon the cost accounting system in use by the company whose costs are in issue and the results obtained therefrom. The burden of coming forward with evidence to explain or qualify the results of such system would then shift to the defense.

Although Judge Hand in the *Aluminum* case, *supra,* held that Alcoa was guilty of monopolization, he specifically ruled on and noted the necessity for relief from predatory conduct alleged by plaintiff in connection with the charged conspiracy to monopolize. Basing a factual discussion of one such predatory practice on cost data in the record, the court held that the so-called "price squeeze," Alcoa's practice of selling fabricated sheet aluminum at a very low margin of profit over the basic cost of aluminum ingot, thus making it unprofitable for other fabricators to sell certain forms of fabricated sheet in competition with Alcoa, was unreasonable and would be enjoined. 148 F. 2d at 436-438. Cost data, it is readily seen, were essential to the showing of the "price squeeze".

In *Corn Products, supra,* the Government alleged a combination and conspiracy to monopolize and presented cost data evidence in support of charges that defendants had, among other things, conducted a "low-price" campaign designed to drive its competitors out of business and exclude potential competitors from entering.[33] Cost data were introduced to show that Corn Products' prices were systematically lowered on competitive products so as to be practically profitless, the company meanwhile maintaining its profit on non-competitive specialty products. The cost data showed that various items, specifically syrup and glucose, were actually sold below cost for significant periods of time. The court discussed cost data in detail, the below-cost selling and small margin of profit which defendant maintained, and held that those factors supported a finding that defendants intended thereby to drive out weaker competitors and thus monopolize the field.

Similarly, in *United States* v. *New York Great A. & P. Tea Co.,* 67 F. Supp. 626 (E. D. Ill. 1946), *aff'd,* 173 F. 2d 79 (7th Cir. 1949), the District Court discussed cost data in detail and relied on them heavily in finding that A. & P. had exercised its market influence with intent to obtain an unfair competitive advantage of preferential terms on merchandise it purchased, and that A. & P. had sold below cost, operating some stores at a loss for periods of years.[34] Those facts, combined with other evidence, supported the findings that Sections 1 and 2 of the Sherman Act had been violated.

On appeal the Court of Appeals stated that the issue before it was "whether there is substantial evidence to show a conspiracy by the defendants to restrain and monopolize trade in commerce in food and food products by controlling the terms and conditions upon which the defendants and their competitors might do business and by oppressing competitors through the abuse of defendants' mass buying and

[33] Cost data were also discussed, as above noted, with regard to relevant market and monopoly power over price.

[34] *United States* v. *N. Y. Great A. & P.,* 67 F. Supp. at 645-680.

selling power."[35] In finding that a showing of violation had been made, the appellate court also noted as relevant evidence the cost data supporting a finding of unlawful below-cost selling and other preferential discount and allowance practices mentioned above.[36]

III. DEFENSES TO PRODUCTION AND ADMISSION OF RELEVANT COST DATA

A decision on relevancy may not be determinative of the questions of whether cost data should be produced for inspection prior to trial or admitted in evidence at trial. In particular cases where defendants can show that pre-trial production or at-trial admission will result in prejudice to their rights, create unnecessary burdens or unduly prolong and complicate the trial, the court may be required to balance the materiality of cost data against the burdens or prejudice arising from its production or introduction into evidence. Whether such balancing of values is involved in deciding relevancy or is solely a question of materiality makes little difference. However, it is characterized, such balancing of values is required in deciding whether pre-trial *production* shall be ordered or at-trial *introduction* of cost data shall be permitted in those cases where the defendants can show prejudice. Accordingly, we turn to the elements of burden and prejudice which may frequently be asserted by defendants as defenses to production or admission of cost data.

In many cases, any prejudice which might result from pre-trial production may be substantially eliminated by appropriate protective orders. Therefore, we discuss below techniques which may be employed to minimize any prejudice arising from production or admission of cost data. We shall also consider methods of easing the burdens on the parties and the court occasioned by production of cost data or its subsequent use at trial.

A. Cost Data Are Closely Guarded Trade Secrets

First among the considerations of burden and prejudice is the undeniable proposition that any competitive enterprise must treat its cost data as highly confidential. The most common reasons for which companies treat their cost data as trade secrets will be considered under two broad topic headings. In doing so, we recognize that in individual cases there also may be reasons peculiar to particular defendants for opposing the disclosure of cost data on the grounds of confidentiality.

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[35] *United States* v. *A. & P.*, 173 F. 2d 79, 82 (7th Cir. 1949).

[36] *United States* v. *A. & P.*, 173 F. 2d at 88. Both courts, it should be noted, recognized that the fact of below-cost selling, alone, was not determinative of violation, but related to other facts did show the existence and intent of monopolistic action.

1. Possible Advantage to Competitors

In most, if not all, competitive situations a producer might gain considerable advantage from learning a competitor's costs. Having such information obviously would aid pricing and marketing strategy. For example, in an industry with a relatively small number of firms which produce a homogeneous product, the producer with the lowest costs may find it possible and desirable to reduce prices in an effort to force a competitor out of the market. Or, conversely, disclosure of cost data could promote a "consciously parallel" price increase; the low cost producer might find it possible upon learning its competitors' costs to raise prices, secure in the knowledge that its competitors would willingly follow its lead.

In view of that possibility, the public may have an interest in preventing competitors from becoming fully apprised, through their being parties to a law suit, of each other's cost data and pricing policies. Otherwise, ironically enough, such antitrust proceedings might conduce to an end which the antitrust laws are designed to prevent.

The danger to the businesses involved may go considerably beyond the tendency, referred to above, of such disclosure of cost information to produce uniformity of price. Information concerning competitors' costs may provide a producer with invaluable information about the productive efficiency of competitors, cost savings which might be gained by employing competitors' productive techniques, and prices paid by competitors for raw materials, labor and other elements of cost. Furthermore, in industries where selling is conducted through a distributor-dealer organization, disclosure of cost information could damage a high cost producer (and, of course, no producer can be certain that his costs are not the highest until he learns those of his competitors). In such industries disclosure of costs might provide lower cost competitors with information that could be used to disrupt existing customer relationships.

2. *Possible Injury to Corporate Good Will*

The relationship between costs on the one hand and selling prices on the other is frequently complex, particularly in industries where there are large cost elements in research and development, advertising and promotional costs. For that reason, it may be difficult, if not impossible, for a company to explain to the uninformed public that there is nothing unusual, unreasonable, illegal, or immoral in its pricing policies. Because unexplained cost information may be misleading, its dissemination may seriously and unjustly injure a company's public relations. Conceivably, the damage to a manufacturer's reputation resulting from the mere disclosure of cost data, without more, could

be more substantial than damage resulting from an adverse judgment in an antitrust proceeding.

More serious dangers may arise from threatened or actual disclosure of cost data in private antitrust actions, particularly in actions between competitors.

B. Legal Status of the Trade Secret Objection to Disclosure of Cost Data

Despite the prejudice which may result, the law is clearly established that a party has no absolute right to refuse to disclose information on the ground that trade secrets will be divulged. *International Nickel Co.* v. *Ford Motor Co.*, 15 F. R. D. 392 (S. D. N. Y. 1954); *Cities Service Oil Co.* v. *Celanese Corp. of America*, 10 F. R. D. 458 (D. Del. 1950).

Court decisions concerning disclosure of confidential information to an adversary litigant reveal differing evaluations of the factors involved. In *Hirshhorn* v. *Mine Safety Appliances Co.*, 8 F. R. D. 11, 22 (W. D. Pa. 1948), the court stated:

> "Where the data is unnecessary to the final adjudication of the issues, it should not be made available since serious prejudice might arise with respect to a very important feature of a company's business data."

For this reason, courts sometimes assert that a strong showing of relevance is required:

> ". . . in the absence of a strong showing of relevance a party will not be required to disclose confidential information." *Zenith Radio Corp.* v. *Radio Corp. of America*, 106 F. Supp. 561, 565, n. 6 (D. Del. 1952).

Yet in the *Zenith* case, the basis of the decision not to require disclosure was that the confidential information was "not relevant at all." *Ibid.* Where confidential information was shown to be relevant, its disclosure was compelled despite its potentially prejudicial effects. *Seff* v. *Gen'l Outdoor Advertising Co.*, 11 F. R. D. 597, 598 (N. D. Ohio, 1951).

Although the fundamental principle seems to call for disclosure of information divulging trade secrets as long as it is relevant to a party's contentions, the extent to which disclosure will be compelled in a particular case is within the court's discretion. *Cities Service Co.* v. *Celanese Corp. of America*, 10 F. R. D. 458, 460 (D. Del. 1950). Thus, in emphasizing that no absolute privilege exists against disclosure of confidential cost data, it has been asserted:

> ". . . But the courts at their discretion will protect such information from disclosure where it appears that it is not sufficiently important in its bearing on the issues in the case." *Sandee Mfg. Co.* v. *Rohm & Haas Co.*, 2 *Fed. Rules Serv.* 2d 33.321, Case 1, p. 492 (N. D. Ill. 1959).

While some general principles may be laid down, the factors controlling the court's discretion must be found in the facts of the particular case. *Wagner Mfg. Co.* v. *Cutler-Hammer, Inc.*, 10 F. R. D. 348 (S. D. Ohio 1950). In other words, each claim of confidentiality must be evaluated in its own circumstances. *Lever Bros. Co.* v. *Procter & Gamble Mfg. Co.*, 38 F. Supp. 680, 683 (D. Md. 1941).

One circumstance which may influence a court to require disclosure of allegedly confidential cost data is that of the age of the documents sought. In the *Eli Lilly* case, Judge Forman observed that the cost documents sought were designed for use during a period which at the time of suit was 1½ to 4½ years past.

> ". . . In view of this circumstance it seems unlikely that the defendants will sustain any appreciable loss of their trade secrets by virtue of the disclosure of this material." *United States* v. *Eli Lilly & Co.*, 24 F. R. D. 285, 292 (D. N. J. 1959).

C. Prolonging and Complicating Pre-Trial Discovery by Requiring Production of Cost Data

Requiring production of cost data obviously enlarges the scope of pre-trial discovery. That is perhaps an inevitable consequence of the strong trend towards full disclosure in litigation. A few years ago Judge Yankwich pointed out:

> "The old fear of allowing 'fishing expeditions' is disappearing from the attitude of present day judges . . . . In cases of the type we are discussing, complex cases, a generous attitude towards discovery has the most beneficial result." Yankwich, *Short Cuts in Long Cases*, 13 F. R. D. 41, 50 (1951).

More recently, however, the Judicial Conference Study Group on Procedure in Protracted Cases has, in its *Handbook of Recommended Procedures for the Trial of Protracted Cases* 2-3 (February 1960 mimeograph), taken the following position:

> ". . . parties are entitled to broad discovery within such boundaries ["defined issues and the discovery rules"], and parties in a protracted case should have no lesser rights in this respect than those in less complex cases. But unbounded discovery, with attendant digressions at the trial into areas of irrelevance and immateriality thus revealed, are in large part responsible for undue protraction of many big cases. The necessity for controlling discovery emphasizes the basic importance of the prior step—definition of the issues."

The *Handbook*, *supra*, pp. 23-30, recommends definition of the issues through pre-trial conferences held shortly after the filing of all permissible pleadings. At that time, the court can determine preliminarily whether cost data appear to have real bearing on the issues of the case, or are merely peripheral or cumulative. If the court reaches the latter conclusion, production of cost data should be refused unless and until further development of the case makes it clear that cost data are in fact relevant.

D. Prolonging and Complicating Trial by Introduction of Cost Data

Defendants in the *Eli Lilly* case argued that admission of cost evidence would inevitably and unduly prolong the trial. The documents demanded from each of five defendants were the following:

> "'All papers or documents which contain reports, memoranda, financial statements, studies and analyses of sales and costs (including unit costs) for the development, manufacture, distribution and sale of poliomyelitis vaccine and which were prepared during the period January 1, 1955 through December 31, 1957, for use by:
>
> '(a) officials who participated in the pricing of poliomyelitis vaccine;
>
> '(b) other corporate personnel who, in the regular course of their employment, participated in the pricing of the company's products whether or not, in fact, they participated to the same extent, or at all, in the pricing of poliomyelitis vaccine;
>
> '(c) the controller or treasurer and/or accounting personnel.'" 24 F. R. D. at 289 n. 3.

In order to rebut the inferences which might be drawn from this evidence, the defense contended that it would be required to introduce extensive factual proof about the whole process of production and distribution in the pharmaceutical industry. This was considered necessary to put management decisions as to polio vaccine in appropriate factual context.[37] The court recognized that introduction of cost data by the Government would necessitate extensive rebuttal evidence on the part of the defendants. However, it decided:

> "Even the prospect of such complex and lengthy proof upon the part of the defense does not weigh sufficiently to deprive the Government of the opportunity it seeks to avail itself of what it deems crucial evidence in support of its case." 24 F. R. D. at 292.

When the issues involve a comparison of cost and profits between defendant companies, additional problems arise both in connection with pre-trial procedures and in connection with the trial. To obtain data which reflect comparable total costs, either some system must be devised to translate the costs of each company to a standard system or (and the more likely) lengthy expert testimony may be required by both prosecution and defense directed to the question of whether the cost data of the various companies are in fact comparable and therefore whether reliable comparisons can be made. See FTC, *Economic Report on Antibiotics Manufacture* (1958) *passim*. Either of these alternatives may place substantial burdens on the parties. At least the latter alternative will complicate the trial and require factual determinations based upon highly technical and complicated evidence.

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[37] As stated in Lanzillotti, *Pricing Objectives in Large Companies*, 48 *Am. Econ. Rev.* 921, 939:

> ". . . individual products, markets and pricing are not considered in isolation; the unit of decision-making is the enterprise, and pricing and marketing statistics are viewed in this global context [of the enterprise]."

A further and related problem is created by the difficulty of obtaining the total cost of any product produced by a multi-product firm. The Federal Trade Commission has reported, based on replies to its interrogatories addressed to the antibiotics manufacturers, that some basic items of expense, such as research, were not allocated to particular products and could not be obtained without an inordinate amount of time and effort. *Id.* at 203. The complexities of this problem have been emphasized in a recent article. Hogan, *Difficulties in the Determination of Unit Costs of Production*, 37 *U. Det. L. J.* 121 (1959).

Nonetheless, when the defendants in the *Eli Lilly* case argued that total costs were unobtainable and partial costs inadmissible, Judge Forman replied,

> ". . . The Government now seeks such documents as may have been prepared to aid each pricing official in fixing the price of his vaccine to public authorities in the United States, whether or not he used such documents. With this evidence the Government may seek to examine the pricing officials as to whether or not their determinations were based upon these documents. This now appears to be a relevant and material inquiry but of course would be subject to rulings upon objections which might be interposed." 24 F. R. D. at 293-94.

The court in a case in which cost data are sought or offered, will be required to balance the disadvantages of burden and complication against the materiality of the evidence. Where the evidence appears to be essential, as it may be in a Section 2 case, materiality will usually outweigh any of the burdens incident to production and admission of such evidence.

E. Possible Prejudice Resulting from Admission of Cost Data

Defendants in the *Eli Lilly* case also argued that the cost evidence was inherently prejudicial and would risk obscuring in the jurors' minds the legitimate issues of the case. The stated purpose of the Government was merely to put to the jury the reasonableness of the explanations by company officials as to their methods of pricing polio vaccine. The defense contended that the real purpose was to arouse the hostility of the jury by evidence of the profits realized on the sale of the vaccine. The court decided that the possibility of confusing the jury was real, but outweighed by "the potential probative value of that which is sought." 24 F. R. D. at 293. The court hoped that with the cooperation of counsel, the possibility of confusion would be minimized and stated that the court would instruct the jury as to the irrelevance of profits alone.

Defense counsel argued that prejudice in such a situation is practically inevitable and that no instruction by the court can effectively eliminate the prejudice.

F. The Courts' Problem is to Balance the Equities in Each Case to Determine Whether to Admit Cost Data

It has been said that each case involving disputed disclosures of confidential information to a competitor is *sui generis*. *Service Liquor Distributors Inc.* v. *Calvert Distillers Corp.*, 16 F. R. D. 513 (S. D. N. Y. 1955). This is especially true with respect to cost data where there are limits to the usefulness of such proof.

In this connection, a court might take the view that the Department of Justice is more entitled to have cost data admitted in support of its cases than are private antitrust plaintiffs. The justification for such a view would be that the Department is concerned with protecting the public from antitrust law violations, whereas the private plaintiff is interested primarily in obtaining vindication of his private rights and recompense for his personal injuries suffered at the hands of particular antitrust law violators. Moreover, unlike the Government, the private litigant must establish a right to redress for a particular wrong done to him. *Zenith Radio Corp.* v. *Radio Corp. of America*, 106 F. Supp. 561, 576 (D. Del. 1952).

In determining the admissibility of cost data, it may be decided that reports of consolidated costs would be adequate substitutes. The Federal Trade Commission hearing examiner so ruled in *Matter of Cyanamid Co.*, Docket No. 7211, and the Commission upheld the ruling as not having been shown to be an abuse of discretion. *CCH Trade Reg. Rep.* para. 28,043 (Transfer Binder, 1959-60).

In any event whenever cost data are offered at trial, the court must necessarily balance the equities in each case and weigh the disadvantages of burden and complication against the materiality of the data offered.

IV. PROCEDURAL METHODS OF OBTAINING COST DATA

In criminal actions to enforce the antitrust laws, the Department of Justice may demand production of relevant information, including cost data, by a subpoena *duces tecum* issued under grand jury authority and, according to *Eli Lilly*, under Rule 17 of the Federal Rules of Criminal Procedure. In civil actions, either the Government or a private plaintiff may proceed by subpoena under Rule 45 of the Federal Rules of Civil Procedure or by a motion to produce documents under Rule 34. Finally, the Federal Trade Commission, in investigations and actions before it, may proceed under Section 6 or 9 of the Federal Trade Commission Act. Of course, the fact that production of cost data may be required in a given case does not mean that such data are necessarily admissible at trial.

A. Production in Criminal Investigations and Actions

1. *Grand Jury Subpoenas*

When suspected violations of the antitrust laws are being considered by a grand jury, cost data may be demanded by a grand jury subpoena *duces tecum*. The documents requested must be relevant to the inquiry and be specified with reasonable particularity:

> ". . . the guides of the court are these: the papers sought must be relevant to the inquiry, they must be 'particularly' described, and the demand must not impose an 'unreasonable' burden upon the citizen." *Petroleum Industry Investigation*, 1957 Trade cases, para. 68,892, p. 73,609 (E. D. Va. 1957).

In such proceedings, the "relevancy of documents are [sic] tested solely by the purpose of the grand jury in its investigation, namely, 'Possible Violation of Title 15 U.S.C. Sec. 1-23 (Federal Antitrust Laws).'" *In re World Arrangements*, 13 F.R.D. 280, 284 (D.D.C. 1952).

Because of the traditionally broad scope of grand jury investigations, such a demand can require comprehensive disclosure in order that the grand jury may obtain all facts which bear on the purpose and scope of the investigation. The grand jury

> ". . . is a grand inquest, a body with powers of investigation and inquisition, the scope of whose inquiries is not to be limited narrowly by questions of propriety or forecasts of the probable result of the investigation, or by doubts whether any particular individual will be found properly subject to an accusation of crime. . . ." *Blair* v. *United States*, 250 U. S. 273, 282 (1919).

See also *Application of RCA*, 13 F.R.D. 167 (S.D.N.Y. 1952); *In re Eastman Kodak*, 7 F.R.D. 760 (W.D.N.Y. 1947). It has been held that the Fifth Amendment protection against self-incrimination does not apply to subpoenas *duces tecum* directed to corporations, *Hale* v. *Henkel*, 201 U. S. 43 (1906), nor does the Fourth Amendment protect corporate records from an authorized grand jury investigation except when there is too much indefiniteness or breadth in the description of the things required to be produced. *Oklahoma Press Publishing Co.* v. *Walling*, 327 U. S. 186 (1946); *In re United Shoe Machinery Corporation*, 73 F. Supp. 207, 210 (D. Mass. 1947).

Cost information also has been made available to the Antitrust Division on a voluntary basis. It has in fact been the experience of the Division that quite often the burden of producing documents can be substantially decreased by negotiation between counsel.

2. *Post-Indictment Discovery*

In a criminal case, the Department of Justice may move for the production of documents under Rule 17(c) of the Federal Rules of

Criminal Procedure.[38] It was held in *United States* v. *Iozia*, 13 F.R.D. 335, 338 (S.D.N.Y. 1952), that "good cause" under that rule for production of documents must include a showing (in that case by a defendant):

"(1) That the documents are evidentiary and relevant;

"(2) That they are not otherwise procurable by the defendant reasonably in advance of trial by the exercise of due diligence;

"(3) That the defendant cannot properly prepare for trial without such production and inspection in advance of trial and the failure to obtain such inspection may tend unreasonably to delay the trial;

"(4) That the application is made in good faith and is not intended as a general fishing expedition."

Requests for cost data under this rule do not pose problems which are in any way different from those presented by requests for any other type of evidence. The requirements of this rule are much stricter than those for a demand for documents under a grand jury subpoena, or for a motion for production of documents under Rule 34 of the Federal Rules of Civil Procedure, or for a subpoena *duces tecum* under Rule 45 of the Federal Rules of Civil Procedure.

In the *Eli Lilly* case, the Government for the first time invoked Rule 17(c) directly against a defendant. The court concluded that Rule 17(c) is available in a proper case to the Government as well as to a defendant. 24 F.R.D. at 294. The court cited *United States* v. *Carter*, 15 F.R.D. 367 (D.D.C. 1954), for the proposition that:

> "Rule 17(c) is applicable only to such documents or objects as would be admissible in evidence at the trial, or which may be used for impeachment purposes." 24 F. R. D. at 288; 15 F. R. D. at 371.

The *Lilly* court also quoted from *Bowman Dairy Co.* v. *United States*, 341 U.S. 214, 220 (1950), as follows:

> "It was not intended by Rule 16 to give a limited right of discovery, and then by Rule 17 to give a right of discovery in the broadest terms. . . ."

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[38] "(c) *For Production of Documentary Evidence and of Objects.* A subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated therein. The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that books, papers, documents or objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents or objects or portions thereof to be inspected by the parties and their attorneys."

The *Lilly* court then concluded that *Iozia* properly stated the applicable test and proceeded to apply that test to the situation at hand.

B. Production in Civil Actions

1. *Pre-Complaint Investigations in Government Actions*

In cases where civil antitrust proceedings alone are contemplated, there is at present no procedure whereby the Department of Justice may compel the disclosure of documentary evidence in a pre-complaint investigation[39]. Various bills authorizing the Department of Justice to issue a civil investigative demand prior to complaint have recently been proposed[40]. Both the Attorney General's Committee[41] and the American Bar Association Antitrust Section[42] have approved the civil investigative demand in principle.

2. *Post-Complaint Discovery*

In civil proceedings a private plaintiff has equal rights with the Government to use discovery procedures under Rules 34 and 45 of the Federal Rules of Civil Procedure. When directed to a party, a motion under Rule 34 requires a showing of "good cause."[43] The scope of investigation is broad, however, and relevancy, not admissibility, is the test according to which the scope of production is to be allowed.[44]

In *Benal Theatre Corp.* v. *Paramount Pictures, Inc.*, 9 F. R. D. 726 (N. D. Ill. 1947), plaintiff alleged that he had been discriminated against in the terms for obtaining first run pictures because of the

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[39] The grand jury cannot be used solely for the purpose of preparing civil cases. *United States* v. *Procter & Gamble*, 356 U. S. 677 (1958); *United States* v. *Procter & Gamble Co.*, 1959 Trade Cases, para. 69,385 (D. N. J. 1959); *United States* v. *Procter & Gamble Co.*, 1959 Trade Cases, para. 69,458 (D. N. J. 1959). See also *In Re April 1956 Term Grand Jury*, 239 F. 2d 263 (7th Cir. 1956), *judgment vacated on other grounds*, 355 U. S. 233 (1957). Where no true bill has been voted it has been suggested that the grand jury transcripts and memoranda made therefrom should be impounded by the court (see concurring opinion of Justice Whittaker in *United States* v. *Procter & Gamble, supra*, 356 U. S. at 684-85, and documents (and all copies thereof) obtained by grand jury subpoena should be returned to the parties who produced them.

[40] S. 716 (Kefauver), 86th Cong., 1st Sess. was passed by the Senate on July 29, 1959. 105 Cong. Rec. 13,332. The House of Representatives had not acted on the measure as of June 1, 1960. H. R. 4792 (Celler), 86th Cong., 1st Sess., which is identical with S. 1003 (Wiley), 86th Cong., 1st Sess., is being considered by the House Judiciary Committee, along with S. 716. H. R. 4792 differs in a number of material respects from S. 716.

[41] Att'y Gen. Nat'l Comm. Antitrust Rep. 346. (1955).

[42] 81 *A. B. A. Rep.* 410 (1956).

[43] See 4 Moore's Federal Practice, para. 34.08 at pp. 2449-55 (2d ed.) as to Rule 34 and *id.* Vol. 5., para. 45.05 [2] at pp. 1722-23 as to Rule 45.

[44] *Hercules Powder Co.* v. *Rohm & Haas*, 3 F. R. D. 302 (D. Del. 1943); 5 Moore's Federal Practice, para. 45.05[1] at p. 1720 (2d ed.).

arrangements between the distributor and the exhibitors who leased pictures for large theatre chains. Cost data for several of a chain's theatres were ordered produced under Rule 34 of the Federal Rules of Civil Procedure in order that plaintiff might determine whether the portion of film rental allocated by the defendant exhibitors to those theatres of the chain competitive with that owned by plaintiff was set artificially high in order to prevent plaintiff from getting first run pictures. Cost data were similarly ordered produced under a Rule 34 motion to show below-cost selling in *Gordon, Wolf, Cowen Co., Inc.* v. *Independent Halvah & Candies,* 9 F. R. D. 700 (S. D. N. Y. 1949); *Sandee Manufacturing Company* v. *Rohm & Haas Company,* 2 Fed. Rule Serv. 2d, 33.321, case 1, p. 492 (N. D. Ill. 1959); *In re Grand Jury Investigation* (G. M. Corp.), opinion of Metzner, D. J. May 20 (S. D. N. Y. 1959).

C. Production in Federal Trade Commission Proceedings

The Commission, of course, does not enforce the Sherman Act as such. However, because the phrase "unfair methods of competition" in Section 5 of the Federal Trade Commission Act embraces practices violative of the Sherman Act, *FTC* v. *Cement Institute,* 333 U. S. 683, 690-93 (1948), practices violative of the policy of the Sherman Act, *FTC* v. *Beech-nut Packing Company,* 257 U. S. 441, 453 (1922), and also incipient practices which, if allowed to mature, would violate the Sherman Act, *Fashion Originators' Guild* v. *FTC,* 312 U. S. 457, 466 (1941), and because such cost data may be relevant in Federal Trade Commission proceedings against practices in the nature of the Sherman Act violations, Federal Trade Commission procedures for obtaining such information are properly a part of this Report.

Confidential cost information in connection with proceedings against Sherman Act-type violations may be obtained (1) by demand under Sections 6(a) and (b) of the Federal Trade Commission Act;[45] (2) by a subpoena *duces tecum* under Section 9 of the Federal Trade Commission Act; or (3) by voluntary disclosure.

1. *Pre-Complaint Investigation*

In the investigative process, prior to the issuance of a formal complaint, the Commission often obtains desired cost or other evidentiary data by voluntary methods. The Bureau of Investigation of the Commission directly requests the concern under investigation to submit voluntarily the specified data. Compulsory process is used

[45] This Report does not consider the possibility that the Commission might also have occasion to seek such data in connection with its powers under Sections 6(c), (d) and (e), and, possibly, Section 7, of the Federal Trade Commission Act

in investigations if the concern under investigation refuses to submit voluntarily the requested data, or if the Commission in its administrative discretion deems it advisable in the particular situation to use initially compulsory process.

Section 6, requiring the filing of such annual or specific reports, and of answers to specific questions, as the Commission shall deem appropriate, is by its terms applicable only to corporations engaged in commerce. *United States* v. *Basic Products Co.*, 260 F. 472 (W. D. Pa. 1919). The subpoena provisions of Section 9 have broader coverage and, as interpreted by the courts, are applicable to the production of all documentary evidence relating to any matter under investigation. *FTC* v. *Tuttle*, 244 F. 2d 605, 615 (2d Cir.), *cert. denied*, 354 U. S. 925 (1957).

There are other factors which would have to be taken into account in determining whether the demand is to be made under Section 6 or Section 9. As a matter of fact, it is possible that Section 6 procedures might be used against corporate respondents or other corporate parties and, at the same time, the subpoena power relied on with respect to parties not subject to Section 6.

In moving now to more detailed analysis of Section 6 powers, it should be emphasized that since *United States* v. *Morton Salt Co.*, 338 U. S. 632 (1950), there can be little doubt that Section 6 may be appropriately used to obtain cost data or other documentary evidence in connection with investigations and formal litigation under Section 5 of the Federal Trade Commission Act. That case dealt specifically with compliance reports after entry of a cease and desist order; but the Court, in referring to Section 6, broadly found "nothing that would deny its use for any purpose within the duties of the Commission, including a §5 proceeding." 338 U. S. at 649.

To obtain evidentiary data by means of a special report under Section 6 requires Commission action, and the authority to demand such reports may not be delegated, so that neither the hearing examiner nor the investigating attorney has authority to take such action. A special or general order of the Commission must be issued in order to obtain evidence by means of Section 6 reports. *United States* v. *National Biscuit Co.*, 25 F. Supp. 329 (S. D. N. Y. 1938).

Where similar reports are to be required of 10 or more corporations, the questionnaire or other reporting requirement must be submitted to the Bureau of the Budget for clearance under the Federal Reports Act of 1942, 5 U. S. C. §139-139(f).

As in the case of subpoenas *ad testificandum*, subpoenas *duces tecum* may be issued by the Commission or a hearing examiner. *Fore-*

most Dairies, Inc., Docket 6495, CCH Trade Reg. Rep., para. 27,844 (Transfer Binder 1959-60)..

The "visitation" power of the Commission under Section 9 is also available for the purpose of obtaining information. The first part of that Section states:

> "That for the purposes of this Act the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against; . . ."

2. *Post-Complaint Investigation*

The Commission's power to subpoena documentary evidence in connection with Section 5 of the Federal Trade Commission Act proceedings may be taken as firmly established.

A recent series of cases upholding the use of the subpoena power of Section 9 of the Federal Trade Commission Act in Clayton Act proceedings has made abundantly clear the validity of the power respecting any matter within the Commission's jurisdiction: *FTC* v. *Rubin*, 245 F. 2d 60 (2d Cir. 1957); *FTC* v. *Tuttle*, 244 F. 2d 605 (2d Cir.), *cert. denied*, 354 U. S. 925 (1957); *FTC* v. *Reed*, 243 F. 2d 308 (7th Cir.), *cert. denied*, 355 U. S. 823 (1957); *Menzies* v. *FTC*, 242 F. 2d 81 (4th Cir.), *cert. denied*, 353 U. S. 957 (1957); *FTC* v. *Bowman*, 149 F. Supp. 624 (D. C. Ill.), *aff'd*, 248 F. 2d 456 (7th Cir. 1957).[46] The conclusion is inescapable that if valid in Clayton Act proceedings, *a fortiori*, the subpoena power is valid in Federal Trade Commission Act proceedings. See also *FTC* v. *Hallmark, Inc.*, 170 F. Supp. 24 (D.C.N.D. Ill. 1958), *aff'd*, 265 F. 2d 433 (7th Cir. 1959); *FTC* v. *Scientific Living, Inc.*, 150 F. Supp. 495 (D. C. Pa. 1957), *aff'd*, 254 F. 2d 598 (3d Cir.), *cert. denied*, 358 U. S. 867 (1958).

Also pertinent here is the case of *FTC* v. *Waltham Watch Co.*, 169 F. Supp. 614 (S. D. N. Y. 1959). That case held that an investigational subpoena will be enforced even though it "may cover ground which is already the subject matter of an adjudicative proceeding." *Id.* at 620.

Standards for testing the validity of a Commission subpoena have been aptly synthesized by the Supreme Court in the *Morton Salt* case, *supra*, where it distilled *Oklahoma Press Publishing Co.* v. *Walling*, 327 U. S. 186, 208 (1946), as holding in effect that a subpoena under Section 9 of the Federal Trade Commission Act is valid "if the inquiry is within the authority of the agency, the demand

[46] Any doubts which may have been raised by *Crafts* v. *FTC*, 244 F. 2d 882 (9th Cir. 1957), were dispelled when that decision was summarily reversed by the United States Supreme Court, 355 U. S. 9 (1957).

is not too indefinite and the information sought is reasonably relevant." 338 U. S. at 652.

Although ordinarily demand for documents for use as evidence in the course of trial is by subpoena *duces tecum*, there are occasions when Section 6 may also be utilized. The use of Section 6 might be appropriate, for example, in a Sherman Act-type case where comparable cost data were to be sought for a number of companies. In such a case the Commission might prefer "special reports" or "answers in writing to specific questions" to the production of individual company records pursuant to subpoena *duces tecum*, which records possibly could not be properly compared without extended testimony to explain variations in cost accounting methods, etc. For an example of the use of Section 6 during litigation, see *Crown Zellerbach Corporation*, Docket No. 6180, 51 F. T. C. 1105 (Order Ruling on Interlocutory Appeal, May 16, 1955).

The cases also indicate that the "visitation" powers of the Commission under Sections 6 and 9 have been used in the course of pre-complaint investigation. In an appropriate case it may be that information required in the actual course of trial could be similarly obtained. *Flotill Products, Inc.* v. *FTC*, 1960 Trade Cases, para. 69,740 (9th Cir. 1960).

3. *Commission Treatment of Claims of Confidentiality*

Even if the "confidential cost data" involved here were equated with "trade secrets," this would be no bar to a Commission subpoena requiring their production. A recent case making clear that "trade secrets" are not privileged from production under a Commission subpoena is *FTC* v. *Tuttle*, 244 F. 2d 605 (2d Cir.), *cert. denied*, 354 U. S. 925 (1957). In that case the court stated:

> "The respondents contend that the information sought by the Commission under the subpoena in the case at bar would include the sales records of the individual companies and that those records may be properly classified as 'trade secrets'. Assuming, *arguendo*, that sales records of the individual companies are trade secrets under Section 6(f), all that that section forbids is the *publication* of 'trade secrets and names of customers,' in public reports that the Commission may make 'from time to time' which it 'shall deem expedient in the public interest.' That does not mean that 'trade secrets and names of customers' may not be subpoenaed by the Commission in any proceeding or investigation under the Act. They may be subpoenaed in litigation in the Federal Courts, if the information is relevant and necessary to the presentation of a case. 4 Moore, Federal Practice, §26.22 p. 1087." *Id.* at 616.

Accord: Menzies v. *FTC*, 242 F. 2d 81 (4th Cir.), *cert. denied*, 353 U. S. 957 (1957); *FTC* v. *Hallmark, Inc.*, 170 F. Supp. 24 (N. D. Ill. 1958), *aff'd on other grounds*, 265 F. 2d 433 (7th Cir. 1959); *FTC* v. *Bowman*, 149 F. Supp. 624 (N. D. Ill.), *aff'd*, 248 F. 2d 456 (7th Cir. 1957). *Cf. Clarke* v. *FTC*, 128 F. 2d 542 (9th Cir. 1942).

The Commission has weighed the necessity for the production of confidential data against the prejudice that might be incurred by the party ordered to produce. And it has, on occasion, refused to order such production. *E.g., E. B. Muller & Co.* v. *FTC*, 142 F. 2d 511 (6th Cir. 1944); *The Maico Co., Inc.*, 51 F. T. C. 1197 (1955); *Foremost Dairies, Inc.*, Docket No. 6495, CCH Trade Reg. Rep., para. 27,844 (Transfer Binder 1959-60) (Order ruling on interlocutory appeal, February 11, 1959); *cf. Segal Lock & Hardware Co.* v. *FTC*, 143 F. 2d 935 (2d Cir. 1944), *cert. denied*, 323 U. S. 791 (1945).

In those cases, trade secrets or confidential data sought by respondents were protected from disclosure, the denial of the demands being rested essentially on the ground that the data were not needed under all the circumstances.

V. TECHNIQUES FOR HANDLING COST DATA AND APPROPRIATE PROTECTIVE ORDERS

To the extent that the cost data requested, or some portion thereof, are found to be relevant and material, on an appropriate showing the cost data may be held subject to a protective order preventing disclosure until its actual introduction into evidence. Moreover, in Federal Trade Commission proceedings, it is possible to maintain confidentiality even in the course of hearings and thereafter.

A. Pre-Indictment Investigation

If the Government is able to satisfy the court that demanded cost records are relevant and material to the particular violation under investigation, the traditional secrecy of the grand jury proceedings would appear to obviate the necessity for a protective order. Rule 6(e), Fed. Rules Crim. Proc. On at least one occasion, however, a protective order has been entered. See *Application of Kelly*, 19 F. R. D. 269, 270 (S. D. N. Y. 1956).

B. Post-Complaint Discovery

Both under Rule 30(b) of the Federal Rules of Civil Procedure, and under its general equity powers, a court may enter orders preventing disclosure of all facts developed and documents produced during pre-trial discovery. Many such orders have been entered.[47]

[47] *American Oil Co.* v. *Pennsylvania Petroleum Prod. Co.*, 23 F. R. D. 680 (D. R. I. 1959); *American Crystal Sugar Co.* v. *Cuban-American Sugar Co.*, 23 Fed. Rules Serv. 26b.31, Case 3 (S. D. N. Y. 1956); *Kurt M. Jachmann Co., Inc.* v. *Hartley, Cooper & Co., Ltd.*, 17 F. R. D. 316 (S. D. N. Y. 1955); *Baim & Blank, Inc.* v. *Bruno-New York, Inc.*, 17 F. R. D. 346 (S. D. N. Y. 1955); *Schwartz* v. *Broadcast Music, Inc.*, 20 Fed. Rules Serv. 33.335, Case 1 (S. D. N. Y. 1954); *General Foods Corp.* v. *Beu*, 15 Fed. Rules Serv. 30b.37, Case 1 (W. D. N. Y. 1951); and *Shawmut, Inc.* v. *American Viscose Corp.*, 11 F. R. D. 562 (S. D. N. Y. 1951).

In *United States* v. *Procter & Gamble Co.*, Civil Action No. 1196-1952, D. N. J., two substantially similar protective orders have been entered. The first (April 19, 1955) provides:

> "5. ORDERED that the plaintiff will not disclose in whole or in part the contents of any document or any information derived from any document produced [by Colgate] pursuant to subparagraph 5 or sub-items b)2), b)3) or b)5) of subparagraph 11 of paragraph 1 above to anyone other than authorized personnel of the Department of Justice, whether as proffered evidence in this case or otherwise, except upon the following conditions:
>
> "a. such disclosure shall be made only in the presence of Colgate;
>
> "b. such disclosure shall be made only pursuant to a further order of this Court, entered after Colgate has had an opportunity to be heard, or with the consent of Colgate; and
>
> "c. prior to such time as the plaintiff may desire to make such disclosure, it will show to Colgate the documents or information in the form in which disclosure is proposed to be made and afford Colgate a reasonable opportunity to argue to this Court that such documents or information should not be disclosed in that form; . . ."

Of particular interest among the private actions is *American Oil Co.* v. *Pennsylvania Pet. Prod. Co.*, 23 F. R. D. 680 (D. R. I. 1959). The court there overruled objections to certain of plaintiff's interrogatories, but for the protection of defendant ordered that its answers should be filed under seal and that disclosure could be made only to counsel for plaintiff and those assisting him in preparing for trial.

> "Here the plaintiff and the defendant are to a certain extent competitors. Clearly the information sought by Interrogatories Nos. 13 and 20 is relevant and necessary to the plaintiff in the proper presentation of its claim and its defense to the defendant's counterclaims. However, I do feel that the disclosure of the answers to these interrogatories should be limited to counsel for the plaintiff and to such persons as he may engage to assist him in any investigation which he may make in preparation for trial, none of such persons so engaged to be employees of the plaintiff or associated with it in any other capacity. In order to effect such limitation of disclosure, the defendant shall deliver a copy of its answers to Interrogatories Nos. 13 and 20 to counsel for the plaintiff and shall file a duplicate copy thereof in a sealed envelope with the Clerk of this Court, to be opened only upon the order of this Court." *Id.* at 684-85.

A similar protective order was granted in *Baim & Blank, Inc.* v. *Bruno-New York, Inc.*, 17 F. R. D. 346 (S. D. N. Y. 1955). Plaintiffs, who claimed damages for alleged violations of the Robinson-Patman and Sherman Acts, voluntarily produced "various books and records, including profit and loss statements and corporate income tax returns." *Id.* at 347. The court granted plaintiffs a protective order enjoining defendant from disclosing any of the documents produced:

> "The plaintiffs are entitled to an appropriate order enjoining the publication or disclosure by the defendant or any of its representatives of the income tax returns, profit and loss statements, books and records or other abstracts thereof pending the trial of the action. This of course does not restrict the use by the defendant of the discovered information for trial preparation or at the trial proper." *Id.* at 349.

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The issue of whether cost records have any relevance in a particular case and objections to the competency and materiality of such records may appropriately be considered at one or more pre-trial conferences. A hearing on those problems will of necessity involve some discussion of confidential information. To eliminate the possibility of disclosure to competitors, the circulation of pre-trial transcripts discussing cost data might well be restricted to counsel for the parties.[48]

If a case is settled prior to trial, the court may upon a proper showing grant a protective order to prevent the disclosure of any confidential information contained in documents produced during pre-trial proceedings. In *United States* v. *United Fruit Co.*, 1958 Trade Cases, para. 68,941 (E. D. La. 1958) a Government antitrust suit brought under the Sherman and Wilson Tariff Acts, a consent decree was entered prior to trial. After the entry of the decree, Judge Lynne continued indefinitely a protective order which prevented public disclosure of any documents produced during pretrial discovery.[49]

C. Use of Masters or Court-Appointed Experts

Masters have been used both to superintend discovery and to hear testimony in antitrust cases.[50] The use of court-appointed experts, familiar in other contexts, has been the subject of much discussion. The use of masters and/or court-appointed experts may offer solutions to the problems created by the pre-trial production and/or at-trial introduction of cost data. However, in recent years the Department of Justice has consistently opposed the use of masters or court appointed experts for this purpose.

1. *Pre-Trial Discovery*

The Judicial Conference Study Group *Handbook of Recommended Procedures for the Trial of Protracted Cases* states:

> "Where discovery in the protracted case presents problems involving exceptional circumstances or where requested by the parties, a master may be

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[48] This procedure was followed in *United States* v. *Standard Oil Company (New Jersey)*, (S. D. N. Y. Civil Action No. 86-27). A pre-trial conference held on October 5 and 6, 1959, concerned confidential information contained in responses of defendants to Government interrogatories. The responses to the interrogatories had been held by the court under seal. The court restricted the circulation of this pre-trial transcript to counsel for the parties. Operating personnel of the defendants were thus denied access to any confidential data discussed at the pre-trial hearing.

[49] *United States* v. *United Fruit Company*, Civil Action No. 4560, order by Judge Lynne (E. D. La. May 14, 1958).

[50] See cases collected in Smith, *Effective Competition: Hypothesis for Modernizing the Antitrust Laws*, 26 N. Y. U. L. Rev. 405, 442 n. 89 (1951).

used to advantage to supervise discovery as an adjunct to the court's supervision of the case in its entirety."[51]

The *Handbook* defines "exceptional circumstances" as including:

". . . where a case is of such inordinate size and complexity that it would be impossible for any judge to devote the time necessary for adequate supervision of discovery";[52]

". . . that extensive discovery or parts of it will be conducted in places distant from the court in which the case is to be tried";[53]

". . . the existence of undue animosity among the attorneys or parties."[54]

References to masters have been made by stipulation in many cases involving privileged or confidential information. See Dooling, *Cooperation Between Counsel in Simplifying Protracted Cases*, 23 F. R. D. 460, 464 (1959).

The Judicial Conference Study Group takes cognizance of the Department of Justice's traditional opposition to the use of masters. "References [to masters] should not be made in cases to which the United States is a party except as provided by law."[55]

Cost data, particularly those relating to cost accounting, are generally complex and often voluminous. If extensive cost data are sought in discovery proceedings, procedures which take into account the technical and generally confidential nature of the data should be devised. A master could rule upon objections to the production of cost data, to their use in depositions, and provide any needed protective orders. This would seem to be in accord with the suggestions of the Judicial Conference Study Group.

2. *At-Trial Evaluation of Cost Data*

Documents relating to costs may involve large amounts of technical data which cannot be accurately evaluated by non-experts. When such data are presented to a jury and then countered by extensive rebuttal evidence, "the possibility of confusing the jury cannot be lightly dismissed. . . ." *United States* v. *Eli Lilly & Co., supra*, 24 F. R. D. at 293. The Prettyman Report states:

". . . frequently the cases here being considered involve scientific or similar facts of such complexity and difficulty and such enormous amounts of technical data as to be insusceptible of accurate determination by a non-expert, except after long and careful study of the underlying material and, even then, at considerable risk of inaccuracy. The traditional method of proof when applied to such issues of fact is cumbersome, unnecessarily time-consuming, and uncertain in its results." 13 F. R. D. at 79.

[51] *Handbook* 30 (Feb. 1960) (mimeographed).

[52] *Id.* at 31.

[53] *Id.* at 33.

[54] *Ibid.*

[55] *Id.* at 31 n. 40. See also *La Buy* v. *Howes Leather Co.*, 352 U. S. 249 (1957).

One solution might be to appoint a special master to hear and to evaluate evidence as to costs. *Cf.* Whinery, *Court Experts and the Proof of Scientific Fact—An Experiment in Court Reform*, 23 F. R. D. 481 (1958). There is ample precedent for such an expedient in cases involving privileged or confidential information. See Dooling, *supra*.

According to the Prettyman Report, all such complicated technical issues should be submitted to panels of experts acting as special masters. The panel would hold hearings and make a written report containing findings and a conclusion on the issues presented. This report would be received by the court as a special master's report under the Federal Rules of Civil Procedure, subject to exceptions, argument, and the other established features of that procedure. See also the suggestion in the Taggart Committee Report that the Federal Trade Commission appoint a so-called Accounting Advisor to fulfill a similar function as an expert witness to the Commission. Advisory Committee on Cost Justification, *Report to the Federal Trade Commission* 16 (1956).

Cost accounting is surely not an exact science, but within the limits in which it might be employed in complicated antitrust cases it is much less subject to bona fide distortion due to a particular expert's theories than are the general areas of economics and sociology. The primary function of accounting is simply to display the facts as they exist in a particular situation. The courts have consistently held that questions of accounting are questions of fact as distinguished from questions of law. *E. g., Dobson* v. *Commissioner*, 320 U. S. 489, 506-7 (1943); *Bazley* v. *Commissioner*, 331 U. S. 737 (1947). The accountant may also interpret the facts, but this interpretation is only an opinion whose acceptance depends upon its reasonableness, and the courts have had extensive experience in making this determination. See Hills, *The Law of Accounting and Financial Statements* 4-6 (1957).

D. Federal Trade Commission Proceedings

Procedures exist in Federal Trade Commission proceedings for the segregation of confidential data so that they are not exposed to general public inspection in the public record of the case. On proper application, such data may be placed in the record *in camera*—that is, in a special confidential file available for inspection only by the parties and their counsel, by Commission counsel, by the hearing examiner and by the Commission and such other staff personnel as may be duly authorized. It is not available for inspection by others.[56] Such a procedure

[56] A *caveat* should be noted here that disclosure, in whole or in part, might be unavoidable where the facts in question must be set forth in counsel's proposed findings and briefs or in the decision itself.

was recognized by the court in the *Bowman*[57] and *Menzies*[58] cases, *supra*. See also *Crown Zellerbach Corporation*, Docket 6180, 51 F. T. C. 1105 (Order ruling on interlocutory appeal, May 16, 1955).

The attitude of the Commission may be seen in the case of *The Maico Co., Inc.*, Docket 5822, 51 F. T. C. 1197, 1202-1203 (1955). In the opinion by Commissioner Gwynne, a majority of the Commission stated:

> "That there is some privilege in the matter of divulging 'trade secrets' is well settled. This privilege extends, not merely to the chemical and physical composition of substances employed and to the mechanical structure of tools and machines, but also to such other facts of a possibly private nature as the names of customers, *the subjects and amounts of expense and the like*. . . . [Emphasis added.]
>
> "The privilege is not an absolute one. Nor can the 'public interest' be automatically held up as an excuse for denying it, although it is always an important consideration. . . .
>
> "Witnesses, like jurors, are often required to put aside their personal affairs and desires to aid in the settlement of disputes between litigants. This is the indispensable requirement for the operation of judicial tribunals and courts in a free society. Consequently, all concerned in the litigation should cooperate in protecting against disclosure of confidential matters, to the fullest extent compatible with the interests of the litigants and of the public. The record here discloses that various procedures along this line are under consideration. In fact, all the parties seem cooperative and we have no reason to doubt that the necessary facts can be adduced without undue injury to anyone."

In a currently pending case, *American Cyanamid Company*, Docket 7211, the Commission recognized the relevance of cost data in a price fixing and restraint of trade case when it upheld the hearing examiner's ruling refusing to quash subpoenas *duces tecum* requiring the production of company cost data. In the face of claims that the information was irrelevant and constituted valuable trade secrets, the Commission held that "the hearing examiner correctly ruled that the information and data called for under all of the specifications objected to are relevant and that, in the circumstances presented, disclosure of such information for study by staff counsel and their accountant advisors will serve the public interest. . . ." (Order ruling on respondent's interlocutory appeals, December 19, 1958.)

However, the Commission directed that certain alternative proposals made by respondents for the voluntary production of certain cost data in lieu of that demanded be considered by the hearing examiner.

The alternative data proposed by respondents were duly considered by the hearing examiner and accepted by him, and on this basis, he thereupon quashed certain specifications of the subpoena demanding

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[57] *FTC* v. *Bowman*, 149 F. Supp. 624 (N. D. Ill.), *aff'd*, 248 F. 2d 456 (7th Cir. 1957).

[58] *Menzies* v. *FTC*, 242 F. 2d 81 (4th Cir.), *cert. denied*, 353 U. S. 957 (1957).

different cost data. Denying the interlocutory appeal of counsel supporting the complaint, the Commission ruled that in the light of its prior remand, "counsel in support of the complaint has not demonstrated to the satisfaction of the Commission that the hearing examiner in ruling that the cost reports submitted were adequate substitutes for the cost data subpoenaed has abused the discretion so vested in him." (Order denying interlocutory appeal, May 8, 1959.)

MILES W. KIRKPATRICK
Subcommittee Chairman

SIGURD ANDERSON
JOHN T. CHADWELL
STEVEN E. KEANE
MARSHALL P. MADISON
GEORGE D. REYCRAFT, JR.
TAGGART WHIPPLE

CYRUS V. ANDERSON
Chairman
Sherman Act Committee

Sentor KEFAUVER. Mr. Chairman, if I may continue on with specific questions, and I will try to make them brief, Mr. Patton.

Senator CARROLL. Will the chairman forgive me for an interruption.

Senator Hart was about to ask some questions and I sort of took the time away from him. I asked him to yield.

Senator HART. The chairman was kind. I indicated that I simply wanted to hear Senator Kefauver.

Senator KEFAUVER. Mr. Flurry has prepared, and there has been furnished to every member of the committee, a very learned legal brief on this subject.

We have talked about legal matters. I wanted to try to get some facts in the record, if I may.

We have been referring to table 3 in the memo on coal costs—and I will not go into detail—showing that when American coking coal is loaded in the United States, shipped abroad, and unloaded at the ports in Europe at prices generally lower than the prices of coal mined in Europe. The table speaks for itself.

The last line in the table refers to Italy where the costs of European coal are from $20.26 a ton to $26.23 a ton. When it is delivered directly from the United States to Genoa, it is only $14.71 a ton.

Now, Mr. Patton, table 2 of the memorandum is a comparison of prices of coking coal in net tons f.o.b. the mines in the Ruhr and in the United States for the years 1953–61.

(At this point in the proceedings, Senator Carroll leaves the hearing room.)

Senator KEFAUVER. In 1953, the average price of coking coal in the United States was $5.97 a ton. In the Ruhr it was $11.46. And so on down the years until 1961, when in the United States it was $6.42 a ton; in the Ruhr, $13.78 a ton. These are important statistics, I would think.

The showings revealed by table 2 are largely made possible by the facts shown in table 1, which shows the coal output per man-day in the United States and in other important steel-producing countries for the years 1953 and in 1960.

In the United States in 1953, coal output per man-day was 8.17 tons. The average for the United Kingdom, West Germany, France, Belgium, the Netherlands, and Poland, with a breakdown shown for each one of them, was 1.26 tons per man-day, or only 15 percent of the U.S. production per man-day.

The gap has been widening. In 1960, the output per man-day of coal in the United States was 12.83 tons. Taking again the six European countries, their average was 1.56 tons per man-day.

(At this point in the proceedings, Senator Carroll enters the hearing room.)

Senator KEFAUVER. That is only 12.2 percent of the U.S. output per man. Does that now show the tremendously larger price for coking coal in the European producing countries than it does here in the United States?

Mr. PATTON. The last table, Senator, merely shows that the coal people in the United States have invested millions and millions and millions of dollars to put in machinery and equipment to mechanize their mines, and the people abroad have not yet done that, with the

result that there is more output per man, but we have to pay millions for equipment that we incur debt for, and we have to pay the interest on the debt, and it does not have any relation, it seems to me, to the cost necessarily.

Senator KEFAUVER. This has to do with the cost of coal to you in the United States and the cost of coal to your competitors in the European steel-producing communities.

Of course, the fact that the coal companies have lowered their costs by mechanization, is helpful to the steel industry.

The memorandum also shows the total cost in 1958 of a ton of coal in Belgium to have been $16.81. The labor cost in Belgium was $9.09. In France is was $13.38 for total cost; labor cost, $8.29, and so on.

From the Bureau of Mines the average total value for coal at the mine in the United States was $4.86 in 1958, or less than the labor cost alone in all of the countries except Poland.

Does that not give the steel industry in the United States a very substantial advantage?

Mr. PATTON. Why, no, Senator.

It merely means that our labor cost is lower because we have spent millions of dollars for new equipment, and our total costs, outside of labor are thereby increased.

Now, I hope that by putting in the equipment we have lowered our overall cost, but it does not mean that we have got the advantage in labor costs, because we have additional other costs by reason of buying the equipment.

Senator KEFAUVER. Consolidated Coal Co. is the biggest U.S. coal producer. You do not own their mines, do you?

Mr. PATTON. No, we do not.

Senator KEFAUVER. You buy coal from them.

Mr. PATTON. From whom?

Senator KEFAUVER. Consolidated Coal Co.

Mr. PATTON. I do not recall that we do; no.

Senator KEFAUVER. Many steel companies do?

Mr. PATTON. They may. I would have no knowledge of that.

Senator KEFAUVER. These coal companies have made investments that enable them to sell more cheaply, which is to your benefit because you buy from them; is that not true?

Mr. PATTON. We do not buy from them. I do not know what their price is.

Senator KEFAUVER. You buy from other coal companies?

Mr. PATTON. We have our own mines and we buy from other coal companies at the best price obtainable; yes.

Senator KEFAUVER. But certainly the coal companies of the United States could not ship coking coal abroad and pay the cost of shipping to foreign ports and sell it for less than they can mine it over there unless their costs were very much lower?

Mr. PATTON. You would have to ask the coal people that. I am in no position to speak for them.

Senator KEFAUVER. As a matter of fact, Mr. Patton, do you not know that Consolidated Coal Co. and other large American coal companies are getting more and more of the foreign market for coal in competition with coal mined abroad?

Consolidated Coal Co. talks about how they are selling coal in Japan, in their 1960 annual report:

> In 1959, the totals we export are principally high-grade coking coal which we believe will steadily increase in demand overseas.

The large amount of coking coal that they have been selling abroad competitively over the years is then shown.

Mr. PATTON. More power to them, making more jobs for American coal miners.

I wish we could increase our position in the export business.

Senator KEFAUVER. You can certainly buy coal from them cheaper than a European company can buy it over there. You concede that?

Mr. PATTON. I do not know.

Senator ERVIN. May I ask a question along that line?

Senator KEFAUVER. Yes.

Senator ERVIN. Is it not a well-known fact that among the worst depressed areas in the United States economically today are the coal mining regions of West Virginia and certain places in Pennsylvania and southern Illinois?

Mr. PATTON. That is a matter of public fact, yes sir.

Senator KEFAUVER. Mr. Patton, in line with our colloquy a few minutes ago, will you point out precisely for the subcommittee, if it is shown that the cost of producing steel in European countries with which you are competing is the same or lower than your cost of producing steel here, how is the disclosure of your costs in terms of groups of companies going to hurt your competitive advantage?

Mr. PATTON. I have no knowledge of the cost of producing steel in foreign countries.

I know that if the producers of foreign steel know our unit or product costs, and we are competing for a piece of business at Houston, Tex., they know that our cost is $100 a ton, they are going to go in slightly under $100 a ton and get the business because they will feel that we will not quote lower than our costs, and if we do, we lose money.

So they have a competitive advantage over us, sir.

I would hate, for instance, to think, if we are in a poker game, to have somebody know what I had in my hand when we are trying to compete for a pot, and it is no different in trying to compete for an order.

We do not want foreigners to know what our cost is when we are competing for business, because they will then know exactly what they have got to call.

Senator KEFAUVER. If the testimony developed before this committee shows that the cost of your production of steel is the same or lower than that of the foreign companies, then there would also be great concern about your high costs and great concern about your 50-percent operating rate, and I would think the steel companies would do something about it. Would you not think so?

Mr. PATTON. We are trying to sell every pound of steel we can, sir.

Senator KEFAUVER. All right, sir, let's turn now to iron ore, the third principal steelmaking element. We were talking the other day about where the European manufacturers got their iron ore from. We have statistical information showing iron ore imports into the Ruhr by country of origin. For 1960 the figures are Sweden, 25 percent;

Spain, 4; Canada, 5; Venezuela, 5; Brazil, 4; Peru, 4; Liberia, 3; port territories, Asia, 6.

Do you know, Mr. Patton, or do you have statistics as to whether the price you can purchase iron ore for is lower than the price which they have to pay for ore?

Mr. PATTON. I have no such statistics, no, sir.

Senator KEFAUVER. Then this is another item on which you do not know whether you are above or below European producers, costwise?

Mr. PATTON. We are competing on price with the European producers. We are not competing on costs. We meet them in the marketplace on price. I do not know what their cost is.

Senator KEFAUVER. Not in the third countries, you are not meeting.

Mr. PATTON. Yes, we are meeting them everywhere that we can.

Senator KEFAUVER. Your prices, as shown by the record, are almost 30 percent higher in third countries than your European competitors.

Mr. PATTON. That may be true in some cases, but if you look at the exports, we are still exporting some steel, so we are selling some steel abroad.

Senator KEFAUVER. But you had a great loss.

Mr. PATTON. Yes, a very great loss, to our great sorrow.

Senator KEFAUVER. We have documents showing sources of iron ore imports into the Ruhr, the amount imported from each source, and the average price paid. I suppose it can be made a part of the record along with the exhibit that we put in, Mr. Chairman.

The CHAIRMAN. Yes, it will be made a part of the record.

(The documents referred to will be made a part of the record and will be found in the files of the subcommittee.)

Senator KEFAUVER. Now, Mr. Patton, I notice here that the foreign steel companies are buying 5 percent, at least, of their ore from Canada. Is that not shown on the table here?

Mr. PATTON. Yes. West Germany is buying part of its ore.

Senator KEFAUVER. Yes, West Germany is buying 5 percent. Other companies buy part of their coal from Canada. As a matter of fact, they buy ore from a company in Labrador in which you have a 5-percent interest, do you not? Isn't that where they buy this ore from?

Mr. PATTON. I am not sure of that, but I know that the Iron Ore Co. of Canada, in which we have a 5-percent interest, sells ore, and I assume they may very well be selling some ore to European steel companies.

Senator KEFAUVER. It certainly costs you less to get ore from Labrador than it would the mills in Germany, would it not?

Mr. PATTON. I would not be at all sure of that. I do not know what the ocean boat rate is from Labrador to Germany as compared with the ocean boat rate down to our plants, plus the freight on rail from the lake port in at Youngstown and Warren and other places.

Senator KEFAUVER. The M. A. Hanna Co. is a 25-percent owner of this company, is it not?

Mr. PATTON. Yes, it is.

Senator KEFAUVER. It is also the principal owner of Hanna Mining Co. and National Steel, or a substantial owner of both, is it not? Their annual report of 1961 states that shipping ocean vessels chartered by Hanna carried 1 million tons of ore to U.S. coast ports and to Europe.

Iron Ore of Canada is owned 25 percent by Hollinger and subsidiaries which is a private Canadian company, is it not?

Mr. PATTON. That is my understanding; yes.

Senator KEFAUVER. And 23.7 by Hanna Mining, 15.4 by National Steel, 16.5 by Bethlehem, 5.1 by Armco, 5.1 by Republic, 5.1 by Youngstown, 4.1 by Wheeling. Is that your recollection of the matter?

Mr. PATTON. I accept that as a statement of fact. I do not know the exact percentages. But we do own the company and stock in the company.

Senator KEFAUVER. Do you make a profit in the Iron Ore of Canada Co.?

Mr. PATTON. Sir?

Senator KEFAUVER. In Iron Ore of Canada?

Mr. PATTON. I did not get the question.

Senator KEFAUVER. This is a profitable operation to you, is it not? Iron Ore of Canada is a profitable operation?

Mr. PATTON. We think so.

We have never received a dividend from it yet, because we are still taking whatever money we are getting and trying to build more efficient plants.

We are just in the process now of building another plant up there to improve it.

Senator KEFAUVER. Do you own a part of it so that you are entitled to get iron ore from them?

Mr. PATTON. Oh, yes, we want to get iron ore from them.

Senator KEFAUVER. And then also the company, of which you are a part owner, sells it on the open market through M. A. Hanna to companies in Germany and in other parts of Europe, which are not owners. Is that correct?

Mr. PATTON. I assume that the M. A. Hanna Co. is selling its share because it is not a consuming company like the steel companies are. So they have to sell their ore, I presume.

I do not know.

Senator KEFAUVER. Wouldn't the cost to you be less since you are a part owner and you do not have to buy it on the open market? Wouldn't it be less to you than to European companies for this reason alone?

Mr. PATTON. I would certainly hope that if we owned stock in a mining company that we would get a dividend, and that as reducing the cost, it would be less or we would not put an investment in it; yes, sir.

Senator KEFAUVER. This is another area where your costs are lower than those of the European companies, is it not?

Mr. PATTON. Oh, that is a pretty farfetched statement, Senator. I do not know whether it is less or whether it is not.

Senator KEFAUVER. It seems to me if you are part owner of the company and you are getting your ore by virtue of your part ownership of the company, and it is up in Labrador, which is further from Germany than you are—it comes through the Great Lakes to Cleveland or down to the coast of the United States—that being a part owner and being nearer would give you a lower price than if you had to buy it on the open market in Europe.

Mr. PATTON. No, we pay the full market price for our ore from the Iron Ore Co. of Canada just like anybody else does, and we hope

that some day that company will make some money and pay us the dividend, but we pay the full market price.

Senator KEFAUVER. I have here a chart, Mr. Patton, showing the places where ore is secured by the steel companies, the percentage of ore content, the freight and delivered price to the plants in the United States, iron ore delivered price per ton unit. Do you have a copy of this, Mr. Patton?

Mr. PATTON. Is this the document you are referring to? Yes, I have a copy.

Senator KEFAUVER. Do you know what is indicated by this table to be a fact?

Mr. PATTON. No, I do not know it to be a fact.

Senator KEFAUVER. These are delivered prices for 1958 of iron ore to the principal steel-producing centers in the United States from the sources from which they are usually supplied. The source is the U.S. Tariff Commission. If you will check these prices against what they have to pay in Europe, I think you will find that generally they are lower, Mr. Patton.

Senator CARROLL. Mr. Chairman, before you leave this item, I would like to put a question here that is pertinent here, about the Mesabi Range. Are you getting much ore from the Mesabi Range anymore?

Mr. PATTON. Yes, sir; we are getting considerable ore from the Mesabi Range, not as much as we did in the days when the great open pit mines were still being operated at full capacity, but in the last 10 years, if you please, we have, through millions of dollars spent in research, found the method of taking low-grade taconite, which only contains 23 percent iron, and putting in equipment to mine and beneficiate that up and get rid of the impurities, so that we are now getting a pellet up there that averages about 63 percent iron, and, as a matter of fact, sir, that is the principal source of ore for our company right there.

Senator CARROLL. What percentagewise? Are you getting more ore out of Canada or the Mesabi Range?

Mr. PATTON. Oh, I think there is considerably more ore coming from the United States, still. The foreign ore is increasing some, but the principal source of ore by far is still the United States.

Senator CARROLL. There is great unemployment in that area and I wondered whether the steel companies are abandoning the Mesabi Range and moving into other areas.

Mr. PATTON. On the contrary, by our investment in Reserve Mining Co., in which we are stockholders with ARMCO, and by the investment in Erie Mining Co., put in by Bethlehem and Youngstown and others in a similar project, we have created thousands of jobs up there to make employment for the people who used to work in the other mines which are now shut down.

(At this point in the proceeding, Senator Scott left the hearing room.)

Senator CARROLL. In the open pits?

Mr. PATTON. In the open pits.

Senator CARROLL. Now with this development of taconite, this is where you invested your great sums of money in taconite?

Mr. PATTON. Yes, sir; Reserve Mining Co., of which we are a 50-percent owner, invested over $200 million originally, and we are now

in the process of expansion at a cost of $120 million to increase our capacity by 50 percent.

Senator CARROLL. And what is the nature of your investment in Canada?

Mr. PATTON. It is a couple of million dollars or something like that. The whole project cost may be around $300 million, and we have 5 percent of that.

Senator CARROLL. Thank you.

The CHAIRMAN. Gentlemen, there is going to be a rollcall in the Senate in 5 minutes on the Cuba resolution.

Senator KEFAUVER. If I could have about 30 minutes, I could finish with Mr. Patton.

The CHAIRMAN. We do not want to miss the quorum call.

Mr. PATTON. We would be grateful if we could finish today, sir.

The CHAIRMAN. Just a minute now; we are going to finish today. I am just debating whether to come back or not, whether to close now.

Senator CARROLL. Mr. Chairman, a parliamentary inquiry. I missed the first two hearings here. Has Mr. Patton been the only witness?

The CHAIRMAN. Yes.

Senator CARROLL. Is there going to be any other witness on?

I heard you make a statement this morning that there is going to be just one witness on one side.

The CHAIRMAN. That is right.

Senator CARROLL. And one witness on the other.

The CHAIRMAN. That is right.

Senator CARROLL. Are we supposed to absorb all these figures by osmosis?

The CHAIRMAN. I do not know. I have been catching it from all over the committee, and if we want to vote to get rid of it——

Senator KEFAUVER. Mr. Chairman, may I say I have some very important matters to ask Mr. Patton about.

The CHAIRMAN. All right; we will come back right after the vote. I will run for a few minutes, but when my plane leaves for Memphis I am going to be on that plane, and these hearings are going to be over.

Senator CARROLL. Mr. Chairman, I asked a question, whether or not there is going to be another witness after Mr. Patton. Do I understand that there is going to be?

The CHAIRMAN. Well, who is the witness?

Senator KEFAUVER. Mr. Loevinger has attended the past hearings. Of course, if I am going to be cut off when the Chairman leaves, I am not going to have any chance——

The CHAIRMAN. We can take Mr. Loevinger another day.

Senator KEFAUVER. I think the record ought to be printed so all the members can have a chance to read it.

The CHAIRMAN. No, sir; we are going to vote next Tuesday.

Senator CARROLL. We are going to vote next Tuesday, but the question on what we vote may be an open question.

(Short recess taken.)

(Present: Senators Eastland, Kefauver, and Scott.)

The CHAIRMAN. Let us have order, please.

Senator KEFAUVER. Mr. Chairman, do you want me to proceed?

The CHAIRMAN. Yes. Is Mr. Loevinger here?

Senator KEFAUVER. He is on his way.

Mr. Chairman, we were talking about iron ore, and I have here an official document of the Statistical Office of the West German Government which we will identify to the reporter.

(The document referred to was made a part of the record and will be found in the files of the committee.)

Senator KEFAUVER. It shows the price of Kiruna D Swedish ore in 1958 delivered at the Ruhr in reichsmarks per ton. Translating into dollars and also into the 52 percent of iron ore which is the basis of the Tariff Commission figures for the United States, we find that their price in 1958 was $13.55 per ton delivered at the Ruhr, compared with the average delivered price of the same iron ore content of steel to the steel companies in the United States of around $11 per ton.

(At this point in the proceedings Senator Ervin entered the hearing room.)

Senator KEFAUVER. This, of course, does not take into account any advantage that might accrue to the American companies by owning part, or in some cases all, of their iron ore supply. Do you have any comment, Mr. Patton? This is at page 157 of the document.

The CHAIRMAN. What is it?

Senator KEFAUVER. It contains statistics on the steel industry put out by the German Government, Statistics Vierteljahreshef, October 1959, Dusseldorf, February 1960. It is the official document of prices of steel in various countries from which they buy iron ore.

(At this point in the proceeding Senator Hart entered the hearing room.)

Senator KEFAUVER. On this basis this is another area where costs abroad are not lower than your costs but instead appear to be somewhat higher. Is that not correct, Mr. Patton?

Mr. PATTON. I have no knowledge of that, Senator. I merely would like to observe while I do not know what the costs of these foreign companies are, it is of great significance to me that they come into the United States and offer for sale their products at $20, $30, and $40 a ton less than we can afford to sell ours for, and still make money, and at the same time have higher costs than we do. It just does not add up to me, sir.

Senator KEFAUVER. That is of great significance, and I wonder if you have thought about the fact that they were operating at 80 percent of capacity or more while you were operating at 50 percent.

Mr. PATTON. The same situation prevails.

Senator KEFAUVER. Otherwise, you would concede that, by operating at 90 percent of capacity, you can make a ton of steel cheaper than by operating at 50 percent of capacity, would you not?

Mr. PATTON. Oh, yes; sure.

Senator KEFAUVER. I expected that to be the answer.

Mr. PATTON. It isn't to me. The same situation prevails when you are operating at higher rates of capacity.

Senator KEFAUVER. I am surprised, Mr. Patton, that you are so fearful of foreign competition and so concerned about it and yet are not more knowledgeable about the costs of your foreign competition.

Mr. PATTON. I do not know how we would get their costs.

Senator KEFAUVER. I am sure that Armco must know a great deal about foreign costs because they build plants in many parts of the

world. They have 18 plants in other countries which are not making steel as such, but products made from steel. Also, United States Steel has an interest in a steel mill in Italy, I believe, and has been planning on building in other countries, including India. That is to your knowledge, is it not?

Mr. PATTON. Not to my knowledge. I do not think any steel company in America has a basic steel plant outside the United States, and I do not know what their plans are. I haven't heard of any.

Senator KEFAUVER. I would like to make this next table a part of the record. It shows that in 1958 when you began to experience a growing loss of your exports and a rise in imports into the United States, your prices went up, whereas in the other countries competing with you they brought their prices down and operated at a capacity. Throughout the world, demand for steel fell off in 1958. You raised your prices. Your European competitors lowered theirs.

This is shown by tables 13a and 13b which I would like to have made a part of the record.

(The tables referred to follow:)

CHANGE IN EXPORT PRICES OF SELECTED STEEL PRODUCTS

	Export price, 1953–57	*Export price, 1957–59*
Steel bars:		
United Kingdom	−22	−9
ECSC	−12	−12
Japan	−20	−29
United States	−36	−5
Plates:		
United States	−19	−6
United Kingdom	−23	−28
ECSC	−27	−35
Japan	−48	−38
Sheets:		
United States	−6	−1
United Kingdom	−3	−5
ECSC	−2	−5
Japan	−18	−25
Structurals:		
United States	−24	−6
United Kingdom	−33	−27
ECSC	−40	−29
Japan	−29	−31

Sources: Table 13b.

TABLE 13b.—*Export prices of various steel products in major producing countries*

[Indexes: 1953=100]

Steel product and country	1953	1954	1955	1956	1957	1958	1959
Bars:							
United States	100	103	107	122	132	138	139
United Kingdom	100	82	97	106	112	105	102
E.C.S.C.[1]	100		119	126	120	89	106
Japan	100	90	99	126	136	83	97
Plates:							
United States	100	103	104	111	119	124	126
United Kingdom	100	78	87	110	123	100	89
E.C.S.C.[1]	100		98	127	127	86	82
Japan	100	91	110	146	148	89	92
Sheets:							
United States	100	94	98	106	114	112	113
United Kingdom	100	99	98	92	97	93	92
E.C.S.C.[1]	100		101	101	102		97
Japan	100	98	95	113	118	88	88
Structurals:							
United States	100	104	107	115	124	130	132
United Kingdom	100	80	95	120	133	106	97
E.C.S.C.[1]	100		114	148	140	99	100
Japan	100	83	95	116	129	87	89

[1] Averages of midmonth quotations for April and August 1953 as 100. Original data for the years after 1953 are annual averages of the price quotations for export basis prices of "continental mills," quoted in Metal Bulletin published nearest to the middle of each month. In 1954 only "official minimum prices" were reported up to November. For steel sheets, no price was reported throughout 1958.

Source: International Monetary Fund.

Senator KEFAUVER. Let's get very quickly to one or two other matters. I know that time is short.

The CHAIRMAN. It is short. Let's go.

Senator KEFAUVER. Mr. Chairman, this is very important.

The CHAIRMAN. I mean it. I have been sitting here for 2 days and I would like to complete these hearings.

Senator KEFAUVER. Mr. Chairman, it is very hard to try to get along with the hearing with the antagonism of the chairman.

The CHAIRMAN. There is no antagonism. This is the third day that I have put in full time on this matter.

Senator KEFAUVER. I have been here ready——

The CHAIRMAN. I have been fighting off committee members who wish to vote.

Senator KEFAUVER. I have been ready and anxious to go on with the witness any afternoon since we have been here.

The CHAIRMAN. Proceed.

Senator KEFAUVER. Very well.

Now, on the matter of whether your loss of markets is due to lower costs of your foreign competitors or to a lack of competition among the steel companies of the United States, I would like to call your attention to two or three matters and ask you about them, Mr. Patton.

On page 964 of part 3 of the hearings held by the subcommittee in 1957, United States Steel submitted a number of bids designed to show that identical bids were uncommon in the industry. Yet when we made an analysis, we found that over 53 percent of the invitations were met by instances of identical bids; 221 cases where the United States Steel alone and one or more others bid identical unit prices represented 31 percent of 711 bid items. That is on page 965. Page 964 shows where Republic and United States Steel bid identically to the Navy Department. Your bid was $0.1030; United States Steel was $0.1030. On the second item, your bid was $0.1030, their bid was

$0.1030. On the next item, your bid was $0.1145, United States Steel's bid was $0.1145.

(At this point in the proceedings, Senators Eastland and Hart left the hearing room.)

Senator KEFAUVER. These are bids on cold-drawn bars to the Department of the Navy. How do you have identical bids with United States Steel?

Mr. PATTON. Why, our price is a published price. I assume that United States Steel's is the published price. If we are going to bid for a piece of business, we bid our published price. It so happens there is nothing mysterious about that. It happens occasionally. Our price there happened to be $206 a ton. I do not know, I assume theirs was $206 a ton. They wanted the price per pound, so we divided $206 a ton by 2,000 pounds and we got $0.1030 per pound. It is as simple as that to me.

Senator KEFAUVER. Regardless of the amount that you sell them?

Mr. PATTON. Sir?

Senator KEFAUVER. The reports here show identical bids regardless of the amount.

Mr. PATTON. Occasionally, I am sure that our price is the same as theirs on a bid.

Senator KEFAUVER. In 52 percent of the instances there were identical bids.

You are aware, I take it, Mr. Patton, that the Department of Justice recently made a compilation of identical bids entitled "Statistical Bidding in Public Procurement." I have here certain of the pages of that report which deal with steel, particularly where you were the bidder along with others on sealed secret bids. Some of these are f.o.b.; some are on a delivered basis.

For instance, here is one for the State of Tennessee to be delivered at Nashville.

Mr. PATTON. What page are you on, Senator?

Senator KEFAUVER. On page 368 of the Justice report, which you have before you. You bid 7.24 cents. Your plant is located at Cleveland, Ohio. Armco at Middletown, Ohio, bid 7.24 cents. Jones & Laughlin at Pittsburgh bid 7.24 cents. United States Steel at Fairfield, Ala., bid 7.24 cents. United States Steel's plant is much closer to Tennessee. How in a secret bid do you bid for the delivery of steel at a particular designation identical with others?

(At this point in the proceeding Senator Scott left the hearing room.)

Mr. PATTON. We have a published price at the plant, f.o.b. the plant at which that particular product is produced. We know that if we are going to compete effectively for the business, the customer is interested in the cost to him delivered at destination. We find out which steel plant making the same product is located nearest to the destination. We get the published freight tariff from the nearest steel plant to the destination, the customer's plant. We take our price and we take that published freight rate, and that is our bid.

Senator KEFAUVER. In other words, you absorb freight?

Mr. PATTON. Why, of course we absorb freight to compete for business.

Senator KEFAUVER. The basing point system, Pittsburgh plus, was ruled illegal and not in the public interest.

Mr. PATTON. Oh, we do not sell Pittsburgh plus. We sell f.o.b. our plant of production.

Senator KEFAUVER. Just a minute, Pittsburgh plus was ruled illegal. One basing was used, Pittsburgh; whereas Alabama and North Carolina had to pay freight from Pittsburgh, even though the steel might have been produced in North Carolina or in Alabama——

Senator ERVIN. But unfortunately we do not have any steel produced in North Carolina.

Senator KEFAUVER. But they did in Alabama.

Senator ERVIN. Yes.

Senator KEFAUVER. But you had to pay freight all the way from Pittsburgh.

Senator ERVIN. We have always got connections in North Carolina.

Mr. PATTON. That may have been years ago, but it certainly is not true today.

Senator KEFAUVER. That was an unfair method of competition. It was ruled out. It eliminated competition and retarded the development of the South and other sections of the country. Now, by taking the closest steel plant to the place where you are going to ship steel, you are accomplishing exactly the same thing?

Mr. PATTON. Not at all, sir; not at all.

Senator KEFAUVER. Why not?

Mr. PATTON. Because we absorb freight. In the old days there might have been phantom freight, they called it, but we do not have any such thing today.

We take the actual freight from the plant at which the steel is produced nearest to the customer and pay the actual freight. There is no such thing as phantom freight in these days like there was 30, or 40, or 50 years ago.

Senator KEFAUVER. But in this instance, to the State of Tennessee at Nashville, it resulted in exactly the same thing as if Pittsburgh plus had been in operation.

Mr. PATTON. Oh, no; sir.

Senator KEFAUVER. It resulted in identical delivered prices.

Mr. PATTON. It might have resulted in identical prices because all prices are published.

Senator KEFAUVER. Anyway, that is what——

Mr. PATTON. And everybody knows what the freight is. It is a published tariff.

Senator KEFAUVER. We can argue about whether it amounts to the same thing, but they are quoted identical prices as they were under Pittsburgh plus.

Mr. PATTON. No, sir. I disagree. I absolutely disagree with that. That is not the fact.

Senator KEFAUVER. That is what you just said.

Mr. PATTON. No; I did not say that.

Senator KEFAUVER. That you figured the freight from the nearest mill?

Mr. PATTON. That is right; not from Pittsburgh. If the nearest mill is our mill at Gadsden, Ala., and that product is made at Gadsden,

Ala., we get the freight from Gadsden to Chattanooga or to Nashville and that is all.

Senator KEFAUVER. Then in that case you pay more freight than the plant that is closer to Nashville?

Mr. PATTON. Oh, no; we would then have to absorb, if there was a plant closer to Nashville and we were interested in competing for that business, we would have to absorb the difference in the freight so that we would be able to compete for that business with the plant located near the customer's plant.

Senator KEFAUVER. Identical bids are the result of freight absorption, as in Pittsburgh plus.

Mr. PATTON. It was entirely different.

Senator KEFAUVER. The chairman is not here, but I want to put in the record a number of these same situations where, regardless of where the mills are located, the prices are identical.

That is page 364 through page 369, with certain examples.

(The documents referred to are as follows:)

PSC COMMODITY CLASS	PSC CLASS TITLE AND AGENCY, DESTINATION, PRODUCT DESCRIPTION, INVITATION NUMBER, BIDDER INFORMATION	AMOUNTS AWARDED: UNIT OF MEASURE AND QUANTITY	AMOUNTS AWARDED: TOTAL VALUE (dollars)	BASIS OF AWARD	NAME OF IDENTICAL BIDDER AND AWARD INDICATION	EVALUATED UNIT PRICE (dollars)	F.O.B. PRICE BASIS	CASE NUMBER	LINE ITEM NO.	BID OPENING DATE
9510	BARS AND RODS, IRON AND STEEL T.V.A.DIV.OF MATERIALS CHATTANOOGA TENN. DEST.MUHLENBERG KENTUCKY NEW BILLET DEFORMED INTERMEDIATE GRADE REINFORCING STEEL 54-75919 09 BIDS 02 IDEN BIDS	CWTS. 6000	32,190	LOW				352	4	10/61
					SISKIN STEEL&SUPP.CO.INC. CHATTANOOGA TENN.	5.365	DEST			
					REPUBLIC STEEL CORP. CLEVELAND OHIO	5.786	DEST			
						5.786	DEST			
	T.V.A.DIV.OF MATERIALS CHATTANOOGA TENN. DEST.MUHLENBERG KENTUCKY NEW BILLET DEFORMED INTERMEDIATE GRADE REINFORCING STEEL 54-75919 09 BIDS 02 IDEN BIDS	CWTS. 4000	23,460	LOW				352	5	10/61
					SISKIN STEEL&SUPP.CO.INC. CHATTANOOGA TENN.	5.865	DEST			
					REPUBLIC STEEL CORP. CLEVELAND OHIO	6.283	DEST			
						6.283	DEST			
	FRANKFORD ARSENAL ORD. PHILA. PA. DEST.PHILA. PENN. HOT ROLLED CARBON CS-1020 ROUND STEEL BAR ORD-36-038-62-73 05 BIDS 02 IDEN BIDS	LBS. 475425	41,912	LOW				522	1A	10/61
					JONES & LAUGHLIN STEEL PITTSBURGH PA.	.0882	DEST			
					US STEEL CORP PHILA. PA.	.0899	DEST			
						.0899	DEST			
	FRANKFORD ARSENAL ORD. PHILA. PA. DEST.PHILA. PENN. HOT ROLLED CARBON CS-1020 ROUND STEEL BAR ORD-36-038-62-73 04 BIDS 02 IDEN BIDS	LBS.		NO AWD				522	1B	10/61
					BETHLEHEM STEEL CO. BETHLEHEM PA.	.0857	ORIG			
					US STEEL CORP PHILA. PA.	.0857	ORIG			
					CONTINUED					

PSC CLASS, INDUSTRY CLASS	PSC CLASS TITLE AND AGENCY, DESTINATION, PROCUREMENT DIVISION, INVITATION NUMBER, BIDDERS, BIDDER CONSIDERATION	AMOUNTS INVOLVED: UNIT OF MEASURE AND QUANTITY	AMOUNTS INVOLVED: TOTAL VALUE (dollars)	BASIS OF AWARD	NAME OF IDENTICAL BIDDER AND AWARD INDICATOR	EVALUATED UNIT PRICE (dollars)	F.O.B. PRICE BASIS	CASE NUMBER	LINE ITEM NO.	BID OPENING DATE
9514	BARS AND RODS, IRON AND STEEL				CRUCIBLE STEEL OF AMERICA PITTSBURGH PA. AWARD	.1219	DEST			
	ORDNANCE CORPS ARMORY SPRINGFIELD MASS. DEST. SPRINGFIELD MASS. HOT ROLLED ALLOY STEEL BARS FOR RIFLES ORD-19-058-62-66 06 BIDS 02 IDEN BIDS	LBS. 34759	3,630	LOW	COPPERWELD STEEL CO. WARREN OHIO	.1044	DEST	713	2	12/61
					BETHLEHEM STEEL CORP. BETHLEHEM PA. BETHLEHEM STEEL CO. BETHLEHEM PA.	.105	DEST			
	SPRINGFIELD ARMORY ORD. SPRINGFIELD MASS. DEST. SPRINGFIELD MASS. 1-3/16 IN. DIA. HOT ROLLED CARBON STEEL BARS ORD-19-058-62-63 08 BIDS 04 IDEN BIDS	LBS. 85000	6,970	LOW	YOUNGSTOWN SHT. & TUBE CO. YOUNGSTOWN OHIO	.082	DEST	737	1	11/61
					UNITED STATES STEEL CORP. HARTFORD CONN.	.083	DEST			
					BETHLEHEM STEEL CO. BETHLEHEM PA. BETHLEHEM STEEL CORP.	.083	DEST			
					REPUBLIC STEEL CORP. CLEVELAND OHIO	.083	DEST			
	SPRINGFIELD ARMORY ORD. SPRINGFIELD MASS. DEST. SPRINGFIELD MASS. 7/8 IN. DIA. HOT ROLLED CARBON STEEL BARS ORD-19-058-62-63 10 BIDS 02 IDEN BIDS	LBS. 40770	3,367	LOW	YOUNGSTOWN SHT. & TUBE CO. YOUNGSTOWN OHIO	.083	DEST	737	2	11/61
					UNITED STATES STEEL CORP. HARTFORD CONN.	.084	DEST			
						.084	DEST			
	MIL. INDUST. SUPPLY AGY. PHILA. PA. 11/4 DIA. HOT FINISHED STEEL BARS IFB-61077-1411-A2 08 BIDS 02 IDEN BIDS	LBS.		LOW	CONTINUED			768	2	12/61

FSC CLASS TITLE AND AGENCY, DESTINATION, PRODUCT DESCRIPTION, INVITATION NUMBER, BIDDER INFORMATION	AMOUNTS AWARDED: UNIT OF MEASURE AND QUANTITY	AMOUNTS AWARDED: TOTAL VALUE (dollars)	BASIS OF AWARD	NAME OF IDENTICAL BIDDER AND AWARD INDICATION	EVALUATED UNIT PRICE (dollars)	F.O.B. PRICE BASIS	CASE NUMBER	LINE ITEM NO.	BID OPENING DATE
9510 BARS AND RODS, IRON AND STEEL	4958	2,663			.537	DEST			
				THE CARPENTER STEEL CO. READING PA.	.607	DEST			
				JESSOP STEEL CO. WASHINGTON PA.	.607	DEST			
MINN. DEPT. OF ADMIN. ST. PAUL MINN. DEST. ST. PAUL MINN. COLD FINISHED STEEL BARS P.O. 12708 04 BIDS 02 IDEN BIDS	LBS. 29000	2,741	LOW		.094	DEST	50099	534	11/61
				JONES&LAUGHLIN STEEL CORP. PITTSBURGH PA.	.096	DEST			
				WYCKOFF STEEL CO. CHICAGO ILL.	.096	DEST			
MINN. DEPT. OF ADMIN.a/ ST. PAUL MINN. DEST. ST. PAUL MINN. COLD FINISH STEEL BARS P.O.12708 04 BIDS 02 IDEN BIDS	LBS. 49000	4,631	LOW		.095	DEST	50100	533	11/61
				JONES&LAUGHLIN STEEL CORP. PITTSBURGH PA.	.094	ORIG			
				WYCKOFF STEEL CO CHICAGO ILL.	.094	ORIG			
STATE OF TENN.,PURCH.DEPT NASHVILLE TENN. DEST.NASHVILLE TENN. COLD ROLLED STEEL SHEETS 345 12 BIDS 06 IDEN BIDS	CWTS. 1000	7,233	LOW		7.234	DEST	50180	1	11/61
				REPUBLIC STEEL CORP. CLEVELAND OHIO	7.29	DEST			
				U.S. STEEL CORPORATION TENN. COAL & IRON DIV. FAIRFIELD ALA.	7.29	DEST			
				GRANITE CITY STEEL CO. MEMPHIS TENN.	7.29	DEST			
				JONES & LAUGHLIN STEEL PITTSBURGH PA.	7.29	DEST			
				CONTINUED					

Identical bid data based on f.o.b. origin price; award and "total value" based on lowest delivered price to the specified destination.

FSC COMMODITY CLASS	FSC CLASS TITLE AND AGENCY, DESTINATION, PRODUCT DESCRIPTION, INVITATION NUMBER, BIDDER INFORMATION	AMOUNTS AWARDED: UNIT OF MEASURE AND QUANTITY	AMOUNTS AWARDED: TOTAL VALUE (dollars)	BASIS OF AWARD	NAME OF IDENTICAL BIDDER AND AWARD INDICATION	EVALUATED UNIT PRICE (dollars)	F.O.B. PRICE BASIS	CASE NUMBER	LINE ITEM NO.	BID OPENING DATE
9510	BARS AND RODS, IRON AND STEEL				ARMCO STEEL CORPORATION ARMCO DIV.OF ARMCO STL MIDDLETON OHIO	7.29	DEST			
					WHEELING STEEL CORP. WHEELING W.VA.	7.29	DEST			
	STATE OF TENN..PURCH. DEP NASHVILLE TENN. DEST.NASHVILLE TENN. 14 GAUGE COLD ROLLED STEEL SHEETS 345 12 BIDS 06 IDEN BIDS	CWTS. 1000	7.183	LOW				50181	2	11/61
						7.184	DEST			
					REPUBLIC STEEL CORP. CLEVELAND OHIO	7.24	DEST			
					U.S. STEEL CORP. TENN.COAL & IRON DIV. FAIRFIELD ALA.	7.24	DEST			
					GRANITE CITY STEEL CO. MEMPHIS TENN	7.24	DEST			
					JONES & LAUGHLIN STEEL PITTSBURGH PA.	7.24	DEST			
					ARMCO DIV..ARMCO STEEL MIDDLETON OHIO	7.24	DEST			
					WHEELING STEEL CORP. WHEELING W.VA.	7.24	DEST			
9515	PLATE, SHEET, AND STRIP, IRON AND STEEL									
	MIL.INDUST.SUPPLY AGY. PHILA. PA. DEST.BAYONNE N.JERSEY STEEL CORROSION-RESISTING FLOOR PLATE 1FA-03077-68-63 04 BIDS 02 IDEN BIDS	LBS. 47187	42.077	LOW				86	3A	8/61
						.8917	DEST			
					HORRISON STEEL CO. NEW BRUNSWICK N.J.	.8925	DEST			
					INLAND STEEL CORP. CHICAGO ILL. JOS.RYERSON&SONS INC. PHILA. PA.	.8925	DEST			
					CONTINUED					

FSC CLASS TITLE AND AGENCY, DESTINATION, PRODUCT DESCRIPTION, INVITATION NUMBER, BIDDER INFORMATION	AMOUNTS AWARDED: UNIT OF MEASURE AND QUANTITY	AMOUNTS AWARDED: TOTAL VALUE (dollars)	BASIS OF AWARD	NAME OF IDENTICAL BIDDER AND AWARD INDICATION	EVALUATED UNIT PRICE (dollars)	F.O.B. POINT BASIS	CASE NUMBER	LINE ITEM NO.	BID OPENING DATE
PLATE, SHEET, AND STRIP, IRON AND STEEL NAVY PURCHASING OFFICE WASHINGTON D.C. DEST.VALLEJO CALIF. HIGH YIELD STRENGTH STEEL PLATE IFB600-163-62 09 BIDS 02 IDEN BIDS	LBS. 20432	6,364	OTHER	ARMCO STEEL CORP HOUSTON TEX. U.S.STEEL CORP. WASHINGTON D.C. AWARD	.3115 .3115 .3115	DEST DEST DEST	156	36	9/61
NAVY PURCHASING OFFICE WASHINGTON D.C. DEST.VALLEJO CALIF. HIGH YIELD STRENGTH STEEL PLATE IFB600-163-62 09 BIDS 02 IDEN BIDS	LBS. 10386	3,115	OTHER	ARMCO STEEL CORP HOUSTON TEX. U.S.STEEL CORP. WASHINGTON D.C. AWARD	.3000 .3000 .3000	DEST DEST DEST	156	70	9/61
A.E.C.MAN.OP.OFF- KAISER RICHLAND WASH. DEST.RICHLAND WASH. CARBON STEEL SHEETS 9921-7282 06 BIDS 03 IDEN BIDS	LBS. 110725	11,368	LOW	DUCOMMUN METALS&SUPPLYCO. LOS ANGELES CALIF. BARDE STEEL CO. SEATTLE WASH. A.M.CASTLE & CO. SEATTLE WASH. GILMORE STEEL CORP. PORTLAND ORE.	.1025 .1124 .1124 .1124	DEST DEST DEST DEST	404	2	10/61
MIL.INDUST.SUPPLY AGY. PHILA. PA DEST.MANASSAS VIRGINIA HOT ROLLED ALLOY STEEL STRIP IFB-63077-725-62 09 BIDS 02 IDEN BIDS	LBS. 19236	4,072	LOTTERY	CONTINUED	.2117	DEST	446	1	10/61

Senator KEFAUVER. If you want to be competitive, why do you have to quote exactly the same price even though your plant may be closer?

Mr. PATTON. I think that is being the most highly competitive that you can be.

Senator KEFAUVER. In other words, you think an identical price is a competitive price?

Mr. PATTON. I personally think it is evidence of real competition, yes.

The customer then has a chance to buy from five or six producers at the lowest possible price instead of one producer.

Senator KEFAUVER. What difference does it make whether he buys from five or six, rather than one, if the prices are just the same?

Mr. PATTON. It makes a lot of difference if he has a choice.

He can determine which plants he wants to buy from. There may be labor trouble in one plant or there may be something else and he has a choice of placing his business with six plants instead of one.

Senator KEFAUVER. United States Steel in our 1957 hearings furnished us with a number of examples, among others who bid identically on sealed bids at delivered prices, which are set forth at pages 960 and 961 of part 3. The competition that saves the pocketbook of the consumer is price competition, is it not?

Mr. PATTON. Competition?

Senator KEFAUVER. Competition that helps the consumer is price competition?

Mr. PATTON. It is a good deal more than price. Price is one element of competition, but I am sure the customer is interested very much in the competitive quality of the material that is delivered to him, the reliability of the company that is making the delivery; that it is going to get it there on time when he needs it.

There are a lot of factors that go into competition besides price, sir.

Senator KEFAUVER. The qualities are set forth by the specifications, I would take it, and you would not say that other companies would not meet those specifications?

Mr. PATTON. They all try to meet them, but some do it better than others.

Senator KEFAUVER. Mr. Patton, I have been very much interested in why it is that every time there has been a price increase by a substantial company, usually United States Steel, that you and all the other companies have gone up exactly by the same amount to exactly the same price. I am talking about the base prices.

On page 14 and page 15 of the report of the subcommittee on steel, there are tables showing identical price increases by a number of companies. I ask this be made a part of the record.

(The tables referred to are as follows:)

TABLE I.—*Identical price increases for steel products, July 1, 1957*

Product	Number of companies reporting	Number of identical increases, July 1957	Product	Number of companies reporting	Number of identical increases, July 1957
Hot-rolled bars	9	9	Galvanized sheets	8	8
Cold-finished bars	4	4	Cold-rolled:		
Concrete reinforcement bars	9	9	Sheets	9	9
Structural shapes	8	[1] 6	Strip	7	7
Sheet piling	2	2	Wire rods	7	7
Plates	9	9	Wire:		
Rails, No. 1	4	[2] 3	Annealed	7	7
Hot-rolled:			Galvanized	7	[3] 6
Strip	9	9			
Sheets	9	9			

[1] 1 up 10 cents per ton more; 1 up earlier.
[2] 1 up 50 cents more.
[3] 1 above general range, narrowed spread.

Source: Letters from 10 steel companies, July to August 1957, in response to letter from Antitrust and Monopoly Subcommittee.

TABLE II.—*Identical price increases for steel products, Aug. 7, 1956*

Product	Number of companies reporting	Number of identical increases, August 1956	Product	Number of companies reporting	Number of identical increases, August 1956
Hot-rolled bars	9	[1] 7	Hot-rolled sheets	9	9
Cold-finished bars	4	4	Galvanized sheets	8	8
Concrete reinforcement bars	8	[2] 6	Cold-rolled sheets	9	[4] 7
Structural shapes	8	8	Cold-rolled strip	7	7
Sheet piling	2	2	Wire rods	7	[5] 6
Plates	9	[3] 8	Wire:		
Rails, No. 1	4	4	Annealed	7	7
Hot-rolled strip	9	9	Galvanized	7	7

[1] 2 others up 10 cents per ton more.
[2] 1 other up $5 per ton more; 1 other up 10 cents per ton more.
[3] 1 other up $2 per ton less.
[4] 2 others up 10 cents per ton less.
[5] 1 other up 10 cents per ton less.

Source: Letters from 10 steel companies, July to August 1957, in response to letter from Antitrust and Monopoly Subcommittee.

Senator KEFAUVER. The records of the subcommittee do not disclose a single instance in which a major producer ended up with a lower price for any product than United States Steel's price after the changes.

That was true in 1957, 1956, and other occasions.

Why do you have to increase your price exactly the same amount as the others increase it?

Mr. PATTON. May I have the record clear on this?

In this pricing area, I am speaking only for myself and my own company and do not purport to speak for anyone else and have no authority to speak for anyone else.

Answering for myself, we believe that we are entitled to get the same price as our competitors do, and we do not think we can get any more, and we are not willing to say that we are poor salesmen to the point that we have to take less.

So we try to get the same price as our competitors for the same product, generally.

Senator KEFAUVER. So you do not want to have any price competition with your competitors?

Mr. PATTON. Oh, yes, yes, there is considerable price competition.

Senator KEFAUVER. But you want to quote the same price that they quote?

Mr. PATTON. Well, when we are competing for a piece of business, we have to meet the price of the other steel companies.

We think we ought to be able to get that business at as good a price as they do. We do not think we can get any more for our steel than they can and are not willing to take any less.

Senator KEFAUVER. I am talking about increases—identical increases. Your costs of operation are different, you will admit. Some companies are more efficient than others. Why do you have to raise your price the same identical amount as United States Steel, regardless of whether you need the extra profit, regardless of what capacity of production you are operating at?

Mr. PATTON. Most of the time if we were free and did not have a competitive market to contend with, we would have raised our prices higher because we needed higher prices to recoup our costs.

But we could not raise it any higher than our competitors and hope to get business, so we raised them to the extent that we were meeting competition in the marketplace.

Senator KEFAUVER. In other words, you raised them to meet competition in the market?

Mr. PATTON. Yes, sir.

Senator KEFAUVER. Would you not have had more competition if you had not raised them so much?

Mr. PATTON. Not for over an hour because the purchasing agent of the company would have called up another steel company and said, "Republic's price is $1 lower, will you meet it?" And they would have met it, and the result would have been we would have gotten the business at $1 less and have lost $1 profit.

Senator KEFAUVER. How do you know that? When did that ever happen?

Mr. PATTON. It has happened in the past.

Senator KEFAUVER. Give me your documentation.

Mr. PATTON. I do not have any right at the moment here, except to say this:

We raised—I will give you an example—we raised the price of bars $2 a ton several years ago higher than our competitors, forging bars, and we kept that in for several days and nobody else met the price, so we had to come down or we did not get any business.

Senator KEFAUVER. Naturally, if you got a higher price, but give me the documentation when you raised your price less than your competitors.

Mr. PATTON. I do not know.

We have raised our prices and our competitors have come up, met them, in the marketplace.

They have raised theirs; we have met them.

Some have been lowered, and we have met those.

Senator KEFAUVER. Whether you call it follow the leader, acting together, monopoly——

Mr. PATTON. Oh, no.

We want to get the business at the going price.

Senator KEFAUVER. There is your problem, operating at only 50 percent of capacity, all selling at the same price, not competing in the foreign markets, even though you do not know whether your cost of production is higher or lower than that of your foreign competitors. That is the reason the Antitrust Subcommittee is interested.

Here is an interesting example. You will remember in 1958, Mr. Patton, when a little company, Alan Wood, raised its price $6 on July 8.

Do you remember when that happened?

Mr. PATTON. Yes, I have a recollection.

Senator KEFAUVER. Alan Wood is a small company in Pennsylvania. They raised their price, and then they had to rescind it because United States Steel and the others did not go along.

The president of Alan Wood stated, as carried on page 4481 of the subcommittee hearings on the 1958 steel price increase:

> We are disappointed that the big mills have not increased their prices. We have no alternative but to stay competitive with their prices.

Do you remember that?

Mr. PATTON. Yes, sir.

Senator KEFAUVER. And then you came along with Armco on the 29th of July, and you and Armco on exactly the same day announced that you were raising your prices by $4.50 a ton.

You remember that, do you not?

Mr. PATTON. No, I do not remember that.

Senator KEFAUVER. This is the clipping from the Washington Post of July 30.

Mr. PATTON. What year?

Senator KEFAUVER. 1958. I will ask that it be put in the record at this point.

(The document referred to is as follows:)

[From the Washington Post, July 30, 1958]

ARMCO STEEL BOOSTS PRICE

MIDDLETOWN, OHIO, July 29.—Armco Steel Corp. said today it will increase prices on a dozen steel products effective Thursday and Republic Steel Corp. indicated it will follow suit shortly.

Thomas F. Patton, president of Republic, the Nation's third largest steel producer, said in Cleveland:

"If Armco sees fit to raise its prices, we will follow promptly. We will meet in the morning to discuss the situation."

The Armco announcement said the increases will average 2.75 percent on the products involved. Armco is the Nation's seventh largest steel producer.

A month ago Republic had take the position that it could not raise prices unless United States Steel acted first. Board Chairman Charles M. White said then: "If we did (raise prices before Big Steel acted), we wouldn't sell any steel."

Armco's price increase action was the first by a major American steelmaker this summer. Its announcement followed word earlier this afternoon from United States Steel's chairman, Roger Blough, that "we haven't anything in mind at the present time" on a price hike.

With Armco breaking the hold-the-line front and Republic promising to follow, it seemed likely other producers would take similar action. For months they have been asserting that the July 1 wage increase given under the United Steelworkers contract and estimated as adding $4 a ton to their costs would have to be passed along to consumers, at least in part.

President Patton, president of the third largest steel producer, said in Cleveland:

If Armco sees fit to raise its prices, we will follow promptly. We will meet in the morning to discuss the situation.

And then it points out that a month ago Republic had taken the position that it could not raise prices unless United States Steel acted first.

Charles M. White said:

If we did (raise prices before Big Steel acted), we would not sell any steel.

You did raise them $4.50 a ton the same day that Armco did. Did you know that United States Steel was going to back up your price when you raised yours?

Mr. PATTON. I certainly did not, no, but if Armco was willing to test the market, we were willing to test it, too. We needed a price increase badly.

Senator KEFAUVER. Mr. White had said that if you raised the price before United States Steel, you would not sell any steel, and you could not raise prices unless United States Steel acted first, and, yet, you did act before United States Steel?

Mr. PATTON. Yes, we acted, and I will say that if United States Steel or the other steel companies did not become competitive price-wise, our price rise would not have stuck.

Senator KEFAUVER. And the next day United States Steel did raise its prices?

Mr. PATTON. I cannot answer that.

Senator KEFAUVER. That is a fact, by $4.50 a ton.

Now, how did you and Armco both know that you would raise your prices the same day and the same amount, $4.50 a ton?

Mr. PATTON. I presume that we found out from our customers that day that Armco had raised its prices, and we were going to raise our prices to get the same price for our product that Armco was getting for its, because we needed a price increase.

Senator KEFAUVER. Why did you not just raise it to $4.40 a ton?

Mr. PATTON. Because if we raised it less, we would have our price met at a lower price and we would be giving a dollar or whatever it was of our profits away. We are not in business to do that.

Senator KEFAUVER. How do you know that Armco would come down?

Mr. PATTON. If they did not, we would have gotten some business.

Senator KEFAUVER. If you want to get your operating capacity up 50 percent, make steel for lower cost, which you could if you raised capacity, if you want to get your markets back, put all these people back to work that you have been talking about, might it not be in the public interest for you to raise prices less and have the others come back, if they want to, and meet your lower price?

Mr. PATTON. It is in our interest to get as high a price for our product as the market will permit us to get, and if another steel company raises the price, we think our salesmen and our product are as good as theirs and we hope to get the same price that they do.

Senator KEFAUVER. One notable exception that I know of when a steel man did not go along with the price increases, thereby serving the public interest and bringing some competition into the industry, was in the early 1930's when Mr. Weir did not go along with the in-

dustry's price increases. He was competitive and brought some competition and lower prices to the steel industry. Since that time I know of no occasion when that has happened.

That helped build up Weirton Steel, which increased their business and made them more competitive, did it not? You are familiar with that story, I presume?

Mr. PATTON. Back in the early 1930's?

Senator KEFAUVER. Yes.

Mr. PATTON. No, I am not familiar with that story.

Senator KEFAUVER. Very well.

Mr. PATTON. Way before my time.

Senator KEFAUVER. It has been written about. You may be young, Mr. Patton, but I thought you would remember that.

Mr. PATTON. I am not as young as I would like to be, no.

Senator KEFAUVER. Mr. Patton, in 1958, when you and Armco brought about a price increase, when you really started losing your markets, your operating rate was very low, was it not?

Mr. PATTON. In 1958 it was a poor operating rate year. It was also a year, as I recall it, in which we had a substantial labor cost increase.

Senator KEFAUVER. We will make this next table a part of the record. It is derived from the magazine Steel.

(The table referred to is as follows:)

Changes in average price of finished carbon steel

Price before change	Change		Price after change	Operating rate at time of change
	Amount	Date		
$145.42	$4.54	Aug. 10, 1958	$149.96	61.
$140.24	5.95	July 1957	146.19	79.
$130.85	6.90	July 1956	137.75	Strike.
$118.45	8.96	July 1955	127.41	85.
$113.20	4.32	June 1954	117.52	72.
$112.51	3.05	July 1953	115.56	93.
$106.32	4.66	June 8, 1952	110.98	Strike.
$100.76	5.56	December 1950	106.32	98.
$95.09	5.67	November 1950	100.76	97.

Source: Prices: Steel, the metalworking weekly, Jan. 4, 1960, pp. 8–17, "Finished Steel—Arithmetical Price Composite."
Operating rate: Ibid., pp. 5–8, and Department of Commerce, Business Statistics, 1951, 1953, 1955, and 1957 editions.

Senator KEFAUVER. The operating rate of the steel industry generally was 61 percent of capacity. You raised the price to $4.54.

Then in 1954 when steel's operating rate was only 72 percent of capacity, you raised the price by $4.32.

Do you not think you would be more competitive and attain a higher operating rate, Mr. Patton, if you did not all raise by the same amount, particularly in recession years.

Mr. PATTON. Senator, I know from experience that if you put a price in that is any different than the going price, up or down, the purchasing agent of your customer is going to be calling the company, and you are either going to have the same price—if your price is lower, your competitor is going to come right down to meet it, and if your price is not as high as your competitor's you are going to lose money, and you are not doing the job you should do to make money.

Senator KEFAUVER. You say that if you raise your price less, that your competitors will meet it. I asked you to document that and you have no documentation.

Mr. PATTON. Look here, here is the Wall Street Journal. I can read it all over. Here is the Wall Street Journal of April 7.

"United States Steel boosted their sales discount" to their pipe distributors to 4 percent. That means they get 4 percent less for their product.

We came right down to meet that, because if we did not, we would not get any pipe business.

Here United States Steel cuts mill price on all-country goods to meet dealers, July 13. If we were going to get any business, we had to do the same thing, and we did.

Here stainless steel price, June 1, 1961, Wall Street Journal, stainless steel price cut by Ludlum on verge of spreading. We had to cut our prices or we were not going to get any stainless business.

Here is a sheet that shows price cut after price cut in the last year and a half and we all had to come down or we were not going to get business.

Senator KEFAUVER. They were made by somebody else, not by you. Allegheny & Ludlum is a small company. What all this amounts to, really, Mr. Patton, is that even though you have a number of companies in the steel business, there is no real price competition. There may be competition among salesmen, for better service, but there is no real price competition.

Mr. PATTON. What would you call this? On June 6, 1961:

United States Steel cuts seamless pipe prices $18 a ton.

We had to cut ours $18 a ton or we would not have gotten any business. I suppose the other pipe producers did the same thing.

Is that not price competition, sir?

Senator KEFAUVER. I will be frank with you, that is what I would like to see more of.

Mr. PATTON. And frankly that is what is ruining us, because we are not making any money.

Senator KEFAUVER. These are mostly fringe items. I am talking about basic steel.

Mr. PATTON. Pipe is basic steel, one of the big items of basic steel.

Senator KEFAUVER. On hot-rolled bars, cold-finished bars, sheets and strip plates—the basic steel items—the price increases have been exactly the same.

Now, to recapitulate, Mr. Patton, unless Senator Ervin wants to ask some questions——

Senator ERVIN. I have been interested in some of the questions.

Do you know any people who are seeking to purchase steel in the United States today who are unable to find the steel to purchase?

Mr. PATTON. I did not get the question, sir.

Senator ERVIN. Do you know any people in the United States who are desirous of purchasing steel who are unable to have their needs satisfied at the present time?

Mr. PATTON. I do not.

Everybody is looking for the people who want to purchase steel, and everybody who wants steel in the United States can get it today.

Senator ERVIN. Would the steel industry, I just wonder, would they be opposed to working at full productive capacity?

Mr. PATTON. We would like nothing better.

Senator ERVIN. With reference to increasing prices since 1950, have not prices of most everything increased since 1950?

Mr. PATTON. Yes, sir, the prices, the whole price level is considerably higher since 1950.

Senator ERVIN. I was just thinking the U.S. Senators, if I remember correctly, were making $20,000 a year, and now it is $22,500.

Now, does the U.S. Government benefit very much in the profits that are made by industry, in general?

Mr. PATTON. It does to the extent of 52 percent. They benefit the most.

Senator ERVIN. And do you not think that Congress could assist in bringing down the cost of most things, steel and everything else, if Congress would quit taking 52 percent of all the net profits of industry?

Mr. PATTON. That would certainly help.

Senator ERVIN. And do you not think that the Congress could probably do something along that line if it would quit spending as much money as it is spending?

Mr. PATTON. Yes, sir.

And I hope that the Congress will do something about it next term.

Senator ERVIN. Do you think a person could make a correct estimate as of the cost of a suit of clothes by ascertaining what a spool of thread costs?

Mr. PATTON. No; I do not, sir.

Senator ERVIN. I once read some man advertised he was going to present the play "Hamlet" with the Prince of Denmark left out. Now, in computing the cost of steel, do you not have to take, in addition to the cost of coal and iron ore, such things as the cost of transportation, the cost of labor, costs of taxes and ad valorem, franchise, income, and many other factors?

Mr. PATTON. Many, many elements enter into the total cost; yes, sir.

(At this point in the proceedings, Senators Eastland and Hart enter the hearing room.)

Senator ERVIN. That is all.

Oh, one other question:

Is it possible for this committee to ascertain what steel products of various kinds are being sold for in the American market today, both by domestic producers and also by foreign producers?

Mr. PATTON. The prices are available; yes, sir.

Senator ERVIN. That is all.

Senator KEFAUVER. I think that is all the questions I have.

The CHAIRMAN. We will adjourn now.

Senator KEFAUVER. Judge Loevinger is here.

The CHAIRMAN. Judge Loevinger?

Senator KEFAUVER. I do want to say, in conclusion, Mr. Patton, that you made a rather harsh statement against the chairman and the subcommittee. As to the comparison whether you are on the same cost basis or whether foreign companies are in a more favorable posi-

tion than you are, and whether you can compete, your documentation has been very scanty, indeed.

Mr. PATTON. May I respectfully differ with you.

I think that we filed a completely documented case.

Senator KEFAUVER. And that in the final analysis is at the heart of what you are complaining about here.

The CHAIRMAN. I think he has made a very fine witness.

Mr. PATTON. May I express to the committee my appreciation for the opportunity that you gave us to appear and the courteous consideration that you are giving to the facts that we are trying to present to you.

Senator HART. Mr. Chairman, let me just, as one who has not spoken so far, express the wish that you can hold in greater confidence the ability of this committee to receive information without having a sieve effect at the other end, because I think the information we seek would be most helpful to us.

I would not want to do damage to American business, and if we could agree on the proposition that this committee is not a megaphone, I think we would agree that we could have the information.

Senator KEFAUVER. I think I pointed out previously that we have had the General Motors profit data in the subcommittee for 5 or 6 years, and it has not been revealed to anybody, and we have had Westinghouse and General Electric data for a year before the subcommittee and there have been no revelations. We had detailed cost data summarized for the bread industry and there has been no leak of the individual company figures.

My point is, while I do not concede that any harm would be done to American steel by production of the cost data, because I think the European costs are as high or higher than American steel, we have tried to make every reasonable effort to have the Comptroller General, in whom I know Mr. Patton has confidence, receive the information, send it back immediately or take it in executive session or disguise it in any way whatsoever that might be suggested, as long as it serves some useful purpose to the subcommittee.

The CHAIRMAN. Now, there is no point in the steel people coming back.

We will wind the hearings up now and proceed with Judge Loevinger.

(At this point in the proceedings, Senator Scott enters the hearing room.)

The CHAIRMAN. Sit down, Mr. Loevinger.

He is your witness.

Senator KEFAUVER. Judge Loevinger. I personally appreciate your coming up here.

I am very glad to see you, as I know other members of the committee are. I think you are a fine and great public servant.

Judge Loevinger, you are, of course, the head of the Antitrust Division of the Department of Justice. You are concerned with the antitrust laws and the enforcement of the antitrust laws.

I do not know if you heard me, sir.

STATEMENT OF LEE LOEVINGER, ASSISTANT ATTORNEY GENERAL, HEAD OF THE ANTITRUST DIVISION OF THE U.S. DEPARTMENT OF JUSTICE

Mr. LOEVINGER. Yes, sir.

I am appearing in response to your request, Mr. Senator. I am a little diffident in appearing as an official of an executive department, since I feel that the matter that is before this committee is a matter of legislative concern and legislative policy.

The CHAIRMAN. It is a matter for the committee to determine.

Mr. LOEVINGER. Sir?

The CHAIRMAN. It is a matter for this committee to determine, is it not?

Mr. LOEVINGER. Yes, sir.

The CHAIRMAN. Is it not a housekeeping job of the committee?

Mr. LOEVINGER. Yes, sir.

And I do not wish to assume to tell the committee what it should do on a matter of legislative policy, nor to intrude my own personal attitudes, nor those of the Department, into the affairs of this committee.

However, insofar as I may have any technical knowledge or information that may be of assistance of the committee, I will be very happy to answer whatever questions that the committee may address to me.

The CHAIRMAN. Senator Kefauver?

Senator KEFAUVER. Judge Loevinger, we appreciate that you are here by request and that you are not volunteering to come, but you are an expert in the antitrust field and you know the problems of enforcement of antitrust laws, and you are familiar, of course, with court decisions, as the antitrust laws have been applied.

Has there been under consideration in the Department of Justice for a number of years, as there has also been in this committee, consideration of some proposal to strengthen the Sherman Act, concerning the authority to secure dissolution in cases where it is shown to be justified?

Mr. LOEVINGER. I do not think I could say, Senator Kefauver, that there has been any official consideration. Of course, those of us interested in this subject have talked, as everyone talks casually, about the kind of laws that one might enact if one had complete and absolute power to enact any laws, but I do not believe that there is an official position with respect to——

The CHAIRMAN. That is the answer. There has been no official position?

Mr. LOEVINGER. Yes, sir.

The CHAIRMAN. And no request for legislation.

Now, proceed.

Senator KEFAUVER. That is not the answer, Mr. Chairman.

The CHAIRMAN. I do not think we are interested in what some fellow said over a cup of coffee.

Senator ERVIN. I never saw a lawyer at any time in my life that would not like to have had the law so that he could win all his cases.

Mr. LOEVINGER. Precisely, sir.

Senator ERVIN. I have had that desire from the time I got my law license.

Senator KEFAUVER. Judge Loevinger, is it not true that in 1958, your predecessor, Judge Hansen, the Assistant Attorney General under President Eisenhower, made a recommendation before the Antitrust Committee that there be some application——

The CHAIRMAN. Now that speaks for itself.

Senator KEFAUVER. Mr. Chairman, am I going to be cut off before I even ask the question?

The CHAIRMAN. You know the record is there. The record of the committee hearing speaks for itself, and it is the best evidence.

Senator KEFAUVER. I am trying to ask the witness a question.

The CHAIRMAN. You asked him did he know that he said something in a hearing.

Now, the hearing speaks for itself. The best evidence of the hearing is what happened at the hearing.

What about it, Senator Ervin?

Senator ERVIN. Well, I would say that from the standpoint of evidence the chairman is right, but I do not believe that congressional committees observe the rules of evidence. I wish they did.

The CHAIRMAN. Go ahead.

Senator KEFAUVER. I was going to ask Judge Loevinger if he did not know that Judge Hansen had recommended that this committee give consideration to, and that he personally recommended the adoption of the section 7 Clayton Act test to section 2 of the Sherman Act.

Mr. LOEVINGER. I am not familiar with this particular testimony of Judge Hansen, Senator Kefauver.

Senator KEFAUVER. Judge Loevinger, do you know that the subcommittee has had under consideration a bill of this kind before it, and has had the matter under consideration for some length of time?

Mr. LOEVINGER. You are referring to the Gore bill?

Senator KEFAUVER. Yes.

Mr. LOEVINGER. Is that S. 3160?

Senator KEFAUVER. That is the bill before us.

Mr. LOEVINGER. Yes; I have read that proposal, sir.

Senator KEFAUVER. Whether you agree with the particular terms of that bill—and I do not want to get into the details—do you feel that there should be some strengthening of the Sherman Act?

Mr. LOEVINGER. I am not prepared or authorized to state a position on this, Senator Kefauver. This is a matter that would certainly be administration policy, and, not having a determination, I could not answer a question of this sort.

Senator KEFAUVER. In considering strengthening the Sherman Act by perhaps adding to it some criteria such as we have in section 7 of the Clayton Act, is cost data essential to a valid understanding of the relationship of size to efficiency?

Mr. LOEVINGER. I would think it to be self-evident that there is a relationship between the cost data, prices, and efficiency. This is a slightly different matter than we are ordinarily concerned with in the antitrust field, which is that of monopoly power.

Senator KEFAUVER. In any matter concerning dissolution we must consider the effect on efficiency. Do you not think cost data are necessary for a determination of that issue?

Mr. LOEVINGER. Again, I can only say that it seems to me to be a self-evident proposition that there is a relationship between cost data and efficiency.

In the antitrust field, however, the test is not efficiency, but with respect to the area of phenomena to which you now address yourself, the standard that Congress has prescribed and which the antitrust laws are concerned with is the standard of monopoly power.

Now, this is not necessarily determined by efficiency. The standard of monopoly power is a standard that has to do with the degree of responsiveness or immunity from responsiveness to market forces of a particular enterprise or group of enterprises.

This may or may not be related to efficiency, and efficiency may or may not be suggestive of monopoly power. However, cost price data is most certainly relevant, and there is a long history of economic commentary as well as of legal holdings as to the relationship between cost-price data and monopoly market power.

Senator KEFAUVER. But efficiency has been one of the major considerations; for instance, in the 1920 *U.S. Steel* case under the Sherman Act.

(At this point in the proceedings, Senator Eastland leaves the hearing room.)

Mr. LOEVINGER. The *U.S. Steel* case was a case brought under section 2 of the Sherman Act, in which it was alleged that the aggregation of companies into a single enterprise violated section 2 by virtue of constituting monopolization. The Supreme Court in an opinion which as I recollect was a minority opinion, because two Justices were disqualified, and it was a 4-to-3 opinion, the Supreme Court held that monopolization had not been established because the Government had not proved the power to control price in the marketplace.

Now, if you are using efficiency in this sense, then it is much easier for me to answer the question. You then are using a somewhat more conventional antitrust standard. I think that it is perfectly clear from the whole course of economic thought from quite literally the beginning of economic theory, that the relationship between cost and price is one of the important indicia of monopoly power in the market. If I may take just a moment to refer to some of the authorities on this subject, if you deem them relevant to this inquiry, the first great economic theorist of cost was Adam Smith. His work was published as long ago as 1776. He said, and I quote—

> In the wealth of nations the price of monopoly is upon every occasion the highest which can be gotten. The natural price or the price of free competition on the contrary is the lowest which can be taken, not upon every occasion, indeed, but for any considerable time together. The one is upon every occasion the highest which can be squeezed out of the buyers or which it is supposed they will consent to give. The other is the lowest which the sellers can commonly afford to take and at the same time to continue their business.

Then as you come down through history, to contemporary times, you will find that there are elaborations of this theory, but that basically the same relevancy is found to exist.

For example, Prof. Joe S. Bain, one of the noted economists in this field wrote in February 1941 in the Quarterly Journal of Economics that—

> The profit rate of industry might be taken as a measure of deviation from competitive equilibrium.

The title of his article was "The Profit Rate as a Measure of Monopoly Power."

Prof. Frederick A. Hayeck in 1948 in "Individualism and the Economic Order," said that—

> Where there is entrenched monopoly, prices were likely to be higher than marginal cost, but that much more serious than the fact that prices may not correspond to marginal cost is the fact that with entrenched monopoly costs are likely to be much higher than is necessary.

Mr. Edward F. Howrey, the appointee of President Eisenhower as Chairman of the Federal Trade Commission in 1955 in an address to the Antitrust Law Section of the New York State Bar Association, said that—

> An indicator of competition is the passing of cost savings on to the consumer or the responsiveness of prices to changes in cost.

In a recently published book published by the Vanderbilt University Press in 1961, Prof. George W. Stocking, one of the outstanding scholars in this field, has said, and I quote:

> The aspects of performance most relevant to determining whether a firm possesses monopoly power are its pricing policies and its profits record. The courts have defined monopoly power as the power to exclude competitors and the power to control price.
>
> In doing so, they doubtless have been influenced by economists. At any rate, economists will not take exception to their definition, although they might suggest a narrowing of it to the single concept, the power to control price since the power to exclude competitors will reflect itself in the power to control price.

Senator KEFAUVER. Yes, I know Dr. Stocking. Now, Judge Loevinger, in trying to consider legislative standards as to what would constitute monopoly, would not cost data be valuable to a committee considering legislation?

Mr. LOEVINGER. Senator, I always refused to tell my clients what to do when I was in private practice, and I do not think I should tell the Senate what to do. There are many considerations that may be involved. As you are aware, the U.S. Supreme Court has said, and some of our outstanding judges on our circuit courts have said, that there are other than economic considerations involved in antitrust objectives.

There are considerations involved in maintaining a plural organization of economic power which go to the kind of society in which we live. The Supreme Court has said that one of the objectives of the antitrust laws is maintaining a kind of social organization in which democracy may flourish. These are considerations which Congress has taken into account and which I think it may properly take into account.

Economic considerations are obviously relevant. I would not say what the considerations might be that Congress may wish to weigh in determining policy.

Senator KEFAUVER. Very well.

This subcommittee, for a number of years, has been studying administered prices. We have conducted inquiries into pricing practices and policies of a number of industries, particularly steel, where there is a relatively high level of concentration, and where prices do not change unless they go up, even though the plants may be operating at a low rate of capacity, where they do not respond in the way that you would expect under normal competitive circumstances. Questions have arisen as to whether the Sherman Act should be strengthened with respect to this kind of pricing practice.

Is it your opinion that cost data is important in the study of pricing practices in a concentrated industry in an inquiry to determine what laws might be passed, what might be done to the Sherman Act or how the problem of administered prices can be handled?

Mr. LOEVINGER. There is no question that cost data is relevant to the issue of concentration of economic power and of monopoly power. I think that one of the best summaries of the legal view of this subject is contained in a report of the Sherman Act Subcommittee of the American Bar Association Antitrust Section in August 1960. This is to be found in volume 17.

Senator KEFAUVER. Judge Loevinger, that came out earlier today and has been made a part of the record.

Mr. LOEVINGER. It has been put in the record.

Senator KEFAUVER. And I agree with you.

Judge Loevinger, it has been noted that we have a bill before us which has passed the House, which proposes that in bidding to the Government under sealed bids, where over 50 percent of the bids are identical, there should be a requirement for the signing of an affidavit as to noncollusion.

Is not the matter of cost data relevant in considering legislation of this kind, that is, whether it is by virtue of identical costs they are giving the same price?

Mr. LOEVINGER. The cost data is relevant certainly to the issue whether or not prices are the same because of collusion or because of other factors.

As was pointed out in the ABA Subcommittee report which I understand is in the record, this has been held in a number of cases. There are a significant number of antitrust cases in which the courts have specifically held cost data to be relevant to the issue of collusion in establishing price.

This, of course, was the precise issue presented to the district court in New Jersey in the *Eli Lily & Co.* case which may or may not be in this record.

For the record, the citation is 24 Federal Rules Decision 285, where this was the precise issue presented to the district court, and it held that cost data should be produced because they were relevant to a charge of collusion in establishing price.

(At this point in the proceedings Senator Hart left the hearing room.)

Senator KEFAUVER. It has been suggested by quite a number of witnesses and in this subcommittee, and as a matter of fact, we have had a bill to that effect, that in certain basic, highly concentrated industries there should be some preliminary notice of price increases. Would not cost data be helpful in determining whether such legislation would be useful or not?

Mr. LOEVINGER. I do not know that I can add much to what I have said, Senator.

There are, of course, many considerations involved in determining policy with respect to such a proposal as that. Some of them obviously relate to matters such as monopoly power and the existence of collusion or price leadership as to which cost data are relevant.

Others may involve other considerations. I am aware of this proposal which I believe was made by Senator O'Mahoney specifically in

certain bills that he introduced, but I am not prepared to discuss that specific proposal, really, at this time.

Senator KEFAUVER. There is a proposal similar to that pending at the present time, although I think that particular one went to another committee, as I recall.

Judge Loevinger, finally have not the courts held uniformly that in contests against the Federal Trade Commission under its powers to obtain cost data under section 6 of the Federal Trade Commission Act, and in contests under the other antitrust laws, where cost data may be needed, the courts have required the production of cost data.

Mr. LOEVINGER. Again, the principle, I think, is best stated——

Senator KEFAUVER. That is, if it is pertinent to the matter.

Mr. LOEVINGER. Yes. If I may quote briefly from the ABA Subcommittee report, it states the principle correctly I believe in a paragraph which says:

> Despite the prejudice which may result, the law is clearly established that a party has no absolute right to refuse to disclose information on the grounds that trade secrets will be divulged. Although the fundamental principle seems to call for disclosure of information divulging trade secrets, as long as it is relevant to a party's contentions the extent to which disclosure will be compelled in a particular case is within the court's discretion.

And it says later:

> In any event, whenever cost data are offered at trial, the court must necessarily balance the equities in each case and weigh the disadvantages or burden and complication against the materiality of the data offered.

Senator KEFAUVER. Judge Loevinger, you have been to Europe on several occasions studying the antitrust laws, the charters, and so forth, of the European Common Market and the charter of the High Authority of the European Coal and Steel Community, have you not?

Mr. LOEVINGER. Yes, sir.

Senator KEFAUVER. I see a statement by Mr. Patton here which he has repeated several times:

> As an indication of the importance the foreign steel producers attach to the confidential character of product cost data, I call your attention to the fact that the High Authority of the European Coal and Steel Community is not permitted to obtain manufacturing costs data from the participating companies without the explicit permission of such companies.

Have you examined the charter of the High Authority of the European Coal and Steel Community?

(At this point in the proceedings Senator Hart returned to the hearing room.)

Mr. LOEVINGER. Yes, sir. That statement is not quite in accord with my understanding. A translation of the Treaty of Paris appears in volume 46 of the American Journal of International Law. The Treaty of Paris is the treaty constituting the European Coal and Steel Community signed at Paris on April 18, 1951.

Article 47 of that treaty, which so far as I am able to ascertain has not been modified, reads insofar as relevant as follows:

> The High Authority may gather such information as may be necessary to the accomplishment of its mission. It may have the necessary verifications carried out. The High Authority shall not divulge information which by its nature is considered a professional secret, and in particular information pertaining to the commercial relations or the breakdown of the costs of production of enterprises. With this reservation it shall publish such data as may be useful to governments or to any other interested parties.

I take it to be fairly evident from this that the High Authority may obtain such information but is not to publish it as stated here in such form as to show the breakdown of costs.

Senator KEFAUVER. It may be available for governments.

Senator ERVIN. There is a rollcall vote over in the Senate.

(At this point in the proceedings Senators Ervin and Scott left the hearing room.)

Senator KEFAUVER. Did you understand my question?

Mr. LOEVINGER. Sir?

Senator KEFAUVER. You read that they could get such information as they want and that would be useful to governments.

Mr. LOEVINGER. They can get such information, but are not to disclose it. I believe the principle against nondisclosure goes to the national governments. Essentially the Coal and Steel Community, like the Common Market, is something on the order of a federal government, and the national governments correspond somewhat roughly to our State governments.

Senator KEFAUVER. Any other questions? Thank you very much, Judge Loevinger.

Mr. LOEVINGER. Thank you, sir.

Senator KEFAUVER. Senator Hart, do you have any observations you wish to make before we leave?

Senator HART. No, Mr. Chairman, except to say that I wish I had left for the rollcall already. I think I have indicated that I am satisfied that cost information would enable this committee to determine with greater certainty than they can without it whether the antitrust laws are in fact adequate to today's marketplace conditions as it relates to steel.

Not an unimportant element in our whole economy, I wish we could have it. I would not want to thereby damage that portion of the economy and through it the whole economy any more than anybody else.

I have no doubt about the jurisdiction of the committee to request it or the relevancy of the information to our responsibility to evaluate the adequacy of the antitrust laws.

I have no doubt at all about that. I am clearly troubled by this businesss as it relates to the policy decision and the effect on the American steel industry. Yet if I conclude that the American steel industry would be damaged by furnishing the information, I am acknowledging that this committee is not competent to safeguard information given it.

I am not quite prepared to acknowledge that.

Senator KEFAUVER. Thank you, Senator Hart. We will place in the record a short and very able brief on the law pertaining to this subject prepared by Mr. Flurry the able senior attorney for the subcommittee, and a memorandum prepared by Dr. John M. Blair, of September 11. which has been referred to.

(The documents referred to are as follows:)

SEPTEMBER 11, 1962.

MEMORANDUM

To: Bernard Fensterwald, staff director.
From: John M. Blair, chief economist.
Subject: Cost data for the steel industry: Purposes and objections.

The objective of this memorandum is to discuss in summary form the principal purposes to be served by securing cost data from the steel industry and the major objections which have been advanced against obtaining such data.

PURPOSES

Obtaining the data will serve two purposes which lie at the heart of the monopoly problem; (*a*) to reveal the extent and use of monopoly power and (*b*) to show the relationship between size and efficiency.

By relating cost (and the important components thereof) to price it will be possible to determine whether the leading companies possess a significant degree of monopoly power. This can be done by showing whether in a given year, such as 1961, the relationship of costs to price is not what would be expected in a competitive industry under similar circumstances. Moreover, when substantial excess capacity exists, as was true of the years for which the data are sought, 1954 and 1961, an increase in price greater than an increase in cost cannot be explained on the basis of an excess of demand over supply. If it is also not due to an increase in costs, the logical deduction is that it is due to the exercise of monopoly power. Conversely, a showing that the increase in price in this period has been less than the increase in unit labor costs would indicate the possession of significant monopoly power in the hands of the union.

The existence of an "unreasonable" relationship of costs to price has long been cited among the indicia of monopoly power. For example, in the *American Tobacco* case[1] cost data were used to show whether there was an intent to monopolize; in the *Cellophane*[2] and *Alcoa*[3] cases cost data were employed to establish whether there existed a monopoly power over prices. In the *Alcoa* case the court found that the company had monopolized the industry in violation of the Sherman Act. The Department of Justice placed in the record figures showing the cost of producing aluminum, as computed from the books of the company. According to these figures, in 1937 the total net mill cost for producing pig aluminum, plus the cost of converting the pig aluminum into commercial ingots, plus administrative and selling expenses, was 9.6 cents per pound.[4] The fact that at the time aluminum was selling for 20 cents a pound was one of the considerations which led the court to conclude that the company had attempted to monopolize and had monopolized in violation of the Sherman Act.

Recognizing the importance of costs to its consideration of the monopoly problem, the Subcommittee on Antitrust and Monopoly has secured cost data on all of the industries which have been the subject of its administered price inquiry, except steel. In automobiles, figures on unit profits were obtained from the two principal producers which, together with information from other sources that were available for this industry, made possible the construction of a cost breakdown per car, which was published by the subcommittee in its report on the automobile industry.[5] In bread, detailed unit cost data were submitted by the major producers and aggregated into totals for groups of companies by the Department of Agriculture for the subcommittee and published by the subcommittee in its report on the bread industry.[6] In drugs, the subcommittee obtained figures from major companies on their purchase and sales contracts which formed the basis for its figures on unit production costs and were published in its report on the drug industry.[7]

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[1] *American Tobacco Co. et al. v. United States*, 328 U.S. 781 (1946).
[2] *United States* v. *E. I. du Pont de Nemours & Co.*, 351 U.S. 377 (1956).
[3] *United States* v. *Aluminum Co. of America*, 148 F. 2d 416 (C.C.A. 2d 1945).
[4] Source: U.S. District Court, Southern District of New York, *United States of America* v. *Aluminum Company of America et al.*, vol. XVI, exhibit 718. (Received in evidence May 5, 1939.)
[5] 85th Cong., 2d sess., "Administered Prices: Automobiles," report of the Subcommittee on Antitrust and Monopoly to the Senate Judiciary Committee, 1958, pp. 124–130.
[6] 87th Cong., 1st sess., "Administered Prices: Bread," report of the Committee on the Judiciary, S. Rept. 1923, 1960, p. 113.
[7] 87th Cong., 1st sess., "Administered Prices: Drugs," report of the Committee on the Judiciary, S. Rept. 448, 1961, pp. 6–25.

In addition to revealing the existence and use of monopoly power, cost data are essential in determining the form of relief. It is one thing to find an unlawful monopoly, either under the Sherman Act or under proposed bills which would apply the Clayton Act test with respect to mergers to existing concentration; it is something else to conceive and carry out an effective remedy. Any implementation of dissolution necessarily raises the question of whether the breaking up of a giant corporation into smaller enterprises impairs efficiency; this issue can be approached intelligently only through the use of cost data. Behind the refusal of the Supreme Court to order dissolution of the United States Steel Corp. in 1920 [8] and of the International Harvester Co. in 1924 [9] was its assumption that efficiency would be impaired.

It is on this issue of size and efficiency that a fundamental divergence takes place in the consideration of public policy. If efficiency is assumed to be closely and directly related to size, the appropriate public policies would include such measures as requiring notification and defense before a public body of price increases, imposing some form of public utility rate control, or simply placing reliance upon the "social conscience" of management, or giving management financial inducements to improve the social performance of their corporation. But if size is assumed not to be related to efficiency, dissolution and companion measures designed to promote competition becomes a logical course of public policy. Only by obtaining cost data can an intelligent judgment be made on the merits of this difficult issue.

As the Federal Trade Commission has put the matter:

"It is frequently assumed and sometimes explicitly stated that large plants are typically responsible for the existence of company concentration, and that, consequently, attempts to reduce the level of company concentration would only result in 'considerable reduction in efficiency'. * * * It follows from this line of argument that reductions in the level of company concentration in such industries would necessarily impair productive efficiency, resulting in higher production costs, and thus, inferentially, in high prices.

* * * * * * *

"This assumed close relationship between plant and company concentration has been vigorously attacked by other authorities who place their major emphasis as to the causes of concentration on consolidations, mergers, and acquisitions. * * * It follows from this line of argument that any excess of company concentration over plant concentration is due to factors other than the requirement of large plants for mass-production operations. Such an excess results from a combining of different independent plants under common ownership and control, which may result in certain advantages to the owners and managers but which does not, in and of itself, result in any increase in production efficiency." [10]

OBJECTIONS

Aside from the question of relevance to the subcommittee's jurisdiction (which has been discussed above), the principal objections which have been raised to supplying the cost data involve the issues of confidentiality, burdensomeness, and value to foreign competitors, each of which will be discussed below.

Confidentiality.—In the chairman's memorandum to members of the Subcommittee on Antitrust and Monopoly of April 11, 1962, outlining the inquiry he stated:

"On the basis of our experience with the steel companies in the 1957 hearings I know that they regard this type of information [cost data] as confidential. Therefore, to avoid controversy on this issue and to expedite use of the information, it is my intention in making public the reported data to present the figures in groups of three companies so that the figures applicable to any one company cannot be ascertained.

"It is also my plan to have the individual companies' schedules submitted by the subcommittee to the General Accounting Office. The tabulations of the figures into the groups of three companies will be done by accountants of that organization under the direction and supervision of the Comptroller General of the United States."

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[8] *United States* v. *United States Steel Corp.*, 251 U.S. 416.

[9] 274 U.S. 708.

[10] Report of the FTC on "The Divergence Between Plant and Company Concentration, 1950," pp. 2–3.

As a result of negotiations with Mr. John S. Tennant, general consel of the United States Steel Corp., further concessions have been made to the industry. Thus, there are to be no size breakdowns for barbed wire, nails and staples, rails and heavy structural shapes. Similarly, the size breakdowns for plates and hot-rolled bars are to be in terms of the four largest rather than the three largest companies. This has been done to prevent one company from deriving a competitor's costs by subtracting its own costs from the group aggregate. United States Steel, which has more grounds for apprehension on this point than any other company, appears to be satisfied with the groupings as finally developed.

Also, as a result of a request by Mr. Tennant, it was agreed to have the schedules submitted directly to the General Accounting Office, to make available to the industry a copy of the table plans to be used in preparing the tabulations, and to return to the companies their schedules upon completion of the tabulation.

Burdensomeness.—While prepared during World War II by accountants for the steel companies, themselves, the original questionnaires accompanying the subpenas (Forms A, B, C, and D) could, it now appears, be filled out only by the expenditure of considerable time and resources. In part, this is due to the fact that some (and perhaps all) of the steel companies do not keep records in the same manner as they were maintained during World War II. In a meeting on May 31. Mr. Tennant stated that the burden of complying with the original questionnaire would be so great as to force United States Steel to take their case to the members of the subcommittee, the full committee and the courts before complying. And even if forced to comply, it could not do so for 14 of their approximately 30 mills since the necessary underlying records for 1954 had been destroyed. Substantial deletions and modifications in the original questionnaires were therefore made, resulting in the present schedules I, II, and III.

In the first place, the basis for reporting the data for the individual finished steel products was changed from the mill to the company, thereby reducing the reporting requirements by about two-thirds. Second, a number of products were completely eliminated from the list. Third, with one exception, the items for which costs are to be supplied reflect the current detail in which cost records are currently maintained by the United States Steel Corp. (an probably other companies as well) ; the exception is labor costs, which is to be furnished by a simple arithmetical computation from available records. Finally, a large number of items for which information was to be supplied have been eliminated; the modified schedules call for only the most important cost elements. It is because of those substantial concessions that United States Steel Corp. withdrew its original objection to compliance on the grounds of burdensomeness.

Value to foreign competitors.—The argument that the disclosure of cost data, even in group totals, would be harmful to the American industry in its competition with foreign producers has certain elements of plausibility, which, however, can be discounted on several grounds. Behind this argument is the widely held assumption that costs per ton are significantly higher in the United States than in Europe. Given this assumption, the argument can plausibly be made that knowledge of the actual level of U.S. costs would enable foreign producers to price their product below U.S. costs (but above their costs) thereby eliminating U.S. competition. But the assumption that steelmaking costs are higher in the United States than in Europe is questionable. Labor costs, it is true, are materially higher in the United States, even despite the higher productivity of the American industry. But the reverse appears to be true of both iron ore and coking coal, both of which are more important elements in the cost structure than labor. If European costs are not significantly lower than American costs, knowledge of the latter would be of little value to foreign producers.

In the second place, without supplying cost data to the subcommittee (or to anyone else), the American steel industry has been rapidly losing its share of world markets. This in turn has been an inevitable result of the fact that the export market prices of U.S. steel producers have been approximately 30 percent above the export prices of European steel companies. If, through the presentation of cost data, it became evident that U.S. export prices were excessive in relation to costs, any resultant reductions in prices would tend to increase the U.S. share of world markets.

Finally, the argument presumes that total unit costs are constant regardless of the rate of output. While the U.S. steel industry has continually insisted that demand for its products is inelastic, it can hardly contend that lower export prices would not have given it a greater share of the rapidly expanding world market for steel. Had it secured an additional volume of orders from

abroad, its unit overhead costs—and thus its total unit costs—would have declined. Just as costs help to determine prices, so also do prices have an influence on costs—an economic reality which is completely overlooked in this "foreign competition" argument.

SEPTEMBER 6, 1962.

MEMORANDUM FROM ESTES KEFAUVER RE SUBPENAING OF "COST DATA" IF PERTINENT TO A VALID LEGISLATIVE INQUIRY

QUESTION

Are the steel companies entitled to refuse to comply with the Antitrust Subcommittee subpena on the ground that the information called for is "confidential," and that "production and public disclosure * * * [thereof] would be very detrimental to * * * [their] competitive position at home and abroad?" (Republic Steel Co. letter of August 10, 1962).

ANSWER

Although in court cases trade or business secrets are entitled to some special protection to avoid unnecessary harm to the producing party's competitive position, such information must nevertheless be produced if material is pertinent.

(1) There are no cases dealing expressly with the problem insofar as congressional committees are concerned, but a congressional committee has at least as much right as a private party or a Government agency in a court case;

(2) Merely "confidential" information is not privileged, unless it falls into the category of a trade secret; there is some doubt as to whether cost data are entitled to the protection of a trade secret like a secret process;

(3) Even if cost data are entitled to protection as a business secret, if adequate measures are taken to prevent disclosure of the damaging information, the material must be produced.

DISCUSSION

A. The rules applicable to congressional hearings

Research has disclosed no decisions specifically involving refusals to produce alleged trade or business secrets before a congressional committee. The decisions in civil court cases, however, would seem to be authoritative. As will appear below, these court cases grant no absolute immunity to trade secrets; at most, they permit a qualified immunity where the necessity for such records does not appear; and (2) no safeguards for secrecy are possible. Neither of these two necessary conditions applies to the present situation for (1) the public interest in the committee's obtaining this information would seem at least as great as a private party's; and (2) we have indicated a willingness and method for maintaining secrecy.

Moreover, it is well established that legislative committees may adopt even less restrictive rules of evidence than obtains in courts of law. See I Wigmore on Evidence, sec. 4K (3d ed. 1940). ("Experience seems to indicate that if these [congressional] investigative proceedings were hampered by intricate rules and legal formalities, their effectiveness would be materially lessened.") At the very least, the rules applicable to congressional hearings should be no more restrictive than those in judicial proceedings.

B. The scope of the protection for trade or business secrets

Although the steel companies attempt to justify their refusal to produce the cost data in question on the ground that it is "confidential" what they probably mean is that the data is privileged as a business secret. Merely "confidential" data is entitled to no protection. Thus, in *Communist Party* v. *Subversive Activities Control Board*, 254 F. 2d 314 (D.C. Cir. 1958), the court said, with reference to FBI files:

"There is a vast difference between confidential and privileged. Almost any communication, even an ordinary letter, may be confidential. Such a document may not relate to any matter of high public concern. But privileged means that the contents are of such character that the law as a matter of public policy protects them against disclosure. A communication from a person to his banker may be confidential, but it is not privileged; certain of his communications to

his doctor or his lawyer are not only confidential but also privileged; the law does not permit their disclosure even under subpena by a court."

As to business secrets the general rule in court cases is stated in Wigmore as follows:

"It is clear that no absolute privilege for trade secrets is recognized. On the other hand, courts are apt not to require disclosure except in such cases and to such extent as may appear to be indispensable for the ascertainment of truth."

8 WIGMORE ON EVIDENCE, SEC. 2212

(McN. ed. 1961)

And in Moore's Federal Practice, it stated quite explicitly that "if the information is relevant and necessary to the presentation of the case, it will be required. The court may impose special conditions to protect the party" (4 Moore's Fed. Prac., sec. 26.22 [3] (1950)).

The cases fully support these statements; indeed, some go further and indicate that business secrets relating to costs, expenses, and the like, are entitled to almost no protection, and certainly to less protection than formulas and processes.

Thus, in *Caldwell-Clements, Inc.* v. *McGraw-Hill Pub. Co.*, 12 F.R.D. 531, 545 (S.D.N.Y. 1952), an antitrust suit between two competitors involving a request for cost data, among other things, the court first laid down the following general rule: "* * * Where information is relevant and necessary to the presentation of a case the consequence of disclosure of trade secret is not a bar to discovery. [Citations omitted] * * * On the other hand the circumstances might warrant the issuance of a protective order * * *."

It then went on to say: "* * * The secrets involved, [cost and revenue data] while something the defendant would want to keep to itself, do not amount to a secret process or an item or service sold in trade. They would seem to be matters that could be brought out on the trial and therefore should be amenable to the discovery process" (545).

And more recently in *Sandee Mfg. Co.* v. *Rohm & Hass Co.*, 24 F.R.D. 53 (N.D. Ill., 1959), another antitrust suit between two competitors, the court forced the defendant to disclose its cost data and internal bookkeeping, stating that (1) the information was relevant to charges of unlawful pricing; and (2) the information was not secret or confidential. Insofar as secret technical processes were concerned, the court went on, the defendant had no absolute privilege therefor, but limiting safeguards would be provided, if full disclosure of these processes were not essential to the case.

See also *Paramount Film Dist. Corp.* v. *Ram*, 91 F. Supp. 778 (E.D.S.C. 1950) (all data as to transactions with defendant's competitors); *Singer Mfg. Corp.* v. *Brother Int'l Corp.*, 191 F. Supp. 322 (S.D.N.Y. 1960) (defendant, a competitor of plaintiff, was granted information in antitrust suit as to sales and prices; such data held not really a trade secret); *Crocker-Wheeler Co.* v. *Bullock*, 134 Fed. 24 (W.D. Ohio 1904) (books showing expenses, customers, and methods not shown to competitor only because not shown to be relevant); *C. F. Simonin's Sons* v. *American Can Co.*, 30 F. Supp. 901 (E.D. Pa. 1939) (antitrust suit plantiff granted information about defendant's dealings with plaintiff's competitors).

The most that has been done to protect the secret is to set up safeguards. For example, in *United Parcel Delivery Co.* v. *Federated Dept. Stores*, 14 F.R.D. 451 (D. Del. 1953), secrecy of plaintiff's records was essential because plaintiff had guaranteed such secrecy to its customers, many of whom were defendant's competitors. The court, therefore, made special arrangements so that defendant could get all the information it needed without infringing on the confidentiality of the affairs of others.

But this is as far as the courts will go. If the information is pertinent and essential, the claim of business secrets will be unavailing.

Assuming, arguendo, that cost data may be classified as "trade secrets," it is subject to subpena when pertinent to the issue under consideration. *Federal Trade Commission* v. *Tuttle*, 244 F. 2d 605 (1957) in which the court said:

"The respondents contend that the information sought by the Commission under the subpena in the case at bar would include the sales records of the individual companies and that those records may be properly classified as "trade secrets." Assuming, arguendo, that sales records of the individual companies are trade secrets under section 6(f), all that that section forbids is the publication of 'trade secrets and names of customers,' in public reports that the Com-

mission may make 'from time to time' which it 'shall deem expedient in the public interest.' That does no mean that 'trade secrets and names of customers' may not be subpenaed by the Commission in any proceeding or investigation under the act. They may be subpenaed in litigation in the Federal courts, if the information is relevant and necessary to the presentation of a case" (at p. 616). Certiorari was denied in this case.

In *United States* v. *Brewster*, 154 F. Supp. 126 (1957) the court states as follows:

"It has been pointed out that neither an incorporated or an unincorporated association can assert an unqualified right to conduct its affairs in secret. *United States* v. *Morton Salt Co.*, 1950, 338 U.S. 632, 636, 70 S. Ct. 357, 94 L. Ed. 401. However, a corporation may challenge an order for the production of records if it is unreasonable on grounds other than self-incrimination, i.e., if it is too sweeping, *Hale* v. *Henkel*, 1906, 201 U.S. 43, 76, 26 S. Ct. 370, 50 L. Ed. 652; if the information sought is not relevant to any lawful inquiry, *Oklahoma Press Pub. Co.* v. *Walling*, 1946, 327 U.S. 186, 208, 66 S. Ct. 494, 90 L. Ed. 614, or if it represents 'a fishing expedition' in quest of evidence of crime, *Federal Trade Commission* v. *American Tobacco Co.*, 1924, 264 U.S. 298, 305–306, 44 S. Ct. 336, 68 L. Ed. 696" (at p. 134).

In upholding the validity of the subpena by the subcommittee of the Committee on Government Operations directing Brewster to produce "the books and records of (each organization) for the period from January 1, 1951, to December 31, 1955, including cash receipts and disbursements, canceled checks, general ledgers, bills and invoices, bank statements, check stubs, correspondence files, memorandums, and minutes of meetings" the court said:

"* * * the court finds no supportable challenge to the constitutional validity of these subpenas. Their terms are only as broad as the scope of the inquiry. If subpenas like these are to fail, the unions will be cloaked with absolute immunity and Congress must wait in the darkness until suspected union officers get around to volunteering confirmatory data" (at p. 135).

The *Brewster* case was reversed by the circuit court of appeals on grounds other than the validity of the subpena.

In *United States* v. *Orman* (207 F. 2d 148 (1953)), the court made the following statement with respect to the right of a committee to intrude upon the "right of privacy" where the material sought was pertinent to the investigation:

"* * * The individual must reply, for the protection of his privacy, upon the requirements of pertinency discussed above. Where a congressional investigation enters a field to which the first amendment is applicable, courts will be particularly careful to check unlawful lines of inquiry. (*Rumely* v. *United States, supra.*) But even here it must be remembered that 'the right of free speech is not absolute but must yield to national interests justifiably thought to be of larger importance. The same is true of the right to remain silent. When legislating to avert what it believes to be a threat of substantive evil to national welfare, Congress may abridge either freedom.' (See *Lawson* v. *United States*, 1949, 85 U.S. App. D.C. 167, 176 F. 2d 49, 52, certiorari denied, 339 U.S. 934, 70 S. Ct. 663, 94 L Ed. 1352, rehearing denied, 1950, 339 U.S. 972, 70 S. Ct. 994, 94 L. Ed. 1379). Similarly under the fourth amendment: it is only 'unreasonable' searches and seizures which are prohibited. (See *Zimmermann* v. *Wilson, supra.*) It appears, therefore, that there is in law no absolute right of privacy apart from these familiar protections. (See *Barsky* v. *United States, supra.*)"

"As shown above, the committee had reason to investigate Orman as it did. (Cf. *Marshall* v. *United States, supra.*) There could be no doubt in Orman's mind as to what information the committee desired, or the general purpose for which the committee had been appointed. Therefore Orman is in error in claiming a violation of his right under the fourth and fifth amendments and of his 'right of privacy' vis-a-vis the committee" (at p. 158).

In the case of *Federal Trade Commission* v. *Electric Bond and Share Company* (1. F. Supp. 247) the court held that the Federal Trade Commission, under a resolution of the Senate directing FTC to investigate certain matters with respect to public utilities, had the power to require Electric Bond & Share Co. to produce under section 6(a) of the Federal Trade Commission Act the cost to a corporation of rendering all purchasing services to its subsidiary operating companies engaged in the interstate transmission of gas or electricity.

In connection with this discussion, attention is called to the following quotation from a decision of the U.S. Supreme Court in *McPhaul* v. *United States* (368 U.S. 372, at p. 379) relating to the failure of a witness to appear under a subpena to produce records.

"We think the Court's decision in *United States* v. *Bryan* (339 U.S. 323) is highly relevant to these questions. For it is true here as it was there, that 'if [petitioner] had legitimate reasons for failing to produce the records of the association, a decent respect for the House of Representatives, by whose authority the subpenas issued, would have required that [he] state [his] reasons for noncompliance upon the return of the writ." (Id. at 332.) Such a statement would have given the subcommittee an opportunity to avoid the blocking of its inquiry by taking other appropriate steps to obtain the records. 'To deny the committee the opportunity to consider the objection or remedy it is in itself a contempt of its authority and an obstruction of the processes. (See *Bevan* v. *Kreiger*, 289 U.S. 459, 464–465 (1933).)' His failure to make any such statement was 'a patent evasion of the duty of one summoned to produce papers before a congressional committee [, and] cannot be condoned.' (Id., at 333" (at p. 379)).

LEGISLATIVE PRECEDENTS

Although hasty research has disclosed few congressional subpenas which seek cost data, it is very common for congressional committee subpenas to ask for all books and records of an individual or business. For example, the Permanent Subcommittee on Investigations of the Senate Government Operations Committee recently issued two subpenas to nightclub owners in the American Guild of Variety Artists hearings, which called for all financial and personal records of the owners of the clubs. (See pt. I, pp. 202–205). We have been advised by Mr. Adlerman that the Billy Sol Estes subpenas also called for all financial records. Such blanket subpenas would obviously include cost data.

Similarly broad subpenas, delving into the most detailed business affairs, have been issued by the McClellan Select Committee on Improper Activities in the Labor or Management Field to unions. (See e.g., p. 15159, pt. 40, of the hearings; also the subpena to Frank Brewster, upheld by the district court.)

Senator KEFAUVER. Last Wednesday I had placed in the record a summary of my position on this matter which I will refer to very briefly now.

(At this point in the proceeding Senator Hart left the hearing room.)

Senator Kefauver. The Antitrust Subcommittee is directed by the Senate to study the problems of monopoly and to improve the antitrust laws. Specifically, the committee this year was directed and received an authorization to continue these studies of administered prices in the metals industries and others. We have bills and propositions before us which make the data that we are seeking pertinent and necessary. We have tried to get at the truth; that is all we want to enable us to legislate as in times past. That is what we need at this time.

The cost data are necessary for the work of this committee. It is a matter of whether the committee is going to have the necessary tools with which to do its work. The basis of Mr. Patton's objections for not supplying costs is the fear of foreign competition.

Mr. Patton had no documentation of a substantial nature that production costs abroad are lower. We have shown, on the other hand, that labor productivity in this country is very much higher, that fringe benefits in the other countries are very much greater. We have shown that costs of coking coal are clearly much higher in European countries than they are here, and that the cost of iron ore is higher there than it is here.

The argument that foreign costs are significantly lower has not been substantiated by Mr. Patton. There is substantial evidence that, if anything, the reverse is true. We are confronted with a situation where our plants are operating at only 60 percent of capacity. There is for one reason or another a substantial identity of prices, a raising

of prices by the major companies at the same time by the same amount to the same level, and for practical effects so far as the purchasers of steel are concerned, there is a continuation of the old basing point system.

All of these are very important for the subcommittee to look into.

I saw an editorial in the Sunday Star saying that I acknowledged, by trying to make concessions to the company, that I thought their cost data should be kept secret and confidential. I am not making any such acknowledgment. I do not know until we see what the costs are. From the information I have, I see no real, valid reason why it would be advantageous to their competitors. But out of an effort to be considerate and to meet their objections, to protect them in what they feel is important, we have gone to every length possible to keep the costs of the individual companies from being disclosed, through submission to the Comptroller General, through possibly their statement in percentage terms, through the possible use of a deflator or some other method.

I note that the steel companies have no compunction in presenting cost data when it serves their purpose; to wit, getting price increases from the OPA, but when it comes to this committee, there is a different reaction. As far as I am concerned, the steel companies have not shown good reasons for noncompliance with the subpena.

They were ordered to appear and to produce documents and did not do so. I want to make it clear that I am not interested in inflicting any punishment upon any of these individuals. It serves no good purpose for them to be fined or jailed. I would be against that, frankly. What we want is the information which I think we are entitled to have. I shall renew my effort with the full committee.

I do not know if I have any direction or any authority about the printing of the record, but I shall certainly recommend to the chairman that the record be printed so as to enable all the members of the committee to have an opportunity of reading and studying it, so that they can vote on the matter with full knowledge of what has been stated in these hearings.

These are matters not only of concern in connection with antitrust laws; they are matters of grave concern to unemployment, to our foreign markets, to our gold outflow. I think the public is entitled to some information as to who is right in this running battle between labor and management, who is right in saying that we cannot operate our plants at more than 50 percent of capacity, who is right in saying that foreign companies can sell in other countries for 30 percent less than American companies.

These are important questions which will, in one way or another, have to be dealt with. They are going to continue to confront the Congress, regardless of what is done here or in the full committee, or regardless of what the steel companies eventually decide to do in connection with the information we need.

If that is all, we will recess the committee subject to the call of the Chair.

(Whereupon, at 5:10 p.m., the committee was adjourned, subject to the call of the Chair.)

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