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No. of 1975

In the Privy Council

**ON APPEAL
FROM THE COURT OF APPEAL
OF NEW ZEALAND**

BETWEEN

EUROPA OIL (N.Z.) LIMITED

Appellant

AND

THE COMMISSIONER OF INLAND REVENUE

Respondent

Record of Proceedings

VOLUME 9

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IN THE PRIVY COUNCIL

ON APPEAL FROM THE COURT OF APPEAL
OF NEW ZEALAND

BETWEEN EUROPA OIL (N.Z.) LIMITED

Appellant

A N D THE COMMISSIONER OF INLAND
REVENUE

Respondent

RECORD OF PROCEEDINGS

VOLUME 9

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IN THE SUPREME COURT OF NEW ZEALAND
WELLINGTON DISTRICT
WELLINGTON REGISTRY

BETWEEN EUROPA OIL (N.Z.) LIMITED

Objectors

A N D THE COMMISSIONER OF INLAND
REVENUE

Commissioner

NOTES OF EVIDENCE TAKEN BEFORE McMULLIN J.

10 Hearing: (commencing) February 12, 1973

Counsel: Barton and Pethig for Objector
Richardson and Cain for Commissioner.

BRYAN JAMES TODD (Sworn): (Written statement of evidence-in-
chief read by witness) -

I was born in New Zealand in 1902 and I am Managing
Director and Chairman of the following companies :

20 Europa Refining Company Limited
Europa Oil (N.Z.) Limited
Todd Petroleum Mining Company Limited
Todd Exploration Company Limited
Todd Western Oil Exploration Limited
Todd Midland Oil Exploration Limited
Todd Eastern Petroleum Mining Company Limited.

I was at relevant times Managing Director and Chairman
of Todd Participants Limited (now SP Participants Limited)
and Todd Investments Limited (now BP Investments Limited).

30 The above five petroleum exploration companies are
partners in joint ventures with Shell, BP, Aquitaine and
Alliance companies in oil exploration in various parts of New
Zealand and in the production of oil and gas in Taranaki.

I am a Director of Shell BP & Todd Oil Services
Limited and BP Shell Aquitaine & Todd Petroleum Development
Limited, which are services companies operating on behalf of
the Shell, BP, Aquitaine and Todd partners for oil and gas
exploration and current production of oil and gas in Taranaki.

40 In addition to the Todd companies, i.e. companies
owned or controlled by members of the Todd family, previously
named, there are also Todd companies unrelated to the petroleum
industry engaged in different activities, such as vehicle
assembly, wholesale and retail motor vehicle marketing,
mineral mining, property development, farming and various other
activities. A feature of these companies is that they are
generally separate corporate entities, the shareholders being
members of the Todd family holding their beneficial
shareholding in varying proportions and these companies are

independent of one another. Not all members of the family are shareholders in each of these companies. There is no one holding company of these separate companies, although there are some Todd companies such as Todd Motors Corporation and Todd Investments Limited which have subsidiary companies.

The Todd family now encompasses three generations and some 65 persons. Some and not all of these persons and in varying proportions beneficially hold shares in the companies which I refer to in the chart now produced and which I will
10 hereafter in my evidence refer to as Todd Companies (EXHIBIT A).

I am a Director and for the current year the Chairman of Directors of The New Zealand Refining Company Limited which is a consortium of BP 22%, Caltex 12½%, Europa 12½%, Mobil 28% and Shell 25%. This consortium holds approximately 70% of the equity shares in the company, the other 30% being held by members of the New Zealand public. N.Z.R.C. produces finished motor gasoline, diesel oils and a range of fuel oils from crude oil, from middle distillate and from naphtha feedstocks imported by the above-named oil companies, processed
20 on their behalf in the Refinery and the products delivered by coastal tankers to each company's respective marketing facilities around the New Zealand coast.

A large part of my business career has been spent in the oil industry and has included making contracts with Russian, British and American oil interests in the supply of crude oil, semi-finished and finished petroleum products, tanker chartering and contracts of affreightment, refinery participation and refinery processing contracts and in exploration for oil and gas including exploration venture
30 agreements, production agreements and sales contracts for delivery of oil and gas and also in pricing negotiations of

all aspects of the industry with New Zealand Government Departments and with Ministers of the Crown.

I have therefore gained intimate knowledge of most phases of development of the petroleum industry overseas and in New Zealand over the past 40 years.

Europa Oil (N.Z.) Limited is a public company registered at Wellington in October 1931 under the name of Associated Motorists Petrol Company Limited (the name was changed in 1954 to Europa Oil (N.Z.) Limited to conform with the trade mark of its products) and 4.253% of the paid up value of the equity shares in this company was held by 13 persons other than Todd interests at 31st March 1971. The capital of this company includes 260,000 \$1 preference shares held by approximately 5,000 persons in New Zealand.

Europa Refining Company Limited is a private company registered at Wellington in July 1962 in which 4.067% of the equity shares was held by 13 persons (but not all the same 13 persons as in Europa Oil (N.Z.) Limited) other than Todd interests, at 31st March 1971.

Todd Investments Limited was registered at Wellington on 24th December 1935. This was a wholly owned Todd company holding 95.747% of the paid up value of the ordinary shares in Europa Oil as at 31st March 1971. Todd Participants Limited was registered at Wellington on 20th July 1960. This was a wholly owned Todd company holding 95.933% of the ordinary shares in Europa Refining as at 31st March 1971. Individual members of the Todd family held differing proportions of the total shareholding in each of these two companies. These differences can be seen by comparing the lists of ordinary shareholders Exhibits C.S.1 and C.S.4. It can therefore be seen that the shareholding in the two separate companies -

Europa Oil (N.Z.) Limited and Europa Refining Company Limited - was in the main held by two separate holding companies each with substantially different shareholders when the contracts were made and in the cases of the minority shareholders in each of these two companies, such minority holdings differ in the case of each company.

I wish to comment briefly on the economic aspects of the five acknowledged major sectors of the Petroleum Industry.

1. EXPLORATION AND PRODUCTION SECTOR:

10 I propose to deal briefly with only one economic aspect of this important sector of the Industry. The market price of crude oil is determined by many economic factors, but the cost of production is not a basic factor in determining price. Cost of production may vary enormously between one oil field and another and between one producer and another, but the ultimate test is what any particular grade of crude oil will bring in the market in competition with other crude oils. But of course the oil producer does not feel bound to produce regardless of price and many countries have regulatory
20 processes which tend to relate price to production.

2. REFINING SECTOR:

In the refining sector the cost of the raw material is the laid down cost of crude oil derived from the production sector and the cost of the refining operation may vary greatly between refineries according to size and in oil refining economies of scale are of great importance. The large refinery has a substantial cost advantage over the smaller one. Refineries are by nature capital-intensive and effective utilisation of any refinery's capacity is a predominant
30 element of cost, a large Refinery under-utilised may cost more per barrel of crude throughput than a small refinery fully utilised. Efficiency of design, suitable location and a range of economic factors all relate to the cost of processing a barrel of crude but world wide the ~~minimum~~ individual cost of the

operation of refineries does not determine the market value of products. This is determined by competitive influences. Whilst it is possible to determine refinery costing at a cost per barrel of crude or feedstock, there is no satisfactory method of determining the cost of output product by product. The oil refiner, like the New Zealand wool producer, does not fix the price of his products, that is determined by market forces. Within the economic limits of a capital-intensive industry, the oil refiner will regulate his operations to the
10 optimum balance between price and volume. Unlike the manufacturer who produces articles of trade different or distinctive from his competitor and who normally is able to fix his own selling price, which is determined by a range of factors including cost of production, the oil refinery must meet the market or modify production. In the sale of crude oils, differences in quality will determine differences in market value, but variations in cost of production have little influence in market value.

In the refining phase where the function is to
20 produce finished petroleum products to standard market specifications, virtually each such producer's finished product is interchangeable with another producer's like product whether these be fuel oils, jet fuels, aviation fuels, diesel oils, heating oils or motor gasolines and such condition of specification and uniformity tends to result in a high degree of price uniformity.

Normally, international contracts for the sale and purchase of crude oil and products, other than spot sales, contain provisions for price escalations according to market
30 price movements but the identification of market price is now no longer as readily ascertainable as formerly.

Formerly movements of market prices in all phases of the world-wide oil industry were recorded and made available to the trade and to the public by many media, the best known of which is the Daily Service of Platts Oilgram.

Prior to the emergence of OPEC (Organisation of Petroleum Exporting Countries) which has been aptly described by Dr P. Frankel a well known oil economist as a trade union of oil producing countries, posted prices were the true indicator of market prices for crude oils and products in the world's markets, but since OPEC's influence became effective in the early 1960s and growing since, posted prices in the member states of OPEC have in effect become tax reference prices and real market prices have become to some degree obscure. Nevertheless, there has arisen a sufficient array of intelligence gathering media, ranging from private consultants to bulletins to reflect, with varying accuracy, the trend of movements in crude and products prices.

Pricing policies differ between oil producing companies. A successful newcomer in production without established connections may force a place in the market by aggressive price policies. Occidental Oil Company with vast discoveries of oil in Libya disrupted the European market, until in recent years when the Libyan State imposed regulatory controls.

Gulf, on the other hand, being well established as probably the largest seller in the world of crude oil to others on long term contracts and not spot sales, has a very conservative reputation both on pricing and entry into new markets. Being dependent very largely on crude sales to others, Gulf Oil has more to defend in price maintenance than any other company and more to lose by meeting the price cutters.

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Price reporting media tend to report only the lowest prices - because that is news - but all companies do not necessarily reduce their prices accordingly or even sell in that market. I have found Gulf extremely cautious on all questions of pricing where such can have any influence in its international trade.

In the previous case a good deal of evidence was given by both the Crown and ourselves on the unlikelihood of any International Oil Company breaching international price standards and it is probably unnecessary to
10 repeat this evidence now. The evidence is available on pages 38 and 48 of Volume I and pages 3, 4, 70, 71, 93, 127 and 128 of Volume II.

A more recent feature in international movement of crude and products is the growing interest in and control of prices by the Governments of consuming countries. New Zealand Government has been very actively in the forefront of this movement in its control of petroleum import costs.

20 Above I have touched on two sectors of the Industry and I will now refer to the third.

3. MARINE TRANSPORTATION:

The carriage of oil employs approximately 50%

of the world's ocean-going tonnage and the cost of freight is an important element of cost to all consuming countries who are not blessed with self sufficiency in indigenous oil.

Approximately 40% of the world's tanker fleet is oil company owned and the other 60% is owned in various ways and employed by the oil industry under long-term and medium term charter for more than half of that 60% and under short-term and spot charters for the balance.

10 I do not include in these figures the tanker fleets owned and operated by the defence forces and Government agencies of the nations of the world.

Unlike oil pricing, the market rates for charters in their respective categories is well documented and widely published in shipping journals and shipping news bulletins.

From this information, AFRA rates are published monthly. AFRA (Average Freight Rate Assessment) is generally accepted world wide by the industry and by
20 Governments, including the New Zealand Government, as a correct assessment of the average cost, in each of the size categories of ships, of tanker freight costs for cargoes carried in the related period.

Tanker freight rates are mercurial -- fortunes have been made and lost by tanker owners, and the impact of tanker

market forces is felt primarily on spot and short term charters, more slowly on long term charters, and on the fleets of the oil companies themselves. All of these components go to make up AFRA freight rates.

4. MARKETING:

This is the function of bringing oil to the final consumer under brand names and is subject to highly competitive stresses. The pattern of marketing has developed world wide along fairly uniform lines but it is subject to many differing regulatory controls according to the view and policy of each of the States in which this sector of the industry operates.

5. EXCHANGE TRADING:

An important factor in the international oil industry of great value to the companies concerned is Exchange Trading.

Oil is not necessarily discovered by individual companies where it is needed for use by that company. Imbalances frequently exist in the relationship between one company's availability and another company's geographical demand. Differences in qualities of crude in respect of differences in product demand as between companies is a factor.

Geographical location of individually owned refineries in relation to other individually owned crude oil production resources is another factor in promoting interest in exchange trading.

In the refinery phase the opportunities for adjusting imbalances between companies of products out-turn, which is governed largely by the type of crude input and individual company's differences in product demand, creates a wide field for product exchanges.

In the whole field of transportation (marine, pipeline, coastal and domestic) immense savings in the cost of avoidable movement to the industry and to the consumer are effected by exchanges. By flexibility in exchanges of products and of crudos, the overall economics of the oil industry are substantially improved.

But seldom do the parties enter into exchange negotiations on an equal footing. Advantages may be mutual but seldom exist equally and hard bargaining between companies in exchange deals is normal. International companies maintain large staffs of highly skilled negotiators in the exchange departments of their organisations and each company zealously guards its tactical advantages.

A large proportion of the Free World's oil is produced, refined, transported and marketed by the seven international companies, being Standard of New Jersey, Royal Dutch - Shell, Mobil, Standard of California, Texaco, BP and Gulf. These companies are frequently referred to by petroleum writers and economists as "the seven sisters". But there is a gradual change consequent on the emergence of others like, for example, CFP (France), and more recently Standard of Indiana and Continental (USA) who from successful oil discoveries outside the United States have established a stake in world-wide refining and marketing. They have gone through the process of "downstream" integration flowing from their success in foreign oil exploration.

Other successful explorers have not ventured beyond the production phase and depend upon their oil revenue from the sale of crude oil only to others. There are also those companies who buy crude and refine for onward sale again to

others, or who may combine the roles of refining and marketing and there are also companies who simply buy refined products for sale to consumers.

For example, Petrofina, the Belgian based company which from having successfully established a market position in European countries including England by simply buying products from refiners for resale has progressively moved towards "upstream" integration by entering into refining processing contracts with refining companies, and later, partly by those means and partly through jointly owned refineries, it has increased its stake in the refinery phase and now Petrofina is engaged in association with others in oil exploration. To the extent Petrofina continues to make successful oil discoveries it may achieve a final position of full integration.

The full integration of an international oil company carries many responsibilities. I intend to refer to only two of the many, being international exchange obligations and international taxation.

The production of oil of course involves a sales problem and consequently a pricing problem which must be resolved to the satisfaction not only to the producer company but also to the producer State as it is on the sales realisation that the State derives its currency exchange revenue.

In OPEC countries taxation is now an arbitrary imposition regardless of the sale realisation. However, exchange earnings and taxation yield are two major responsibilities imposed by the producer State and it is clear that the producing company, even if fully integrated, and engaging in no third party transactions down the line is

not free to make its own determinations. Regulatory control of production is being used increasingly as the instrument of Governments for this purpose.

The refining sector of the industry is faced with similar responsibility and accordingly pricing codes apply to this sector within the jurisdiction of the States in which those functions are carried out.

On the world-wide scene, each international company has to have careful consideration how any of its
10 agreements may impinge on or affect commercial agreements or undertakings made with any purchaser in any other part of the world.

Pricing standards are the first consideration. For instance, in the case of sales to Japan which is the world's largest buyer/importer of crude oil and products, no international oil company can willingly risk the goodwill of its large Japanese customers by freely granting more favoured treatment elsewhere.

I took part in the original concept and the formation
20 of Associated Motorists Petrol Company Limited now known as Europa Oil (N.Z.) Limited, and have been responsible for its active management since its operations were commenced. In the mid-1930s I was appointed Managing Director and after the death of my father in 1942 I succeeded him as Chairman. Europa Oil (N.Z.) Limited has been concerned with marketing petroleum

products throughout New Zealand since 1933, the principal product being motor spirit (known in the petroleum trade as motor gasoline or simply gasoline) Light Diesel Oils and Lubricating Oils. I took part in negotiating the Russian supply contract in 1932 which ran until the end of 1935 and in negotiating the Caltex contract which ran from 1936 with certain rights of renewal from time to time and which finally expired in 1956. I negotiated the 1956 Contracts between Gulf and Europa Oil (N.Z.) Limited. Gulf Oil Corporation is an
10 international company of great strength and it is appropriate that I should give a brief history of my personal relations with that company which commenced with a visit by me to Gulf's head office in Pittsburgh in November 1934.

Ever since my entry into the oil business I had regarded Gulf as potentially a company with which we might have association. I called on Gulf at Gulf's head office, Pittsburgh, in November 1934, but as my interest was in finished products and Gulf's interest in international trade was predominantly the sale of crude oil of which Gulf was a
20 very large producer, there was no prospect of a business relationship. I again met Gulf in Pittsburgh in 1944. On that occasion I met Colonel Drake, the Chairman of the Board of Gulf, Mr B. Newton in charge of Gulf's international operations and Mr Ostergaard in charge of Gulf's refining division. Gulf had plans then for bringing into produc-

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their pre-war discovery of the vast Kuwait oil field and we discussed the possibility of setting up a refinery in New Zealand and the Gulf refinery division under Mr Ostergaard prepared three refinery projects for my consideration. I produce these as EXHIBIT B.

During the same visit to the United States in 1944/45 I had discussions with Bechtel McCone, Refinery Design Engineers and Houdray Incorporated, Refinery Process Licensors. Bechtel McCone - now Bechtel Inc. - prepared a New Zealand
10 Refinery project for me. I produce this as EXHIBIT C.

I mention these refinery discussions in 1944/45 as indicating my interest in expanding from the marketing sector of the industry into the refining sector, which I knew from my investigations then and subsequently was a profitable sector of the petroleum business.

Europa's share of the New Zealand market, although growing rapidly, was and has continued to be principally in the lighter and more profitable products of motor gasoline, diesel oils and light fuel oils. Europa lacked the balancing
20 factor of a market to dispose of the heavy products from a barrel of crude oil (and indeed because of the overall unbalanced product requirement of New Zealand this is a problem which even today requires each participating company to supply naphtha, middle distillate as well as crude for processing in the New Zealand Refinery). There were substantial attractions

to Europa as a New Zealand Company both as to the prospective profitability of a viable refinery and the prestige position to be derived from refining in New Zealand which justified my continued interest. Nevertheless, lacking the economics of size and the unbalanced product yield, it was necessary to shelve the idea at that time.

When in 1955 my negotiations with Caltex New York for a new contract for supplies (the existing one was terminating in 1956) appeared to have broken down, I arranged to meet with
10 Gulf at Pittsburgh in 1955. There had been big changes in Gulf personnel since 1944 and I arranged through a mutual friend suitable introductions to the Executive Officers of Gulf. By this time Gulf had brought into production through the jointly owned 50/50 Gulf/BP Kuwait Oil Company the vast Kuwait concession and had acquired a 7% interest in the consortium formed to take over the Iranian oil concessions and the Abadan Refinery with a capacity of 450,000 barrels a day and manufacturing a full range of petroleum products including motor gasoline.

20 A topping plant - that is a simple distillation unit for the production of naphthas, kerosene, middle distillate and fuel oil had been installed at Kuwait primarily for the production of fuel oils. This plant did not manufacture motor gasoline, but only fuel oil, unfinished gas oil, kerosene and naphthas and was only a small outlet for Kuwait crude, production of which has reached a capacity in excess of 3.5 million barrels per day (recently curtailed by Kuwait Governⁿment decree) which is exported as crude, compared with 180,000 barrels a day
30 which this plant processes as naphthas, kerosene, gas oil and fuel oil.

Crude Oil Sales and two refining Technical Officers. As I have already stated in previous evidence, Mr Paton made it clear to me that Gulf could not be interested in simply selling products into New Zealand. He used the phrase "we must avoid treading on other people's toes" but he stated Gulf was entirely free to sell crude oil as such and engage in refining operations with others anywhere in the world. My discussions with Gulf in 1954 were on exactly the same plane as in 1944 and that was the purchase of crude oil and the refining of same. Paton made it clear that this was the only basis we could discuss. We examined New Zealand's petroleum requirement, the pattern of demand and Europa's own requirements. They advised me, as in 1944, that Gulf would be prepared to assist Europa in the financing of a New Zealand Refinery either by way of loan, debenture or equity participation, but the result of our discussion showed that it was not possible to establish a refinery in New Zealand to refine straight crude oil, since there would be an excessive production of fuel oil which would have to be shipped
10
20
30
elsewhere. We examined the possibility of processing a "spiked" crude, that is a crude oil fortified with naphtha to give a bigger yield of motor gasoline, but the question was whether there was any tariff on naphtha or spiked crude under the New Zealand Customs Regulations and I agreed that on my return from Pittsburgh to New York I would check with the New Zealand Government Office and obtain the Customs details on this point. I saw the New Zealand Customs people in New York, ascertained that there was no special duty on spiked crude or naphtha, telephoned Pittsburgh and arranged to have a further meeting with Gulf. I had a visit and a number of talks in New York with Mr Parkman Clancy who was

then a senior officer in the Gulf Export Crude Oil Division, and Mr Warren Roe a refinery technician. We discussed the question once again of how this could be developed and basically as Europa's limited volume was still the deterrent it did not look altogether attractive. I had for a long time the strong notion of getting into the refining business in New Zealand and I was reluctant to give up the project entirely. At these New York meetings the idea emerged that by using an overseas Gulf refinery where the economics of size would make
10 the project financially viable we could perhaps get together.

I wished to be as well informed as possible on this question of refining and not to accept the views of one company only. I went from New York to Washington D.C. and there I commissioned Mr C.S. Snodgrass, an oil refinery Consultant Engineer, to prepare for me a refining project based on Europa's needs in New Zealand. A copy of that project dated 22nd September 1954 is exhibited at Pages 4068 to 4075. This independent report showed that the capital cost and operating costs would be high and again the economic viability
20 was doubtful.

My next contact with Gulf was in February 1955 when Mr Clancy and Mr Roe came to see me in New Zealand en route from Tokyo. By this time they had progressed to the point where they wished to pursue actively the proposition of engaging with us in a refining operation outside New Zealand. I had had studies made addressed primarily to the capital cost, operating cost and engineering projections for a refinery in New Zealand and I knew very well that the gross refining margin in an East of Suez operation at that time was about
30 one U.S. dollar per barrel of crude. Regarding offshore Gulf had a ready market for the heavy ends but, East of Suez, had no established market for the light ends. There appeared to

be a high degree of mutuality of interests in Europa and Gulf joining together in such an operation. These Gulf Officers wished to go back to Pittsburgh and clear up matters of policy on this project and it began to look like something might well materialise.

In August 1955 I had a meeting in Honolulu with some Gulf Officers who were Mr Parkman Clancy, Crude Oil Division, Mr Martin, Gulf International Ship, Mr Herbert Manning, Legal Counsel. There we continued generally the
10 ideas which had been discussed in February in New Zealand. I adopted the philosophy during these discussions that if we were dealing with a major international integrated company we would be entitled under the circumstances of a refiner's profit squeeze to obtain some sort of protection as would be inherent in the integrated Company's own system. Although refining was profitable East of Suez it was then currently unprofitable in the Carribean area and I felt that some protection should be available from a crude supplier from which
20 source the profits of the integrated Oil Companies mainly flow.

The Organisation Agreement between Gulf Oil Corporation and Europa Oil (N.Z.) Limited provided for the setting up in the Bahamas of a company (Pan Eastern Refining Company Limited) to purchase from Gulf that quantity of crude oil as required to be refined to produce the equivalent of Europa's requirements of motor gasoline on a buy-back basis. This agreement could not be given effect to until cleared by Mr R.W. Taylor the Controller of Exchange, Nassau, who required consent from the U.K. Secretary of State for the Colonies for approval of Exchange Control. This approval having been obtained, Pan Eastern Refining Company
30 Limited was incorporated on 1 June 1956.

I refer to Sand/Taylor correspondence (Exhibit K of previous case) which describes accurately and in some detail

- 20 -

the joint participation of Gulf and Europa through Pan Eastern in refining the quantities of Crude Oil to produce Europa's requirements for petroleum products in New Zealand and which makes application for United Kingdom Exchange Control approval and this was granted.

A feature of the 1956 Gulf Iran/Europa supply contract was that in terms of buy back rights of Gulf of products from Pan Eastern, which I will refer to in a moment, Gulf retained flexibility in supply of motor gasoline through Gulf Iran from
10 any source. Gulf thereby reserved to itself full flexibility in making exchange arrangements with others for its own advantage and, in fact, for almost the whole of the period of this contract Gulf exercised this exchange right by supplying Europa on exchange from the Shell refinery at Curacao and later from Mene Grande refinery at Puerto dela Cruz (a Gulf subsidiary). Although it was originally intended that Gulf Iran would supply as well as manufacture Europa motor gasoline from the Abadan refinery produced from light Iranian Agha-Jari crude, in fact only one cargo of motor gasoline was actually
20 supplied from that source. The gasoline manufactured at Abadan for Pan Eastern was delivered elsewhere by Gulf. This provision of flexibility also had advantage to Europa as it made available Gulf's world-wide resources of procurement of motor gasoline thereby avoiding consequences of any local force majeure and in effect thereby matched the supply resources of BP, Caltex, Mobil and Shell in New Zealand.

The Contract of Affreightment provided for AFRA freights and an alternate fixed rate contract.

Early in the ten-year currency of the 1956 Gulf/Europa
30 Contracts I became interested in a new approach for setting up a refinery suited to produce Europa's high product ratio of gasoline requirement. I entered into discussions with Gulf for establishing in New Zealand gasoline refining capacity for

producing motor gasoline from imported naphtha by the process of naphtha reforming, by the recently developed process of Platinum catalytic reforming. Had this project materialised, it would have replaced the Gulf/Pan Eastern production of Europa gasoline, by production in New Zealand. The file covering my negotiations with Gulf is recorded on pages 4132 - 4140W.

I commenced discussions in February 1959 with the then Minister of Industries & Commerce, Mr P.W. Holloway, whom I subsequently found unresponsive, the reasons of this becoming
 10 clear later. During the period of my discussions with Mr Holloway, the Government negotiated with Shell that their company establish a refinery in New Zealand and as a result Shell obtained an agreement for the exclusive right to do so.

I produce as EXHIBIT D a file of correspondence dealing with the formation of the New Zealand Refining Company Limited containing the following :

Letter from J.B. Price, Shell Oil to Hon. P. Holloway, Minister of Industries & Commerce, dated 18 May 1959.
 Mr Holloway's reply of the same date.
 20 My letter to the Right Hon. Walter Nash, Prime Minister, dated 25 May 1959.
 The Prime Minister's reply dated 2 June 1959.
 Mr J.P. Price's letter to me of 19 June 1959 enclosing a resume of the negotiations and arrangements Shell had entered into with Government.
 My letter of 9 September 1959 to the Prime Minister.
 The Prime Minister's reply of 14 September 1959.
 My letter of 17 September 1959.

As a result of my reservations and subsequent
 30 Government/Oil Company negotiations a new agreement was reached to establish a joint Company owned refinery in New Zealand, with approximately 30% equity participation to be held by the New Zealand public.

To satisfy New Zealand's very large proportion of motor gasoline requirement the basic design of this project hinged on a naphtha reformer unit.

Refining a barrel of crude oil into market products - frequently referred to as a "composite barrel of products" - yields a "gross refiner's margin" which is best illustrated by the tables published by Frankel/Hewton (later economic consultants to the New Zealand Government) shown in evidence at p.4113.

The "gross refiner's margin" East of Suez is shown in Table 5 and is a function of the cost of crude of a specified quality, the yield of a "composite barrel" of products therefrom and the market value of those products. The authors used at that time posted prices which were then commercially applicable prices.

A distinction needs to be made between the refined cost of products and the profitability arising from the disposal by a refinery of those products at market values.

When a refinery owner runs his own crude oil through the Refinery and uplifts the whole yield of products he has a relatively simple accounting problem in respect of both refined cost and profitability. By deducting from the sales realisation value of the "composite barrel" of products the cost of crude oil and the cost of refining applied to each barrel of crude input, he is left with profitability which is termed the "nett refiner's margin".

On the question of cost as distinguished from profitability any attempt to calculate the cost of each petroleum product volumetrically in simple ratio to the total cost results in all products having the same cost and this is obviously non-commercial. Where the need occurs to attribute the refined costs to each of the range of refined products it is convenient to attribute such costs in accordance with the relativity of market value of each such product.

In the case where a refinery user processes his crude in a refinery not owned by him on a fee basis and where he accepts responsibility of uplifting the total yield of products less fuel and loss the problem of attributing costs to products is much the same as that of a refinery owner processing his own crude.

Because of the "continuous stream principle" of a refining operation and as probably such a user's crude is being co-mingled and run in conjunction with the refinery owner's
10 crude, an agreement is reached on a "deemed yield" of products, after deduction of fuel and loss, and from time to time that user will uplift from the common pool of finished products his related apportionment of the deemed yield. Payment of the agreed processing fee at per barrel of crude "charged" to the refinery and uplifting of the "deemed yield" satisfies the requirements of both parties.

But this situation becomes much more difficult when we move from the previous relatively simple cases to any one of a range of other refining cases with which the refining
20 industry is concerned. I propose now to refer to the problem which has confronted the Participants in the New Zealand Refining Company Limited in setting up the agreement which related to processing each of the crudes and feedstocks of their own choice to produce the yields of products required by each Participant.

I produce as EXHIBIT E the Participants' Agreement dated 5 March 1962. This agreement gave effect in principle to the understanding reached in 1958 between the Government and the Oil Companies.

30 Active negotiation between participating Oil Companies commenced in London in August 1959 and it required a further 2½ years of difficult negotiations between the

parties before the Participants Agreement was advanced to a sufficient degree of compromise between the parties and the Participants Agreement signed. The compromise between the parties was reached in the first quarter of 1962 and the Participants Agreement was signed on 5 March 1962.

Ten and one half years after conclusion of the Participants Agreement and eight years since the Refinery came on stream problems relating to use of the refinery yet remain unsolved between the parties. I mention this to illustrate the difficulties surrounding a joint refining operation.

It had been originally accepted by the Government that a refining fee would be charged to the Oil Companies representing broadly the differences between the value of feedstocks and the value of the products themselves being related to world posted prices for crude oil and finished products, together with appropriate freight and insurance. This was later changed by Government directive and I produce as EXHIBIT F the Minister's letter to N.Z.R.C. dated 4 September 1969 whereby a fee of 44 cents per barrel of feedstock input was imposed.

The practically inseluble problem was how to apportion between the users of the refinery an appropriate share of this margin or fee. Each user could tender different feedstock at different values, each could uplift different ratios of finished products with differing ratios of values, each imposed differing claims on the use of the capacity of different units of the refinery (each unit having quite different costs of operation) according to his type of feedstock and his types of ratios of finished products and each by so doing would impose the problem of how to contribute fairly his appropriate share of the gross refinery's

margin or later the 44 cents fee. Any user by making shifts in types or ratios of feedstock and required products yields from time to time would further complicate the issues, one example being that any such shift would change the overall gross refiner's margin and impose the effect on other users.

As the Refining Company was a public company with outside shareholders, each user's contribution was not only to costs but also to profits and on what basis could the profitability contribution of each user to the overall
10 profitability be set since each user would be offtaking products at different values. Furthermore, each user had the right to use spare capacity in any part of the refinery not required by any other user and a shift in use of capacity meant a shift in all the elements I have already referred to.

As an illustration of the great complexities in solving the individual interests of users in the joint use of the Refinery, I produce a file relating to the apportionment of profitability, which is only one of these difficult elements as EXHIBIT G. Other major problems yet remaining unsolved
20 relate, for example, to right of use and how to determine actual usage of refining capacity and allocation of charges other than the profit element.

In the oil industry all joint refining arrangements are accepted as presenting almost insoluble accountancy problems if the parties look for a complete definition of one another's interests. Compromise is the only solution.

I refer now to the "sale processing and buy back" contract between Boral Australia and Caltex and I produce the Bitumen Oil Refineries Limited (Boral) Prospectus which refers
30 on page 6 ^{to} of the Agreement between the parties as EXHIBIT H.

I also produce as EXHIBIT I Boral Annual Reports dated 16 September 1947 and 15 November 1948 which confirm

I produce as EXHIBIT J a copy of a revised Agreement entered into in 1957 by Boral covering the provisions of the buy back by Caltex from Boral of motor gasoline, diesel fuels and fuel oils all at posted prices.

Boral, during the period it was engaged in petroleum refining, was a very profitable company. Its profits were derived to a very large extent from the buy back provisions in its contract with Caltex.

10 An example near to New Zealand is the processing agreement between H.C. Sleight and Co. Limited, a large and well established marketer of petroleum products, predominantly motor gasoline and Australian Oil Refining Pty. Limited, a wholly owned subsidiary of Caltex Australia for processing Sleight's requirements at A.O.R.'s Refinery. I refer to the Annual Report of H.C. Sleight for the year 1968 at 4129 which states :

"... petroleum fuels are produced for the Company by Australian Oil Refining Pty. Ltd. Kurnell N.S.W. (A.O.R.) under processing agreement."

20 I refer again to the provision in the Caltex/Boral 1957 Agreement for delivery of finished products from the Boral Refinery to H.C. Sleight which is indicative of the flexible nature of oil industry operations where exchanges are made between companies.

The Gulf/Pan Eastern contract dated 10 March 1964, which is Exhibit B5, p.3134, provides for the purchase of crude oil for refining by contract and the buy back of the resultant products and thereby permits Gulf, at its election, to engage in exchange transactions with others and supply Europa Refining's requirements through Gulfex in terms of that supply contract. This buy back provision was also to the advantage of Europa Refining under possible conditions of limited force majeure. I have already given evidence of a

30

similar provision on page 20. The Gulf/Pan Eastern contract was for the purchase of such quantity of crude oil as would be required for crude oil as such and for the production, when refined by contract, of Europa Refining Co. Limited's New Zealand requirements of naphtha and middle distillate. The whole of the fuel oil and the surplus gas oil produced from the refining operation would be for disposal by Gulf in its sales system and for which there was, and has continued to be, an active buyer's demand.

10 The apportionment of the net refining margin at the Kuwait Refinery (that is the gross refiner's margin less the processing fee) was resolved by negotiation in the following manner :

Gulf would uplift for its own disposal all the fuel oil and a large proportion of the middle distillate and Europa Refining would (through Gulfex) uplift all the naphtha and a smaller proportion of the middle distillate produced. The sale prices by Pan Eastern of the naphtha and portion of middle distillate destined for New Zealand were agreed to
20 be the result of negotiations from time to time. The fuel oil and remaining middle distillate uplifted by Gulf would be purchased at such prices as to yield to Pan Eastern a return which would equate with Pan Eastern's return on the production uplifted for New Zealand destination.

When the Gulf/Pan Eastern agreement was reached in 1962 I had already represented Europa as one of the five participant companies in a 2½ year negotiation for participation in the New Zealand Refinery and with the intimate knowledge of that conflict of five companies' interests I felt that
30 my Gulf negotiation produced a most satisfactory solution to a problem which bristled with difficulty.

- 28 -

I now refer back briefly to the 1956 Gulf/Pan Eastern Processing Contract for the purpose of showing the difference between that contract and the 1964 Processing Contract.

As my evidence shows, there is a great problem in apportioning refining profitability in the case of joint use of a refinery. The agreement provided for a formula which took into account market changes in gasoline prices in relation to market changes in crude oil prices.

It is perhaps sufficient to say that through unforeseeable and quite unprecedented market changes the formula became unrealistic, as while the total refining profitability from a barrel of crude remained fairly constant, the formula returned greatly reduced earnings to Pan Eastern. A revision was finally agreed to by Gulf after 20 months' negotiation. Gulf was under no contractual obligation to do so but as the file shows they were co-operative and liberal in this revision.

These negotiations are set out in the letter variations file. (Exhibit B14 in the previous case).

It will be seen that during these negotiations I proposed certain changes which in effect would give Pan Eastern a return related to changes in the cost of crude and in the value of the overall yield of a composite barrel of product. The composite barrel of product means the resultant quantities of products derived from refining one barrel of any particular type of crude oil. My proposal

would have meant Pan Eastern profits would reflect any change in the refining profit on the whole range of products and as will be seen Gulf agreed to this. Having agreed, Gulf later proposed for simplicity that the contract be left without change, that the formula be retained with a guarantee to assure Pan Eastern a minimum refining profit of 52.5 U.S. cents per barrel of crude processed, which was consistent then with reality. This meant the processing contract still operated on the formula but if the formula failed to return the minimum profit then by means of crude oil discount to Pan Eastern the profit would be realistically made up to the minimum of 52.5 U.S. cents per barrel. It also meant that if the formula returned to Pan Eastern as it did in the early stages a profit in excess of 52.5 U.S. cents per barrel then Pan Eastern would retain the formula profit. It was Gulf's offer and it appeared generous and I had no good reasons for not consenting to Pan Eastern's acceptance.

10

The 1962 Contract between Pan Eastern and Gulf and the later 1964 Contract contains no formula and no minimum guarantee of refining profits.

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I now produce as EXHIBIT K a table showing Pan Eastern refining profits year by year under the 1964 Contract at per barrel of crude processed. This table illustrates that the earnings of Pan Eastern have been affected year by year by changes in market values of crude and products.

Pursuant to the agreement finally reached between the New Zealand Government and Shell, Mobil, BP, Caltex and Europa to set up a consortium refinery in New Zealand (the equity capital to include a subscription from members of the New Zealand public) a meeting was held of the prospective participants in October/November 1959 in London.

30

Mr Carmichael, Europa's General Manager and I attended that meeting and beforehand we had discussions with Gulf regarding their possible interest in contracting with us for the supply of feedstocks. The 1959 meeting in London was more or less abortive, as prior to its being held the Kapuni oil and gas discovery had been made in New Zealand in August 1959 and when the participants met they felt that it would be premature to reach any conclusions until the size of the Kapuni discovery of oil was more accurately determined. A further meeting of the participants was held in April/May 1960 in New York, by which time it had been determined that prospective production of oil (condensate) from Kapuni would not materially affect the interest of all participants in supplying from their own sources feedstocks for the New Zealand Refinery. Between the period of the 1959 London abortive meeting and the commencement of the 1960 New York meeting, I was concerned to learn from the other participants that Gulf had spread the word that Europa was not free to purchase its refinery feedstocks from any company other than Gulf and that Gulf had a pre-emptive right of supplying.

Upon arrival in New York, when upon meeting the other participants it was clear to me that Gulf had spread this around pretty effectively, I protested to Gulf that they had so stated the position to other prospective suppliers and as a result Parkman Clancy, by then world wide Crude Co-Ordinator of Gulf, accompanied by the Gulf lawyer Herbert Manning, came from Pittsburgh to see me in New York. They had dinner with me at the St. Regis Hotel at which Manning stated that the 1956 Agreement gave to Gulf this pre-emptive right. I was surprised, because I had no recollection that at any time in the negotiations covering the 1956 Contract had this question arisen and I found it difficult to accept the correctness of

Manning's statement. I had no copy of the 1956 Contract with me and could not refute this point. Mr Manning stated the provision was in the contract and that they would firmly insist upon their rights. This gave me great concern, as unless Europa was able to freely negotiate with all potential suppliers it would be in a most difficult position. In the Oil Industry such a freedom is fundamental and this of course would be frustrated by knowledge by others of a Gulf pre-emption right. I immediately pointed out that if such a pre-emption he described existed, Gulf had forfeited any moral right by their action in disclosing this to other companies and thereby defeated our opportunity to procure other offers. Mr Carmichael did not attend the dinner meeting and the following morning I related to him what had been said and we arranged to visit the office of Walton, Bannister & Stitt, Attorneys at Law, New York, who were entrusted with the safe keeping of the original of the 1956 Contract. We examined this contract in the offices of this legal firm which confirmed Manning's statement. Article 11.02 of the 1956 Petroleum Products Sales Contract states -

"During the period hereof, Gulfiran shall have the option of supplying Europa's petroleum requirements in New Zealand of lubricating oils, crude oil and other products, provided that Gulfiran meets and accepts the best offer, either for an f.o.b. or c.i.f. sale, available to Europa".

My concern was greatly increased and it became a matter of seeing how I could establish our freedom to negotiate.

I was subsequently enlightened on what Gulf was thinking at that time when I heard for the first time during the previous case in February 1969 the evidence produced by the Crown by discovery from Gulf certain Gulf internal

internal correspondence covering the period August 1959 to August 1960 (pages 5313 to 5342). This internal Gulf correspondence is illuminating and discloses in retrospect and in considerable detail the relations between Gulf and myself over that period both on the question of pre-emption rights and other important matters.

The New York meeting of New Zealand Refinery Participants of April/May 1960 was adjourned and resumed in London June/September 1960 and during this meeting I could see
10 the opportunity for obtaining freedom from the aforesaid pre-emptive provisions in favour of Gulf.

Altogether, commencing during the New York/London meeting of Participants April, May, June, July, August, September 1960, nine drafts, including three Drafts A, B, C of Draft 7 of the Participants Agreement were prepared and at a mid-stage in the London meeting a definition of Affiliates was prepared. The principles relating to the affiliates by definition of Caltex, Shell and Stanvac had been under discussion since some time in July and I nominated two
20 companies, namely, Todd Participants and Todd Investments, to be defined as affiliates of Europa Oil. Todd Participants was incorporated in New Zealand on 20 July 1960, and acquired the registered ownership of 20,000 shares in Europa Oil (N.Z.) Limited holding these shares in trust for Todd Investments Limited. (These shares were transferred back to Todd Investments Ltd by share transfer dated 18th February 1964.) I felt it was desirable at the time that Todd Participants Limited, as an affiliate by definition, should, like the other designated affiliates, have directly or indirectly a shareholding in the marketing company. The definitions of "affiliate" in the Agreement are incorporated in the Ninth
30 Draft on pages 48/9. In the case of four of the signatories, this nominates two companies being entirely separate legal entities, one as to the other, as affiliate by definition of the participant and thereby counters on such

companies and their subsidiaries the right to use of Refining Capacity in New Zealand Refinery. I produce the Ninth Draft as EXHIBIT L.

During the period between May 1960 until some time in 1962, I had very little discussion with Gulf on the question of Feedstock Supply. The prolonged difficulties in reaching settlement of the Participants Agreement which was not concluded until March 1962 imposed no great urgency upon conclusion of any Feedstock Supply arrangements from any source particularly
10 as the New Zealand Refinery was not expected to be ready until late 1963 or early 1964.

I visited Japan in December 1960. I was introduced by Mr Herbert Goodman, the Gulf Oil Corporation's senior representative in Japan, to the Chairman of Directors of Idemitsu Kosan.

On 21 December 1960 (after the public announcement of the proposal to set up a Refinery in New Zealand) I had a discussion in Tokyo with Mr S. Idemitsu, Chairman of Directors and Colonel Toshima, Senior Executive Director of Idemitsu
20 Kosan, who acted as interpreter. Idemitsu Kosan then operated three of the large oil refineries in Japan - Idemitsu's own current capacity being about 7 times the size of the then proposed New Zealand Refinery. At that time Japan had a large and growing demand for fuel oil produced in Japanese refineries but also partly satisfied by fuel oil imports, and a surplus of naphtha from domestic refining of crude. Mr Idemitsu suggested an arrangement whereby Europa would ship to Japan its surplus fuel oil to be produced from whole crude in the proposed New Zealand Refinery which Idemitsu would exchange for their surplus
30 naphtha, running a shuttle tanker service between Japan and New Zealand.

I suggested that it would be logical and more economical that we purchase crude and carry out this refining operation in

the Persian Gulf, thereby shipping the fuel oil direct from Persian Gulf to Japan and the naphtha direct to New Zealand, thus saving transportation costs. Mr Idemitsu, who previously had spoken through his interpreter, said in English "Mr Todd, in my view such an idea comes straight from Heaven".

The possibilities of this Idemitsu joint project were distinctly interesting. This project for the purchase of crude oil and for processing it by contract in the Persian Gulf (the world's cheapest source) for movement of fuel oil and a proportion of middle distillate to Japan and Naphtha and a proportion of middle distillate plus some crude oil to New Zealand appeared then to have practical and long-term attractions for both of us.

Consequent upon my initial talk with Mr S. Idemitsu, Chairman of the Board, at Tokyo in December 1960, I had visits in 1961 to New Zealand for further discussion from Mr Gene Idemitsu, his nephew - an executive officer of the company - accompanied by Mr Onishi (Idemitsu Sales Manager) and also later that year from Mr K. Idemitsu, President of Idemitsu Kosan and Colonel Teshima, Senior Executive Director.

Idemitsu Kosan was and is a very large and successful petroleum refiner and marketer in Japan. At that time it was rapidly expanding its position in the Japanese market to 430,000 barrels per day. Idemitsu is the largest of the wholly owned Japanese Oil Companies and was buying its crude oil from several sources in the Persian Gulf and also had crude oil contracts with Russia. It was therefore in a very strong bargaining position to make a satisfactory crude purchase and processing contract with a suitable refiner in association with ourselves in the Persian Gulf.

When I re-opened discussions with Gulf in the latter part of 1961 on feedstock supplies, they had had time to consider the Idemitsu/Europa proposals and the Gulf/Europa discussions were re-opened on the basis that crude would be

purchased from Gulf and processed according to our respective requirements and that a company new to Gulf, Europa Refining Company Limited, would purchase feedstocks according to New Zealand requirements and tender these feedstocks to the New Zealand Refinery for manufacture into New Zealand market products.

The creation of the new company Europa Refining Company Limited being a separate legal entity and not a subsidiary of Europa Oil (N.Z.) Limited enabled achievement of the following collective objectives -

- 10 1. Means to negotiate for supply of feedstocks without any prior pre-emption commitment to Gulf, i.e. release from the Clause in the 1956 Contract.
2. Means to obtain flexibility in financing participation in the New Zealand Refinery. Because this Refinery was then estimated to cost up to Stg.22 million it was desirable to be able to finance outside Europa Oil (N.Z.) Limited and a separate company offered greater flexibility in this regard.
3. Means to achieve exemption from liability for excess retention tax as is explained in the circulars to
20 shareholders dated 20 July 1962 and 26 February 1963 which I produce as EXHIBIT M.

(Europa Oil (N.Z.) Limited, unlike the overseas participating companies was subject to New Zealand retention tax and to the extent that Europa Oil (N.Z.) Limited retained earnings for the purpose of financing an interest in New Zealand Refining Company Limited it would be subject to New Zealand retention tax of 35% on its earnings. The Act contained no provision
30 for the Commissioner's discretion to grant relief from retention tax on retained earnings. Retention Tax was not repealed until 1963.)
4. Means to keep refining profits distinct from marketing

profits in New Zealand and which appeared desirable because of New Zealand Government pricing policies. This was in line with world practice.

10 With the proposed introduction of Europa Refining Company Limited as a negotiating party Gulf became co-operative and negotiations were conducted by me in a somewhat leisurely way with various Gulf Executives during the latter part of 1961 in Singapore and in London, New York and Pittsburgh on the general lines of the Idemitsu discussions for an agreement between Pan Eastern and Gulf for the purchase and processing of Kuwait crude at the Gulf 50% owned Refinery in Kuwait such quantity of crude oil as would generate the whole of Europa's naphtha requirements from time to time and such raw gas oil as may be required as well as some crude oil. I could then foresee that the quantity of crude oil to be imported direct to New Zealand would be relatively small and such feedstocks when processed in the New Zealand Refinery into finished products would yield the required New Zealand product pattern without any surplus of heavy fuel oil.

20 Because we were not engaged in heavy fuel oil distribution in New Zealand and because, in any case, no crude would give a balanced yield of products to suit our product pattern, it was necessary to procure as feedstock for the Refinery middle distillate (or raw gas oil) in addition to naphtha, in such quantity as would produce our requirements of finished diesel oil and light fuel oil for the New Zealand market.

30 In our feedstock supply negotiations in 1962 Gulf wished to supply only naphtha and crude oil and to retain the total availability of middle distillate and fuel oil for disposal in Gulf's own sales system. I needed middle distillate to give a balanced feedstock for the New Zealand Refinery with no unsaleable surplus of heavy fuel oil and I pressed successfully that Gulf would have to give way and make middle distillate available, as otherwise in its absence of availability, the feedstock would not satisfy our requirements.

The result of my negotiations in 1961 and 1962 with Gulf culminated in the contracts as described in the Case Stated which were executed on 27 December 1962.

40 These contracts which never became operative were cancelled in Pittsburgh on 9 March 1964 and replaced by the 1964 contracts dated 10 March 1964. Gulf's wish in 1962 was that the freight earnings under the alternate rate which

had been under negotiation and agreed to in principle should be kept in Pan Eastern. I preferred to adhere to the 1956 Affreightment Contract procedure in this regard, but Gulf had a strong preference for the form finally agreed in the 1962 Contract which I finally accepted. Propet was by then a large shipping company and Gulf's wish was to preserve the AFRA concept in international marine transportation. When by the Commissioner's letter of 27 June 1963 (Page 3291) our 1956 Contracts were cleared by him, I went back to Pittsburgh and
10 persuaded Gulf to adopt the form of the freight provision of an alternate freight rate on the same basis as the provision in the 1956 Contract. I gave evidence on this on page 138 of Volume 1.

The Feedstock Supply Contract between Gulfex and Europa Refining contained several important provisions :

In the first place it was a long term contract for almost ten years from the start up of the New Zealand Refinery. The period and security of this Contract was of great significance to Europa. The design of the New Zealand Refinery was basically a naphtha reforming refinery for New Zealand motor gasoline
20 manufacture, with provision for hydro-desulphurising gas oil to New Zealand standards and production of a relatively small amount of fuel oil and some bitumen. This required in the case of all New Zealand Refinery users a highly specialised feedstock if export of surplus fuel oil was to be avoided and Europa Refining's position was exceptionally vulnerable. We simply had to have a highly specialised feedstock consisting principally of naphtha and unfinished middle distillate (and a small quantity of crude). There was limited availability from only a few supply sources of this sort of feedstock East
30 of Suez and we required to have not only a long term contract but a stable contract with a reliable and competent company, as was Gulf. I produced the Participants Agreement as EXHIBIT E and I refer to Article VIII Clause 8.01 (1) on

page 12 which sets out the right of each participant to tender the feedstock of his choice and obtain the yield according to his required market pattern.

10 "Notwithstanding any limitations which may be implied in any other Clause of this Agreement, but subject always to such limitations as are imposed by the design and capabilities of the refinery and subject as hereinafter provided, each participant shall have the right to the use of the refinery, up to but not exceeding such share of the capacity of the refinery as is equal to that participant's capacity entitlement as hereinafter established, to have processed therein by the refinery company either separately or in admixture with the feedstocks of other participants in accordance with best refinery practice (so long as the latter involves no restrictions on the capacity rights of such other participants) such feedstock as that participant or its affiliates may elect to furnish, and to
20 obtain therefrom such yield of products as is required by that participant or its affiliates."

I also refer to Article 9.01 (1) which is a long and complex clause not yet completely resolved dealing with the obligations of the participants for the payment of fixed costs.

With this sort of Refinery, unless stability of supply could be assured failure to use our capacity obligation could result in a fixed cost contribution in accordance with clause 9.01 (1) of up to \$500,000 per annum penalty without any return. I therefore regarded the provision for a long term contract of
30 ten years with the security and stability of specialised feedstocks assured by the reliability of such a company as Gulf to be the paramount consideration. Failure of a supply source would leave a user exposed to great costs and risks.

The second important point in the contract was agreement on prices. Both Gulf and I had some considerable difficulty in establishing a firm mutually acceptable basis of pricing into New Zealand to cover a ten year term. Posted prices for crude oil were no longer true market prices nor had there ever been posted prices or reported market prices
40 for naphtha.

I did have some guide on naphtha values arising from meetings with the other Participants in London during the latter

part of 1962. A value of \$2.40 was indicated at those meetings. Arising from those meetings it was agreed that Shell and BP would complete their naphtha evaluation studies for Serbia Naphtha and Kuwait Naphtha respectively and submit these studies to Mobil New York. Shell accordingly wrote to Mobil New York on 15 February 1963 with copies to other Participants and I produce copy of Shell's letter with two attachments as EXHIBIT N. The attachment covering Kuwait Naphtha shows an evaluation for full range naphtha to arrive at the gross product worth of Kuwait Naphtha as a feedstock in the New Zealand Refinery. This evaluation study produced a Kuwait Naphtha value of 5.71 cents per gallon or \$2.39 per barrel. In the case of middle distillate posted prices were closely representative of market prices.

I wanted a secure basis for a long term and this was particularly important from my point of view as a corollary to our New Zealand Refinery commitment.

I have heard of short term fixed price contracts, but such a type of contract would be quite unsuitable for my requirements, nor would fixed prices be available for a long term contract.

Gulf had very firm reservations on committing themselves to supplies into New Zealand for long term but it was essential for me to obtain a long term commitment. I was aware, and had to accept and respect their problem of repercussions in their international trade that a c. and f. commitment, disclosable by open invoices to Departments of Government in New Zealand and abroad, could have on their changing international trading position from time to time within the more than 10 year period of our contract. For my part, I also had a problem which had no easy solution and neither Gulf nor I could forecast the way supply terms would go in international trade over a long term period and I

simply had to have a long term non-interruptable c. and f. supply contract for specialised feedstocks to satisfy our New Zealand Refinery requirements.

The solution reached between Gulf and myself was to establish a contractual base on the understanding that Gulf and ourselves would freely negotiate our supply terms from time to time - this was the best possible solution and that was in fact, in mutual confidence, how we settled it.

Based on our long and favourable experience in
10 dealing with Gulf, I knew I could rely on their good faith, indeed I had no other choice, and as it has turned out, I have no reason for regret.

Of course in 1962 when I negotiated the original contracts, which were never operative, it was envisaged that the contracts would become operative much later namely when the New Zealand Refinery come on stream in 1964/65 and supply terms were obviously a matter for later determination.

At this time the New Zealand Refinery had not yet come on stream and I was quite prepared to defer this matter
20 until the Gulf/Japanese pricing situation had been clarified to which I referred in cross-examination - Vol. 1 p.147 lines 2-24. In accordance with our understanding, during my visit to Pittsburgh in March 1965, we settled current pricing - retroactive to the start up of the Refinery - on a basis of 16 cents off crude, 29 cents off naphtha and a small adjustment

in the pricing provision of middle distillate. I think that this was a reasonable settlement under all the circumstances and this was confirmed in retrospect by the discounts shown in Table 3(b) of Mr Newton's evidence on pages 58 and 59, Volume 2.

I should like to emphasise that when I settled this first round of price adjustments at March 1965 there was not any whisper that the Commissioner would reverse his 1963 clearance of our Gulf/Europa contractual position. After
10 having settled the first round of discounts I returned to New Zealand on 31 March 1965 to find that on the same day the Commissioner had issued his assessments.

Adjustments for later periods were negotiated from time to time.

I produce as EXHIBIT O a schedule of the letter variation agreements covering the series of price changes made in the Feedstock Supply Contract from inception to 18 April 1972.

The third feature of the Supply Contract is the
20 provision for Europa Refining's right of exchanges set out in Clause 9. This is an extremely important provision and probably took me more time to negotiate than any other part of the Supply Contract. Gulf was reluctant to grant me any exchange rights. I insisted that we must have them, as I could foresee that under future circumstances such exchange rights could be of great importance. I succeeded in obtaining only partial exchange rights for exchanging feedstocks obtained under the Supply Contract with others overseas or what in the Industry is termed offshore exchanges.
30 I did however succeed in obtaining a very considerable privilege in the right to exchange such feedstocks upon receipt in New Zealand, and as my evidence will show this turned out to

be a very valuable part of the contract. I now produce as EXHIBIT P a table showing the quantities exchanged and an estimate of the savings when compared with current product import costs at posted prices and current open market charter rates of freight over the period for finished products so exchanged. This estimated saving in New Zealand of N.Z.\$1,710,026 illustrates the importance of the exchange provision in the contract. These exchanges were made mainly when the New Zealand Refinery no longer had capacity to produce New Zealand's total requirements. Another important and valuable feature of the Supply Contract was the provision for 10 120 days' credit; also alternative means of feedstock supply under conditions of force majeure. The provision for supply of finished products was ineffective because of the imperfections of the related affreightment provision for finished products.

The Contract of Affreightment with the alternate freight provision in the Ancillary Agreement between Europa Refining and Propet, a shipping subsidiary of Gulf, is also a contract of very great importance. This contract which is coupled with the Feedstock Supply Contract gave to Europa 20 Refining the advantage of access to and use of the Gulf fleet of tankers for the marine transportation of refinery feedstocks which was a great advantage against the risks both operational and financial of independent charter. The Affreightment Contract also provided for 120 days' credit. The provisions of the alternate freight contract gave Europa Refining a very low base rate for marine transportation in the voyages from the Kuwait refining port of Mena Al Ahmadi to New Zealand, or under certain possibilities such a deemed 30 voyage. This alternate freight contract has provided Europa Refining with a continuing benefit which by 31 March 1971 had aggregated to N.Z. \$3,296,772 gross and net of tax N.Z. \$1,813,235. Taken together the Supply and Affreightment

Contracts have yielded c. & f. costs to Europa Refining better than the c. & f. requirements of the New Zealand Government in respect of the New Zealand Oil Industry.

As I have said before the aforementioned Supply and Affreightment Contracts were entered into by Europa Refining Company Limited and the Supply Contract was subject to the provision that Europa Refining would process these feedstocks in the New Zealand Refinery into finished products for the New Zealand market. Europa Refining had the right to sell such
10 finished products (but not the right to sell feedstocks) to others, including Europa Oil (N.Z.) Limited, and it had certain rights for exchanging such feedstocks.

No contract of any sort was made between Europa Oil (N.Z.) Limited and any Gulf company. No obligations or other commitments were entered into between Europa Oil (N.Z.) Limited and any Gulf companies.

The Re-organisation Agreement (page 3188) provided means to increase the capital of Pan Eastern to £ Stg.500,000 thereby reducing Associated Motorists shareholding to 10% if
20 the additional capital was not taken up by Associated Motorists. It was in mind to place the status of shareholding in Pan Eastern beyond doubt in respect of classification as a Proprietary Company. A trustee on behalf of the individual shareholders, including those shareholders not members of the Todd family could subscribe the share of additional capital. It was also considered the time may come when it would be desirable, for price control reasons, to get Associated Motorists/Europa Oil completely out of Pan Eastern. Gulf would buy Associated Motorists existing 50,000 shares and
30 would hold 300,000 shares and individual shareholders 200,000 shares. Contemporaneous provision was therefore made to equalise for New Zealand shareholders to take up another 100,000 shares.

These provisions of the Re-organisation Agreement have not been acted upon. I do not think it is necessary for me to refer in any detail to the other Gulf/Europa Agreements.

Regarding the Gulf/Pan Eastern Processing Contract perhaps it is easier to illustrate the Pan Eastern costing problem by looking at the problem arising from the imposition by the New Zealand Government in the year 1969 on the New Zealand Refining Company of a fee of 44 cents per barrel of input.

10 During the year 1969 the total value of input feedstocks of N.Z.R.C. was \$42,907,445 resulting in an average per input barrel cost of \$1.99. If 44 cents were simply added as a cost of manufacture to each of the products at the Refinery the unrealistic result would be that fuel oil, bitumen, gas oil, motor spirit would each have the same cost of manufacture of \$2.43 per barrel plus coastal distribution costs of 26 cents per barrel - a total of \$2.69 per barrel. This would be clearly an absurd and commercially unrealistic proposition.

20 Had it not been that the New Zealand Government determined the method by which the allocation of the total cost of manufacture and coastal distribution would be applied to each of the New Zealand Refinery products the special interests of each of the users, being so widely divergent, would have created a formidable problem for resolution. In point of fact the New Zealand Government decided that the manufactured cost of refined products, delivered at New Zealand main ports from the New Zealand Refinery, would be apportioned on Middle East posted prices, thereby resulting in costs ranging from heavy fuel oil at \$1.91476 per barrel,
30 gas oil at \$2.83493 per barrel to premium motor spirit at \$3.84630 per barrel. This arbitrary range of costs then became the base for setting consequential New Zealand consumer prices. These individual costs per barrel of each product

multiplied by the quantity of that product consequently equated with the average cost of \$2.69 per barrel.

Pan Eastern was faced with a similar problem. A fee of 20 cents per barrel for processing Kuwait crude had been settled at an early stage of negotiations. It was agreed that the price of Kuwait crude to be purchased by Pan Eastern from Gulf would be posted price less 15%, namely, U.S. \$1.3515. To apply a straight 20 cents per barrel processing fee to the crude cost would give a straight figure per barrel of each of the products - Naphtha, Gas Oil Fuel Oil - of U.S.\$1.5515 per barrel. This would have been quite uncommercial.

On the agreed yields of 16% naphtha, 27% gas oil and 56% fuel oil the above total cost of U.S.\$1.5515 was apportioned to their then assessed market values. The result yielded a manufactured cost of naphtha of U.S.\$1.46 per barrel and gas oil of U.S.\$2.00 per barrel as shown in the Contract at Clauses 4.02(a) and 4.02(b). There would be price variables in the range of fuel oils produced by Pan Eastern and it was agreed that the third side of the triangle resolved itself and the resultant apportionment of cost, whilst Kuwait crude prices remained stable, was naphtha U.S.\$1.46, gas oil U.S.\$2.00 and fuel oil (total range) U.S.\$1.389.

This agreement was a practical solution to a potentially difficult problem and has yielded realistic commercial results.

Pan Eastern purchased from Gulf between 1964 and 31 March 1971 96,853,748 barrels of Kuwait crude oil, a large quantity by any normal contractual standards, and re-sold crude as such in the quantity of 2,581,218 barrels on which it made a relatively small re-sale profit of U.S.\$149,226. The price at which Pan Eastern was able to purchase Kuwait crude was not available to Europa Refining at the time the contract was made and I can see no commercial reason why Pan

Eastern should not have been prepared to make available crude oil for onward sale to New Zealand and make some, even though a relatively small, profit by so doing. The quantity processed during this period was 94,272,530 barrels which on an annual basis was the equivalent of more than 60% of the annual capacity of the New Zealand Refinery and the profit made on sale of these processed products was U.S.\$21,264,774.

On 30 September 1964 a Formal Deed, Petroleum Products Supply Contract, was entered into between Europa Oil (N.Z.) Limited and Europa Refining Company Limited providing non-exclusive sale by Europa Refining to Europa Oil of all of Europa Oil's requirements of petroleum products at the going posted prices and AFRA freights.

It was realised that if Europa Refining was to sell motor spirits to Europa Oil on that basis it would be necessary for Europa Refining to obtain a wholesale licence under the Motor Spirits Distribution Act 1953. Accordingly, on 8 May 1964 Europa Refining made application to the Motor Spirits Licensing Authority. The application was heard on 5 October 1964 and although I thought other companies would not oppose the application, there was in fact opposition and the proceedings went badly and finally the application was withdrawn.

The Formal Deed of 30 September 1964 and Deed of Cancellation dated 20 November 1964 are Exhibits C.S. 13 and C.S. 14.

Following cancellation of the Deed of 30 September 1964 I understand the Company's Treasurer, Mr N.K. Smith, became concerned, because of the separate legal identity of Europa Oil and Europa Refining each with different shareholders, that there was no clear understanding of the rights and responsibilities of each Company. Mr Smith was also concerned regarding proper insurance cover to identify

any insurable interest in petroleum, whilst in the custody of the New Zealand Refinery, because without formal arrangements between these two Companies a claim might be rejected by the Insurer on the grounds of no insurable interest.

As a result of discussion of these problems an attempt was made to resolve them in a memorandum of arrangements effective as from 1 April 1965, signed by Dr. G.A. Lou as a Director on behalf of Europa Refining and Mr R.H. Carmichael a Director of Europa Oil. I did not have
10 knowledge of this document which I believe was signed when I was overseas. The Memorandum of Arrangements effective 1 April 1965 is the first document in Exhibit C.S.15. This memorandum was clearly in breach of the foedstock supply contract and it was necessary that I should promptly revoke this and preserve Europa Refining Company Limited's contractual rights.

I did so by recording a note of the correct understanding between the companies which is the fourth document in Exhibit C.S.15. This note was vital for the
20 restoration of the contractual supply rights of Europa Refining Company Limited (with its related benefits such as exchange rights) which would have been lost if the memorandum had been given effect to. In this note I took care to re-establish the provision of the Gulfex/Europa Refining supply contract that Europa Refining would use its refining capacity for processing feedstocks procured under the supply contract and for manufacturing petroleum products therefrom. In terms of the provisions of the Gulf/Europa Refining Supply Contract only Europa Refining had the right to
30 purchase from Gulf feedstocks for refining in New Zealand. Europa Oil had no such contractual rights and only Europa Refining in terms of that Contract had the right to "charge" feedstock to the New Zealand Refinery and to make feedstock exchanges. In this connection I refer to

The Preamble to the contract (page 3112),

The definition of "New Zealand feedstock requirements" (page 3113),

Clause 3.01 "Quantities and Qualities of Feedstocks" (page 3114),

and the exchange provisions set out in Clause 9.01 (page 3121).

10 It will be seen that Gulfex's obligation was to supply Europa Refining Company Limited no more than the quantities of feedstock ascertainable by the provisions of the clauses I have referred to.

My note also restored the intention of Europa Refining to manufacture and sell refined products to Europa Oil and of Europa Oil to purchase such refined products as is evidenced by the formal Deed of Agreement of 30 September 1964 which I have referred to earlier on page 46 and this intention was also clearly set out in my circular to shareholders dated 20 July 1962 - EXHIBIT M at page 2 as follows :

20 "It is also intended that the Company will supply refinery feedstock, arrange the processing of the same and deliver the refined products to Europa Oil (N.Z.) Ltd. ex the Refinery."

The main difference from that deed was that instead of selling to Europa Oil (N.Z.) Limited at going import parity values for delivery of finished products at New Zealand coastal ports and retaining the processing profit (after payment of processing costs including New Zealand coastal freight), Europa Refining would deliver at its current cost.

30 The payment provisions by way of advances to Europa Refining for this service resulted in Europa Oil receiving deliveries into its storage tanks at New Zealand coastal terminals of finished petroleum products, namely, motor gasolines, gas oils and light and heavy fuel oils. Advance payment for these products were to be reconciled at the completion of each manufacturing quarter and any balances due

would be settled from time to time as may be mutually agreed. I also rescinded the provision for 120 days' credit as I felt that under the provision for advances there should be flexibility between the parties.

What Europa Oil received and what it paid for were finished New Zealand market products delivered into its New Zealand coastal terminals. Europa Refining retained its use of the New Zealand Refining Company refining capacity in fulfilment of the terms and provisions of its Gulfex supply
10 contract.

Although Europa Oil (N.Z.) Limited had no major supply of its own feedstocks for processing in New Zealand it did not wholly relinquish its right of use of available refining capacity in the New Zealand Refinery at Marsden Point. It had, of course, a fundamental right of access to the New Zealand Refinery and there was one situation particularly to be respected when Kapuni condensate, discovered in 1959, became available for refining in New Zealand. The Government requested all New Zealand marketing companies, including
20 Europa Oil (N.Z.) Limited, to accept as their share quantities of Kapuni condensate in proportion to each company's market percentage. Had each company agreed, this would have greatly simplified the payment of the bounty which the Government agreed should be paid to the successful discoverers of this oil, namely, Shell, BP and Todd. Kapuni condensate yields a high proportion of motor gasoline and gas oil highly suitable to Europa Oil's marketing requirements. When Mobil and Caltex declined to take a share for refining and sale in New Zealand, it became necessary for the New Zealand Government to pass the
30 Act known as the Kapuni Petroleum Act 1970, as the machinery for the bounty distribution. Europa Oil (N.Z.) Limited, as a New Zealand marketing company, agreed with Government to uplift for refining and marketing the quantity of Kapuni

condensate produced by the Todd Petroleum Mining Company Limited for delivery at the Marsden Point Refinery as "charge stock" for processing therein, and has sold the resultant finished products through its marketing facilities.

During the whole period of the Europa Refining/Gulf contracts Europa Oil (N.Z.) Limited was entirely free to purchase refinery feedstocks and finished products from any source of its choice. Even when it entered into the contract with Europa Refining - the Deed dated 30 September 1964 which was
10 cancelled on 20 November 1964 and was never operated - it was not bound beyond 3 months' notice. It had no obligation to Gulf or to Europa Refining and could have freely chosen any other source. Obviously as a matter of sensible business conduct it exercised its options as it thought best. Europa Oil (N.Z.) Limited had an independence of choice of sourcing its supplies throughout the whole period of the Gulf/Europa Refining Contracts.

Naphtha and middle distillate were the key feedstocks required by Europa Refining. Middle distillate was always
20 in short supply and the oil industry sources of naphtha production were very limited East of Suez. Early in the course of the feedstocks Supply Contract the Japanese petro-chemical industry grew at an unprecedented rate which was quite unpredicted when I was dealing with Idemitsu in 1960 and 1961. Economic predictions in the oil industry are quite frequently wrong. Light naphtha is an essential petro-chemical feedstock and the heavy fractions of a full range naphtha can be moved into the kerosene and gas oil cuts from which there has always been a consistently strong market demand and the various
30 grades of fuel oil are the result of blending distillates with residium. I was becoming aware that times were changing. Gulf had undertaken to supply for Europa Refining Company Limited's requirements a grade of naphtha which was

not their standard production and this involved them in blending in a kerosene cut at additional expense as the value of kerosene was U.S.\$1.76 per barrel higher than naphtha plus the cost of blending. Also Propet was supplying freight, predominantly for the transportation of naphtha, at a very substantial concession. Not only was the alternate freight rate much below AFRA but as Gulf were caught short on their fleet coverage at a time of a sharp increase in world consumption and transportation of petroleum they were obliged to charter for their world-wide trade at high rates for a good part of the Gulf/Europa Refining contractual period. The rates paid reflect the heavy cost to Gulf in honouring the Europa Refining Affreightment Contract.

The world consumption of oil during the past twelve years is reported to have equalled oil consumption in all the previous history of the Oil Industry. This explosive increase in demand greatly depleted existing oil reserves creating heavy obligations for additional capital for the Oil Industry and imposed heavy demands upon the world's tanker fleets and Gulf were exceptionally hard hit by its earlier failure to cover its overall transport obligations in good time.

I could not risk Europa Refining being found in breach of its contracts either in respect of its rights and obligations for feedstock supply, marine transportation or in other respects and I took care that my note should clearly establish what were Europa Refining's obligations under those contracts and at the same time preserving Europa Oil (N.Z.) Limited's independence. The importance of my action will be shown in the following evidence.

A shortage in the availability of a special type naphtha required for motor gasoline manufacture began to be felt by the New Zealand oil industry in the early stages of our supply contract. Even our competitors began to enquire

whether we could help them in the form of naphtha exchanges to relieve their naphtha shortages. Because of the growing general shortage of naphtha some of the other users of the New Zealand Refinery began to reduce their use of capacity rights in the Refinery and Europa Refining, under the provisions of the Participants Agreement, was able to avail itself of more than its equity capacity. Europa Refining was in this strong position because of Gulf's firm obligation to deliver under the terms of the feedstock Supply and Affreightment Contracts.

10 Moreover, under the exchange provisions in the Supply Contract, Europa Refining was able to supplement unavailable refinery production by exchanges in naphtha. By 1966 no overall spare capacity was available to produce the full New Zealand market requirements of motor gasoline and all companies, other than Europa, were making direct importations of finished products to New Zealand. Mobil was short on naphtha over a period of several years. In New York and whilst visting New Zealand, Mobil executives made several approaches to me to purchase naphtha but in terms of the Gulf Supply Contracts Europa

20 Refining could not sell naphtha to Mobil. Caltex initially had produced its requirements of New Zealand light products by importing and refining whole crude in the New Zealand Refinery and exporting from New Zealand large quantities of excess fuel oil. Caltex experienced difficulties in procurement of sufficient suitable naphtha and actually imported some naphtha spasmodically from India but this was a very light grade, unsuitable for satisfactory use in the New Zealand Refinery, and this was discontinued upon protest from other users. Shell and BP made exchange agreements for large

30 quantities of Europa naphtha as set out in the Table which I produce as EXHIBIT P. As I have mentioned earlier, East of Suez the sources of naphtha were mainly limited to the few refineries in the Persian Gulf, mainly owned by the international

companies and the supply difficulty of New Zealand could not be relieved elsewhere. Japan, which had a naphtha surplus in 1960, rapidly became naphtha deficient in respect of its own refinery production and made demands upon Persian Gulf sources for its requirements.

The exchange provision in the Europa Refining contract therefore proved to be of very considerable value. Gulf began to be concerned with the volume of Europa Refining naphtha purchases. Over a considerable period they had
10 questioned our right to make exchanges and this question was finally referred to Mr E.G. Loughney, a Senior Vice President of Gulf, who arranged a 4-hour meeting with me at Pittsburgh on 6 September 1968 which was attended also by Mr Peter Binstead, a Gulf Vice President and General Manager of Gulf's world-wide marine transportation. The latter was concerned that we were employing a large volume of his tanker transportation at a net rate much below AFRA and at a still much lower rate again than the cost of chartering in additional tankers in short supply. Also in attendance was Mr Robert
20 Rees, Senior Legal Officer of Gulf. We had a strenuous discussion, since Gulf, like others, was not only in short supply of naphtha but was having a shipping problem.

I wrote a memorandum during that meeting of my interpretation of our exchange rights. I gave Mr Loughney the memorandum and at the same time I made a copy which I retained. I produce as EXHIBIT Q that copy of the memorandum on which I made a note. Mr Loughney agreed to take my memorandum under consideration and as I heard nothing further from Gulf on the question of our rights of exchange, I
30 concluded that my interpretation of the exchange provisions of the contract was accepted.

But this problem with Gulf was not concluded. They continued to be concerned at our heavy supply demands and

they raised the question - was Europa Refining selling naphtha to others which was precluded under the contract? In spite of assurances they persisted in raising this issue and during my visit to Pittsburgh during June 1969, in an endeavour to get the question laid to rest once and for all, I wrote to Mr Carmichael, with a copy to Mr J.N. McGarvey, the Manager of Gulf's supply section, inviting Gulf to satisfy themselves that Europa Refining was not selling naphtha, by sending an officer to New Zealand to examine New Zealand records.

10 I produce as EXHIBIT R my letter of June 1969 copies of which were given to Mr McGarvey and Mr Clancy of Gulf, and that seemed to conclude that question as they did not send any representative to New Zealand.

I issued two later amending notes which are the second and third documents in Exhibit C.S.15. The first was because of the issue of the Finance Companies Investment Regulations 1969 by adding the word "payments" after the word "advances" in the first and third lines of the original note. The second amending note was immediately
20 issued because it was brought to my attention that the word "payments" in the third line was in error as throughout the whole of the period up to date there had been a continuing dispute with the New Zealand Refining Company and users were not making payments to that company but only advances.

To summarise and to show in simple form the movement of petroleum under the contracts and agreements which I have explained in my evidence, I produce a chart headed "Chart to illustrate the flow of Petroleum under the 1964 Gulf Contracts". (EXHIBIT S). Attached to that chart is an explanation of the
30 Chart which I now repeat. (Where there is a quotation from a Gulf contract "Europa" means "Europa Refining Company Limited").
1. The Legend appearing on the chart identifies a colour

with the different Companies concerned as follows :

| | | |
|-----------------|----|--------|
| Gulf Companies | - | Red |
| Pan Eastern | .. | Green |
| Europa Refining | - | Blue |
| Europa Oil | - | Yellow |
| Others | - | Brown |

2. The circles indicate a passing of ownership of petroleum - squares indicate possession but not ownership.
3. The first column on the left of the charts depicts the movement of petroleum in accordance with the terms and conditions of the Gulf/Pan Eastern Processing Contract dated 10 March 1964 (page 3134).

10

(a) The first circle depicts Gulf Exploration Company selling crude oil to Pan Eastern as provided at clause 3.01 which reads in part -

"During each quarter, or for such other period as Paneast may from time to time agree with Gulf during the term of this Contract, Gulf shall sell or cause to be sold to Paneast and Paneast shall purchase from Gulf:"

20

(b) The next circle depicts Pan Eastern having acquired the crude oil in accordance with clause 3.01 and passing such crude to a Gulf owned or Gulf procured refinery as provided at clause 3.02 which reads :

"During each quarter, or for such other period as Paneast may from time to time agree with Gulf during the term of this Contract, Gulf shall deliver or cause to be delivered, to refineries made available hereunder such part of the quantities of crude oil purchased by Paneast under this Contract as would be equivalent to the quantity of crude oil required to produce the quantities of feed stocks (other than crude oil) and finished products which Gulfco is obligated to supply from time to time to Europa under the Feed Stock Supply Contract. Any crude oil so delivered

30

shall be processed for Panecast's account into feed stocks and finished products. All risk and peril for the crude oil during delivery to the refinery and during processing shall be borne by Gulf or the supplier and refiner designated by Gulf."

- (c) The next square depicts the Gulf owned or procured refinery (without ownership of the petroleum) passing back to Pan East the production resulting from processing (as per clause 3.02).
- 10 (d) The next circle depicts Pan Eastern selling the production (and crude oil not processed) to Gulf Exploration for equivalent quantities from time to time sold by Gulf Exploration to Europa Refining and the balance of product to Propet Company Limited, a Gulf arranged purchaser, as provided at clause 5.01 and 5.02 of the Contract which reads :

"Disposition of Crude Oil and Petroleum Products

- 5.01 Panecast agrees to sell and deliver and Gulf agrees to purchase or arrange for the purchase by others in
- 20 cargo lots of the crude oils purchased hereunder by Panecast and not refined, the other feed stocks and the finished products which have been refined for Panecast from crude oil purchased by Panecast.
- The purchase of the crude oils, feed stocks and finished products referred to above shall be made in quantities equivalent to the quantities of such crude oils, feed stocks and finished products from
- 30 time to time sold by Gulfex to Europa under the Feed Stock Supply Contract and at the same prices received by Gulfex under said contract. All deliveries of crude oil not processed shall be made at the loading port at which Panecast has received the crude oil and all deliveries of the feed

stocks and finished products shall be made at the refinery loading ports at which such products have been processed for Paneast.

10 5.02 Paneast will have available from the processing of crude oil hereunder additional petroleum products to those to be purchased under the provisions of Clause 5.01 hereof. Gulf agrees to purchase, or arrange for the purchase of, such additional petroleum products so as to return to Paneast for the such additional petroleum products an amount of money equal to the difference between the prices to be received by Paneast for the crude oil, feed stocks and finished products sold under the provisions of Clause 5.01 and the cost to Paneast of the crude oil and the feed stocks and finished products processed therefrom as determined under Clause 4."

20 4. The second (Middle) column of the chart depicts the movement of petroleum in accordance with the Gulf Exploration/Europa Refining Feedstock Supply Contract dated 10 March 1964 (page 3112).

(a) The first circle on the left depicts Gulf Exploration selling to Europa Refining crude oil and other feed stocks as provided in clause 3.01 of the Feed Stock Supply Contract which reads in part -

"Quantities and Qualities of Feed Stocks

30 During the term of this contract Gulfex shall sell and deliver to Europa f.o.b. loading ports designated by Gulfex, and Europa shall purchase and take delivery at such loading ports, of all of Europa's New Zealand feed stock requirements".

(b) The first circle on the right depicts Propet providing marine transportation to Europa

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Refining as provided at Clause 2.01 of the Contract of Affreightment (page 3149) which reads in part -

"Transportation to be Performed

During the term of this Contract Europa agrees to ship and Propet agrees to transport, or cause to be transported, in bulk for Europa's account the quantities of feed stocks, other refinery charge stocks and finished products purchased which Gulfex is obligated to supply to Europa under the Feed Stock Supply Contract."

10

(c) The second circle depicts Europa Refining delivering crude oil and feedstocks to New Zealand Refining Company Limited at Whangarei, New Zealand for refining in terms of the agreements between the two companies from time to time.

(d) The square depicts New Zealand Refining receiving crude and feed stocks from Europa Refining, some of which are for processing and some of which is transferred at Europa Refining's request by N.Z.R.C. to other New Zealand companies under Exchange Agreements.

20

5. The third (right hand) column of the chart depicts the movement of petroleum under the Europa Refining/Europa Oil agreements (Exhibit C.S.15).

(a) The first square depicts the New Zealand Refinery delivering finished products (refined from crude and feedstocks delivered by Europa Refining) into Europa Oil in terms of my note - Exhibit C.S.15.

30 (b) The second circle depicts Europa Oil receiving such finished products and also products from other companies under Exchange Agreements and in due course selling to the consumer.

I now produce a second chart headed "Chart to Illustrate the payments of money relative to the 1964 Gulf Contracts etc."

(EXHIBIT T).

Attached to that chart is an explanation of the chart which I now repeat.

1. The Legend appearing on the chart identifies a colour with the different companies concerned as follows :

| | | | |
|----|-----------------|---|--------|
| 10 | Gulf Companies | - | Red |
| | Pan Eastern | - | Green |
| | Europa Refining | - | Blue |
| | Europa Oil | - | Yellow |
| | Others | - | Brown |

2. The chart is in three separate columns each column dealing with the following three companies :

Column 1 Pan Eastern Refining Company Limited.
 " 2 Europa Refining Company Limited
 " 3 Europa Oil (N.Z.) Limited

In each column the large circle in the middle depicts the company concerned and is segmented to show payments and receipts. Payments are depicted by Red Arrows to a smaller circle depicting the payee; receipts are depicted by Green Arrows from smaller circles depicting the payer.

3. The first column shows a large green circle in the middle depicting Pan Eastern.
- (a) The top segment depicts payment by Pan East to Gulf Exploration for purchases of crude oil as provided at clause 3.01 of the Processing Contract (page 3134) at prices determined by clauses 4.01 and 4.02 of the Contract which reads in part as follows :

30 "Crude Oil Price and Processing Charges

4.01 The price per barrel, f.o.b. port of loading, to be paid by Paneast to Gulf or to the supplier from time to time designated by Gulf for the crude oils purchased

hereunder but not manufactured into petroleum products under this Contract shall be:

10 (a) for Kuwait crude oil, the average of the per barrel posted prices of Gulf Kuwait Company, BP Trading Limited, Esso International Inc. and Mobil International Oil Company or their successors (or such of them as post a price) for Kuwait crude oil, f.o.b. Kuwait, of an API gravity equivalent to the average gravity of the Kuwait crude oil loaded aboard the tanker less an amount equivalent to 15% of the average of said postings;

4.02 The amount per barrel, f.o.b. refinery loading port, (including the cost of the crude oil, the processing thereof and all other outgoings) to be paid by Paneast to Gulf, or to the supplier and refiner from time to time designated by Gulf, for each barrel of naphtha, gas oil and wide cut distillate processed for Paneast hereunder shall be:

20 (a) for naphtha, irrespective of gravity or the refinery loading port, a base price of \$1.46 per barrel with said base price escalating cent for cent with any increase or decrease in the average of the posted prices of the companies specified in sub-paragraph (a) of Clause 4.01 hereof for Kuwait crude oil of 31.0⁰ - 31.9⁰ API gravity above or below \$1.59 per barrel;

4.02

30 (b) for gas oil, irrespective of gravity or the refinery loading port, a base price of \$2.00 per barrel with the said base price escalating cent for cent with any increase or decrease in the average of the posted prices of the companies specified in sub-paragraph (a) of Clause 4.01 hereof for Kuwait crude oil of 31.0⁰ - 31.9⁰ API gravity above or below \$1.59 per barrel;"

- (b) The next segment to the right depicts payment by Pan Eastern to Gulf Exploration of the processing fee of 20¢ per barrel crude processed.
- (c) The bottom segment of the large circle depicts income from the sale by Pan Eastern of all of the naphtha, some gas oil and a small quantity of unprocessed crude oil to Gulfex and the sale of the balance of gas oil and all of the heavy fuel to Propet as provided at clauses 5.01 and 5.02 of the Processing Contract.
- 10 (d) The remaining segment of the large circle depicts Pan East's profit from the foregoing transactions being paid to the shareholders 50% Propet and 50% Associated Motorists Petrol Co. Limited.
4. The next (middle) column shows a large Blue circle in the middle depicting Europa Refining.
- (a) The first segment depicts Europa Refining paying to Gulfex for the f.o.b. value of crude and feed stocks as provided at clause 3.01 of the Gulfex/Europa Refining Feedstock Supply Contract (page 3112) at prices determined by Clause 7 of the Contract (and as amended) and on the terms set out in Clause 8 of the Contract.
- 20 (b) The next segment to the right depicts payment by Europa Refining to Propet for marine transportation as provided by Propet in accordance with Clause 2.01 at the rates provided in Clauses 4 and 5 and on the terms set out in Clause 8 of the Contract of Affreightment 10 March 1964 Propet/Europa Refining (page 3149).
- 30 (c) The next segment to the right depicts payment to New Zealand Refining Company Limited of its refining fee and cost of N.Z. coastal distribution. These payments were made on behalf of Europa

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Refining by Europa Oil as advances to N.Z.R.C. Limited as provided by my note - (Exhibit C.S.15).

- (d) The segment at the bottom depicts sale of petroleum to Europa Oil (N.Z.) Limited under the agreements between Europa Refining and Europa Oil.
- (e) The next three segments to the right depict -
- (i) the receipt of alternate freight credit as provided in the Ancillary Agreement between Gulf Oil Corporation and Europa Refining (page 3176)
 - (ii) the receipt of sundry income, e.g., interest earnings by Europa Refining.
 - (iii) the receipt of dividends from N.Z.R.C. Limited arising from Europa Refining's holding of 514,286 shares in that Company
- and the payment out of those amounts to Europa Refining shareholders.
5. The third (right-hand) column shows a large yellow circle depicting Europa Oil.
- (a) The first segment depicts payment by way of advance to or on behalf of Europa Refining in terms of my note - Exhibit C.S.15.
 - (b) The next segment to the right depicts Europa Oil Marketing costs.
 - (c) The next segment to the right depicts income from Europa Oil's sales to its customers.
 - (d) The segment at the bottom depicts receipt by Europa Oil of sundry income; e.g., interest, rentals, dividends.

- (e) The next segment but one depicts receipt by Europa Oil of dividends from its subsidiary Associated Motorists Petrol Company Limited. (A.M.P. Co. Limited income consisted of dividends from Pan Eastern plus interest earnings and commissions).
- (f) The remaining segment depicts payment by Europa Oil of dividends from the profits engendered by all the transactions just outlined.

10 This Chart shows also for each of the Companies in summarised form just how each company earned its profit -

Pan Eastern: By buying crude and having most of it refined for a fee and selling the production from refining and the unprocessed crude.

Europa Refining: made profits on its affreightment contract, from interest and from N.Z.R.C. Limited dividends.

Europa Oil: made profits from marketing petroleum products in New Zealand - from sundry income and from dividend from Associated Motorists.

20 In January 1964 shortly after the New Zealand Refinery came on stream the Government first queried the expression "world prices" and stated in its view "world prices" were not the same as posted prices. In April 1965 the Department of Industries and Commerce wrote to all companies requesting details of quantities and costs of imports of petroleum products and also copies of supply contracts. Europa complied with these requests and forwarded copies of the Supply and Affreightment Contracts including the Ancillary Freight Agreement but no other Gulf Agreements were supplied.

30 On 7 December 1966 the Minister of Industries and Commerce wrote to Mr J.B. Price, Managing Director of Shell, stating in Government's view after study of import prices New Zealand had paid considerably more than arm-length world

prices. Mr Price replied by letter dated 12 December 1966 to the Minister of Industries and Commerce in which he said - "Furthermore, and although you only briefly refer to the situation regarding the action being taken by the Commissioner of Inland Revenue, we cannot agree with the inference that the two subjects can be divorced - in fact the issues in several important respects certainly appear to be common." I produce these letters as EXHIBIT U.

10 An Interdepartmental Committee on the Oil Industry was a Government committee set up under the chairmanship of Mr J.P. Lowin, Assistant Secretary of Industries and Commerce, consisting of representatives of Industries and Commerce, Treasury and initially Crown Law Office and after the first round of talks included representatives of Inland Revenue Department.

The first plenary meeting between Oil Companies and the Interdepartmental Committee to negotiate pricing standards was held on 16 February 1967 and both plenary meetings and meetings with individual companies continued thereafter.

20 "Benchmarks" is a term coined by the officials to describe standards recommended by them as collective levels of landed cost to apply to imports of petroleum into New Zealand. The Government Benchmarks are available in several ways outside the negotiations with the Interdepartmental Committee - they are available for establishing delivered prices of products ex the New Zealand Refinery, for pool pricing purposes, for the fixing of wholesale and retail prices and for pricing Kapuni condensate and for calculating bounty payments.

30 I now produce as EXHIBIT V a table setting out quantities of Europa Refining Company Limited imports into New Zealand of Kuwait crude oil, naphtha and gas oil for the years 31 March 1966⁶ to 31 March 1971, valued firstly at f.o.b.

prices in accordance with the Feedstock Supply Contract with Gulfex dated 10 March 1964 as amended from time to time and freights in accordance with the Ancillary Agreement being part of the Contract of Affreightment with Propet dated 10 March 1964 and then valued secondly at the Benchmarks for f.o.b.'s and freights established by the Interdepartmental Committee on the Oil Industry.

10 The table shows that the total cost of Europa Refining Company importations in accordance with the Supply and Affreightment Contracts with Gulfex and Propet for the period from 1 April 1965 to 31 March 1971 amounts to \$N.Z.49,716,157 whereas the cost of the same imports valued at New Zealand Government Benchmarks for f.o.b.'s and freights amounts to \$49,940,091, a saving of \$223,934.

20 Not all companies' positions are the same and the New Zealand Government recognises this by imposing not a rigidly fixed price for each import and related freight but a flexible "package" within which the New Zealand oil importer may function. There is flexibility in pricing between one crude as to another and flexibility in pricing other refinery feedstocks and a flexibility in freight rates in relation to the total New Zealand landed cost of imported oil.

30 A paper was given to me by Mobil early in ^{July} 1972 which has a specific significance where it deals on pages 3, 4 and 5 with the problem of identification of naphtha which, as stated, is a generic term for a wide range of unfinished light petroleum fractions and illustrates very clearly that naphtha, as quoted in the price reporting media, is a light naphtha unsuitable for motor gasoline manufacture in New Zealand, and if such light naphtha were imported to satisfy the pricing proposals then being made by the Committee, then instead of a saving in the ultimate cost of New Zealand gasoline, there

would be, in the case of the year 1 July 1970 to 30 June 1971, an additional cost in New Zealand exchange exceeding \$4.7 million. The tabulation of this additional cost is set out in the attachment to the paper under the heading "NZRC - Comparison of Processing Light Naphtha Spike versus Heavier Type Naphtha Supplied 7/70 - 6/71".

It also reviews not only the "overall package" concept but shows the important part which the freight element played in the achievement of the Government C. & F. targets. 10 The importance of the freight component is referred to on page 2 of that paper and illustrates that if the actual costs of the transportation of naphtha were applied to the C.& F. cost of naphtha, this would have resulted in ^{an} average increase of 26 cents per barrel in the C.& F. cost compared with the freight rate agreed under the package concept.

The conclusion on page 5 touches on the contemporary problem at that time of the increased petroleum costs as a result of the OPEC imposed cost increases. The paper as a whole provides a valuable contribution not only to the problem 20 of correct evaluation of the specialised naphtha, of which Europa Refining was a predominant importer into New Zealand, but also to the agreed principle between Government and the Industry of the C.& F. package concept. I now produce this paper as EXHIBIT W.

A certain Government proposal for naphtha valuation gave me great concern and I requested a personal interview with Mr J.P. Lewin and I pointed out to him that the proposed valuation was quite unique and could only be derived from the Gulf/Pan Eastern contract which had been produced by me only 30 to the Inland Revenue Department. I wanted to particularly point out to Mr Lewin that the figure proposed to apply to the years 1964, 1965 and 1966 was the cost of manufacture of Kuwait naphtha in terms of that contract and not the market value.

The cost of manufacture of naphtha from Kuwait crude was not the cost of manufacture of naphtha from other crudes, the price of such other crudes being generally higher and also that to confuse the actual cost of manufacture with market value was a basic error. Mr Lewin readily accepted this point and this figure was withdrawn. The important consideration is the distinction between market price of imports, as distinct from cost of production. A letter addressed to me by the Assistant Secretary of the Department of Trade and Industry, Mr J.W.H. Clark, dated 30 January 1973, makes this distinction, stating -

10 "Your argument is based on OPEC costs whereas on this issue Officials have consistently argued that it was the market price which was the important consideration."

I produce this letter as Exhibit W1.

The world-wide oil industry has been in a continuous condition of crisis over much of the period of our contract and Europa Refining has performed better than any other member of the oil industry in New Zealand in maintaining New Zealand Refinery feedstock supplies. It has taken up capacity use of the New Zealand Refinery not used by others and has thereby contributed more than its market share to the *20* economics of the New Zealand Refining Company Limited. By so doing it has made a corresponding additional contribution to the New Zealand exchange position. Furthermore, during the period of the Gulfex/Europa Refining 1964 contract from 1 April 1965 to 31 March 1971 (the period of the disputed assessment against Europa Oil), Europa Refining, exclusive of dividends from its shareholding in the New Zealand Refining Company, has earned New Zealand taxable income of \$4,559,247. Much of this fine performance is derived from the quality and stability of its supply and affreightment contracts with Gulf. One must give credit to Gulf that it has, at all times, *30* scrupulously observed its contractual obligations and has proven honourable and generous in its administration of that contract.

I unhesitatingly say that over the period when Europa Oil (P.Z.) Limited has drawn upon Europa Refining Company Limited for the supply of finished products produced by Europa Refining from feedstocks processed in the New Zealand Refinery and for petroleum exchanges *procured through the resources of*

Europa Refining (excepting such of its own production of purchases of Kapuni light condensate), Europa Oil (N.Z.) Limited has enjoyed exceptional advantages.

I know of no alternative source from which Europa Oil could have obtained long term supplies with equal advantage. Naphtha sources for the type required for manufacture of New Zealand motor gasoline, were for most of the period unavailable East of Suez (West of Suez sources would be quite uneconomic). Middle distillate (unfinished gas oil) has been consistently in short supply and other than from Europa Refining resources, would have been virtually unobtainable. Both these feedstocks are essential for Europa product market pattern. If Europa Oil had abandoned its election to use the resources of Europa Refining it would have had no other source for its specialised feedstock requirements. Furthermore, it would have been in the same difficulty for its marine transportation. Open charter rates for a large part of the total period have been prohibitive especially as to voyages to New Zealand other than on a continuous fleet basis and unattractive to tanker owners; in tanker jargon the New Zealand voyage is not a "handy trade" as this is an ocean trade with no handy ships for chartering. Payment of such rates would have been financially disastrous. I know of no source combining the essential components of assured long term supply of the required type of specialised feedstocks and of an assured supply of marine transportation at AFRA rates other than that provided by Europa Refining if Europa Oil had attempted to lay down in New Zealand its own requirements of feedstocks at the expiry of the Gulf pre-emption period.

Europa Oil has been able to acquire in the New Zealand petroleum rapid grown market, a constantly increasing competitive share. In the case of motor gasoline from 14.8 per cent. in 1964 to 16.8 per cent. in 1971, and in the case of

gas oil from 14.8 per cent. in 1964 to 17.7 per cent. in 1971, and also a small but growing position in the fuel oil market from zero in 1964. To do this it was dependent on assured supply of market products which it was able to obtain without limitation even when NZRC capacity fell short of New Zealand market requirements because of Europa Refining's unique exchange opportunity and at a time when other companies in New Zealand were having feedstock supply problems. Europa Oil (N.Z.) Limited's taxable earnings in New Zealand for the

10 financial years 1964 to 1971 inclusive aggregated \$12,201,272, an annual average earning of \$1,525,159, excluding the assessments before the Court. Its comparative record as against the rest of the Industry is an achievement of success.

During the period since the execution of the 1964 contract, we have witnessed an unprecedented phenomenon of the transformation of the international industry progressively from a buyer's market in 1964, moving soon thereafter, according to the class of oil company feedstock required, to a seller's market and in more recent years to

20 a market dictated not by buyer or seller but by the producing States themselves. This was becoming increasingly apparent to me in my discussions with Gulf. Naphtha was becoming short in supply and middle distillate supplies have always been tight. Gulf was showing a loss under the Propet/Europa Refining Affreightment Contract resulting from having to go on the charter market at premium rates to fulfil Gulf's fleet obligations. These were conditions well before 1970 when I began to discuss with Gulf the continuation of our contract beyond the termination date of the existing contract for

30 supplies for the proposed extension of the New Zealand Refinery. Gulf showed a lack of interest. During those discussions Mr Del Brockett, Chairman of Gulf's Board, invited me to have a private talk with him to tell me that he felt it his duty, in view

of our long and friendly association, that Gulf was curtailing its commitments because of producer States' regulatory controls and pressures and the foreseeable energy shortage and would therefore not be interested in entering into any new Supply Contract with me for crude or other feedstocks, nor would it be interested in acquiring the whole or any part of the shares in the Europa enterprise in New Zealand. In short - the international oil industry had experienced a complete revolution between 1964 and 1971.

COURT RESUMES Wednesday 14th February, 1973.

BRYAN JAMES TODD:

XXM: MR RICHARDSON:

Mr Todd, in these tax years 1966 to 1971 was AMP's share of the Pan Eastern profits over \$8,000,000? I couldn't say.

It is in the Case Stated? If it is in the Case Stated that is correct.

Did that \$8,000,000 all come back to Europa? That again I can't say, it would be available only to come back to Europa and it would come back in form of dividends only.

Was that \$8,000,000 over half the total profits of Europa over those years? Europa being what company. Europa Oil? You mean the trading profits of Europa Oil.

Was the eight million Europa share in Pan Eastern over half the total profits of Europa Oil in these tax years? I'm not sure I understand the question, over half of what profits.

Did Europa return as its assessable income during the six years in question an amount of 5.4 million dollars? I'm afraid again I can't answer in exact figures, but I would say this, Europa Oil would put in its annual returns the full receipts by way of dividends for each of the years that it had received from Pan Eastern, it would be ~~required~~ ^{advised} to do so under terms of the Companies Act or the Inland Revenue requirements. If I say Europa's assessable income excluding Pan

10 Eastern amounted to 5.4 million and its share of Pan Eastern profits for the period amounted to eight million, do you agree Pan Eastern contributed more than half the profits of Europa for the period? In the first place Europa Oil does not have a share in profits of Pan Eastern, it gets dividends from Pan Eastern, I would like to make that distinction, so to compare the assessable income of Europa, I am assuming you are referring to trading or taxable income in New Zealand, derived by Europa Oil in New

20 Zealand.

So in the form of dividends originating from Pan Eastern Europa got or was to get eight million dollars in respect of this period compared with its trading income of 5.4 million dollars? Depends if the dividends were paid and if they were paid and the figures are correct, then the comparison would be correct, I qualify that because I don't know if the total amount of earnings of Pan Eastern were distributed by way of dividends over that three years.

30 Under Article of Association of Pan Eastern did Associated Motorists have the right after each year to call for dividend distribution of the profits? Each had that right.

Is it the position that Europa through its control of Associated Motorists could have obtained half profits of Pan Eastern at the end of each year? By way of dividends.

Did the Pan Eastern profits which would reach Europa by way of dividend during these tax years amount to about 25% of Europa's F.O.B. payments to Europa Refining? Now again, you must qualify that question, which company are you referring to as Europa.

10 I am referring to Europa..I show you EXBT NO. 1? I had a copy but it is in slightly different form from the one produced, the copy I received doesn't give the totals.

TO BENCH: Has the one you have the years 1965 to 1970 inclusive? Yes, but this one has the totals in..I did ask which Europa company.

TO COUNSEL: Yes, and I am asking you did Europa Oil get back through Pan Eastern sums amounting to about 25% of the F.O.B. advance payments Europa Oil
20 made to Europa Refining in respect of its supplies? No, that would be entirely wrong as I see it. Let me take it in steps, is the position according to your evidence that Europa Oil made advance payments to Europa Refining of the amount of F.O.B. costs of purchases by Europa Refining from Gulfex? No. What did it do? Europa Oil paid by way of advance payments for the finished products being motor spirit, finished gas oils and fuel oils produced ex the New Zealand refinery and those payments included cost
30 of manufacturing and were not payment for F.O.B. stocks at all.

Did Europa Oil make advance payments to Europa Refining of the amount of Europa Refining's F.O.B.

feedstock prices? No.

At the time that a shipment of feedstock supplies was loaded under the 1964 contract, did Europa make an advance payment to Europa Refining? I can't answer that, because I don't know.

I thought you had given evidence about this yesterday ...do you have before you the memoranda, EXBT 15, to the Case Stated? No.

Perhaps I could read to you from the Exhibit, does the
10 first sentence read

"Europa Oil (N.Z.) Ltd. will make advance payments to Europa Refining Company Ltd. against feedstock cargoes and freights and charges and will make advance payments to New Zealand Refining Company Ltd. in respect of processing fees."

Do you know yourself how and when these payments were made? No, how and when no.

Do you know how the amounts of those payments compared with the F.O.B. prices and freights under Europa Refinings 1964 contract? (Witness reads third copy C.S.15) I read that as being all part of the same procedure.

Is the position you don't know yourself what was done?

20 Oh, yes, and it is clear in first sentence, that it is a series of advances which cover the total manufactured cost of the motor gas, the gas oil, the finished motor gas, the finished gas oil and finished fuel oil delivered to Europa Oil, and that the provision for advances are in my view cannot be segregated or quantified as to any particular ingredient into the total manufactured cost of those finished products. The ingredients of course go back to the beginning, are ingredients of feedstocks
30 acquired overseas, marine transportation to New Zealand, processing fees in New Zealand refinery, processes incurred in costs removing the finished products to Europa Oil and the advances amount to

total of those elements of structure of the finished products delivered to Europa Oil (N.Z.) Ltd.

Now we come to all that later, at this point, if we take as one element the F.O.B. price for feedstocks did Europa get back through Pan Eastern sums amounting to about 25% of those F.O.B. prices during the six year period...did Europa receive from Pan Eastern sums amounting to about 25% of the F.O.B. payments for feedstocks from Gulfex? No, I think
10 that again is put incorrectly because we are comparing situation of two different companies and it seems to be quite wrong for Dalgety & Company to be compared with N.M.A.-Wright Stephenson...I can't accept to put it in this form is the proper way to put the question.

Please now answer the question? I think it had better be put again.

Did Europa receive through Pan Eastern sums amounting to about 25% of the F.O.B. payments for feedstocks
20 made to Gulfex in respect of these tax years? Well, the way the question is put, did Europa receive, an assumption it received dividends, I am unable to say, but assuming nine million was received as dividends, and comparing that nine million with a totally dissimilar item in character which totals in the first column 37 million, then arithmetically, I repeat arithmetically, the figures appear to be correct.
Is there any discussion in your brief of evidence of Europa's share through Associated Motorists of Pan
30 Eastern profits? I can't recollect it.

Would you agree that the Pan Eastern arrangement was a most material factor in Europa Oil's profitability during these tax years? No, I wouldn't put it that

way at all, I would say that Europa Oil's profitability was derived from the conventional trading in New Zealand in distribution of oil profits in the same manner as the profitability derived by our competitors, Shell, BP, Caltex and Mobil, that is Europa's profitability in New Zealand, and that is its trading profitability. If it derives from outside New Zealand a dividend income from an entirely different source from that which is conventional and relates conventionally in respect of our competing trading companies in New Zealand, if it has in addition to that a dividend income from outside New Zealand that is a different matter and I think to satisfy the point you are raising is that the dividend income from this outside source was of course substantial, but it was peculiar in the oil industry in New Zealand to Europa only.

Do you agree that on every order of supplies Europa could calculate exactly how much it would get by way of Associated Motorists through Pan Eastern as a result of that order? Well, first of all, we must again distinguish which Europa.

TO BENCH: Can we assume when "Europa" is mentioned that is Europa Oil, and if it is refining that is Europa Refining? Perhaps we could use the same context as in statement of evidence. I think to use Europa Oil and Europa Refining would be best.

TO COUNSEL: I will ask the question again, it is a general question, do you agree that on every order of supplies Europa Oil could calculate how much it would get as a result of that order through Associated Motorists and Pan Eastern? I don't want to use emphatics, but in this case I would say it was utterly impossible.

Do you recall Mr Smith gave evidence about the operation of the 1964 contract in the previous case?

I recall him giving evidence, yes.

And if I suggest to you that his evidence was that the feedstock supply contract and the processing contract were parallel contracts in respect of pricing, would you agree? Did he give that in evidence.

Would you prefer I asked Mr Smith those questions?

No, but you said he gave this in evidence, I just
10 ask whether he did give that in evidence.

At p.185 line 19

20 "Under the 1964 contract, did Pan Eastern end up with a profit which gave Europa through Pan Eastern the expected profit on its purchases? On feed stock purchased? The term "expected profit" worries me a bit: it gave the profit in accordance with the contract. That could be calculated as you said earlier simply by comparing prices under parallel contracts, the feed stock supply contract on the one hand and processing contract on the other? Yes, but the calculation does not produce a profit. The purchases and sales did? Yes. Calculation had to be based on purchases and sales."

I don't think the question of parallel is significant
...I want to be careful I am not led into something
I might later regret because of my inadvertence.

TO BENCH: What do you say about parallel contracts?

They were related because Pan Eastern shareholding was held 50% by Europa Oil and Europa Oil was purchasing motor spirit supplies from Gulf Iran
30 under those contracts. The situation in the present case is entirely different.

TO COUNSEL: I will refer you to another passage of Mr Smith's evidence on p.182 line 9, referring to feedstock supply and processing contracts.

"Are they parallel contracts? Yes. Does Europa get through Pan Eastern an amount equal to the difference between the two sets of prices? Yes, that is the effect."

Yes, this is under the 1956 contract.

The 1964 contract? Then that evidence is incorrect.

Do you deny on every order of supplies Europa Oil could calculate how much it would receive by dividends from Pan Eastern as a result of the order?

Under the 1964 contract, yes, I completely deny that.

Do you claim that Europa's right to dividends from Pan Eastern through Associated Motorists had no

bearing on Europa Oil's decision where to get its supplies? I can neither deny nor affirm that because that is a question which is dealt with very extensively in my evidence in chief and there are many factors taken into account in reaching a business decision on sound business judgment which influences the making of the contracts.

Was one factor so far as Europa Oil was concerned the right to dividends from Pan Eastern? Mr Richardson,
10 I gave in my evidence that Europa Oil made no contracts.

Was one factor so far as Europa Oil's decision where to get its supplies its right to dividends from Pan Eastern? I have already dealt with that.

TO BENCH: What do you say as to that point, as to whether it was a factor? Europa Refining was the contracting party, Europa Oil had no obligations and entered into no contracts. If Europa Oil were the recipient as it was of dividends from a certain
20 source, it would naturally be taken into account by Europa Oil as sound business approach to its own interests.

Now passing to another topic, before you entered into the 1956 arrangements with Gulf, did you have negotiations with Caltex? Yes.

Did Caltex make proposals for a long term supply arrangement? No, that was the problem, in the first instance our contract has come to an end, our contract with Caltex was terminating in 1956; I made
30 unsuccessful attempts to renew that contract.

Did Caltex make proposals for a supply arrangement for Europa Oil? Eventually, having declined to renew the contract except on most unfavourable terms,

when it learned that I was dealing with another whose identity was not known, it did make approaches.

Did its final proposal provide for the incorporation of a jointly owned Bahamas Company? Caltex itself is a Bahamas Company and it is a jointly owned Bahamas Company.

Was that jointly owned company to buy the crude from Caltex, have it refined by Caltex and sell the products back to Caltex? I have to rely on memory, the
10 proposal, speaking from memory, was that the jointly owned company would buy crude from Caltex, Caltex would process that crude, but I can't answer from memory whether Caltex proposed they would buy back the results of the processing of that crude either in whole or in part, I can't remember that.

Was the estimated profit for Europa Oil through the Caltex Bahamas arrangement for 1957 \$687,000? Caltex prepared memorandum setting it out, and if that is the figure in the memorandum that would be
20 correct (p.4105 of earlier case)

Before you concluded the 1962 agreements with Gulf, did you have negotiations with BP? I had many negotiations with BP, but what ones are you referring to.

I am referring to negotiations with respect to feedstock supplies? I will have to be refreshed, I just don't remember...I am not suggesting that I didn't, but I just don't know.

(p.4242 Vol. IV) There is a letter of 13th November
30 1962? I'm sorry, I thought you were referring to 1956...this is 1962, I had no negotiations.

Did BP make a proposal for a long term feedstock supply arrangement? There is a letter dated 13th

November 1962 addressed to Europa Refining Company Ltd with a comprehensive proposal, the circumstances of that proposal should be explained. I was in England in 1962 which was after the signing of the processing agreement between the companies involved in that Refining project, I was in England in 1962 having discussions with Shell and BP on Oil Exploration matters and the Exploration people told me that they would like the head of their trading division to have

10 a talk to me about supplies, I saw this man twice briefly, I think he was a Mr Stratton, and he said that they would like to make a proposal of feedstocks for New Zealand Refinery. I said I was most willing to receive a proposal, he put it to me as oil companies do, in the first place, what would satisfy you by way of a proposition, that is always the first gambit in opening discussion, because if you disclose what your terms are, then it has two effects, one to become a bargaining point to beat you down, and

20 secondly it discloses something of an offer from others, which you probably would raise a bit, so you give away your complete bargain power if you say who you are dealing with and the terms upon which you would supply.

Was this proposal for a jointly owned Bahamas company?

I would like to continue.

Look at p.4246 paragraph 14 (Read)

30

"It is proposed to set up a joint BP/Europa Company in the Bahamas whose function will be to secure profit for Europa through that company equal to the difference between -

- (a) the prices actually charged by BP to Europa from time to time for crude oil, straight Kuwait Naphtha and freight and

- (b) The C. & F. price at the time in question for crude oil, straight Kuwait Naphtha and freight calculated in accordance with paragraphs 7 and 8 of this offer.

Details of the method of operation of the joint company to be set up in the Bahamas are as set out in the attached Appendix B."

My question is, did the proposal provide for a jointly owned Bahamas company? The letter was sent to me in New Zealand and it was an offer, and this is why I felt it would be desirable to give some background to how this letter arose, otherwise it could be the inference that this was a matter of

negotiation between BP and myself, and there were no negotiations.

Did you say this was not an offer? It was an offer.

TO BENCH: You mean that offer came out of the blue?

I declined to negotiate, this is why I wanted to give correct background of circumstances of the letter.

TO COUNSEL: Mr Todd, have you been a director of Pan Eastern since its incorporation? Yes.

How many directors' meetings did you attend during
10 the six years covered by this case? None, I have an alternate and that is the normal practice of the international companies all of whom, almost without exception, have registered companies in the Bahamas and the Bermudas and they have their administrative offices either in London, The Hague, New York, Pittsburgh in oil industry....in England, if you buy a tin of Nescafe you see on the can "A company incorporated in the Bahamas", but it is very rare for the directors to attend. I am not an administration
20 officer and it would be a very rare thing for directors of the Bahamas registered company to attend the meeting, they rely on their alternates.

TO BENCH: How many meetings a year? One

Who would be alternate? I have an alternate who is a member of a law firm in the Bahamas.

TO COUNSEL: Were directors' meetings of Pan Eastern held in the lawyer's office in the Bahamas? Yes, I think that is correct, and the minutes are circulated from the registered office of the company which is
30 in a law firm. It is a tourist spectacle to visit Nassau in Bahamas and see whole facade of building covered with company name plates, they are directors for hundreds and thousands of companies.

Apart from the weather, there appears to be an attraction for the Bahamas? Not only attraction, a necessity.

TO COUNSEL: I read extract from "Fortune February 1969"

"Sophistication comes to Tax Havens" and p.174 under the subheading "Changes on Bay Street", I read it to

No. 2 you

10 "When the visitor to the Bahamas gets tired of the spectacular sunsets, the dazzling white beaches, and the roulette tables, he can always take in another famous local sight: the company nameplates covering the walls outside local law offices. This self-governing British colony of fewer than 150,000 people has some 11,000 companies. Most of the nameplates can be found in and around Bay Street, Nassau, home of the Bay Street Boys - the group of local merchants, lawyers, bankers, and politicians who turned the Bahamas into a thriving tax haven, and made the colony's name synonymous with fiscal skulduggery."

20 I gave my evidence a moment ago without any knowledge of the article, I suppose the writer is entitled to write as he likes and if he wishes to attribute skulduggery that is his privilege.

Has Pan Eastern at any time had any staff? The answer to that is simply, at its registered office in Bahamas it has necessary staff through services of the legal company and the corporate requirements under the Bahamian laws. The world wide administration of these registered Bahamas companies is not carried

30 on in Bahamas at all. Example, Caltex, which is an international company of great magnitude, I dealt with it from 1936, Caltex is one of the very large international entities in oil industries engaged in worldwide activities outside North and South America, their administration office and their

business functions are centred in New York, their registered office in the Bahamas is no more than what I have described as a name plate outside a lawyer's office and with a minimal staff performing the functions carried on in the Bahamas.

Does Pan Eastern itself have any administration offices or staff outside the Bahamas? Yes, in a contract with Gulf, Europa Refining's contract with Gulf, the obligation is imposed on Gulf to

10 perform all the books and records and they are quite

substantial, as evidence will show, at Gulf's expense in other words Gulf acts at its own expense in the administration of the contractual business between Gulf and Pan Eastern. Pan Eastern by contract is relieved from carrying those tasks out.

(p.3142 - clause 504)

During these tax years, have the only assets of Pan Eastern been amounts owing by Gulf companies and deposits in Banks outside the Bahamas? Whatever the
10 balance sheets would show would be the position and I would think that at the end of each quarter the transactions for that particular quarter having been completed, or at the end of each year may be, that that would be the case.

Has Pan Eastern ever had any assets in the Bahamas?

I think the name plate.

Has it ever had any commercial activity in the Bahamas? No.

Mr Todd, in the previous case you said you regarded
20 the Pan Eastern set up as a refining venture? There was a lot of discussion on that and the evidence wandered a good deal on that.

One of the later comments (p.126 line 14) "You have said that you regard the Pan Eastern set up as a refining venture?"

Are you still saying that in the Pan Eastern arrangement Gulf and Europa Oil were in 1956 setting up a genuine refining venture? Yes.

You know that Mr Justice McCarthy said this claim verged on the romantic? I think he was referring
30 to the profitability, I'm not sure, I read his judgment, but I don't remember it.

At p.420 line 49

"But neither do I think that "the setting up of a genuine refining venture", Mr Mahon's phrase, describes in any more accurate way the real character of the arrangement. It verges on the romantic."

With all respect to the Honourable

TO COUNSEL: So we know where we stand in this case, are you still claiming that Pan Eastern was a genuine refining venture? Most assuredly.

I want to come to the 1964 contracts with Gulf, and you might want to have the volume in front of you. I go first to feedstock supply contract which is at p.3112, and I look at p.3118 which is concerned under cl.7 with price, under the feedstock supply contract did Gulfex agree to supply Europa Refining

with crudes at posted prices? That is 7.01, yes.
Were substantial discounts off posted prices available
in arms length sales in the 1962/64 period? There
were discounts of varying amounts according to the
circumstances of vendors and purchasers and those
discounts were apparently well known but of varying
amounts which were generally kept fairly secret.

10 But Mr Newton presented tables covering this period
in his evidence which shows a range of discounts in
that particular period. And, of course, Mr Newton
through his intelligence gathering system has a
wider knowledge of discounts than I have, but to
answer the question simply, there were discounts
in 1962/64, that is a generally known fact.

Did the processing contract in effect provide Europa
by way of a dividend from Pan Eastern with an amount
equal to 15% off the posted prices of crude
purchases under the feedstock supply contract? I
have given in evidence in chief just that fact, that
20 under the Gulf Oil Pan Eastern contract 15% off the
posted price was the price that Pan Eastern
purchased crude from Gulf Oil.

11.30 COURT ADJOURNED

11.50 COURT RESUMED

Just before the adjournment I was asking about the 1964 feedstock and processing contracts, I read to you a passage from your evidence in the previous case (p.141 line 22)

0 "Passing to the 1964 contracts - you put them in yesterday and dealt with them. We have prepared again a chart which you can have a look at. (EXHIBIT 5). Looking at the chart, do you agree with everything in the Notional? Under the 1964 processing arrangement Notional arrangement, Pan Eastern buys crude oil from Gulf at a discount? Two parts - Whangarei supply and other crudes which are notionally processed - Whangarei supply comes as crude to New Zealand? Yes. But Pan Eastern purchases that crude from Gulf at discount and immediately sells it back to Gulf at posted prices? Under the contract. So Pan Eastern obtains discount without doing anything to the crude? On that chart. It cannot be said that is a refinery profit in any sense? No. I suggest the only reasonable explanation of that is to give Europa a discount on its purchases for Whangarei? Yes. In effect. 20 Apart from situation in New Zealand exactly the same result could have been obtained by a straight discount? If I could have arranged it with Gulf."

do you accept the position as stated in that passage? I am not quite sure of the context, it is difficult to agree with something without seeing what is recorded ...in the first place "Do you agree ...notional", I think I said "No" there...I find it difficult to accept that I accepted that notional chart.

30 Look at p.141 last line

"It cannot be said that is a refinery profit in any sense?"

And my answer was "No" and I agree with that.

The next line

I suggest the only reasonable explanation of that is to give Europa a discount on its purchases for Whangarei?"

But it does not give discount..unless the chart had already taken into account the discounts I had arranged in March 1965 because otherwise the invoices to Whangarei were for full posted price, but if the chart refers to period post or after my negotiated discounts, then it would show a discount.

If you read the next sentence, you will see the context to which you gave that answer? "Yes in effect", I don't think that is correct on review, because I can't see how an invoice at posted price from Gulfex to Europa Refining for delivery of feedstock to Whangarei is in effect a discount.

10

Read through the passage again, I suggest it is referring to the processing contract in conjunction with feedstock supply contract? If that is the case, there is no relationship, there couldn't be a relationship.

Let us take it in several steps. Under the processing contract does Pan Eastern purchase crude from Gulf at post prices less 15%? Yes.

Under the processing contract did Pan Eastern sell that crude back to Gulf at posted prices? To Gulfex at posted prices, yes, but it never actually did so, only under the provisional contracts which were amended effectively from the date of the first shipment, so that in effect what you are putting to
 10 me, Mr Richardson, the answer to that is the price from Gulfex to Europa Refining was...the price paid by Europa Refining to Gulfex for delivery to Whangarei effectively was a discount price.

Now can we come back to the position as recorded in the contracts themselves...I have suggested that under the processing contract Pan Eastern purchased crude from Gulf at posted prices less 15% and sold the same crude back to Gulf at posted prices? No, contractually that was the provision.

20 And do you agree that Pan Eastern thereby was to obtain a discount without doing anything to the crude? Buying and selling it.

Buying it from the person to whom it sold it at a guaranteed provision? No, not guaranteed provision, for sale onwards from Gulfex.

And as at the time the contract was ^{included}~~enclosed~~ was that at posted prices? Yes.

Do you agree that the profit Pan Eastern made was not a refining profit at any sense? Oh yes, it was
 30 a buying and selling profit, on crude unprocessed.

Do you agree the only reasonable explanation of that was to give Europa a discount on its purchases for Whangarei? No.

Well, you have been recorded as having answered yes

to that same question in the previous case? I say now it ought to have been "No". But I think I did add something to that in effect.

Do you agree the only reasonable explanation of that processing contract provision was to give Europa Oil a discount on Europa Refining's purchases for Whangarei? No.

Perhaps could you explain the answer you gave at the previous hearing? It might be simpler to explain
 10 the answer I gave in my present evidence, it might save time.

TO BENCH: I give you the previous evidence at the top of p.142, Yes

"Apart from situation in New Zealand exactly the same result could have been obtained by a straight discount? If I could have arranged it with Gulf."

and I think that was the very material connotation for the whole of that passage.

TO COUNSEL: Are you not saying in that passage, this was in effect a discount, "I could not get a straight discount from Gulf"? Yes, I have given that in my
 20 evidence in chief in this case of 15%, my evidence in chief shows I got a discount of a lesser amount for delivery into New Zealand effective as of the date of the first cargo delivered into the Whangarei Refinery.

Did that direct discount automatically to the same extent reduce Pan Eastern's profit on purchase and resale of crude? Yes.

Was the result that prices and profits under the processing contract reflected changes in prices
 30 under the supply contract? Naturally.

Now I want to come back to the BP feedstock proposal of 1962, look at p.4243, was the price of crude for the first four years to be posted prices less 15%? Yes, clause 7.

Was this to be done in two steps with Europa Refining paying posted prices and the 15% accruing through a Bahamas company? It is a long time since I have read this contract, could you direct me to that passage. Look at p.4248, it says

"1. Outline of Scheme.

A. (i) BP Trading to enter into a contract with Europa for sale of crude and straight Kuwait Naphtha C. & F. New Zealand at posted prices (or deemed posted price in the case of straight Kuwait Naphtha) plus AFRA freight."

"C. A Bahamian Company to be formed, 50% of the shares being held by Todd and 50% by BP's subsidiary referred to under B. above."

Yes.

Then going to (c)? Yes.

"D. Profit to accrue to the joint Bahamian Company equal to twice the difference between the actual price invoiced to Europa under 1.A.(i) above and any rebated price to which Europa may be entitled."

Yes.

And Europa may be entitled refers back to p.4243 paragraph 7? That is correct I think, I rely on you. Does it seem then that Europa Refining was to receive the 15% rebate through a Bahamas company? That I don't know about that...The notion that BP had was that Todd and BP form a joint company, I don't know the scheme, it doesn't seem to me that the construction you put on it was in the mind of BP, but I can assure you it was not in my mind.

Now if you would refer again to p.4243 in the proposal itself, but this time to paragraph 7 (c), I will read out that paragraph and then a paragraph later in the appendix. (Read).

"(c) Straight Kuwait Naphtha

10 The price of each shipment hereunder of straight Kuwait Naphtha shall be \$1.82 per barrel loaded, which price shall increase by the full amount of any increase in BP's posted price for Kuwait Export grade crude oil of 31.0°/31.9° A.P.I. gravity, effective on the date of commencement of loading of the shipment in question, above \$1.59 per barrel, and shall decrease by half the amount of any decrease in the said posted price below \$1.59 per barrel down to a posted price of \$1.49 per barrel and by the full amount of any further decrease in the said posted price below \$1.49 per barrel, provided that the resultant price for straight Kuwait Naphtha shall not, in any event, fall below a minimum of \$1.60 per barrel."

And then if you turn to page 4248 under paragraph 1,
"Outline of Scheme"

"(ii) The "deemed posted price" for straight Kuwait Naphtha shall, for the purpose of these contracts, be \$2.40 per barrel varying with the Abadan posting for 79R gasoline, seasonally adjusted."

20 Was then the base price of naphtha \$1.82 escalating with post prices for Kuwait crude? Yes...not a straight escalation.

Under the Bahamian company scheme p.4248 was the base deemed posted price to be paid by Europa Refining \$2.40 per barrel? That is apparently... the scheme is BP's and that is the effect.

Was the difference between the two prices the \$1.82 escalating and the \$2.40 to accrue to Todd through

a Bahamas company? I don't know, I think it would accrue to the joint participants, not accrue to Todd. Please look at (D) on p.4248

"Profit to accrue to the joint Bahamian Company equal to twice the difference between the actual price invoiced to Europa under l.A.(i) above and any rebated price to which Europa may be entitled."

Yes, that would make each of the partners get the effect of that.

10 TO BENCH: They would each get effect of? The difference between the \$2.40 and the \$1.82, by the device of doubling the difference between the actual price, yes.

TO COUNSEL: As a matter of arithmetic that difference is of the order of 58c per barrel? I will rely on your arithmetic, Sir.

Now in your earlier evidence you described the difference under this proposal as an intended discount and I will refer you to passage in your evidence at p.137 lines 18 to 21

20

"On presentation of the proposals, the way proposal was written, it appeared that on haphtha there was an intended discount and both would be put through as a commission through a Bahamas company."

I think that could be the case, this is what emerges, nothing more than a disguised discount.

Can you explain why under the Bahamas company scheme at p.4248 it was Todd who was to get the rebated price to which Europa Refining was entitled under paragraph 7 of the feedstock supply proposal?

30 I think the explanation requires what I was about to embark on earlier and is left for re-examination,

but unless I give to the Court the circumstances of this letter it is very difficult for me to answer in any specific way the question as put. Very briefly this was a scheme dreamed up by BP, I had no part whatever in negotiating this at all, I had two brief meetings with Mr Stratton and told him if he wanted to make an offer he had better put his best foot forward and also that I was going to U.S.A. very soon and he had better do his best.

He knew of course, and it was general knowledge in the industry, that Europa Refining would be the party and I said "I don't want you to be inhibited by giving me any proposals which you may think that I will use to my own advantage in negotiating with others" and it was needless to add that as a matter of policy I never encourage one company with negotiations with another. The one exception was after 20 years of trading with Caltex when I had a
10 visit in New Zealand from the Vice President of Caltex who was disturbed to realise they were going to lose our business and practically begged me to tell him what the deal was and I finally told him we were going to deal with a company overseas, that is the one occasion. To come back to this matter, I told Mr Stratton that I felt he could probably do better by working up his project, sending it to me in New Zealand where I would receive it after I got back and he could then feel assured that whatever
20 proposal he made would not be used by me in negotiating with one or other American companies. This proposal is entirely the brain child of BP, I had no part in it whatsoever.

Did you suggest that the beneficiary under the Bahamas arrangement should be Todd rather than Europa Refining? No, I had no part in formulating this proposal, the only matters of common knowledge were two, this was the result of the BP negotiation in the refining, this was the knowledge of Gulf
30 pre-emption would be Europa Refining, and the other was that we had with Gulf some sort of Bahamian association.

You can't say why BP distinguished between Todd on

the one hand and Europa Refining on the other? No. Now I want to come to Gulf contracts in relation to Naphtha...were the pricing arrangements both in processing contract and feedstock supply contract the same in 1964 as they were in 1962? From memory I think they are the same.

Turn to p.3119 Vol. III which is feedstock supply contract..I read paragraph (c) (read)

10 "for naphtha, irrespective of the port of loading, the average of the posted prices for Kuwait crude oil of 31.0⁰-31.9⁰ API gravity, as determined in sub-paragraph (a) above, plus U.S. \$0.02 for each full degree by which the gravity of the naphtha is above 31.0⁰ API;"

so we have it

under feedstock supply contract Europa Refining paid for naphtha the posted price for Kuwait crude plus 2 cents for each degree of gravity above 31 degrees? That is not correct, as I said before those prices were modified, so we did not pay those prices..."payable" would be correct, not "paid".

20 If we take the gravity of naphtha at 62 degrees and the posted price for Kuwait crude at \$1.59 per barrel, was the purchase price payable \$2.21 per barrel, I think you can take those figures, because Mr Newton gave them in evidence? Yes, as a piece of arithmetic.

Were most of your supplies coming in at 65, 66 and 67 degrees? Mostly 65.

30 Would that then make the total purchase price payable \$2.27 per barrel at 65 degrees? If that is the arithmetic, yes.

Is that price \$2.27 40 cents above discount price in the BP proposal? Yes.

Turn next to the processing contract which begins
 at p.3134 and turn to pricing provisions cl.402
 at p.3138

"The amount per barrel, f.o.b. refinery loading port, (including the cost of the crude oil, the processing thereof and all other outgoings) to be paid by Paneast to Gulf, or to the supplier and refiner from time to time designated by Gulf, for each barrel of naphtha, gas oil and wide cut distillate processed for Paneast hereunder shall be :

- 10 (a) for naphtha, irrespective of gravity or the refinery loading port, a base price of \$1.46 per barrel with said base price escalating cent for cent with any increase or decrease in the average of the posted prices of the companies specified in sub-paragraph (a) of Clause 4.01 hereof for Kuwait crude oil of 31.0° - 31.9° API gravity above or below \$1.50 per barrel;"

now is the difference, again arithmetically,
 between the base price for Pan Eastern's purchases
 of naphtha of \$1.46 per barrel escalating as
 20 provided and Europa Refining's price payable under

the supply contract of \$2.27, if we take 65 degrees gravity, is that difference of the order of 80 cents per barrel? Your question is incorrect, you said that the purchase price, this is a manufactured cost under refining, that is a great distinction.

I am relying on words of the contract? It doesn't say purchase price at all.

It begins by saying

"4.01. The price per barrel, f.o.b. port of loading..."

and it

continues through to 402 "The amount per barrel...

10 \$1.46 per barrel"? That is not purchase price, that is manufactured cost...this is a determination of a manufactured price.

TO BENCH: Was that the price to be paid by Pan

Eastern to Gulf? It is not a purchase price, it is the cost of crude, the cost of processing and all other outgoings, and Pan Eastern has to pay that to *Gulf*.

TO COUNSEL: Was the difference in price payable by

20 Pan Eastern to Gulf for naphtha \$1.46 as base price and price payable by Europa refining to Gulfex for naphtha for refining \$2.27? Yes.

Would it be fair to say that under the BP feedstock proposal what was described as a rebated price for the naphtha was much lower than the price payable by Europa Refining for naphtha under the feedstock supply contract? The distinction being one is the manufacturing price and the other is the trade price, yes, there is a difference.

30 Still on feedstock supply contract, was it a Europa Refining decision what feedstock it imported for the Whangarei Refinery? Yes.

Not Gulf's? It was negotiated, it was negotiated on what Europa Refining wanted, Gulf weren't controlling our business.

As far as Gulf was concerned, Europa Refining could bring in all crude and no naphtha? Contractually yes, physically impossible.

During these tax years did Europa Refining usually bring in its shipments both of crude and naphtha? Very little crude.

Was the crude proportion something like 15% in volume? Well at a guess it might be, yes, I can't say for certain, if you have taken figures out and satisfied
10 it was 15% I would not quarrel.

In the early discussions with Gulf concerning feedstock supply was the emphasis on both crude and naphtha? Yes...you say the emphasis, I'm not quite sure how you can have emphasis on two, but both were discussed, that is the correct answer. Look at Vol V p.5332 where the internal Gulf memoranda begin. There are the memoranda which were made available through the Crown during the proceedings of the last case, do I identify them
20 correctly in that way.

Yes...now return first to p.5333, in paragraph 3 last sentence

"It is further his intent, at present, to take his full requirement of crude in the form of Spiked Kuwait and negotiate his own swap arrangement with Shell or one of the other participants for his share of Sumatra Crude."

and then at p.5334 paragraph 2

30

"Since it now appears that the relationship between Gulf and Europa will involve the sale of crude oil, if and when the New Zealand refinery goes on stream, we plan that the Crude Oil Department conducts negotiations with Europa concerning a possible future purchase of crude oil to meet their requirements."

now would you agree the emphasis in that memorandum is on crude oil? Well,

9094 A

I agree that Mr Hoffman's surmise which is in this letter puts emphasis on crude oil, but that is purely his surmise.

Now turn to next letter p.5336, first sentence of paragraph 2

Mr Todd has made it clear that he has been quite satisfied with his relationship with Gulf and that he would propose to negotiate an extension of his contract with Gulf to provide him with the necessary crude oil for his share of the refinery operations."

again is the emphasis there on crude?

These letters are in 1959 and Gulf had no notion as far as I know of what type of feedstock we would

prefer.

Turn to p.5340 for a statement of your feedstock requirements I read paragraph 3,

10 "Mr Todd states that he will require from Gulf approximately 4,000 B/D of feedstock, which could be in the form of approximately 50% Kuwait crude and 50% Kuwait naphtha. While this stream will not supply him with his present market requirements of gasoline, it is the intent of the consortium members to run the refinery to supply New Zealand's product needs with the individual participants effecting exchanges themselves to achieve proper individual product balances. Todd states that Shell has already offered to supply a common feedstock, but Todd indicates that he would prefer to supply his own so long as it is consistent with the refinery's capabilities and as close to his own product balance as possible. He further states that a 50-50 Kuwait crude and naphtha balance comes close to this but he is not adverse to Gulf offering a different feedstock if it would find doing so advantageous."

That carries with it a very long story, I spoke of two years of negotiations
 20 between participants and this is all wrapped up in that situation, and involved lengthy negotiations, Shell stood out very strongly in designing the refinery run on a Sereca feedstock of which they had good availability, and they wished other participants to make their own arrangements for their feedstocks and exchange those feedstocks off shore New Zealand with Shell who would then put in single feedstock into New Zealand Refinery. There were certain
 30 economies to be achieved in operation of refinery running suitable for feedstock such as Sereca. I had the strongest objection to doing just that, it occupied fantastic amount of negotiation, and a great deal of this discovered after represents considerable degree of surmise on the part of Gulf. I kept playing an independent role with Gulf and with all the others, and a great deal of what I have read represents surmise and speculation on the part of Gulf.

909.5 A

Would it be reasonable to say that if in comparative terms crude oil was very cheap and naphtha was currently expensive, it might be worth while bringing in more crude to the New Zealand Refinery and exporting some heavy ends? That is an exercise in economics which all companies in New Zealand have carried out and none has found it possible to economically import crude and export surplus products except one, Caltex.

Does Caltex have a similar market pattern to Europa?
Yes, and that is their problem, because having a
similar market pattern to Europa, but having
inadequate availability of naphtha they have been
forced to engage in uneconomic exercise by importing
a percentage of crude higher than their market
pattern justifies and resorting to the diseconomies
of backhauling fuel oil, it is purely a diseconomy
because New Zealand is at the far end of the petroleum
10 supply line from the Middle East and while refineries
which straddle the trade routes can quite economically
on carry surplus ~~supply~~^{products} because there is no freight
penalty since the on carry is only part of the total
ultimate haul, in the case of New Zealand it involves
a back haul which is a marine diseconomy. Caltex have
had to resort to this, and they have resorted to
another measure because of their similar pattern of
high degree of light products to underuse their
capacity entitlement in the New Zealand Refinery and
20 supplement that underuse, bringing from sources lying
between the Middle East and New Zealand onhaul
products, finished products, which has had the
advantage to Caltex, twofold, no, threefold advantage,
firstly, Europa Refining Company has...

TO BENCH: For the reasons you have developed and others
you might develop, Caltex has had its problems in
pursuing this course? Yes.

1. P.M. COURT ADJOURNED

2.15 COURT RESUMED

Mr Todd, I want to move now to the question of naphtha exchanges, dealt with in brief of evidence p.52 line 31, and you produced EXBT P and I think EXBT P shows that during the period of October 1967 to March 1971 the quantity of barrels of naphtha, the subject of these exchanges, was over 3 million barrels? Is that all the exchange companies....top right hand corner, oh yes.

10 So far as those last two Shell exchanges were concerned, was the basis of exchange Government Bench Mark values for naphtha and products.

What was Bench Mark F.O.B. for naphtha during the currency of those two exchange agreements? I can't say off hand, but it is on record.

Would it be possible for Europa Refining to supply the details of Bench Mark Values which it must have used in producing EXBT V? If it hasn't put in, it may not be...but I think it could be made available.

20 Was the Bench Mark price for naphtha at the times of the two Shell exchanges well below the price Europa Refining paid Gulfex for the naphtha? I am not sure if the bench mark included the freight, if it did so, then I should think, relying on memory, that the cost to Europa Refining would be less than the Bench Mark exchanges, but I'm not really sure.

My understanding is that there is an F.O.B. Bench Mark price for naphtha and at all material times it was below, well below, the price payable by
30 Europa Refining to Gulfex for its naphtha under its feedstock supply contract? It would depend upon the agreement with Shell, and from memory the agreement with Shell is to exchange naphtha delivered

at the Marsden Point Refinery at Whangarei and would therefore include freight content in the naphtha, and if I am correct in this assumption, then the value of naphtha delivered to Shell for valuation purpose... I am getting confused..the valuation basis attributed to naphtha exchanged with Shell would be the c.&f. value of the composite Bench Mark...I may be wrong but I think that is it.

Take in two steps, comparing F.O.B. prices, will the
10 Bench Mark F.O.B. for naphtha right through the period be well below prices payable by Europa Refining under the feedstock supply contract? If you take that element of exchange in isolation I think that would be correct.

Are you not sure viewing it as package of F.O.B. plus freight, the proposal at the Bench Mark figures was greater or less than the total payable by Europa Refining under its contracts? Taking it as a package
20 of F.O.B. Bench Mark, the affreightment contract, including the benefits of the alternate freight contract, then without any reference to any figures, I should think there wouldn't be very much difference but when I say that I say it with qualifications, I haven't seen it or have the figures in front of me. In giving an answer do you take into account the freight concession under the ancillary agreement? Oh, yes, I think that Shell in turn in exchanging products also did in bringing their products into New Zealand but again I'm relying on memory.

30 In respect of naphtha purchases by Europa Refining which were then exchanged as shown in EXBT P, did Europa Oil obtain the right to dividends through Associated Motorists and Pan Eastern under the

processing contract? Yes.

Would you agree then that as the result of these exchanges substantial benefits accrued to Europa Oil through its right to dividends from Pan Eastern? I would say that in addition to the savings which are shown on this EXBT P, there were also further substantial benefits, in the form of dividends from Pan Eastern.

As a result of the provisions of the processing
10 contract, did those dividends reflect the quantity of naphtha supplied under the exchange arrangement? Under the processing contract there is no distinction regarding the destination of the production whether it is processed in the refinery by Europa Refining Company or whether the products are exchanged upon arrival in this country, there would be no identification of any sort in that regard.

In either case the profits of Pan Eastern depend on the volume of purchases and the feedstocks involved
20 under the feedstock supply contract? That is the essence of the whole arrangement.

NO. 3 (EXBT NO. 3, NAPHTHA EXCHANGE CORRESPONDENCE)

Now Mr Todd, I'm not proposing to ask any questions about that exhibit, I am asking about EXBT P. Did Europa Refining have the right to purchase gasoline and other products from Gulfex under the feedstock supply contract? Europa Refining had an option, I think, again you are referring to contracts long since disappeared from my memory, but there was an
30 option or a right, there was some provision for Europa Refining to purchase finished products under the Gulfex supply contract.

If I could read to you the pricing provision in respect of supply by Gulfex of gasoline and other

products (p.3120,

"7.02. The price per gallon for the finished products referred to in Clause 4.01, i.e. Motor Gasoline (all octane), Jet Fuels, Kerosene, and Gas Oils, irrespective of the loading port at which delivered, shall be the lowest posted price for each of such products, f.o.b. Caribbean or Persian Gulf loading ports, as reported in Platt's Oilgram under the heading "Caribbean, Middle East and Far East Refined Products Prices", which is in effect on the date the tanker commences to load."

10

under the processing contract was there a provision for negotiation of a base price in relation to finished products? Yes, I have a recollection of that.

Under the 1962 processing contract, was an example of a base price given which was exactly 2.5 cents per gallon below the then posted price for gasoline? I remember this came up in evidence in the last case and I gave evidence on this matter and rather than rely on my memory on this matter, it might be better if we have the evidence that I gave before.

20

I can't refer you to the exact page of evidence, but would you accept that there was a base price example given in the 1962 contract, perhaps I can now give a page reference, it is p.140 line 13

"In the processing contract (EXHIBIT 1) paragraph 4.03 you see in the middle of that paragraph - ("for example, as of the effective date of this Contract the parties agree that the base amount per gallon for 93 R.O.N. Motor Gasoline and 83 R.O.N. Motor Gasoline is 7.4 U.S. cents and 5.3 U.S. cents respectively)"? Yes. That is not to be found in the 1964 contract? Correct. I refer to B5, page 7 of Case Stated. You see the paragraph is the same but that is left out? Yes. If you look again at the 1962 paragraph, do you agree that those two amounts there set out 7.4 and 5.3 represent a discount of 2.5 U.S. cents in each case?"

30

and

the answer there was "yes". Is the position that Europa Refining could have purchased products from

10 Gulfex under the feedstock supply contract but it preferred to enter into the naphtha exchanges to get the extra products required? You seem to be getting at two separate matters, you are quoting something from the 1962 contract and now ask something in immediate conjunction with the other suggestion, and I don't quite know where this is leading, and I think that to be explicit about the whole thing, I thought it might save time to read the evidence, but to read only part of the evidence could be quite misleading to this Court, I am not suggesting counsel intends that, of course.

Would you answer the previous question? We are talking about the feedstock contract of 1964, the answer is that Europa Refining had an option under

the terms of the provisions of the 1964 contract. Would the benefits arising to Pan Eastern as a result of any such purchases under the feedstock supply contract have depended on the base price negotiated by the parties in respect of gasoline and other products? There is a provision in the 1964 contract, relying on memory for accuracy, for the parties to meet at some stated date before the end of each calendar year to negotiate the terms upon which Pan Eastern would buy crude oil and process gasoline for the ensuing year. At no time did the parties ever meet, so that in fact that portion of the provisions of the contract never became operative and one of the principal reasons why no attempt was made to cause that part of the contract, that is the Pan Eastern contract, to be made operative was that, as I gave in evidence in chief, the affreightment provisions for freighting the finished products which could have been produced under the provisions of this clause had the parties met and had they agreed, the affreightment provision was defective and the cost of the freight made the whole thing a nullity.

^{Had}~~Have~~ the provisions in respect of finished products remained in both the feedstock supply contract and the processing contract right up today? There has been no amendment, the provisions for the finished products in the processing contract never became operative.

30 Do you say they never became operative because Pan Eastern and Gulf never agreed on a base price? They never met to agree, (Reference in processing contract pp.3139 to 3150).

I want to pass now to gas oil, we know that under the feedstock supply contract Gulfex agreed to supply Europa Refining with gas oil? Yes.

And we know the supply was to be at posted prices for 53 57 D.I. gas oil F.O.B. Abadan? Yes, that was the quality of gas oil being shipped.

As a result of the letter variation in March 1965, was the supply price then posted prices for 48 52 D.I. gas oil F.O.B. Abadan? That was part of the
10 negotiation I had with Gulfex to grant lower prices to Europa Refining for naphtha, for middle distillate or gas oil, and the result was Gulfex agreed that although they were continuing to supply quality represented by the 56 D.I. they agreed to reduce the price of it equivalent to a lower rate, in effect to give discount.

In 1962/64 period were discounts off the posted prices of gas oil available in arms length sales? That is very difficult to answer, gas oil at all
20 times has been a product in, one may say, preferential demand and it is not easy to get any definitive information in relation to gas oil, the situation may vary from one supplier to another, but all I can add is that Gulf have always been unwilling sellers of gas oil to Europa, in the 1956 contract, and again as I said in evidence in chief, reluctant to sell us gas oil at all, and in a situation of that sort discounts could be spasmodic, they may represent certain companies which may have availability, but
30 not in general, but it is one of the most difficult areas of pricing to get any information about it.

In the previous case as part of evidence Mr Newton produced various graphs comparing posted and discount prices and if I might refer you to BXBT at p.64

Volume II headed

"Caribbean Posted and Discounted Prices for Gas Oil
(48/52 D.I.) 1960-1964 based on Platt's Channel Port Index."

Yes, that is a
chart which in the previous case we rejected because
it is completely inapplicable to east of Suez area..
Channel Port Index represents the situation in European
refining market, which is entirely isolated from
east of Suez area, and presentation of this chart
10 was a distortion of the market position east of
Suez. In Europe^e you have many refineries heavily
over built in post war period, a great deal of
reconstruction went into them, and we have a special
situation in Europe^e where refineries were selling
at any reduction price they could get. The Channel
Port Index was a curious situation which was related
to the heavily depressed and highly competitive
European market based upon the fact, as I said in
evidence in chief, a refinery with unused capacity
20 which is a very costly instrument, and the temptation
of such refineries to engage on production of the
incremental barrel, because if the refinery is running
at 70% capacity it is a capital intensive industry
and the costs of the refinery are loaded against
70% of production, therefore such a refinery has a
temptation to run incremental quantities at a very
small margin of profit because that then returns
him a better return than if he runs at 70%. And
this is a situation which existed in Europe and this
30 is why we protested against the production of this
regarding the gas oil east of Suez where this
European situation did not exist. I objected to
the chart then and I object to it for the same
reason now.

So far as I can see Mr Newton was not challenged in that case? I think there was so much we objected to of Mr Newton's evidence, that we may have overlooked it.

Is that your explanation? No, it is not my explanation. Was the gas oil Europa Refining was taking under the contract an unfinished gas oil? Standard D.I. 56 gas oil produced in Kuwait and is unfinished in regard to New Zealand market, but it is used in that state in the Indian market. New Zealand has been highly spoiled in the very low sulphur content of the market gas oil used in this country. The reason we are spoiled is twofold.

Is 48/52 D.I. gas oil refined or finished gas oil? Same characteristics as D.I. 56 but it has a difference^t cetane, it has a lower cetane value and that is the main determinate of the initials D.I., that means Diesel Index, and therefore the 43 or 45 has a lower diesel index, it is a poorer grade.

Are you referring to the gas oil Europa Refining brought in? No, it brought in the 56 D.I.

20 And was to be priced at posted price for 48/52 gas oil? As I said it is simply a discount by Gulfex being recorded as the difference in posted prices of those two D.I. classifications. It is a straight discount on the D.I. 56, that is the simplest way of putting it, and that is the correct way.

Would you agree that the type of gas oil supplied to Europa Refining was worth less than 48/52 D.I.

gas oil on world markets? It is worth more.

Do you say your feedstock gas oil was worth more than 48/52 D.I. gas oil? If it has a higher posted price it must have a higher worth.

30 Has there ever been a posted price for feedstock gas oil that you import? I think that out of Kuwait there

is no posted price for naphtha, nor a posted price for gas oil, I say I think, I'm not quite sure, but by reference to posted prices of competitive sources of these materials from other refineries situated in the Persian Gulf owned and operated by other companies who do post prices, that the posted prices so published are used in our Gulfex contract as the reference price, I think that flows a great deal throughout the pricing reference in the Gulfex supply
10 contract.

When was the question of a direct discount on crude from Gulfex to Europa Refining first discussed? Again I question the meaning of "direct discount".

We know that in the letter variations of March 1965 the supply prices under the feedstock supply contract were reduced retrospective to the beginning of the contract a year earlier? About a year.

The contract was dated March 1964? Yes, I was back in Pittsburgh in March 1965...yes.

20 When was the first discussion about a reduction in the supply price? I think that is recorded in the earlier evidence, I think from memory it occurred on the signing of the 1962 contract, I may be wrong and it may be on the signing of the 1964 contract, they were pursuant to clear understanding I had with Gulf that at an appropriate time on settling of Gulf's problems on pricing, that discounts would be granted. It would be helpful as I am relying on
30 memory to check whether it was on the signing of the 1962 contract or the signing of the 1964 contract.. I know I gave evidence.

It was on the signing of the 1964 contract (reference p.145). It begins at line 17 and the reference is

at p.147

10 "Completion of the 1964 contract, the execution of it on 10th March. Mr Elston Law gave me on the afternoon we both departed from Pittsburgh my executed copy of the contracts other than the Pan Eastern/Gulf contract which had to be executed in the Bahamas - or some delay in any case in execution. He was proceeding in his role as mid-East crude oil co-ordinator the same evening to Geneva to a meeting with OPEC - I think Geneva; it may have been Teheran. He expected to be there for six weeks or two months and a question of the policy which Gulf would adopt in invoicing crude oil into New Zealand direct would be to some extent conditioned by the results of the OPEC negotiations. I gave in my evidence that no provision had been made in the supply contracts for any discount off posted price. I agreed with Gulf that this matter could best be left for later determination which was their wish, and in fact, on the undertaking I had received from them that discount would be a trade discount which they could live with. They were particularly concerned as being one of the largest crude oil sellers in the world and particularly with vast contracts for crude in Japan, not to make any decision regarding the discount for invoicing into New Zealand until the matter had been carefully examined with all these considerations which lay behind the problems. And that is how the matter rested at that time. When was it decided that the discount should be 10%? I think from memory that was decided at the further meeting I had in Pittsburgh - I think it would coincide with the - OPEC Conference was over and I went back, I think. It is hard to identify the trips. I feel pretty sure that the discount negotiated was negotiated in person by me. You have no record at all? Well if I could have more time to identify the discount letter. I am now looking at B1 - March 1965. Yes, I was in Pittsburgh at that time. Was it agreed about that time? No, in March 1965 - I am sure of that. Yes, I returned to New Zealand on the 30th March 1965 and was confronted with the surprising income tax letter. That was not a very nice homecoming."

is the

40 position then that at the time the 1964 contract was signed the question of a discount under the feedstock supply contract was discussed but was left over until Gulf had settled some of their international problems? On that clear understanding. In late 1964 and early 1965 were the Europa companies involved in a pricing enquiry along with other International companies? Yes...1964, let us get the dates right, I think the first was a letter from the Minister of Industries and Commerce, I don't think it was 1964.

a record of it, then I don't dispute it.

Do you accept it if I say that at the end of that meeting on the 26th February 1965 it was left that the Industries and Commerce Department would ask each company for invoices for feedstocks to check on the discounts of posted prices and freights? I have no recollection of the letter.

Mr Todd, I am suggesting to you that in late 1964 and 1965 there was this pricing enquiry and that at the end of February 1965 there was a meeting between officials and oil company representatives when the question of discounts on feedstock supplies was raised and it was left to the department to ask each company for its invoices to check the discount? If that is on the record then I don't dispute it whatever, what I gave in evidence yesterday was the occasion when Europa was asked to produce its contracts. That is clear in my mind as it was part of my preparation of the evidence.

20 Did this pricing enquiry play any part in the completion of the letter variations the following month in March 1965? No..there was a clear cut understanding in 1964 that the prices under the feedstock supply contract would be discounted, and that was in terms of the agreement signed at that time, and negotiations which preceded that agreement. Coming to the discounts provided for in the letter variations in March 1965, in the case of crude they amount to approximately 10% off posted prices?

30 Yes.

Did you negotiate the percentage with Gulf? Yes.. I wanted more. I negotiated with Gulf officers and I succeeded to prevail upon them to give us 12½% subject to approval of Gulf management, and

Gulf management turned down 12 $\frac{1}{2}$ % and felt it was too much, and they said the best they could do at that time would be 10%. I am only quoting what I was told. In 1966 there was a further variation by way of a slightly increased discount? Yes.

On whose initiative was this? Mine.

What was the reason for it? Because discounts were prevalent and a little larger than the previous year and I wanted our import prices into New Zealand to
10 be as low as I could possibly get them and I negotiated a further discount.

The next variation was 1970, between 1966 and 1970, were there changes in the market for crude? Yes. Did crude discounts increase substantially during that four year period? Yes.

But there was no variation of the feedstock supply contract at all during that period? There was not, for the simple reason with a very large company, this was peanuts, I had much bigger issues than that. I
20 don't believe in doing business to win all the arguments, I like to win a large argument now and again and let someone else win the small ones.

So it was not an issue you wanted to argue about? No. Is the position that the difference between the discount under the 1966 variation and the 15% discount in the processing contract came to Europa Oil in the form of dividends from Pan Eastern? Yes.. but I
~~gave~~ ^{have} given in evidence the total quantum, in the whole period \$149,000 in a period of some seven years.

30 Now I want to come to relationships between Europa and Europa Refining, under the 1962 contracts was it Europa Oil which was to get the benefit of a freight concession through Pan Eastern? Pan Eastern were to get the benefit and of course Europa Oil would

get a resultant benefit.

Was there a doubling provision which gave Europa the full difference between the freight at A.F.R.A. and freight at Intascale prices? No, there was not a doubling. I can give the full details, but to cut it short I would say the effects would be that the saving between the A.F.R.A. rates and the alternate base rate to the extent of the use of marine transportation employed in the transportation of the feedstocks to Whangarei would be made fully available to Europa Oil, fully available as dividends, but equivalent to it, I could go into the details as to how that was achieved, but it was not a doubling. Comparing the 1962 and 1964 contracts, is the position this, under the 1962 contracts Europa Oil obtains the freight concession through Pan Eastern. Under the 1964 contracts Europa Refining obtains the freight concessions itself? Europa Refining obtains freight concession and laid down feedstocks brought into New Zealand and thus adding to the taxable income of Europa Refining in New Zealand.

Could you answer my question of comparison, under the 1962 contract Europa Oil was to get a freight concession amount, and under the 1964 contract Europa Refining gets the concession? Yes, and I gave the reason in my evidence in chief.

Now coming to feedstock supply contract (p.3126 cl.1502)

30 "15.02. If during the term of this Contract, Europa merges or consolidates with another company or sells or transfers its ownership interest in the Refinery to another company, firm or person, Europa agrees that it will, as a condition of such merger, consolidation, sale or transfer require the company with which it merges or consolidates or the purchaser of the interest in the Refinery to assume the obligations of Europa under this Contract."

9109 A

why was that provision included?

The Americans have a term which they call boilerplate, and the truth of the matter is that when it comes to the boilerplate I usually leave it up to the lawyers and I am stuck

to give you an immediate ~~answer~~ answer.

Would that provision have allowed Europa Refining to

assign feedstock supply contract to Europa Oil along with the shares in the New Zealand Refining Company Ltd? (stopped)

In your brief of evidence you expressed your concern at the time that Gulf might prove awkward over the arrangements between Europa Oil and Europa Refining agreed to by Mr Carnichael and Dr Law? Yes.

I am suggesting if Gulf had proved awkward over that memorandum could Europa Refining not have
10 simply assigned the contract to Europa Oil? I just can't answer that, it is a new point, never been brought before me before, and I don't know what the answer is.

Now coming to Europa Refining, were any of Europa Refining's transactions with Gulf and Europa Oil ever reflected in its profit and loss accounts? With Gulfex you mean.

Were any of those transactions ever referred to in Europa Refining's profit and loss accounts? I am
20 stuck to answer that one.

Did Europa Refining ever have a trading account as part of its accounts? Europa Refining as I understand it had a running account with Europa Oil which would...I'll leave the answer at that.

During the tax years in question did Europa Refining ever have any staff? No.

Did it pay any Directors' fees? I'm not sure of that.
Did Europa Refining ever issue invoices to Europa Oil? It had I understand running accounts and I
30 don't think invoices were passed to and from the companies at all.

Was any documentation or other work in relation to Europa Refining's supply arrangements with the Gulf

organisation carried out by Europa Oil staff? The officers of Europa Oil carried out also the functions of Europa Refining.

At the expense of Europa Oil? Yes, which was quite all right because it all came in at cost arrangement of delivery to Europa Oil, it would merely be an exchange of charges back and forth between the two companies and end up in the same net result.

Apart from interest, were debits in the profit and
10 loss account of Europa Refining right through this period very modest? I can't answer that.

I want to move now to the organisation agreement in 1964, EXBT B12 (p.3188), and reference in your brief is p.43 line 17, in your brief at p.43 have you explained the reasons for entering into the reorganisation agreement? Yes.

I would refer you to your evidence in the previous case, Volume 1, p.78, line 19, "What was the effect of this agreement for reorganisation of Pan-Eastern? I am a bit stuck ...to answer that", that seems to be the only
20 reference to it? Yes.

In 1969 you were stuck to answer the question as to the effect of the reorganisation agreement, but you have in your brief of evidence in this case given an explanation of the reorganisation agreement? Yes. And I want to ask you how is it you are able to give this explanation in 1973 when you are stuck to answer the question in 1969? The simple answer is I have done preparation, I had done no preparation when I was questioned before.

30 The parties to this reorganisation agreement are Gulf and Todd Participants? Yes.

It is so stated at p.3188? I didn't intend to be indefinite.

Todd Participants is the parent company of Europa Refining? Yes.

And Todd Investments is the parent company of Europa Oil? Yes.

Why did Todd Participants enter into the reorganisation agreement affecting Pan Eastern instead of Europa or Todd Investments? I did have a little note about this, I would like to check on it (permission granted to look at note). First of all there was
10 a provision in the organisation agreement for the winding up of Pan Eastern at the termination of the 1956 contract, and as Pan Eastern would be engaged in a new processing contract for the manufacture of refinery feedstocks, it was necessary to have an agreement that the winding up on the termination of the 1956 contract would not be operative, that was one part of the provisions of the reorganisation agreement. The capital restructure, I don't appear to have a note on that, but that was to ensure that
20 there would be no doubt that Pan Eastern could be held to be a proprietary company within the provisions of the then current Proprietary definitions in New Zealand.

For tax purposes? For whatever purpose a proprietary company...so that the provisions for restructuring capital would fairly remove any doubt on that question, and as you recollect that was a question raised in the last litigation, so there would seem to be open legal argument whether or not Pan Eastern was
30 a proprietary company.

We know that Europa Oil was party to the organisation agreement under which Pan Eastern was initially set up, and we know that it was Europa Oil's subsidiary Associated Motorists which was a share-

holder in Pan Eastern, if there was to be any change in the organisation arrangements for Pan Eastern, was that not at least in part Europa Oil's concern? Well, yes, you might say that, yes.

And A.M.P.? Yes.

Now I'm going to suggest to you without going through the clauses that the reorganisation agreement contains a number of undertakings by Todd Participants as to how Pan Eastern and Pan Eastern's shareholders will
10 act? Yes.

If you accept that statement, is the position then that Todd Participants was guaranteeing what Europa Oil would do? No, because you see when this reorganisation agreement was written, it was intended that Todd Participants would acquire the shares in the form described in my evidence in chief, and Todd Participants was the appropriate party because it was the parent company of Europa Refining who in turn had contract with Gulfex, so that it was the
20 natural order of things having reached the agreement with Gulf on this organisation, that Gulf would be looking no longer to Todd Investments but to Todd Participants and it was in the order of that expectation that the matters referred to you were carried out. Had those undertakings by Todd Participants remained in effect under the reorganisation agreement even though capital reconstruction was not carried out? The agreement ^{was} remained ~~was~~ unaltered and to that extent it makes a bit of a nonsense.

30 4.05 COURT ADJOURNED

4.23 COURT RESUMED

I want to pass now to the objectives in creating Europa Refining and having it in the 1964 contract,

and reference in your evidence at p.35, where you give four objectives that were to be served, what was the main reason of the four? I am looking to see the order they are in, the main reason I would think would be freeing from Gulf pre-emption because until I got free from that Gulf had me by the short hair.

You also refer at p.46 in your brief, we will come back to p.35 at p.46 you come to application of the
 10 Motor Spirits Licensing Authority, and at line 19 you say

"The application was heard on 5 October 1964 and although I thought other companies would not oppose the application, there was in fact opposition and the proceedings went badly and finally the application was withdrawn."

I

show you EXBT No.4 (Proceedings before Motor Spirits Licensing).

TO BENCH: You have in front of you what is said to be a record of the hearing in front of Motor Spirits
 20 Licensing Authority...it is a record of part of the hearing? Yes, a record of only a very small part.

TO COUNSEL: Full record is available, no doubt you have a copy in your office too? No, we tried to get transcript from Motor Spirits Licensing but they have destroyed all their records.

I read to you from this statement of your counsel Mr Taylor on resumption of the hearing, and I refer to paragraph 4 at p.E1

312 "Now the point on which I requested an adjournment on Monday, gentlemen, touched upon the reasons why Europa Oil itself was not the applicant. The main reason, sir, why the application did not take that form was because of taxation considerations affecting Europa and its shareholders, relating in particular to retention tax. If Europa Oil had made this application and used its own funds for contributing to the refinery's share of capital, it would have involved £180,000

10

in retention tax. So there was the problem, not only of retention tax in relation to the formation of New Zealand refining, but the later problem of retention tax which could arise if further capital or long-term advances had to be provided for New Zealand refining. That is certainly in contemplation of the parties and it may very well occur. So that Europa Oil would have been at a very great disadvantage tax-wise, apart from other considerations, and it was therefore thought reasonable to distribute funds so that Europa Refining could be established as a separate company."

having read the passage and drawn your attention to Mr Taylor's statement that the main reason why the application was not for Europa Oil was tax? Do you wish me to reply to that. Yes, and I would like you to say on reflection do you still say that the first reason stated at p.35 of your brief was the main reason? Yes, the simple answer is yes. Dealing with that first reason, did cl.11.02 of

Petroleum Products Sales contract (p.3010) give Gulf Iran the option to supply Europa's requirements including crude, provided Gulf Iran met the best offer available to Europa? Yes.

Once Gulf Iran had responded under cl.11.02, did Europa Oil's obligation depend simply on what was provided under any feedstock supply contract that was entered into? I don't understand the question.

Did clause 11.02 give Gulf the right to meet the
 10 best offer for crude that Europa Oil could get?

"11.02. During the period hereof, GULFIRAN shall have the option of supplying EUROPA's petroleum requirements in New Zealand of lubricating oils, crude oil and other products, provided that GULFIRAN meets and accepts the best offer, either for an f.o.b. or c.i.f. sale, available to EUROPA."
 yes.

In relation to a feedstock supply, was the matter under cl.11.02 that either the contract was made with Gulf meeting the best offer or Europa Oil went elsewhere? Other products were included, naphtha and gas oil are products of petroleum, gave Gulf Iran a pre-emptive right.

Do you agree that whether Europa ended up dealing
 20 with Gulf or with another supplier in respect of its supplies, once Gulf had the opportunity to meet the offer under cl.11, cl.11 would have no more effect? I think commercially we tended to put the cart before the horse, because I gave in my evidence in chief that Gulf spread the word around to all other possible vendors that they had a pre-emptive right, and therefore the others knew if they made an offer I would have to take it back to Gulf, and whoever would make an offer knowing that, this completely nullified
 30 the opportunity of Europa negotiating. If Gulf had respected it and not told others, then I might have got other offers, but under these circumstances I could get no offer at all, it meant I lost any negotiating position I might have had.

Was Europa Oil committed under cl.11.02 until such time as the feedstock supply position was resolved whether it was Europa Refining or Europa Oil or any other company that was to be involved in the feedstock supply? The pre-emption provision which we have just read terminated at the end of this contract at the end of 1966, so until the termination of this contract I had no means of negotiation for feedstocks, for lubricating oil or other petroleum products,
10 everything was subject to this pre-emption.

Academically you might say all I had to do was to take my best offer back to Gulf, but for practical purpose how could I get an offer from other companies, ~~going~~ ^{assuming it had} to take it back to Gulf.

Whether it was Europa Refining or Europa Oil that would enter into feedstock supply negotiation, would make no difference under cl.11.02? That is the point, Europa Refining has no corporate dealing with Europa Oil at all, and therefore was not bound by these
20 pre-emptive provisions.

Do you say that you could go to any other company, including Europa Refining for Europa Oil's requirements? I could go to any other what...

Do you say you could go to any company including Europa Refining and enter into a supply arrangement without coming up against cl.11.02? I say that I could not go to any company, Europa Oil could not go to any company under that pre-emption agreement without being obliged to take back any offer it
30 might conceivably obtain without going back to Gulf Iran.

Do you agree that unless Gulf was agreeable to Europa Refining being the party to the feedstock supply contract, it could rely on cl.11.02 against

Europa Oil? I would say flatly or simply that Europa Oil could not negotiate to a conclusion with anybody under that pre-emption agreement, it must go back to Gulf Iran and I repeat that because Gulf had acquainted the other potential suppliers of this position, that any chance I had to negotiate with anyone else was I would say stultified, or go further and say useless, because once again, Mr Richardson, who would ever negotiate in a complex and confidential
10 matter such as oil supply contract and have all the international implications that are involved if it knows that immediately the negotiation would have to be conveyed to a competitor.

Did those same difficulties apply to Europa Refining in the sense that it proposed to supply Europa Oil in New Zealand? No, because there were certain provisions written into the contract which permitted Europa Refining supplying Europa Oil in New Zealand or Europa Refining could supply anyone else.

20 Was it then a matter for agreement between Europa Refining and the Gulf organisation? What was a matter. You said that it was agreed between Europa Refining and Gulf? That Europa Refining could supply Europa Oil, that is provided in the Gulfex/Europa Refining contracts, but in addition that provision having been made in that respect, Europa Refining was free to develop any other markets it wishes to develop. Now we come to the second stated reason on p.35 of your brief (read),

"2. Means to obtain flexibility in financing participation in the New Zealand Refinery. Because this Refinery was then estimated to cost up to Stg. 22 million it was desirable to be able to finance outside Europa Oil (N.Z.) Limited and a separate company offered greater flexibility in this regard."

what could Europa Refining do that Europa Oil could not do in this regard? I would tend to put that the other way around, that Europa Refining could engage in financing this particular process without in any way entrenching upon the financial facilities or structures of Europa Oil. When it came to an increase in the capital required by Europa Refining for participation in the New Zealand Refinery, was that supplied by Europa Oil?

10 By this time, we are now talking of the 22 million pounds project, it was the 22 million pound project which made it highly desirable to keep the finance of the Refinery outside and independent of Europa Oils, Europa Oil had no debts, no borrowed money, and it would be much more desirable to finance this very large obligation which all companies had agreed not only to put up equity finance but to put up loan finance, the finance was 22 million pounds, and the burden of that would be much better carried in

20 isolation by a new company rather than involve Europa Oil. And these were the estimates of costs, 22 million pounds submitted by Shell to the New Zealand Government for approval of the establishment of this industry and the finance of that 22 million pounds under discussion with the New Zealand Government are recorded is that the oil companies would undertake to find the loan moneys and to underwrite the equity contributions if the New Zealand public did not respond, so that it was most desirable

30 to finance this new undertaking by a company formed for this specific purpose, for this interest in New Zealand for this new industry.

THURSDAY, 15th FEBRUARY, 1973 - CASE CONTINUED

XXD OF MR BRYAN TODD (Continues)

Mr Todd, I want to pass now to the Europa Refining supply arrangements and the memoranda exhibited in Case Stated as EXBT 15 and in your evidence the discussion begins at p.46 ...all those memoranda given No.15 in the Case Stated are undated...when was the first of these signed by Mr Carmichael and Dr Lay? I don't really know because it was apparently
10 signed when I was overseas.

In what year? In the year 1965..I'm looking at the date here.

Are you relying on paragraph 6? My eye caught paragraph 6.

Can you be sure it was not 1966 that that document was signed? I'm quite sure it was signed in my absence because I wasn't aware of it.

Can you tell us when it was signed in 1965? I would think some time during my absence.

20 To which absence? My absence overseas in 1965.

When in 1965 were you absent overseas? February and March 1965.

Was that the only time in 1965 you were absent from New Zealand. I really don't know, I can't answer that.

Would you now turn to the last item in C.S.15, is that the copy that has the words "Advances" in both first and third lines? Yes.

And was that the first of the memoranda that you
30 yourself signed? Well now, I know that when we looked at the Case Stated there was confusion as to which was the first and last and I had thought they had been identified in the Case Stated to save this

problem you are posing to me, they were signed at substantially different times and great care was taken by our people to identify the first and the last and are referred to in evidence in chief, but I regret to see that in Case Stated that annotation has not been made.

Look at the three separate memoranda you signed and then say the order in which you signed them? I might fall into grave error, the distinctions are very substantial but not readily observable from
10 the reading of the three.

Just take your time to read each of those three and then give order that each was signed? I'll read them, but I won't be able to guarantee to give the order in which they were signed, simply because it would involve considerable consideration as to what the differences are.

TO BENCH: The differences lie in the first three or four lines, the body is substantially the same
20 throughout?

TO COUNSEL: I am highly confused...I don't want, Mr Richardson, to make a stab at it.

TO BENCH: Are you of a state of mind where you can say "I just can't say which was signed first" or "I think it was this one but I have got some reservations"? I find it difficult to say which one I think, but there were so many considerations involved in this question...perhaps I could express my thoughts out loud, the original one, whichever
30 one it is, signed by me when I discovered what I regarded as a grave error in the memorandum prepared and signed in my absence by Dr Law and Mr Carmichael. I corrected that position by issuing

this note of instructions. Those instructions stood until a much later time when the finance regulations were introduced which I think was about two years later, and an alteration was made so as to avoid the situation where a company by making advances would be liable for investment in Government securities, and in this case would have been a very substantial amount, I think from memory the figure that would have been involved would have been in the order of \$500,000 so that the amending note was prepared to avoid the technical situation which would arise out of the situation of making advances. Then it was found that there was an error in that later note because the later note then provided for payments to the New Zealand Refining Company and none of the users were making payments to the New Zealand Refining Company but because of disputes which were individually made against the Refinery by each of the users, a compromise with Refinery was reached where the Refinery was to be kept in funds by way of advances, although not one ^{or any} of the users were prepared to accept the invoices.

With the recital of those circumstances are you able now to say that you think that the order was this and that? I have said that out loud to get a recollection of it, it seems to me that the last of these three sets out the position prior to the Finance Regulations. I am not familiar with the Investment Regulations but it seems to me they constitute an advance which would then bring Europa Refining within the 1969 or whatever it was Investment Regulations, and it was necessary to change that, and it seems to me that the middle of the three would rectify this point.

Is this the position, as they appear as 1st, 2nd and 3rd in Case Stated, the first one appears to be first one signed in order of time, and followed by the third one and the middle one was the final correcting document? I think the third one is the first signed, and the first one in this order was the second one signed, and the middle one was the last one signed. It appears the third C.S.15 was the first signed? Yes. The first C.S.15 was the last signed? Yes.

10 And the second was the last signed? Yes..that is as it appears to me and I hope I am not found to be in error.

TO COUNSEL: Would you agree that the events of the last twenty-five minutes show how much confusion can arise when documents are not dated? I certainly agree.

Can you explain why each of these was not dated? No. I studied the position, carefully looked at the respective situations of Europa Oil and Europa Refining with particular reference to the obvious
20 breach of the terms of the Europa Refining agreement with Gulfex which would have arisen had the Law/ Carmichael memorandum been acted upon.

How soon after your return in 1965 to New Zealand did you sign the first of these memoranda? I think there was some pause before the matter came to my attention, but it would not be at the most more than a few months.

Can you be sure you signed it in 1965? Oh yes, I
30 feel pretty certain about that.

TO BENCH: About what time in that year do you think you got back here? I got back on the unfortunate day 31st March when assessments are made, I have no trouble in identifying that date.

TO COUNSEL: Would it have been in the first half of 1965 that you signed the first memorandum? I cannot say, it would depend on when the memorandum came to my attention, I know when it came to my attention I was deeply concerned.

Now the Finance Companies Investment Regulations were made on 20th October 1969? That is right. I think I mentioned a moment ago that that was a much later event than my signing of the original note.

10 And you said in evidence that that was about two years after you had signed the first memorandum? Well, if I said that I would think that that wouldn't be quite right.

How soon after the 1969 Regulations were made was the second memorandum signed? I think that was made quite soon after the Investment Regulations were introduced.

Was it still some time in 1969 or could it have been after 1969? It would take some time for the knowledge
20 of these Investment Regulations to filter through and my answer was to act promptly after the Investment Regulations were known to us; how soon the knowledge of the effect of the Regulations would become clear I'm not quite sure, but I would think fairly soon after.

Can you say why the outdated memoranda were not cancelled and marked as cancelled at the time they were replaced? That raises a nice point in my mind of should I have anything on the record with regard
30 to that memorandum because it being the breach of the Europa Refining/Gulfex agreement, and the period when I corrected it, if that memoranda were on the records of the company in any official way Gulf

Gulf could perhaps use it against us in terms of the breach and a later correction of a breach may not have given us relief against Gulf.

(In 1969 there were two Investment Regulations, the first being 26th June and the second 20th October). Mr Todd, the previous case was heard in the Supreme Court in February 1969, do you recall that in January 1969 Europa Refining was asked by letter from the Inland Revenue Department for details of the
10 arrangements between Europa Oil and Europa Refining Company Ltd? I have no recollection.

Do you have any recollection of a discussion between Mr Phillips and Mr Smith of your company on that question late in January 1969? I think there were hundreds of discussions between Mr Smith and the Inland Revenue Inspectors and I have no recollection of any particular discussion.

If Mr Phillips says that he was advised by Mr Smith in January 1969 that there was no written contract
20 between Europa Oil and Europa Refining, what would you say? I would say there was a written contract which was rescinded, that is the contract which is in the case, the formal contract and the deed of revocation.

Is it the position that these memoranda in BXBT 15 were produced to Inland Revenue Department in 1972? I don't know.

Is it possible that none of these memoranda was signed until after the first hearing in February 1969?
30 No, Mr Richardson.

Are there any directors' minutes in either Europa Oil or Europa Refining referring to these arrangements? I shouldn't think so.

Now you say that in terms of these three memoranda Europa acquired products from Europa Refining ex New Zealand Refinery not feedstocks? Yes.

Apart from these three memoranda, do you have any other document or record to support that claim? I don't think that there is any document or memorandum. Would you agree that all the other documentation during these six tax years suggests that Europa acquired feedstocks from Europa Refining? I would say
 10 that all the documentation would not suggest that. Would you like to modify the answer to the previous question when I asked whether there was any other document or record to support the memoranda? No, I don't think so, my reply was that I know of no other..you asked me was I aware of any documentation or memorandum, I replied I was not aware of any, now you say were there any, that is the difference.

TO BENCH: In short, if there were any, you didn't know of it? Yes.

20 TO COUNSEL: Look at EXBT J at p.3300 letter from Dr Law to Deputy Chief Commissioner of 11th July 1966, do you see from the first few lines that it is the letter of objection to the amended assessment for the year ended 31st March 1965? The first sentence, yes. And the second sentence "I have been instructed..to object to the assessment as follows", would those have been your instructions? No, Sir, Dr Law acts in a professional capacity and in tax matters he handles the company's affairs, and I would think that is a piece of professional nicety
 30 to express it that way.

At this time in July 1966 Europa Oil had already asked for a Case Stated in connection with the assessments for the previous years? Oh yes, we had been trying for two and a half years, the Crown had been extremely

dilatory in satisfying our constant demands, and if this refers to that, the assessment of that case was made in...the assessments were issued on 31st March 1965 on the grounds that at the time and all previous times..

Would you agree that in that context the grounds of objection formulated that letter of 11th July 1966 must have been settled with some care? Dr Law is a very careful man.

10 Look at paragraph F, p.3301

20 "(f) An additional objection, but not excluding in respect thereto the objections on the same grounds given in (a) (b) and (c) above, and the objections raised in respect of assessments for the previous years, is that there is a major aspect which affects the partial disallowance of the cost of purchases made in respect of the year ended 31st March, 1965. A substantial portion of the purchases of Europa Oil (NZ) Ltd. namely £1,280,595 was made by Europa from Europa Refining Co. Ltd. and not from a Gulf Company. The former Company, as you are aware, has entered into a supply contract for feedstock with Gulf Exploration Company on the 10th March 1964, the intention being that the feedstock would be refined on behalf of Europa Refining Co.Ltd. and the finished product sold to Europa Oil (NZ) Ltd. In view of the difficulties Europa Refining Co.Ltd. experienced in its endeavour to obtain a Motor Spirits Wholesale Licence from the Motor Spirits Licensing Authority it withdrew its application for the time being. As a result, to comply with the Legislation, Europa Refining Co. Ltd. has to sell the feedstock to Europa Oil (NZ) Ltd. before it is refined. All sales take place at the landed price of the feedstock to Europa Refining Co.Ltd."

30

I think it quite obvious that Dr Law was relying on his recollection on his quite erroneous memoranda to which he was a party and to which I found immediate objection, so I would say it was a slip on Dr Law's part, but quite understandable.

40 Turn to Case Stated in this case and look at EXPT 28, is that a letter of objection dated 25th March, 1971, from Europa Oil to the Commissioner in respect of the assessments for the years ended 31st March 1966 to 31st March 1968? A formal letter of objection.

And I read to you paragraph 3 (c), also reading opening words of paragraph 3 (read),

"3. That the Judgment of the Judicial Committee of the Privy Council dated 21st October 1970 in the Appeal Commissioner of Inland Revenue versus Europa Oil (N.Z.) Ltd. has no application to the said amended assessments because

.....

(c) the circumstances of purchase by Europa Oil (N.Z.) Ltd. of feedstocks from Europa Refining Company Ltd. bear no legal or factual similarity to the purchase by Europa Oil (N.Z.) Ltd. of products from Gulfiran under the 1956 Contracts."

10

do you say that

is another mistake? Yes.

Would you please turn over the page to EXBT 29, is that a letter of objection and does it in paragraph 3 (c) contain the same reference to purchases by Europa Oil of feedstocks from Europa Refining? It seems to be a complete repetition of the first one, does it not; it looks like a stock letter which has been sent every year.

20

Do you agree that in March 1971 the company Europa

Oil regarded circumstances of its relationship with Europa Refining as a very important factor in its objection? The difference between Europa Oil and Europa Refining...oh yes.

Would you agree that the letters of objection in relation to the Europa Oil/Europa Refining situation must have been settled with some care? Between Dr Law and Mr Smith, I should think they would settle it with care, I personally had no part in these letters,
10 I left it entirely to them.

Are you say Dr Law in 1966 and Mr Smith in 1971, writing on behalf of Europa Oil completely misstated the supply position between Europa Oil and Europa Refining? I would say Dr Law obviously fell into error in 1966 and has perpetuated that error throughout these letters. These letters, Mr Smith can speak for himself no doubt, but Mr Smith would prepare these letters in consultation with Dr Law.

I would like to show you a letter from Europa Oil
20 (N.Z.) Ltd to Department of Industries & Commerce of
No. 5 20th July 1965 (EXBT No. 5), Mr Todd, is that a copy of a letter written by Europa Oil to the Department of Industries & Commerce supplying the information requested by the Trade Practices and Prices Division of the Department? Yes, it is obviously a letter written to the Department..yes to the Trade Practices and Prices Division, yes.

And in answer to question 1 does Europa Oil say
of crude oil was landed at Whangarei on
"Our first shipment./..May 7, 1964"? Yes.

30 And do the schedules also under the name of Europa Oil give the details of that feedstock shipment?

Yes, quite right.

As at 20th July, 1965, is the position that the

General Manager of Europa Oil considered Europa Oil was bringing in feedstocks? No, he didn't, there was extensive correspondence extensive meetings and extensive negotiations throughout the whole of the price enquiry commencing in 1965, right to the Inter-Departmental Committee set up in 1967, through to this day and every one of those letters which the Department sent to us are addressed to Europa Oil (N.Z.) Ltd, and to every one the General Manager of Europa Oil has simply replied on Europa Oil letter-heads.

10

Could I summarise it this way, is the position that in all the correspondence with the Trade Practices Division of the Department of Industries and Commerce the Europa group has referred to feedstock supplies coming in in the name of Europa Oil? No, I don't think that is correct, you see, the enquiry, meetings, discussions between the InterDepartmental Committee, handles it as Chairman of the Committee signing as Chairman, then he signed as Assistant Commissioner of Industries & Commerce, he didn't know which hat he was wearing, he addressed these letters, which were more or less stock letters, with small variations to fit the companies, he addressed them in all cases to the Managing Director or a responsible officer of the marketing company in New Zealand. At some point in time whether before or after this letter, he had in his possession the feedstock supply contract between Gulfex and Europa Refining, the contract of affreightment and alternate provision of that contract between Gulfex and Europa Refining, nevertheless if he had acted correctly he should have addressed a number of those letters to Europa Refining....but these were

20

30

stock letters sent to managing directors of marketing companies. Mr Carmichael handled most of these matters, I attended many of the meetings, but normally Mr Carmichael and Mr Smith, correspondence handled by Mr Carmichael who received letters as Managing Director of Europa Oil Company and he replied in that way. As you have seen by my evidence I am a chief administration officer of a large number of companies and I have so much difficulty in dictating to my
10 Secretary and being sure the right name goes on the letter heading and right signature that I have adopted having my own letterhead and she doesn't know which company and I write on "Brian Todd, Box so and so" and sign it Brian Todd and try not to confuse which company I am dealing with, and I suggest Mr Carmichael did the obvious thing and wrote the letters in the form he did.

And does this include referring to feedstocks being Europa Oils? Mr Carmichael would not be concerned
20 about the niceties of ownership, nor were the Department, they were addressing their letter to the wrong people and Mr Carmichael was replying to the wrong people, and it is an understandable situation. Was it usual practice in correspondence with Gulf in relation to the 1964 contract for the letters to Gulf to be on Europa Refining letterheads or Europa Refining to be specifically named in the letter?

In my own correspondence, which would be the important correspondence, the letters would be written
30 by me on my own letterheads. Gulf tended to refer to Europa as Todd, so on most matters Gulf/Todd. On matters referred to Mr Carmichael and others was it usual to identify Europa Refining in correspondence? I shouldn't think so.

Moving to p.47 of your evidence at line 17 you say

"I did so by recording a note of the correct understanding between the companies which is the fourth document in Exhibit C.S.15."

when you call it
 an understanding between the companies, are you referring to what you yourself decided? What I myself decided in the light of the whole background as set out in a number of exhibits in my evidence, the understanding in Gulf contracts, understanding in circulars sent to shareholders, in the creation of Europa Refining, the understanding of the correct
 10 interpretation of the Gulfex/Europa Refining contract, and I think what I say there is a brief condensation of all those things.

In the next two or three pages of your evidence, referring to the memorandum, you consistently refer to what you decided yourself, I refer you to p.27 line 20 "I took care"? I was the one who had the awareness of the contracts, which have obviously escaped those who took action once I was overseas, so I do accept that this was a personal concern, as
 20 a matter of fact I was greatly exercised when I saw this, and I am quite happy to have it referred to in the first person.

And again p.27 line 43 to 47

"This memorandum was clearly in breach of the feedstock supply contract and it was necessary that I should promptly revoke this and preserve Europa Refining Company Limited's contractual rights."

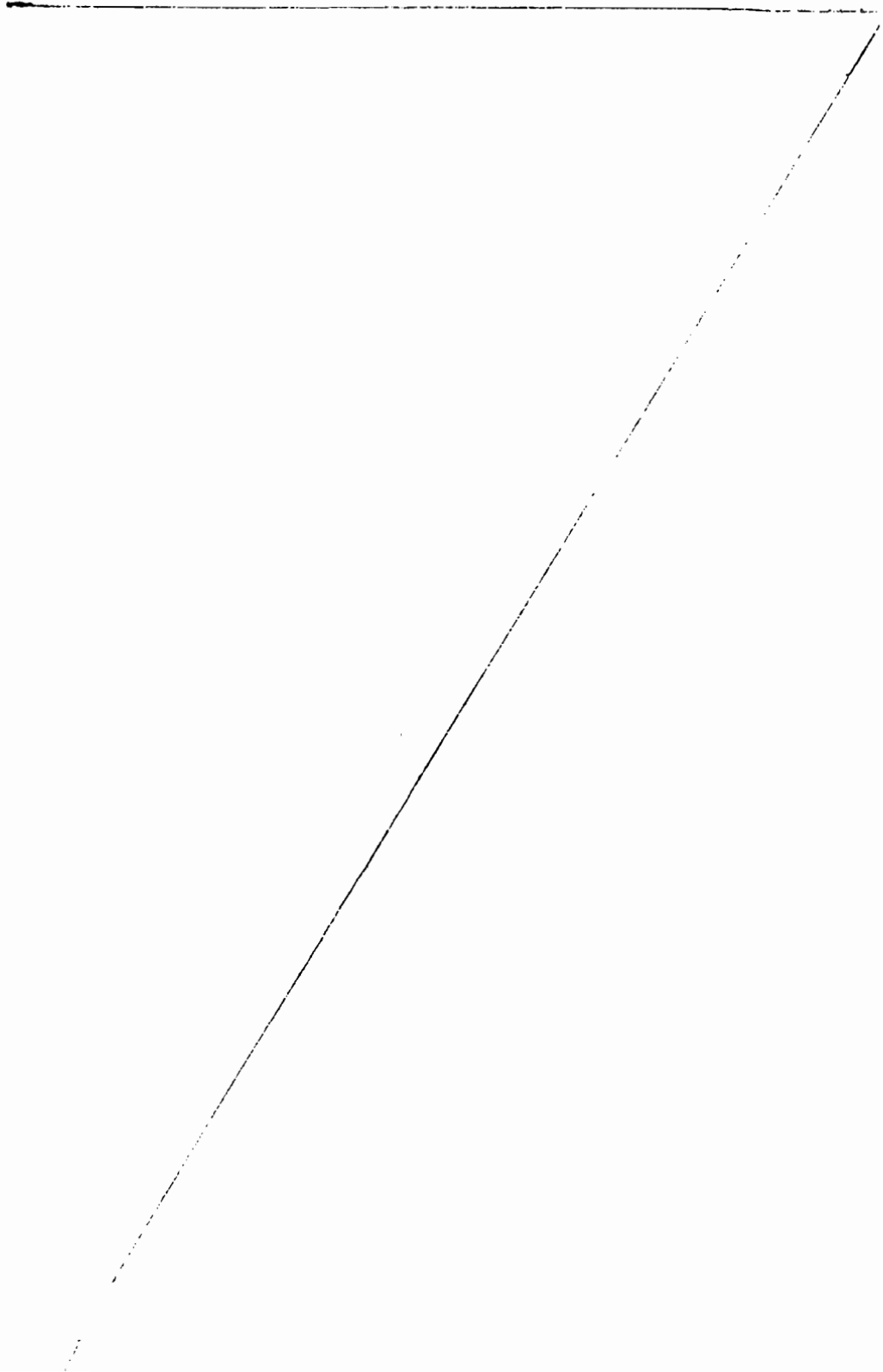
Yes.

And it had been signed by Mr Carmichael, and Dr Law, a doctor of law, and tax consultant? I think Carmichael signed as a director, not general manager,

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but nevertheless what they signed was a distinctly wrong document.

Now at p.48 line 24, you refer to the main difference between the deed that was formally cancelled and the first of the memoranda as relating to the sale prices in respect of the sale of products by Europa Refining to Europa Oil? Yes.



Did you apply again or at any time up to the present to the Motor Spirits Licensing Authority for a whole-sale licence? No.

If the memorandum has the similarities to the deed to which you refer, does it not raise the same licensing problem as led you to apply to the Motor Spirits Licensing Authority in 1964? No.

And have you taken legal advice on that? I don't think I have any written opinion on that.

10 Mr Todd, I show you EXBT 6, you might like to take a few moments to read through those documents supplied by Europa Oil to the Commissioner, and are cables etc. (Witness does so).

Now referring to the cable under date 17 August 1967 from Carmichael Europa to Gulfcops, does that seem to have been sent according to the references to Europa Oil by Europa Oil? Some times the references can be misleading because on the cable account Europa Oil is the party which has the account with
20 the cable department, I don't think it has any significance in this connection, but it may arise some other time where the cable is quoted Europa Oil, but I don't think it has significance here, Carmichael was acting on behalf of Europa Oil, that is relying on memory.

Does that cable refer to a Cargo 88 being included retrospectively in a 50-50 refining project Gulf was preparing for Europa's consideration? Gulf had proposed they would prepare, in point of fact they
30 never did so, never even prepared the first line of any proposal, in other words, did not work on it, but they had told us that they would be preparing a project.

Turn two pages over, to you from Mr Clancy of Gulf dated 3rd October, does your agenda for forthcoming meetings in Pittsburgh with Gulf include as second principal item named 50-50 processing deal? It clearly says so there.

What was the outcome of the discussions at that meeting? Never got to first base.

Did this proposal originate with Gulf? I think it originated with a rather junior member of Gulf, Mr
10 Hooper I think, who didn't have a very long stay with Gulf.

In its embryonic stages did it involve Pan Eastern? It involved nothing because we never got going....it didn't reach the point of conception.

Turn to the last document dated 23rd March 1967, does it say "Cargo 86 will be U.S. Dollars 2.31 per barrel. This cargo will be included retroactively in processing arrangement which being worked on and which hope to have principal terms in draft form within next few weeks."

That is

the same 50-50 embryonic proposal, but Mr Hooper
may I say was very good at soft soaping, because we
were in a difficult position, this was a time of
20 crisis and you can see from these records that Gulf
were proposing to charge Europa not only a posted
price but a premium on posted price, Hooper wanted
to take advantage of the crisis and demand a premium
over the posted price which he said he could get
elsewhere, and this is why he soft soaped.

Was this in respect of supplies for which no prices
had been fixed under feedstock supply contract because
of the absence of negotiations to fix a base price?
No, unfortunately it was otherwise, we had to have
30 the cargo. As I mentioned in earlier evidence the
freights agreement in our feedstock finished products
supply section was deficient. In other words, we had
to pay the going rate, and there was a famine crisis

when New Zealand could not produce the quantity we needed, we had to have these two cargoes to fulfil Europa Oils contract of marketing, and Gulf, Mr Hooper in the supply division, wished to take advantage of the fact and quite rightly, that as finished products were in short supply and demanding on the market in excess of posted prices, he wished to charge a premium on posted prices, fortunately we were able by contract in the supply of finished product section
 10 which provided that supplies of finished products were at posted prices, and I think it is referred to in these cables. All I want to say is that we succeeded in getting finished products at posted prices, which we couldn't have got elsewhere.

11.35 COURT ADJOURNED

11.50 COURT RESUMED

I want to refer, Mr Todd, to a number of miscellaneous points in your brief of evidence, the first at p.20
 at line 20 "The gasoline manufactured ^{for Pan Eastern, was delivered elsewhere} at Abadan. by
 Gulf", how do you know it was manufactured at Abadan?
 20 Well obviously, that was the most economic place to manufacture it, Gulf had a 7% ownership and manufacturing facility in Abadan Refinery, the crude oil deemed to be used in the processing was light Iranian crude oil.

TO BENCH: This means there were a number of factors which would suggest that that is where it came from?
 Yes.

TO COUNSEL: Did Pan Eastern have a processing contract with the Abadan Refinery? With Gulf or with a refinery
 30 procured by Gulf, and the refinery procured by Gulf was the Abadan Refinery.

Remember in the last case Mr Smith said there was nothing he could see to show where Pan Eastern's

refining took place? That is correct.
 Pass to p.27 line 10 "The apportionment ^{of the net refining margin at the} ~~..~~ / Kuwait

Refinery.." is there any reference in the Pan Eastern contract to the Kuwait refinery? Yes, I think you will find reference to Gulf having refinery at Kuwait and will supply feedstock supplies in terms of that contract from the Gulf refinery at Kuwait.

Is there any reference in the processing contract or in the Pan Eastern documents to a refinery at Kuwait?

10 The answer is the same under the processing agreement. The provision is for Gulf refinery or a refinery procured by Gulf, and Gulf had the choice of where they liked or which suited them best, and I think in my evidence in chief I stated why that was so.

Is the position so far as Pan Eastern is concerned, it did not know where its crude was being refined? No, and it didn't need to care.

Would you pass now to p.33 line 12, is the next section of your brief concerned with your discussions
 20 with Idemitsu closing with a reference at p.34 line 30-32, that Gulf had had time to consider the Idemitsu/Europa proposals? Yes.

Was there any mention of Idemitsu proposals or discussions with Idemitsu in the previous case? I don't recollect.

Do you have any documents or correspondence relating to the Idemitsu discussion? The Japanese are not given to corresponding in a matter only in negotiation. Were the Idemitsu Europa proposals communicated to
 30 Gulf in writing? I can answer that by saying that I interpolated in my evidence in chief that I was introduced by Mr Herbert Goodman, the Gulf Oil's representative in Japan..(quoted from evidence) then

I added to my evidence that Mr Goodman and Mr Gene Idemitsu a nephew of Mr Idemitsu were also present at that discussion. Gulf therefore knew from the inception of my discussion with Idemitsu and what followed in discussions.

Were the Idemitsu/Europa proposals given to Gulf in writing? No, negotiations between oil companies are seldom committed to writing, I know of one or two exceptions, but they are rather exceptions.

10 Pass to p.40 line 4,

The solution reached between Gulf and myself was to establish a contractual base on the understanding that Gulf and ourselves would freely negotiate our supply terms from time to time - this was the best possible solution and that was in fact, in mutual confidence, how we settled it."

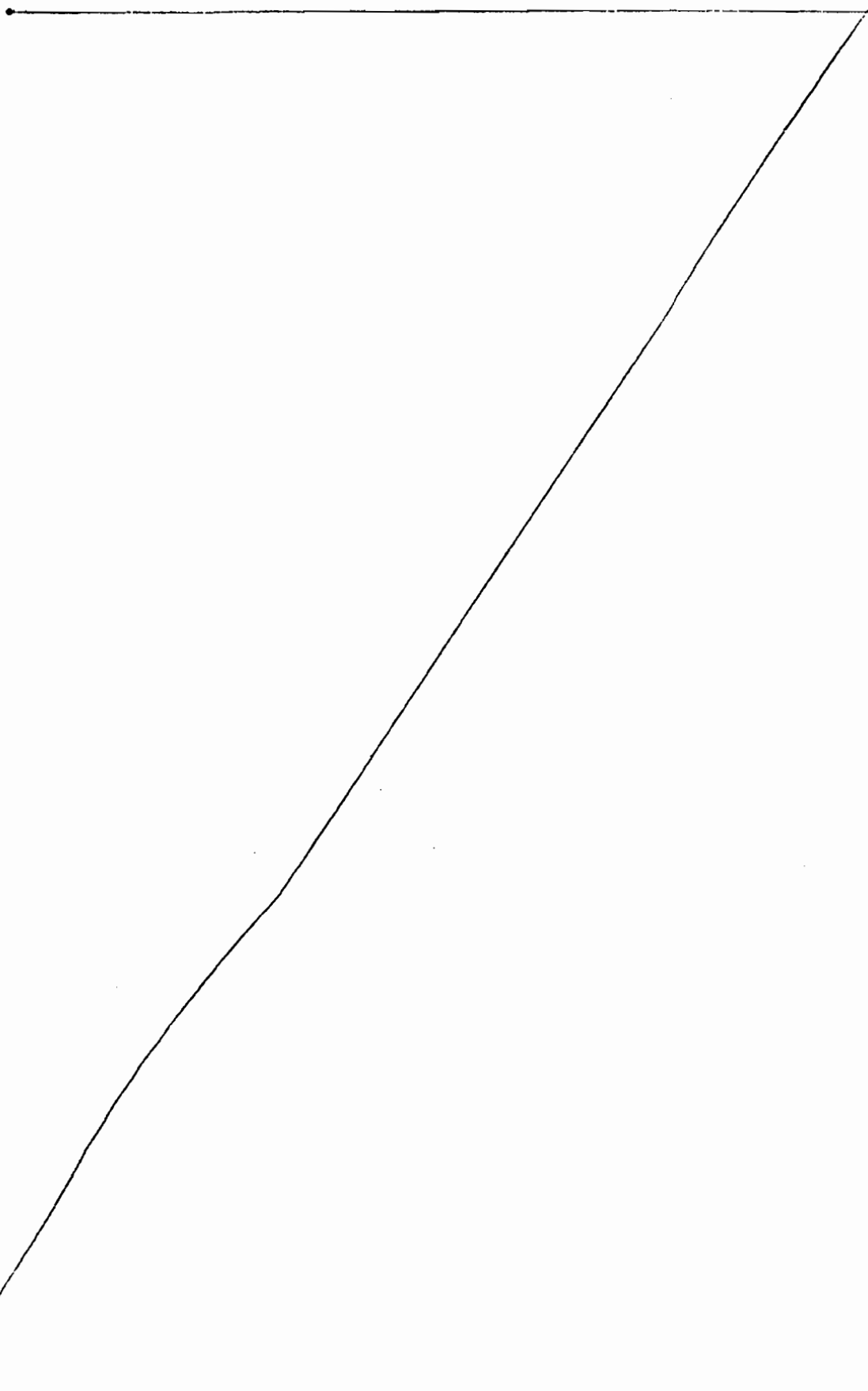
Yes.

Do you have anything in writing to confirm this understanding? No.

Was there any mention in your evidence in the previous case of this understanding? Yes, I think so.

20 If I suggest to you, Mr Todd, that the only reference was to the understanding that a discount from Gulfex to Europa Refining would be settled after Gulf had had the Opec discussion and arrived at a discount it could live with, I suggest that is the only reference to an understanding with Gulf, can you explain why there is no other reference in the previous evidence that you and Gulf "would freely negotiate our supply terms from time to time", (reference to previous case p.139 lines 28 to end; p.147, 1 to 24,) (p.147 line 24 and references to March 1965 discount letter) Yes.

Well was the understanding between you and Gulf at the time the 1964 contract was signed in terms of the passages I have read from your evidence in the previous case? Yes, that Gulf and I would negotiate discounts from time to time, which Gulf were not prepared to commit themselves to at that particular time.



TO BENCH: When then at p.40 of your evidence you speak of understanding "negotiate our supply terms", that is reference to the discounts? Clearly is...yes in my evidence in chief I have made reference to it.

TO COUNSEL: Please turn to p.41 line 19 where you begin a reference to Europa Refining's exchange right, are exchange provisions in a supply contract normal industry practice? I would think that in the case of International companies it would be a sine qua non
10 that they would have exchange arrangements, I can't say they would have exchange provisions in their contracts because I have never seen one, but I know from the parties this is general so far as International companies are concerned, it is very valuable to some extent not equally enjoyed, but provided there is mutual exchange the parties will negotiate them, that is international level. But when it comes to a small company like Europa making a deal, international
20 company wants to hold wholly to itself the exchange deals, that is why I had difficulty, they didn't want to surrender to me something I knew was of value and they knew could be of value to them. That is why I say it was a very important provision in the contract and it turned out to be extremely valuable and it was a hard won provision in the negotiations.
Would you agree that an exchange provision of that kind is a normal industry practice in feedstock supply arrangements such as those Europa Refining entered into? Entered into with whom.
30 With Gulf? No, I would think not, otherwise if it were so I wouldn't have had any difficulty.
Please pass to p.45 beginning of line 3, do you refer to a problem facing Pan Eastern and to a processing

fee of 20 cents per barrel, and in the next paragraph to agreed yields? Yes.

Was there any mention of this by you at the previous hearing? I have no recollection.

And at line 23, as part of the apportionment of cost, do you show fuel oil at 1.389 dollars? Yes.

Is that amount well above the arms length f.o.b. fuel oil price at that time? That is a difficult question to answer, it is a full range fuel oil, it is every-
10 thing apart from extraction of naphtha and gas oil, it has a variety of uses and a variety of specifications within that content. It can range from heavy residuum for making asphalt, it can be bunker C fuel which is a heavy fuel oil which is burned under boilers in steam vessels, it can be a blend with a cut of some of the lighter fractions, therefore in answer to your question of is this higher or lower than the amount of value, one has to show a set of values with variance, wide extremes.

20 Please pass to p.49, lines 25 to 31, why did Mobil and Caltex decline to take Kapuni condensate? They preferred to use their own production from their own oil fields. Did they contend that the price they would have to pay for the condensate was too high? No, that never was at issue at all.

Was the Kapuni condensate price based on the Government's import parity price? Yes, that was the basis for the price of Kapuni condensate being established by the C. & F. bench marks established
30 by the Inter-Departmental Committee and it covered a range of crude oils.

Pass now to p.50, line 18 referring to naphtha and the middle distillate, were there substantial surplusses

of naphtha east of Suez in the early mid-1960's?

Depends on what you mean by surplusses.

Was the availability of naphtha such that during that period oil companies cycled surplus naphtha back into the crude oil structure? I am glad you put that question, that is precisely the case.

Was there the same situation in respect of naphtha at the end of the 1960's with naphtha being cycled back into the crude oil structure? Not to my knowledge.

- 10 If Mr Newton says that was the case, would you disagree? It would depend on what Newton says, it may be that one company might be doing this, this is why I felt a description of economics of the cycling is important.

TO BENCH: In the other period generally there was such an availability of naphtha that a number of other companies were recycling it? I know that as far as Gulf were concerned they had changed from being willing disposers of naphtha to being unwilling disposers...

- 20 They seemed anxious to hang on to what they had? Yes. I did say in evidence in chief that not all companies' positions are the same.

TO COUNSEL: At the foot of p.50 line 32, look at the sentence that continues to p.51 line 4

- 30 "Gulf had undertaken to supply for Europa Refining Company Limited's requirements a grade of naphtha which was not their standard production and this involved them in blending in a kerosene cut at additional expense as the value of kerosene was U.S. \$1.76 per barrel higher than naphtha plus the cost of blending."

in that sentence what had you taken as the value of kerosene? The difference between the posted price of naphtha and the posted price of kerosene, if there were discounts on either

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they would be self-cancelling, as the discounts were substantially the same.

Have you taken the posted price of kerosene rather than its manufactured cost? Yes, because we are dealing with the Gulfex obligation to supply naphtha to Europa

Refining, this is a value operation, not a cost operation.

Are you not in that paragraph referring to the cost to Gulf of meeting their supply obligations to Europa Refining? In the context that if the kerosene has a market value on disposal to other companies of \$1.76 per barrel higher than naphtha then it was the difference in the value that represents an additional cost, but quite distinct from the question of cost of manufacturing. The Crown doesn't seem to understand distinction between cost of manufacture and value. Still at p.51, still that paragraph, the closing sentence referred to freight rates, after the closure of the Suez Canal were freight rates high in 1967 and early 1968? They were sky high. In 1970-71 were freight rates again high at the time of the closure of the Trans-Arabian pipe line and a production cut in Libya? I think that is correct, I wouldn't dispute it.

Apart from those two periods, were freights generally low right through the 1960's and into the 1970's? It depends on what you mean by freights, whether you mean spot rates, short term charges or continuous voyage rates, three continuous voyages which is different from spot rates, running to short term charters, running to mid term charters and running to long term charters, so it is not easy to answer your question.

If we exclude those two periods I have mentioned, would you agree that in respect of freights of the kind you have mentioned freights were generally low right through the 1960's and into the 1970's? No... they would be high compared with earlier periods,

sky rocket rates of Suez crisis and lower than but lower than rates which arose out of the other crisis, the closing of Trans-Arabian pipe line...

but this is a question of relativity, and it also has to do with the position of individual companies, that is another highly variable situation.

During those two periods of high freight rates, were the great majority of the shipments to Europa Refining carried on Gulf's own ships? Not Gulf owned ships, I shouldn't think so, I should think that the
 10 Gulf fleet comprises some owned ships, some on long term charter, some on medium term charter.

TO BENCH: Is it possible to deal with it in a more general way, the majority of supplies in Gulf's own ships or chartered ships? No, Gulf chartered two specific ships, they lost many pounds in the individual charters.

TO COUNSEL: At p.51 line 30 you refer to a development of a shortage in the availability of the naphtha? Of a special type of naphtha.

20 Over these tax years in question, did the Government Bench Mark F.O.B. for naphtha go down? The Government forced them down.

Now please turn to p.67 line 14 and the sentence beginning

"The world-wide oil industry has been in a continuous condition of crisis over much of the period of our contract"

would

you agree that the crisis period started in 1970?

No...I think you referred just recently to crisis in Suez period, the Trans-Arabian closure, all sorts of crises.

30 You adhere to the view you have expressed on p.67 line 14? I think every administration officer in the oil industry suffered ulcers too.

Coming to p.69 line 14 do you say in that sentence that

"the transformation of the international industry progressively from a buyer's market in 1964, moving soon thereafter, according to the class of oil company feedstock required, to a seller's market"

I said according to the class of oil company feedstock.

Would you agree that that did not happen until the second half of 1970? If that had not been the case

(0) earlier than 1970 Mobil would not have been approaching us to buy naphtha, Shell would not have approached us to make naphtha exchanges, BP made naphtha exchanges and Caltex had to backhaul surplus crude oil because they had naphtha shortage of the type prevalent in New Zealand, so all those factors and many others indicated that the situation had changed much before 1970.

Again having given you the opportunity to consider it, you adhere to your view expressed in your brief at that point? Turning to the latter part of the sentence, the pressures of the existing states continued through to 1970.

20

(CROSS-EXAMINATION CONCLUDED)

12.55 COURT ADJOURNED

FRIDAY, 16th FEBRUARY, 1973 - CASE CONTINUED: 9.30 A.M.

RE-EXAMINATION OF MR BRYAN TODD

The first topic I would like to deal with, relating to the re-organisation agreement, why was that reconstruction agreement not proceeded with? The contract was signed before the Commissioner had commenced his investigations, and before we had any intimation of the Commissioner's intention. When the Commissioner concluded his investigations and gave his clearance in 1963 and then the new 1964 contracts were entered into in replacement of the 1962 contract, for the reasons I gave in my evidence, and there was not any urgency to proceed with the re-organisation. But then in early 1965 when Europa received the assessments, it was felt it would be most unwise after receiving those assessments, to set about changing the contract in the light of the claims made.

If the capital reconstruction of Pan Eastern had been carried through with whom would Gulf be dealing thereafter in relation to processing contract? Gulf would still be dealing with Pan Eastern under the processing contract.

To whom would Gulf have been looking to ensure the carrying out by Pan Eastern of that company's obligations? It would have to be Todd Participants. And Todd Participants was the parent company of another company? Parent company of Europa Refining. I want now to come to the so-call pre-emption clause in the 1956 petroleum products supply contract, you were asked in cross-examination why Mr Herbert Taylor stated before the Motor Spirits Licensing Authority that the main reason for the setting up of

Europa Refining was to overcome the problem of excess retention tax? I remember being asked that.

You remember Mr Taylor is recorded as giving excess tax is the main reason? Yes.

And you remember in your evidence in chief that the reason was not placed first? Yes.

10 What explanation do you give for those differences in approach? I think in response to Mr Richardson's question, he asked me what did I regard as the most important reason, and I said (1) to avoid provisions of the pre-emption provisions, and obviously the Motor Spirits Licensing Authority is an open tribunal always attended by large gatherings of oil industry, retailers, wholesalers, lots of onlookers, and I would think it would be quite improper for Mr Taylor to have introduced that subject which was a highly confidential character at such a public hearing.

I want to come to the BP offer, remember being asked a number of questions about the BP offer made to you?
20 Yes.

When you returned to New Zealand in 1962 after having seen Mr Stratton twice in London? Briefly.

Did you receive a letter from BP? I received a letter with attachments.

Was that letter in effect an offer from BP? I am trying to distinguish between an offer and a proposal, I think it embodied both.

Before you reached New Zealand had you been made aware of the terms of the offer or proposal? No...
30 I think it was mailed to me under a personally addressed confidential envelope.

When you read the terms of the offer or proposal, what view did you take of their substance?

I regarded it as a very unsatisfactory proposal. Without going into detail, can you say briefly the respects in which it was unsatisfactory? I read this last night and made a few jottings, may I read them. I want to read this because I thought this might come up today.

TO BENCH: I prefer you to give it without reading it.

TO COURT: Well first of all the proposal for the supply of naphtha was a naphtha quite unsuitable for our requirements, and there were three basic reasons; the specific gravity showed a wide range of tolerance at BP's option and on specific gravity alone this naphtha would have been a very unsuitable naphtha for use in the New Zealand refinery. The Reid Vapour pressure was 14 lb which would be entirely unsuitable for use in the New Zealand Refinery, it would be of such a gaseous nature that a great deal of gas loss through the flare in the refinery would be experienced in the use of such a naphtha. The sulphur content would also be almost intolerable for use in the refinery in New Zealand. It would have imposed very heavy strains upon what is called a hydro treating facilities in the refinery and the terms of the participants imposing such high claims upon that unit, it would have infringed on the rights of other users. In other words it could have been tolerated if Europa had had exclusive rights, but under the circumstances it could have infringed on the rights of others...there are several other objections. A further objection was that the provision for freight rates did not attract me. The other objections were that the offer made no provision for the supply of gas oil as such and the feedstock to Europa Refining for use in the New Zealand refinery. I have already given evidence of

of how important I regarded that matter. But I should say that there was provision that BP in New Zealand would swap the surplus fuel oil which Europa would be bound to make under this proposal with gas oil produced by BP in New Zealand, and the terms of that swap proposed are set out and that could have been a very substantial diseconomy to Europa in swapping under those terms; it provided as alternative to swaps that BP would undertake to purchase surplus
10 fuel oil which would necessarily arise in Europa's processing, of the feedstocks offered by BP and the alternative means of disposing of that surplus was that BP would purchase from Europa that surplus at a valuation based upon the saleable price of fuel oil which of course has a much lower price than the New Zealand price because it has a much lower freight element in it, freight element being the cost of freight from Middle East to Singapore, as against the cost of freight from Middle East to New Zealand, so
20 that would be a serious loss.

After considering the offer, what action did you take of notifying BP of your attitude? In the first place I think to call it an offer is probably an over-statement, I looked at it and I didn't carefully consider it. I regarded the attachments, I suppose I can say, a rather crazy quilt work which I didn't understand.

Did you notify BP of your attitude towards this proposal? I made no response, no written response
30 whatever. After we completed the Gulf contract I advised BP and I think from memory I advised the local managing director of BP that we had made a deal with Gulf and I think that was the end of the matter.

I want to come to some aspects of the Pan Eastern processing contracts, cl.504 of that contract at p.3142 provides

"Gulf shall be responsible for preparing all relevant costing data and records relating to transactions under this Contract."

did Gulf prepare the data and records referred to in that clause? Yes.

Turn to cl.302 at p.3136

10

"During each quarter, or for such other period as Paneast may from time to time agree with Gulf during the term of this Contract, Gulf shall deliver or cause to be delivered, to refineries made available hereunder such part of the quantities of crude oil purchased by Paneast under this Contract as would be equivalent to the quantity of crude oil required to produce the quantities of feed stocks (other than crude oil) and finished products which Gulfex is obligated to supply from time to time to Europa under the Feed Stock Supply Contract. Any crude oil so delivered shall be processed for Paneast's account into feed stocks and finished products. All risk and peril for the crude oil during delivery to the refinery and during processing shall be borne by Gulf or the supplier and refiner designated by Gulf."

20

it relates to the delivery to refineries of quantities of crude oil, now still on that sub-clause would you go to the last sentence which reads, "All risk and peril for the crude oil" etc, throughout the term of the processing contract, did Gulf in fact carry out its obligation under cl.302 as far as you know? Yes.

30

The next matter I want to deal with relates to two questions that were put to you(p.4 line 23, and p.5 line 9 of xxd)

"do you agree that on every order of supplies Europa Oil could calculate how much it would get as a result of that order through Associated Motorists and Pan Eastern? I don't want to use emphatics, but in this case, I would say it was utterly impossible."

40

"Do you deny on every order of supplies Europa Oil could calculate how much it would receive by dividends from Pan Eastern as a result of the order? Under the 1964 contract, yes, I completely deny that."

then turn to

cl.601 on p.3118 headed "Nominations", did Europa Refining submit to Gulfex the estimate from time to time referred to in that clause? Always.

Now look at ^{cl. 602} ~~cl. 602~~, did Europa Refining notify Gulfex from time to time in accordance with that clause at least 75 days in advance of the date as referred to there? Yes, I think the practice was to give plenty of notice, not rely on 75 days, to give much longer notice because of the problems in the New Zealand Refinery, it would never be neatly on 75 days.

10

When you were asked about every order of or for supplies, did that relate to the notification in cl.602? No, the notification..sorry, yes, that relates to the order.

Now turn to cl.7 dealing with price, you will see in paragraphs (a) (b) etc reference to posted prices?

Yes.

Now would you turn to the definition of posted price

at p.3113, the last four lines

"and shall, with respect to each cargo purchased hereunder be the posted prices in effect on the date the tanker commences to load;"

now at the time when you place the order, which you

have said is not less than 75 days before loading

commences, would you know what the posted price

would be on the date of loading? No.

Would it be possible to forecast what the price would

be? That would be in the guessing game, as I said in

10 evidence in chief a great many predictions in the oil

industry are proven to be wrong.

TO BENCH: Might it be in the wild guessing game or the

informed guessing game? A lot of people have lost

money in the oil industry.

On this aspect? On the advice of their economistsst, I

can quote many cases where they have lost fantastic

amounts of money by accepting predictions which

turned out incorrect.

Was it your experience in Europa that prices which

20 you had guessed ahead as ruling some time in the

future, sometimes proved to be very much awry? In

the case of crude oil prices the posted prices

could be relied upon as being fairly regular because

there were artificial tax reference prices imposed

by the Sovereign States in the producing companies

in 1960, and until there was a good deal of ferment

over the period since then as to what would be the

fate of posted prices, but the fact is that posted

prices remained fairly constant as tax references

30 prices for tax purposes until the big upset in 1970

or 1971 with the new regime of Opec pricings for

tax reference, but on the other hand they product

prices they were not subject to that regime and they

could vary and in point of fact did vary from time

to time throughout the whole period so that one could not make...it might be reasonable to assume that on posted prices of crude there would be variations as a result of renegotiations with Opec, and one could assume that until renegotiations took place they remained, but the posted prices of products could not be predicted.

TO COUNSEL: Now turn to p.8 on p.3120, read cl.8.01, that involved a period of 120 days credit did it
10 not? Yes.

Did the payment involve an international exchange transaction? Yes.

Could you at the time when you placed the order 75 days before loading know what the exchange rate was going to be at the time when the credit period expired? It was at least 195 days, no possibility whatever, we were always at risk.

Turn to p.40 of your evidence in chief about which you were asked some questions, line 4 to line 12,
20 you were asked questions about that in cross-examination? Yes.

Did Gulf indicate to you any reason why it would not give a direct discount into New Zealand? Yes.

What? They did not say they would not give a direct discount into New Zealand but not prepared to quantify it.

Indicate why not? Yes, they were in the middle of negotiations with the Opec companies, they had questions of pricing in Japan their largest market, contingent upon those negotiations, and additionally
30 the Japanese market being the major market for international contracts, they wished to be very careful ~~for international contracts, they wished to be very careful~~ in not forecasting ahead of time

prices into New Zealand which would be available on open invoice to the Authorities here, Authorities generally exchange this information, and they would not want to be committed ahead of circumstances which might change from time to time on the whole question of discount ranging through the life of the contract. Would it have been possible to include in the contract some such clause as "The parties agree that they will negotiate terms of supply", something along those

10 lines? It would have been possible but very detrimental. Why? If two parties to a contract write a provision in the contract that if either party wishes to renegotiate a material part of the contract, such as the pricing, and machinery is set up for negotiations and if one or other party disagrees, then the only final result is for the parties to cancel the contract and that is the last thing I wanted to happen. I am familiar with this fact because Dr Frankel, who is an acknowledged oil economist, which is distinctly

20 different from oil trader, and also adviser to New Zealand Government in association with his partner Mr Newton on pricing into New Zealand and at one of these pricing discussions he attended a plenary meeting and put this very point to me, he criticised this, that we did not have a provision for renegotiation from time to time and I put it to him as I put it now, "Dr Frankel, if we had such a provision and at the same time wished to have long term contractual security and we failed to agree, then in effect we

30 have no contract at all" and his reply was "I'll leave it to your ingenuity to solve that problem". Coming now to the problems that you mention on p.51 of your evidence in chief, about which you were asked in cross-examination, line 20, about Gulf being

exceptionally hard hit to cover its overall transport obligations in good time, how are you aware of Gulf's difficulties in this connection? My knowledge arose from many discussions Gulf had with me on this question arising primarily from the effect of the provisions of the affreightment contract and the alternative provisions of that contract of 1964? They were hard hit by these provisions, they acknowledged. But in the course of the quite intimate

10 relationships I had developed with Gulf personally we had many chats on various aspects of oil matters generally. I had a close friendship with Mr Peter Binstead who is the head of Gulf's world wide marine transportation operations. Gulf had obtained a great deal of world publicity when they led the way to building the first six giant oil tankers exceeding 300,000 tons each, and Peter Binstead told me that while they thought by that acquisition they had well protected themselves against future transportation

20 obligations they had assumed their calculations had gone completely astray and they were very hard hit and in short supply of marine transportation.

The next matter again was discussed yesterday, I want to give you an opportunity of explaining a little more of it, you referred to cycling back of naphtha into crude? Yes, it was referred to, I recall.

Explain why that particular action is considered desirable by a refinery at a particular point? Well, contrary to the layman's impression what is apparently

30 a loss operation, it can be a very profitable operation. The reason is this, that when you produce a barrel of crude oil you have a thing of worth if you can sell it, and one of the ways of obtaining

a sale of a barrel of crude oil is refining it and selling the individual products, and you also expect to make a profit in refining. Now at Kuwait it is well known the cost of lifting the oil from the ground is in order of about 8 cents, so to produce a barrel of crude oil and pay the tax to the host Government at the high rate prevailing less the 8 cents production cost, leaves a very heavy tax payable, yet there is a good profit left in the production of

10 crude oil. The next step is to increase capacity to uplift from the reservoir an additional quantity of crude oil if you can sell total production from the refinery, and over many years fuel oil and gas oil have of themselves been profitable products. But the problem is that that same refinery may not have a sale for the naphtha, and another refinery may be in a better position. Let us take the case of one who has not, if he recycles that back into the oil reservoir he can only do that if the refinery is somewhere

20 adjacent to the oil fields, which is the case in several of Middle East, now if he recycles naphtha back into the ground, he hasn't lost it, he simply puts it back into restorage, but by recycling it he saves tax, because put simply \$1.60 a barrel for Kuwait crude, this is earlier on, prices are higher today..I go back to when the posted price of Kuwait crude was pretty heavy, \$1.60, tax 55%, so leaving out the 8 cents for uplift cost, the producer of the Kuwait would pay 80c tax on barrels produced, but pays

30 it on net production, and if he recycles back into the ground he saves some of that and he also saves the naphtha and in point if fact right now those producers who cycled naphtha back in the earlier days

because it was profitable as such, make extra profit because they can bring it back now as lighter gravity of crude oil which have higher naphtha content and naphtha is now higher in price.

TO BENCH: To recycle naphtha? It goes back into the crude.

Does it not affect the naphtha? A producer who recycles naphtha has the advantage in lifting oil again, he has the advantage of producing more naphtha
10 from that particular area.

TO COUNSEL: You were asked on p.22, line 13,
"Did this pricing enquiry play any part in the completion of the letter variations the following month in March 1965? No."

the pricing enquiry you were being asked about there was a pricing enquiry in February 1965, remember being asked about a meeting called in February 1965? I remember saying in my evidence, I drew attention to the letter written by the Minister in 1966 and felt that was the start of the enquiry.

Remember being asked if you knew anything about a
20 meeting convened in February 1965? I remember being asked, yes.

Remember it being mentioned that Mr Carmichael attended the meeting? Yes.

Are you able to say why you didn't attend the meeting?

I was about to leave for overseas to attend various engagements I had in USA through March and I had made those engagements in an early part of the year 1965. I had either left New Zealand before that meeting or about that time, I knew nothing of the
30 meeting.

Now the next point, still on p.22, you were asked about there being no letter variations in the period 1966, June 1966 to October 1970, and you dealt in

your answers with the position of crude during that period, can you expand on your explanation why there were no letter variations concluded between June 1966 and October 1970? Well the lengthy negotiations between the members of the industry which were attended by overseas executive officers of international companies and the Inter-Departmental Committee didn't reach any conclusion until 1967, I think, and when that conclusion was reached I visited the Gulf in the USA and I told them of the decisions reached on the bench mark valuations of naphtha and gasoline which were part of the components of C. & S. valuations and I put it to Gulf would they reduce the naphtha and gas oil prices in the Gulfex contract to the settlements reached in New Zealand. They said they would not do so, they regarded the settlements as commercially unreal and must have been political or settlements arising from political decisions, and I had to admit to Gulf that that was very much the case because throughout the whole of the negotiations the Departmental Officers used great pressure on the oil companies to get the prices down to those impossible levels, and one of the arguments they used was that international industry enjoyed special protection in New Zealand under a provision of Motor Spirits Distribution Act which in effect said gave these companies a monopoly in New Zealand, and they felt that because the companies were given Government bestowed monopoly and they were not slow to suggest from time to time that unless the companies met their demands on these low bench prices they were at

risk of having the Motor Spirits Act changed and allowing it to become a free for all market. A good deal of what I have just related can be obtained from , not the transcripts, there were none, but certain papers or resumes of discussions which the Government itself circulated and from the notes which the individual company officers took of the proceedings. I therefore say that Gulf took the argument that these were exceptionally low prices. I would like to say notwithstanding the fact that these pressures were

10 exerted and the prices achieved by the Government negotiators were exceptionally low prices, nevertheless Europa Refining has more than satisfied the overall targets imposed by the Government in these negotiations. In other words, Europa Refining has done better in its importations into New Zealand than what was required of the other companies and, if I may say this, I am completely baffled why the Commissioner has never withdrawn his tax assessment under these circumstances.

EVIDENCE IN CHIEF

CORNELIUS STRIBLING SNODGRASS, B.Sc., states:

I reside at "Belgrove", near Leesburgh, Virginia, U.S.A., which is located 35 miles from my Washington office. I am an independent professional consulting engineer having practised for many years, both individually and in association with other specialists. More recently my activities have been directed largely towards technical advice to Governments in developing energy resources, more specifically oil and gas, for the advancement of their agricultural and industrial economies.

In the two States of the U.S.A. where I have practised, namely, California and New York, I was qualified to practise as a Professional Engineer in New York; in the branches of both chemical and mechanical engineering in California. I am a Fellow of the American Institute of Consulting Engineers.

Currently I am President of L.S.G. Energy Consultants Inc. of 1819 H Street, N.W., Washington, D.C. In February 1972 I was appointed petroleum adviser to His Majesty Quaboos bin Said, Sultan of Oman.

Entering the oil industry over 45 years ago as a refinery process engineer in California I removed to London in the early 30's and established Snodgrass Perrin and Company Limited, a technical service organisation specialising in the processing of natural and synthetic oils, serving independent refiners in the Eastern Hemisphere, - later renamed Petrotech Ltd.

My U.S. Government service started in the Navy during World War I and was renewed upon the outbreak of war in Europe in 1939 when I volunteered for duty with the U.S. Naval Attache in London and later served in Washington as technical liaison with the Navies of the British Commonwealth. The

maintenance of oil stocks became a prime concern and in August 1941 I was transferred to initiate a Foreign Division of the Office of Petroleum Co-ordinator which later became the Petroleum Administration for War (P/W). Initially responsible for continuity of oil supplies to the British Commonwealth nations, I later became Director of Foreign Refining Division, (P/W), having the responsibility of maintaining supplies from all United Nations refineries for military and essential civilian purposes. British requirements and supplies were co-ordinated through my office by liaison with the Office of the British Petroleum Representative in Washington who spoke for the Ministry of Fuel & Power in London.

My World War II service included the establishment of war-time relationships in respect to petroleum supplies with Commonwealth countries; technical missions to Canada, Mexico, South America, North Africa, the United Kingdom and the Middle East. I became Chairman of the Foreign Operating Committee of P/W which was responsible for its overall foreign operations. Typical of our problems were the continuity of maintenance and up-keep materials to such locations as Abadan and petroleum supplies on such long hauls as to New Zealand.

Colaterally I organised and directed the U.S. Technical Oil Mission to Germany through which new process developments in Germany were harnessed in completing the War with Japan. I was a member of the U.S. Technical-Expert Delegation in negotiating the Anglo American Oil Agreement; Chairman of the Technical Industrial Intelligence Committee, and alternate member of the President's Soviet Protocol Committee.

As a member of the U.S. Technical Oil Mission to the Middle East in 1943 I visited the oil fields and facilities of the Kuwait Oil Company which later became the source of very substantial supplies of crude oil for disposition by the 50/50 owners of the Kuwait Oil Company, i.e. BP and Gulf Oil.

During my term of office as Director of P/W I was in close touch with the responsible officials of the major oil companies, both American and British, and necessarily had access, in confidence, to the intimate operational data of those companies. The Gulf Oil Company played a significant part in the industry committees which were the operational core of the Government - Industry co-operation through which we achieved our objective of harnessing overall petroleum sources and facilities in the war-time effort. The officials of Gulf whom I saw most often and with whom I maintained a personal relationship throughout their careers were Col. Drake, Chairman of Gulf, Mr B. Newton, Vice-President of Marketing, and Mr Charles W. Hamilton, Vice-President of Foreign Production.

Shortly after the War I was commissioned by Government to make a field investigation, report and recommendation on the utilisation of the two synthetic oil plants which remained operational in Germany, for the purpose of processing crude oils to provide petroleum products for local markets.

During the Korean War I was recalled in Government service to organise and direct the foreign operations of the Petroleum Administration for Defense (P/D) which service was very much parallel to that of World War II except that the main problem was in providing a procedural means for bringing the 17 American companies concerned with overseas oil supplies under anti-trust cover in order that they might, in effect, co-mingle and co-ordinate their available supplies with those of British and French companies to the end that the loss of /badan was offset. This brought clearly into focus the necessity for exchanges between companies being made on the principle of short haul and to correct imbalances.

During this period I served as Chairman of the U.S. delegation to the Organisation Meeting of the NATO Planning Committee, and as U.S. delegate to the first Venezuelan Petroleum Congress 1951/52.

In 1954 I was engaged by the U.S. Government to undertake the inspection of the 24 European oil refineries and petro-chemical plants which had received American financial aid for the purpose of rendering an appraisal as to the appropriateness of the engineering concepts and designs in the light of the objectives for which the projects were authorized under the Marshall Plan.

From 1953 I was a member of the U.S. Military Petroleum Advisory Board until 1958 when it was disbanded.

10 In 1956 I was appointed by the U.S. State Department and served as senior U.S. delegate to the First International Gas Conference in Geneva.

The geographical areas in which I have carried out professional assignments are Algeria, Australia, Brazil, Burma, Canada, Chile, Ecuador, Europe, Great Britain, India, Indonesia, Iran, Libya, New Zealand, Pakistan, Papua, Peru, Saudi Arabia, Singapore, Syria and Venezuela.

Typical of the assignments carried out individually or with associates are those listed in an appendix hereto.

20 One of the most significant of my assignments was that which started in 1959 when I re-established my headquarters in London. The Murphy Oil Co. of El Dorado, Arkansas, retained me to investigate oil markets in the U.K. and Europe for the purpose of initiating marketing operations on behalf of Murphy and integrating upstream to sources of crude supply. The United Kingdom was the first market chosen and negotiations were soon started for the purchase of land in a worked-out chalk pit for installation of essential tankage. Starting from scratch, we needed to rent office space, to recruit and
30 train staff, to negotiate for petrol station sites which were few and far between, to negotiate for oil supplies, - first for products, then for crude oil and processing space in refineries owned by others, to arrange for the chartering of

tankers, and finally, after an integrated processing, transportation, marketing operation had been established, under the name Murco Petroleum Ltd., I counselled the parent company, Murphy Oil, on areas to consider for oil concessions and assisted in concession negotiations for what became the Lavan Field in the Persian Gulf.

I have known Mr Bryan Todd since 1944 in PAW days. As mentioned in the Appendix, in 1954 when J. Edward Brantly and I were partners, Mr Todd retained us for two assignments, one a preliminary economic feasibility study of a refining operation to supply the market requirements of Europa. This was prepared as a memorandum and is referred to in page 4068 of previous evidence. As can be seen from this preliminary study, the economy of scale augured against the establishment of such a small refinery. Our second assignment from Mr Todd consisted essentially of geologic counsel and advice by my partner, Brantly.

Having decided that, for Europa's requirements alone, a refinery was not economically feasible, as I see it, Mr Todd then looked to the most feasible alternative namely a processing arrangement with a company whose operations were sufficiently extensive to solve the economics of scale problem.

As can readily be seen in Mr Todd's evidence, his meetings with officers of the Gulf Oil Corporation were timely. Ever since its great discovery at Spindletop in Texas, Gulf has been looked upon and has, in fact, been a foremost oil-finder. However, except for its interest in the Mene Grande Oil Company in Venezuela, Gulf had no foreign production outside of the U.S.A. prior to World War II. The great Kuwait field in which Gulf and BP have equal interests started production after World War II.

Historically Gulf has been a stable and conservative company backed by the Mellon family as its dominant shareholders.

It can safely be said that Gulf has always conducted its affairs in conformity to high ethical standards. Outside the United States, it is predominantly a crude oil exploration and production company, largely dependent for the outlet of its crude production upon sales to other established companies.

I have looked at the general conditions of the Gulf Oil/Pan Eastern Processing Contract, the Gulf Exploration/Europa Refining Feedstock Supply Contract, the Propet/Europa Refining Contract of Affreightment and the Gulf Oil/Europa Refining Ancillary Agreement. I am familiar with Europa's requirements and Gulf's situation at the time and in my view the contracts represent a negotiated set of contracts well suited to the circumstances.

Under the Feedstock Supply Contract, the Contract of Affreightment and Ancillary Agreement Europa achieved long-range security of supply for naphtha and middle distillate which it needed as charging stocks to the New Zealand Refinery and Gulf secured a substantial crude oil outlet and fuel oil needed to supply its markets.

The Processing Agreement clearly is what it says, i.e. a processing agreement. It was negotiated at arm's length by two parties who found a common meeting ground, each to meet its specific requirements and objectives. As is the case with every processing deal of my knowledge, it is tailor-made. There is no such thing as a normal or standard processing arrangement, because circumstances and factors are never

identical as between various parties. There are, however, features which can be common to many refinery deals, i.e. it is not necessary to own a refinery and, in the present case where Gulf has reserved the right to supply from any source, it is not necessary, nor is it desirable, to specify a particular refinery.

Every processing arrangement of which I have knowledge involves some type of exchange or buy-back arrangements. The Gulf buy-back provisions are anything but unusual. In fact, it is through just such arrangements that most processing deals are made economically feasible. A large proportion of all the petroleum products to U.S. consumers are supplied through exchanges between companies in short-supply in one area with those in long-supply in another.

I look upon the Gulf/Pan Eastern contract as a well-conceived and sound business undertaking wherein the individual interests of the two parties to the contract are met. I can see nothing in it which does not conform to sound business principles. The processing fee is within a reasonable range for this type of processing and the calculations of cost are, in my view, suitably apportioned.

It might be germane at this point to describe briefly some of the processing arrangements of my knowledge. During my term of service to the Murphy Oil Corporation in initiating, staffing and directing the petroleum products marketing operation in Europe, which was named Murco Petroleum Limited with headquarters in London, supplies were originally obtained through a processing arrangement with Tidewater Associated Oil Co. which company built a refinery in Kalemberg, Denmark, without sufficient markets to absorb the refinery's capacity. Later this refinery was purchased by Esso and it therefore became necessary for us to negotiate a new processing arrangement with Esso. This took some time and in the final

analysis involved the exchange of certain quantities of Marlago (Venezuelan) crude produced by Murphy and its U.S. "import tickets" as parts of a rather complicated formula so devised as to overcome the natural tendency of Esso not to supply products to a small independent and thereby enable the independent to break into traditional markets. The upshot of the arrangement was that although the processing agreement was related to the Rotterdam refinery, Esso could at its option, provide corresponding products from sources other than its Rotterdam or Kalemberg refineries if it so preferred. The economics of the contract were based upon the characteristics of Libyan crude but Esso could supply any crude, the yields being "deemed" irrespective of crude quality or refinery operating characteristics.

The expression "deemed yield" might also be described as an assumed yield - a yield pattern which has been negotiated by the contracting parties, i.e. the processing refiner on the one hand and the user or users on the other, for the purpose of establishing a suitable and mutually agreed basis of operation. The yield which is deemed or assumed may be the same as or different from the actual yields obtainable from certain crude oil or crude oils.

The Great Northern Refinery in Minnesota was originated as a processing refinery. Great Northern bought crude from Mobil and sold back products to Mobil on the basis of deemed yields by a formula which fixed product prices in order to give Great Northern a processing fee.

A jointly owned, independent refinery in Panama has processed for six or more individual companies at the same time, each user requiring a spread of products to supply its particular markets. A standard fee was established based upon certain crude quality and certain deemed yields. To provide the give and take between off-takers requirements a premium was charged for off-take of light products at above

- 9 -

contract quantities and a penalty for off-taking fuel oil at below contract quantities. Each company had a tailored deal and conducted it through either a Bermudian or a Bahamian subsidiary. The refinery owns the crude oil being processed and the user takes title to the products when delivered. In order to balance the "slate" it was necessary for this refinery to engage in the exchange of crude and of products within the U.S. and tributary markets.

10 To the best of my knowledge all oil companies, with the possible exception of one, utilise the medium of exchanges to shorten their supply lines to balance as between companies their product supplies with their crude resources and to supply markets nearer to the sources of supply of other companies than to their own. The net result is in savings to the consumer in the areas concerned. Without the media of exchanges, swaps, buy-backs, there is little question but that the consumer would have to pay more.

20 What seems to me as missing in the reams of evidence which has been brought to my attention is the broad picture of literally hundreds of millions of consumers of petroleum products throughout the world being served through extended lines of supply starting with :

- (1) The production of crude oils of widely varying characteristics from thousands of oil fields situated over the surface of the globe, mostly far distant from centres of largest consumption;
 - (2) The movement of the crude oil by pipeline and/or tanker to
 - (3) Refineries in which these crude oils are processed, some owned by one company, some jointly owned by a number of companies, national refineries and some custom-refineries commonly known as processing refineries;
- 30

- (4) Movement of the products by pipeline and/or tanker to distribution points;
- (5) Distribution to retail and wholesale outlets to meet the specific requirements of the local market for each product.

Each company has its own set of problems in the chain of supply from oilfield to consumer, such factors as changes in crude oil production and supply, in quantity and quality of varying refinery crude runs, operational and maintenance programmes, with unexpected shutdowns and slow-downs, with changes in market patterns due to climatic and other factors, and with dislocation of marine transport. Encompassed by these and other variables the highly skilled crude and products negotiators of each company are continually on the alert to make crude swaps, processing contracts, product exchanges, buy-backs, deals of all kinds, each in his particular company's interest.

When one begins to visualise the enormous breadth and scope of world-wide petroleum supply one can appreciate why the large international oil companies have been predominant factors and how difficult it is for a relatively small "independent" to obtain long-term security of supply for his market.

APPENDIX.LIST OF TYPICAL ASSIGNMENTS CARRIED OUT BY
MR C.S. SNODGRASS INDIVIDUALLY OR WITH ASSOCIATES.

- FOR THE BRAZILIAN GOVERNMENT : Analysis of and report on the overall petroleum economy of Brazil including exploration, drilling, production, forecasts of consumption, location of refineries and advice on external sources, availability and prices of crude oil (in association with J. Edward Brantly).
- 10 FOR THE SYRIAN ARAB REPUBLIC : Economic feasibility studies and reports on -
- (a) Converting the Homs Refinery to process Syrian crude oil; and
 - (b) The pricing of indigenous crude oil for export.
- FOR THE SAUDI ARAB GOVERNMENT :
- (a) Technical advice on economic development projects utilizing oil and gas; and
 - (b) Economic and engineering feasibility study of fueling the capital city of Riyadh with oil from the newly-found Khurais oilfield versus with gas from the Uthmanayah field.
- 20 FOR THE PAKISTAN GOVERNMENT AND PAKISTAN PETROLEUM LIMITED :
- (a) Economic and engineering feasibility studies of outlets for and the pricing (in competition with other energy sources) of natural gas discovered at Sui in Baluchistan.
 - (b) Consultation in organizing and financing the Sui Gas Transmission Company and in the initiation, engineering, constructing and staffing of the Sui-Karachi and the Sui-Lahore gas pipelines.
- 30 (c) Technical advice on the use of natural gas as a prime source of energy in the agricultural and industrial development of Pakistan, including transmission and

distribution surveys, gas pricing, regulatory practices, and a nitrogenous fertilizer programme.

FOR TODD BROTHERS, WELLINGTON, NEW ZEALAND:

- (a) Engineering study and report on oil refining in New Zealand.
- (b) Geologic study and recommendation of areas for oil and gas exploration (in association with J. Edward Brantly).

FOR THE BURMAH OIL COMPANY LIMITED, LONDON :

- 10 (a) Economic feasibility surveys of natural gas utilization in Assam, Burma, and Papua.
- (b) Reports on the manufacture of petrochemicals.
- (c) Preliminary study of a gas pipeline from the Peruvian Oriente across the Andes to Cerro and Lima.
- (d) Investigation of world-wide geothermal energy.

FOR CONSTOCK (LATER CONCH) LIQUID METHANE COMPANY :

Consultation in regard to world-wide sources, availability, prices and characteristics of natural gas for liquefaction, from 1958 to 1968.

FOR THE REPUBLIC OF INDONESIA :

- 20 (a) Technical Advisor to Government in the pricing of natural gas and in negotiating a contract for natural gas as a feed-stock and as fuel to a fertilizer (urea) plant in Sumatra.
- (b) Analysis of bids for the engineering-construction of the urea plant.

FOR THE DOMINICAN REPUBLIC :

- 30 Survey of the market for petroleum products in Dominica and throughout the Caribbean area, prepared refinery specifications, obtained international bids, and made recommendations to Government.

FOR B.O.C. OF AUSTRALIA :

- (a) Field investigation of a proposed gas pipeline from the Great Australian Basin to Adelaide, South Australia.

iii.

- (b) Consultation in regard to markets for the natural gas discovered off-shore N.Z. Australia.

FOR THE INTERNATIONAL FINANCE CORPORATION :

- (a) Study and report on the relative economics of manufacturing nitrogenous fertilizers from flare gas along the Persian Gulf for export versus from liquefied natural gas or naphtha in India.
- (b) Field survey, report and recommendations on a nitrogenous fertilizer programme for Pakistan.

10 FOR THE COMPAGNIE FRANÇAISE DES PETROLES :

Economic feasibility surveys of markets for petroleum products, of refinery locations, and of refinery processes and processing.

FOR THE IRANIAN GOVERNMENT :

With associates, served for several years as technical advisors to the National Petrochemical Company, the National Iranian Oil Company, and the National Iranian Gas Company.

- 20 FOR MURPHY OIL CORPORATION, a relatively small independent American Company, investigated European oil markets and initiated, organized and staffed marketing operations in Europe; including the direction of negotiations for sites of service stations and for distribution terminals, for chartering tankers, and for oil concessions, arrangements for crude oil supply and for processing this crude oil in refineries owned by others.

CORNELIUS STRIBBING SNODGRASS

XXD RICHARDSON: Mr Snodgrass, under the processing contract in this case, does Gulf supply the crude to Pan Eastern? Gulf Exploration.

Does Gulf, to use the term to apply to Gulf companies, then process or arrange the processing of the crude for Pan Eastern? That is my understanding.

Does Gulf then buy or arrange the purchase of all the resulting products from Pan Eastern? I believe it
10 does.

At prices determined in the processing contract? Now when you get to a specific such as this, I must confess that my exposure to these contracts has been so brief that I could not swear that is in the Pan Eastern contract or any other contract, what you say is my understanding.

Does the Europa group supply any crude to Pan Eastern? Gulf supplied it ... I don't understand your question, if Gulf supplied it. Is it your understanding of
20 the agnts. that the Europa group does not supply any crude to Pan Eastern? Yes, that is my recollection.

And is it your understanding that the Europa group does not buy any products from Pan Eastern? Now again Gulf buys products from Pan Eastern I believe. What does the Europa group do in the Pan Eastern operations then, except share in profits by way of dividends? My own idea of that is that theirs is the priceless ingredient of having the shall I call it technique, I can think of many more commercial
30 operations which are not dependent upon capital, which are not dependent upon immediate owned operational facilities, but which are the result of someone's brain work.

I would like to focus on the processing or refining nature of a Pan Eastern operation ... does the Europa group itself directly play any part at all in the Pan Eastern processing operations? I think that question has been answered with all the others, how this is done, and my memory is not sufficiently good to be able to recite and outline to you the scale of those contracts.

10 Do you regard the Pan Eastern arrangements as a good business deal for Gulf and Europa Refining? I do, definitely.

Do you regard them as a processing deal so far as Europa Refining was concerned? The specific implication "so far as Europa Refining is concerned", I cannot speak to, but I regard it as a good processing deal for the parties.

20 Does the Europa group play any part itself in the processing arrangements of Pan Eastern? It plays the part outlined in the contractual obligations, which I believe are quite clear, which are negotiated between the two parties.

Are you there referring to Gulf and Europa Refining as the two parties? I must confess that when you referred to two parties, I am thinking of the two parties concerned in each one of the agreements, whether it is Europa Refining at that particular point, I'm sorry I can't say.

Are the two parties to which you refer the Gulf group on the one hand, and on the other the Europa

30 group? Yes, I should think so. *Should you agree that the processing contract was part of a franchise deal that Europa Group made with Gulf? It is part of a set of contracts Ltd.*
 Would you agree that Gulf would never have entered into the processing contract had it not been entering into the feedstock supply and freight

contracts with the Europa group? The answer to that question involves my endeavouring to delve into what was in the mind of the Gulf corporate mind at that time, a combination of factors which produced the result.

With your long experience in the industry, what would you expect the answer to be to my question? I would expect it to be a combination of factors, there are many many factors, you can't pick out one or two.

10 I don't know all of Gulf's reasons for it, they had many good reasons undoubtedly, I wouldn't presume to pick out one or two and say, "these would be the reasons", I think I would be guessing, and at fault if I did.

Would you agree that the Pan Eastern arrangement was a means of giving the Europa group a benefit in relation to its purchases under the feedstock supply contract? I think generically the processing deal does provide that facility, yes, not just this

20 processing deal but others.

Would you consider that was the objective of this Pan Eastern arrangement? One of the objectives, yes.

Do you agree that the commodities and quantities dealt with under the processing contract were directly related in kind and quantity to Europa Refining's purchases under the feedstock supply contract? Were directly related, you said ... to my mind they were indirectly rather than directly related.

Was the extent of the activity under the processing

30 contract determined completely by the commodities and quantity of them supplied to Europa Refining under the supply contract? The charging stocks after being processed in the N.Z. refinery, as I

understand it, then became products and these products entered the N.Z. market, I think that is correct. I put it another way, can we compare the volume of activity under the processing contract, with the purchase of supplies under the supply contract, if in a period of, say, one year Europa Refining purchased 10 shipments of naphtha under the supply contract, under the processing contract would Pan Eastern be buying from Gulf sufficient crude which after
10 processing left it exactly the quantity of naphtha supplied to Europa Refining under the supply contract? From what you have just said it appears to me to be ^{written} ~~written~~ in the contract.

Were the pricing arrangements under the processing contract such as to ensure on the naphtha a profit related to the quantity supplied to Europa Refining under the supply contract? Not just naphtha, you said naphtha.

Does it apply? I think you will have to refer to
20 these clauses because as I have said I do not have these contracts too well in mind, I arrived here last Friday night, we had a meeting, I wrote up something, since then I've been sitting in Court here. I am not trying to trap you in any way, I use naphtha because it was in the previous example. I will pass to another topic...is it common industry fashion to apply pricing concessions in direct forms? Yes, I believe it is...I am not a pricing specialist. Would one example of an indirect price concession
30 be cheap loans? They have been made, yes. Would another common form of price concession be an allied reduction in freights? Yes. Would another form of price concession be the deferral of time for payment of the supplies?

Yes, I believe that has been used, particularly in the Japanese contracts.

Would you agree that the concession or advantage to the Europa group under the Pan Eastern arrangement could have been given to it in another form? No, I don't think it could have been negotiated from what I know of the history of it, I don't think it would have been possible for Mr Todd or anyone else to negotiate it.

10 Have you studied any of the contract documents other than the 1964 contract document? I have read a set of documents, the ones mentioned in my testimony, if they are the 1964 contracts they are the ones I have read.

At p.6 you have listed the documents you have read, we know there was another agmt. in 1964 called the Re-organisation Agreement, have you read that document? I believe my experience of that has been since I was sitting in the Court.

20 11.32 COURT ADJOURNED. 11.50 COURT RESUMED

Mr Snodgrass, during the adjournment have you read the Re-organisation Agreement? I have not.

Is it a function of Pan Eastern under the processing contract to buy crude oil from Gulf and resell it unprocessed to Gulf? Some of the crude, I believe a very small portion of the crude, does go that way through the contract, I don't think it is consequential. Do you know of any other case where a refining company buys crude and immediately sells it back to
30 the supplier at a profit? In the case of the Panama Refinery of which I spoke in evidence in chief, there are and have been many complex arrangements and it is my understanding that one or two of those

arrangements did involve what in effect would be the same result as is produced here and that is some of the crude which is not processed being sold by the refinery, but in the case of the Panama Refinery, it is the Refinery which has the responsibility of co-ordinating the feed-supply on the one hand and the off-take on the other hand of the several users. Do you know of any refining company which has only one customer? I have known, at the moment I couldn't

10 guarantee or swear there is a refining company with one customer, but I do know of one, yes.

TO BENCH: What would be the circumstances of those companies with only one customer, would it be by choice, the fact that the company to whom processed oil is supplied is so big that it takes all the output? No, I should say it is the desire of the processor to get started in the processing business. After he is in this business he would naturally look for other users.

20 TO COUNSEL: Are you referring to a refining company which has a refinery? In this particular ^{stage} case, yes. Do you know of any case of a refining company with only one customer and that customer supplied all the crude to the refining company, and that customer does the refining or arranges the refining of the crude? The customer does not do that. And that customer buys all the products from the refinery, do you know of any case of that kind? Not where the customer does the refining.

30 Have you read the evidence given in the previous case by Mr Newton and Professor Lehman? I use the word scan rather than read, I have scanned the evidence.

RXD BARTON:

Mr Snodgrass, in 3 or 4 questions in cross-examinations it was put whether you knew of a refining company doing this or that, how would you describe Pan Eastern, as a refining company or not, or as something in between? I would call it a processing arrangement.

Now as I mentioned to His Honour a moment or two ago, in the evidence given in the previous case, it was
10 suggested that the arrangements with Pan Eastern were not genuine refining arrangements, are you able now to make any comment on that suggestion? Well to my mind, and within the limitations of my experience, those words don't apply, there is no reason why it should be what a genuine arrangement is, what is a genuine refining arrangement?

TO BENCH: A genuine refining arrangement might be
thought to be one in which a company carries on all its processes in all its technicalities, refining it
20 into more sophisticated products? Perhaps a genuine refining operation is an operation that refines ... We are talking about processing crude oil, the responsibility for which is taken by a company which can refine it in one of its refineries or hand it out to others.

EVIDENCE IN CHIEF

NEVILLE KEITH SMITH states :

I was until 31 July 1972 the Treasurer and a Director of Europa Oil (N.Z.) Limited, Secretary of Associated Motorists Petrol Company Limited and Secretary and a Director of Europa Refining Company Limited. I have had discussions, been present at discussions and had correspondence with Inland Revenue Department since the first investigations in 1963.

10 For the purpose of dealing with the accounting problems it is necessary to have a general understanding of the Refining process.

In a continuous stream operation where processing is for one user only no accounting problems as between users will arise. Whatever is processed in continuous stream is for account of one user so that the refinery whether owned by the User or processing for the User on a fee basis accounts for input, processing fee and output to one User only.

20 There is no problem over accounting for stocks of Crude Oil or finished products or how much has been processed where the refinery operates for one User only. However, if there is more than one User then problems start cropping up and I suppose it is fair to say the more users the more problems. These problems arise firstly from the receipt and storage of each User's crude oil or other feedstocks pending processing. The Refinery will have certain storage tanks available but unless there is an abundance of such tankage segregation of each user's stock is not possible. An abundance of storage tanks straight away means more capital tied up and thus uneconomic operation. So almost certainly the refinery will
30 mix one user's crude or feedstock with another's. The Refinery then cannot physically identify each user's stock and cannot process each user's stock in isolation. If any Refinery

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attempted to segregate stock and process each batch separately, it would have an inefficient and uneconomic operation resulting in excessive refining costs. The non-segregation applies to finished product as well.

I have knowledge of these problems from N.Z.R.C. Whangarei. This Refinery is jointly owned by five New Zealand Oil Companies and New Zealand public and processes crude oil and other feedstocks on account of the five different Oil Companies. I produce consolidated stock sheet prepared by N.Z. Refining Company Limited covering the period 1 January to 10 31 March 1967. (EXHIBIT X). The first column of this sheet lists the various types of crude oil and other feedstocks, intermediate variation (i.e. partly processed feedstocks) and finished products. The second column is headed "Opening Stock Entitlement". In the middle of the form is a column headed "Deemed Intake" and towards the right-hand side a column headed "Closing Stock Entitlement".

The use of the word "entitlement" in relation to opening and closing stocks and the word "deemed" in connection with Intake is significant. As I will show, these deemed or entitlement quantities vary from actual. I produce a 20 summary which for convenience I have prepared from information sent by N.Z. Refining and this summary shows each Company's deemed intake and closing stock entitlement. (EXHIBIT Y).

The total of each Company's deemed intake and closing stocks agrees with the consolidated stock sheet figures.

I draw attention that both on the Consolidated Stock Sheet and on the summary I have prepared there is disclosed for each Company and for certain types of feedstocks in total a minus stock position (figures in brackets) i.e. N.Z. Refining 30 Company is telling users it has processed more of a certain feedstock than was ever delivered to it. I produce physical stock movements feedstocks sheets covering the same period

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prepared by N.Z. Refining to show actual stock movements and actual stocks on hand. (EXHIBIT Z). I draw attention that the total quantity of actual stock on hand (665,771 barrels) is the same total quantity as shown Closing Stock Entitlement on the Consolidated Stock Sheet, Exhibit X, but the composition of the total varies greatly as between different types of feedstocks. For example M.E. (Middle East) Naphtha on Exhibit X Consolidated is shown as a minus quantity 36,011 barrels but on Exhibit Z Physical Movements it is shown as 1,787,624 bbls - a difference of 1,823,635 barrels. Comparing the two statements no individual feedstock quantities of stock on hand are identical. I draw attention ~~also~~ that the intake figures vary considerably also i.e. deemed intake from Exhibit Y for Far East Naphtha is shown, - NIL barrels, but the actual intake from Exhibit Z for Far East Naphtha is 144,029 barrels. In no case does the actual intake figure for any feedstock agree with the deemed intake figures. The reason behind the difference between the deemed intake and actual intake figures is that the deemed figures are based on the programme prepared in advance by the Refinery setting out for each user on a quarterly basis his individual programme of feedstocks to be tendered to yield his projected requirements of finished products. The difficulty of course is that users are sometimes unable to conform to the Refinery's intake programme because of supply, shipping and import difficulties and problems arising within the Refinery itself of, e.g., malfunction of such refinery units as will throw the refinery product programme out of balance. The Refinery therefore operates on a deemed programme in respect of each user to perform the function of supplying to each user as far as it is possible with his requirements of products. The users accept the deemed yields from the particular feedstocks tendered by them although the products they uplift cannot be identified with the feedstocks

they tendered. Where users were deemed to have used more stock than they tendered and they have quite clearly received products processed from other user's stock, this was made up or repaid out of future feedstock shipments. At all times throughout the operation of New Zealand Refinery it has been necessary for users to accept deemed yields from their feedstocks tendered as it is quite impossible to identify individual ownership of feedstocks or actual yields.

This is a problem which is common to all joint
10 refinery projects and applies in the case of the Pan Eastern contract with Gulf. There is no way of appropriating from time to time an identifiable quantity of Kuwait Crude to be processed in the Gulf Refinery on account of Pan Eastern in association with crude of other ownership nor is there any way of individually identifying to Pan Eastern ownership from time
20 to time throughout any given period the yield of products from that processing operation which go into a common pool with the other production. Gulf's practice has been to appropriate to Pan Eastern the yield of products from which the quantity of feedstock required for shipment to New Zealand was allocated.

Gulf meticulously maintained proper and requisite accounts to record the refining processing transactions carried out for Pan Eastern.

I produce as EXHIBIT AA photo copies of Journal vouchers and General Ledger accounts (in \$U.S. and £Stg.) of Pan Eastern Refining Company Limited for the years 1966 to 1970 inclusive. These documents are prepared and kept by Gulf Oil Corporation in Pittsburgh to record Pan Eastern's purchases of crude oil; the payment by Pan Eastern of
30 refining processing fees and the sale by Pan Eastern of the yield of production from such processing; in accordance with clause 5.04 the Processing Contract dated 10 March 1964 between Gulf Oil Corporation and Pan Eastern Refining Company Limited;

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and miscellaneous items of dividend payments, sundry income and expenses.

I propose to give a brief explanation of the documents covering the 1968 year (other years' records being similar) and to that end I produce a typed summary as EXHIBIT BB which I have prepared from the Pan Eastern General Ledgers and headed "Summary of Pan Eastern General Ledgers 1968" with supporting attached photo copies of the relevant parts of the General Ledgers for that year.

10 I also produce Pan Eastern Annual Accounts as EXHIBIT CC, i.e., Balance Sheet at 31 December 1968; Statement of Retained Earnings 31 December 1968 and Statement of Income year ended 31 December 1968 as prepared by Gulf Oil Corporation. I also produce copies of Pan Eastern Journal Vouchers for the year 1968, prepared by Gulf as EXHIBIT DD. (These documents also appear in EXHIBIT A).

Dealing firstly with the typed summary of Pan Eastern General Ledgers 1968 (Exhibit BB) the top half of that summary simply records all balances shown in the various ledger accounts at 31 December 1968 after closing entries had been made. It is a trial balance of the books of account of Pan Eastern and the balances shown appear in Pan Eastern's formal Balance Sheet at 31 December 1968. In the bottom half of the summary I have set out again from the Pan Eastern General Ledger accounts what are effectively the closing entries for the 1968 year to show clearly how Pan Eastern profit arises from the purchase of crude oil and the processing thereof for a fee, i.e. total costs = \$23,528,386.31, and the sale of the resultant yield, \$27,009,716.31. The refining profit on these transactions, plus profit on Crude re-sold (\$20907-67) for the year amounts to \$3,451,329.98. Then by bringing to account other income \$19,549.33 less expenses \$1,791.83 (Pan Eastern's accounting expenses are in terms of the contract included in the processing fee), a total profit to Pan Eastern

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for the year of \$3,499,087.50 is arrived at. Adding in the balance forward \$2,747,581.19 and deduction of dividends paid during the year \$4,344,041.00 arrives at the balance of earned surplus of \$1,902,627.69 retained and recorded in the Balance Sheet at December 31, 1968. Each of the figures just mentioned can be traced in the appropriate Ledger account, copies of which for 1968 are attached to the typed summary. Full records for 1968 and other years are contained in Exhibit AA.

10 I explain briefly the 1968 year Journal Vouchers, Exhibit DD. These Journal Vouchers are the means by which the General Ledgers to which I have just referred are entered and maintained. Each of the vouchers for the year is numbered and has various supporting documents attached. The number system indicates the month of the year and the voucher number for that month, e.g., VR. 01-0001 is the first voucher for January, 03-0003 is the third voucher for March and so on.

JANUARY TRANSACTIONS:

Turning to Voucher 01-0001- the entry on the first
 20 line is a credit to account No. 5001 (Revenue) in the amount of \$63,101.73. This entry arises from the sale by Pan Eastern to Gulf Exploration of 44,753 barrels of crude oil - this is crude oil purchased by Pan Eastern for resale as such. The transaction is evidenced by the first attachment to the voucher being Pan Eastern's invoice to Gulf Exploration for the sale of crude, distillate and gas oil and the entry deals with the crude sale. The second and third entries on VR.01-0001
 similarly credit account 5001 Revenues with sale of 227,918
 barrels of distillate (naphtha) \$455,836.00 and the sale of
 30 75,835 barrels of gas oil \$207,029.55 arising from the same invoice attached. The fourth entry is a debit in Pan Eastern's books Account 4082 to Gulfex for the total value of crude, distillate (naphtha) and gas oil as evidenced by Pan Eastern's

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invoice (total) in the amount of \$725,967.28. The fifth entry is evidenced by the second attachment being Pan Eastern's invoice to Propet covering the sale of 1,182,325 barrels of surplus gas oil and heavy fuel and the amount of \$1,906,716.17 is credited to account 5001 Revenue. The sixth entry debits Propet's account 1152 in Pan Eastern's books for this sale of surplus gas oil and heavy fuel, \$1,906,716.17. The seventh to tenth entries are evidenced by Gulfex invoice to Paneast :

| | | |
|----|---|----------------|
| 10 | for the purchase of 44,753 barrels of crude for resale | \$ 60,483.68 |
| | for the purchase of 1,424,488 barrels of crude for processing | \$1,925,195.53 |
| | and for the processing fee | \$ 284,897.60 |

all these entries being charged in Pan Eastern accounts to purchases and purchase costs account 6001/6741 and the total thereof, \$2,270,576.81 by the seventh and last entry being credited to Gulfex account 4082 in Pan Eastern's books.

At this stage it is of course possible to determine Pan East's position for the transactions covered by the entries on this one voucher -

Pan East has bought -

| | |
|--------------------------------------|-------------------|
| Crude for resale 44,753 bbls. | 60,483.68 |
| Crude for processing 1,424,488 bbls. | 1,925,195.53 |
| Processing fee | <u>284,897.60</u> |
| Total Cost | 2,270,576.81 |

Pan East has sold

| | |
|--|---------------------|
| Crude oil 44,753 bbls. | 63,101.73 |
| Distillate (naphtha) 227,918 bbls. | 455,836.00 |
| Gas Oil 75,835 bbls. | 207,029.55 |
| Gas Oil and Heavy Fuel 1,182,325 bbls. | <u>1,906,716.17</u> |
| Total Sales | \$2,632,683.45 |

Pan East Profit therefore : \$362,106.64.

Voucher 01-0002 is a transfer of the balance owing by Gulfex to Pan Eastern, arising from the transactions detailed on voucher 01-0001, to Propet's account. This is a transfer of balances between two Gulf companies and was presumably effected to suit Gulf's accounting requirements, and because Propet acted as banker to Pan East.

Voucher 01-0003: These entries record the receipt of interest income \$342.25 and the payment of an air freight charge \$45.32 incurred by Pan Eastern.

10 FEBRUARY TRANSACTIONS:

There were no transactions in February.

MARCH TRANSACTIONS:

Voucher 03-0001. This voucher deals with a dividend of \$2,669,194.00 declared by Pan Eastern on 12 March 1968.

The entries are a debit to deduction from surplus account 4955 and credits to dividends payable account 4110.

20 Voucher 03-0002. This voucher transfers part of the dividend payable (\$1,292,302.06) to Propet by Pan East (account 4110) to the credit of (i.e. offset against) the amount due by Propet to Pan East account 1152 in respect of sales made by Pan East to Propet. (Total dividend entitlement \$1,334,596.99).

Voucher 03-0003. To explain these entries which deal with the payment of a dividend of £Stg. 1 million declared by Pan Eastern on 12 March 1968, it would probably be helpful to examine the system adopted by Gulf to implement the dividend payment.

Firstly, the processing contract 10.3.64 provides at clause 6.03 as follows :

30 "Payment for the quantities of crude oil, feed stocks and finished products purchased by PanEast during each quarter shall be made within fifteen days after the end of that quarter (herein referred to as "the settlement date"). Gulf and any purchaser procured by it shall likewise make payment to PanEast on the basis set forth herein for the crude oils, feed stocks and finished products purchased hereunder during each quarter within fifteen days after the end of that quarter and Gulf guarantees due payment by any purchaser procured by Gulf."

In practice payments due by Pan Eastern were offset against amounts due to Pan Eastern by Gulfex and Propet and as a result cash payments were not made by Pan Eastern. Payments due to Pan Eastern were not made by Gulf in accordance with clause 6.03 but were accumulated in Propet account in Pan Eastern books of account, Propet being shown as a debtor. In effect, Propet account was a current account between Pan Eastern and Gulf Companies and thus Propet acted as banker to Pan Eastern.

10 When monies were required by Pan Eastern for dividend payment, Propet would pay sufficient monies in part satisfaction of amounts owing to Pan Eastern so that Pan Eastern could then pay the dividend declared.

Propet of course as a 50% shareholder in Pan Eastern was entitled to one half of the total dividend and this was satisfied in Pan Eastern books by partly or wholly offsetting Propet's dividend entitlement against the amounts due to Pan Eastern by Propet and payment by Pan Eastern of any balance of dividend remaining after such offset, in cash.

20 To satisfy the \$1 million dividend we are now considering Gulf took the following steps :

Gulf firstly arranged to offset in Pan Eastern books for credit of Propet \$1,292,302.15 (£484,919. 17. 11) leaving a balance of dividend to be paid to Propet in cash \$42,294.94 (£15,080. 2. 2).

Gulf then arranged to acquire from the Gulf Kuwait Company £349,267. 0. 0 and Gulf Exploration Company acquired from Brown Bros. Harriman and Company £135,652. 17. 11. These two amounts total £484,919. 17. 11 which was credited to Pan Eastern Time Deposit Account in London. Then Gulf
30 arranged to transfer from the Time Deposit Account this sum of £484,919. 17. 11 plus £30,000 plus interest accrued £308. 4. 5, a total of £515,228. 2. 4 to credit of Pan Eastern Regular

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account. Then out of the Regular account Pan Eastern paid £500,000 to A.M.P. and the balance of its entitlement £15,080. 2. 2 to Propet. These transactions left the Regular account balance increased by £148, 0. 2.

Vr. 03-0003 records all these transactions. In view of the foregoing general explanation, there would be little point in dealing further with each individual entry.

Voucher 03-0004: This is a transfer of balances in the Sterling Ledgers only between Gulf, Gulf Iran and Propet
10 accounts. The amounts are balances brought forward from the previous year and in case of Gulfiran represents exchange rate adjustments to prior transactions.

Voucher 03-0005 and Vr. 03-0006: The Processing Contract of 10 March 1964 provides at clause 6.04 for exchange rates \$U.S./£Stg. to be determined 15 days after the end of each quarter. Gulf therefore caused invoices for crude and processing fees on the one hand and for sales of crude, naphtha, gas oil and heavy fuel on the other hand to be first billed by the appropriate party at the parity exchange rate (then \$2.40
20 to £1). Then when the Contract exchange rate became known 15 days after the end of the quarter, revised billings were prepared to show £Stg. values at the contract exchange rate. These revised billings were then compared to the original billings and entries made to incorporate the adjustments needed.

The foregoing, then, covers in some detail the journal vouchers for the first quarter of 1968.

APRIL TRANSACTIONS:

Voucher 04-0001. The first two entries are credits to Revenue Account 5001 for the sale by Pan East to Gulfex
30 of 78,527 barrels Kuwait crude oil \$110,723.07, and 278,325 barrels Kuwait Distillate (naphtha) \$562,034.70. The third entry is a debit to Gulfex for these sales totalling \$672,757.77. These entries are evidenced by the first attachment being Pan

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East's invoice to Gulfex 1/c 4082 in the amount of \$672,757.77.

The fourth and fifth entries credit Revenue Account 5001 and debit Propet account 1152 in the amount of \$2,452,192.73 being evidenced by Pan East Invoice to Propet for sale of 1,443,344 barrels of gas oil and heavy fuels - second attachment to the voucher. The sixth, seventh and eighth entries record the charging to Pan East by Gulfex of -

| | | |
|----|--------------------------------------|----------------|
| | 78,527 bbls. Crude for resale | \$ 106,129.24 |
| | 1,738,969 bbls. Crude for processing | \$2,350,216.60 |
| 10 | Processing Fee 20¢ bbl. Crude | \$ 347,793.80 |

each amount being debited to purchases and purchase costs accounts 6001/6741 and the total \$2,804,139.64 being credited to Gulfex Account 4082. These entries are evidenced by the third attachment being Gulfex Invoice to Pan East.

Voucher 04-0002. This entry transfers the balance of Gulfex Account \$2,131,381.87 in Pan East books to Propet Account - presumably because Propet acted as banker to Pan East.

Voucher 04-0003. This voucher records payment of legal fees \$173.01 and receipt of interest income \$11,001.76.

20 The remaining vouchers for the rest of 1968 commencing at 05-0001 for May 1968 record similar transactions.

I now deal briefly with Pan Eastern accounts at December 1968 prepared by Gulf. (EXHIBIT CC).

The Balance Sheet shows -

Assets

| | |
|---------------------|------------------|
| Cash in Bank | 376,144 |
| Accounts receivable | <u>1,806,483</u> |
| Total Assets | <u>2,182,627</u> |

Shareholders' Equity:

| | | |
|----|-------------------|------------------|
| 30 | Capital | 280,000 |
| | Retained earnings | <u>1,902,627</u> |
| | | <u>2,182,627</u> |

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These figures are a formal presentation of the balances extracted from the General Ledgers prepared by Gulf and set out in Exhibit BB.

The statement of Income for the year ended 31 December 1968 clearly shows how Pan Eastern derives its income. To perhaps illustrate this better, I have added quantities to this statement - the Gulf prepared statement did not include quantities.

During the 1968 year :

- 10 (a) Pan Eastern bought 408,678 barrels of crude for a total cost of \$552,329 and sold this crude for \$576,236, thus making a profit of \$23,907.
- (b) Pan Eastern bought 14,808,932 barrels of crude for \$20,014,271 and paid a processing fee of \$ 2,961,786
- Total Costs \$22,976,057

From the processing of these 14,808,932 barrels, the following production and cost of production arises -

| | <u>Production</u> | <u>Quantity</u> | <u>Unit Cost</u> | <u>Total Cost</u> |
|----|-------------------|-------------------|------------------|---------------------|
| 20 | Naphtha | 2,369,429 bbls. | \$1.46 | 3,459,366 |
| | Gas Oil | 3,998,412 " | \$2.00 | 7,996,824 |
| | Heavy Fuel | 8,293,002 " | \$1.389 | 11,519,867 |
| | Loss | <u>148,089</u> | - | <u>-</u> |
| | | <u>14,808,932</u> | | <u>\$22,976,057</u> |

The unit cost to Pan Eastern of naphtha and gas oil is established by reference to clauses 4.02 (a) and 4.02 (b) of the Processing Contract of 10 March 1964 between Gulf Oil and Pan Eastern. The unit cost of producing fuel oils is determined by the function of the costs of naphtha and gas oil in relation to total cost.

30

Turning back now to the Statement of Income, Pan Eastern sold 2,369,429 barrels naphtha at values per barrel

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varying in this particular year from \$1.98 to \$2.02 for a total value of \$4,760,967. This quantity of naphtha production from the above table cost Pan Eastern \$3,459,366 - thus Pan Eastern profit on the naphtha production amounted to \$1,301,601.

Of the total gas oil refined for Pan Eastern during the year the equivalent quantity to that purchased from Gulfex by Europa Refining amounted to 568,707 barrels. The unit cost of production was \$2.00 per barrel, so total cost of producing that quantity was \$1,137,414. From the statement
10 of income Pan Eastern sold 568,707 barrels gas oil for a total value \$1,552,570. So the profit to Pan Eastern on gas oil production is \$415,156.

So far I have dealt with the profit to Pan Eastern on the equivalent quantities (i.e. all of the naphtha production and part of the gas oil production) purchased from Gulfex by Europa Refining. The combined naphtha and gas oil profit totals \$1,716,757.

Pan Eastern still has ownership of production of the balance of gas oil 3,429,705 barrels and all of the
20 production of heavy fuel. In accordance with clause 5.02 of the Processing Contract of 10 March 1964, Gulf has agreed to purchase or arrange for the purchase of these products at a price which will return to Pan Eastern a profit of \$1,716,757 plus \$23,907 profit on crude oil, i.e. \$1,740,664. This gas oil cost Pan Eastern (3,429,705 bbls. x \$2.00) \$6,859,410 and the heavy fuel cost Pan Eastern \$11,519,867 (from the table above) a total cost of \$18,379,277, Pan Eastern sold this production (from the statement of income) for a total value
30 of \$20,119,942 thus making a profit of \$1,740,665 thereon. The total processing profit, i.e., \$1,740,664 plus \$1,740,665 totals \$3,481,329 as shown on the statement of income.

I produce as EXHIBIT EE Gulf statement for the year 1964 headed :

"Gulf Oil Corporation
(On behalf of Gulf Exploration Company)
Statement of Refining for Account
of Pan Eastern Refining Company Limited
for the year 1964."

With reference to the arrangements between Europa Oil and Europa Refining : following the cancellation on 20
10 November 1964 of the Deed dated 30 September 1964 I did become concerned, because of the separate legal identity of each company, that there was no clear understanding of the rights and responsibilities of each company. I was also concerned about establishing insurable interest in the stocks petroleum at the New Zealand Refinery. I raised this matter with other directors and as a result of our discussions a memorandum of arrangements was drawn up and signed by Dr. G.A. Lau a
20 director on behalf of Europa Refining and Mr R.H. Carmichael a director on behalf of Europa Oil. This memorandum of arrangements is the first document in Exhibit C.S.15. Although this memorandum of arrangements satisfied my concern about the separate companies with different shareholders and also my concern about insurance, it was not at all acceptable to Mr Todd because it breached the provisions of the Gulf/Europa Refining Feedstock Supply Contract. Discussion with Mr Todd resulted in the correct understanding of the arrangements to apply between the two companies being set down on paper and signed by him and this superseded the memorandum of arrangements signed by Messrs Lau/Carmichael. This memorandum signed
30 by Mr Todd is the fourth document in Exhibit C.S.15 and also satisfied my concern.

I produce as EXHIBIT FF letter dated 20 December 1968 from Mr J.P. Lowin to Mr B.J. Todd, the third and fourth paragraphs of which state :

10 "The companies made it clear that because of possible implications for international trade in petroleum feedstocks and products they could not accept the bench mark prices on a specific product by product basis. However they signified their agreement to offer adjustments which would have equivalent effect to the bench marks for 1968, and in doing this some of the companies qualified their offers with the reservation that they be regarded as conditional upon the acceptance of what those companies would view as an acceptable profit level. While the reservations of individual companies are noted, the industry and individual company settlements for 1968 are in terms of the Minister's decision to proceed on the basis of the 1968 bench mark prices.

20 It is of course common ground that the routes by which the companies achieve the level of such bench mark prices will vary in terms of the individual settlements negotiated with each of the companies."

I was present at Flenary meetings on 23 June 1968 and 1 July 1968 between Oil Companies and the Government Interdepartmental Committee on the Oil Industry at which meetings Mr B.D. Kennerley representing the Commissioner of Inland Revenue stated that subject to confirmation with the
30 Commissioner he was able to commit the Commissioner to the bench mark levels and would let us know if the Commissioner did not accept. No notification was ever received that the Commissioner did not accept the bench mark levels.

NEVILLE KEITH SMITH

2.15 COURT RESUMED - Evidence in chief continued:

Mr Smith, would you be good enough to repeat what you said about the heading in letter EXBT FF about some agreement? The attachment to letter EXBT FF is headed "Agreement with Europa Oil (N.Z.) Ltd". I wish to make it clear that Europa Oil responded to that letter denying that an agreement had in fact been reached with Europa Oil. I want now to ask you
10 about staff employed by Pan Eastern, did that company employ staff of its own? No.

Have you any comment to make about relevance or otherwise of the employment by Pan Eastern of staff to the question of whether it is carrying on a processing venture? I think I can best answer by drawing an analogy in connection with chartering of tankers. Assume I approach Mr A, the owner of a tanker and I arrange to charter that tanker from him; assume I have some expert knowledge of the tanker market; I
20 then contract with Mr B. to relet the tanker on favourable terms; I appoint John I. Jacobs, well known London firm to be managing agents in respect of that tanker. The result of that transaction returns to me say £100,000; I should have included in this that I had formed a £100 company. Now in this transaction I have no capital, no assets and no staff, and I did not attend directors' meetings because I had appointed Mr Jacobs my alternate. It seems to me in those circumstances I can justifiably
30 claim to be in some part of the tanker business and I do not think if I contended to the Commissioner that I had made no earnings from the tanker business

because of the factors I have mentioned that he would accept that contention.

I want now to direct your attention to the processing contract cl.5.02 at p.3141, from time to time in the evidence in the previous case and in submissions in the previous case the expression "doubling" is used in relation to that clause, do you know the origin of this phrase "doubling" in relation to this clause? It is a phrase, as far as I know, coined by the
10 Commissioner in the previous case as the result of a gross misunderstanding of what cl.5.02 really means. What is the primary purpose of cl.5.02? The primary purpose as I read the clause is to establish the price at which Pan Eastern will sell and Gulf or a Gulf procured purchaser will buy the surplus gas, oil and heavy fuel resulting from the processing carried out for Pan Eastern. It is essential to have some provision in the contract to determine that price. Alternate provisions such as costed
20 price or market price or perhaps some other vague term would have made the contract unworkable. As far as I can see this is the only practical way having regard to the interests of the parties in which the price could be determined. If no provision had been made, Gulf could destroy or at least diminish Pan Eastern processing profits by purchasing this production at a low price.

Following on from that, is it possible that Pan Eastern could have made a loss at any time during
30 the period with which these tax assessments are concerned? Yes.

In what circumstances would that be possible? It is necessary to make assumptions, of course, because Pan Eastern in fact did not make a loss, although

during the period the earnings reduced. If artificial posted prices for crude oil had been established as a result of the 1970 discussions between the international oil companies and the Opec countries at a very high level for tax purposes in relation to the value of products, then Pan Eastern would make a loss.

When you speak of tax purposes, could you be just a little more specific perhaps by referring it to a country or area? I understand the posted prices for, say, Kuwait crude oil are the prices upon which the tax liability of the producing company is established.

XXD RICHARDSON: I would like to deal first with this question of doubling the profit: please turn to p.180 in volume 1 of previous case, I would like to read a passage beginning at line 21 and continuing almost 2 pages.

"You told us what was done under the contract by Pan Eastern - turning now to clause 5.02, is there any relationship between the marketable value of the remaining products and the amount payable for them under clause 5.02? Yes, I have looked at this question. As far as I can judge the prices at which they were sold are quite close to their market value. Sales back by Pan Eastern to Gulf. Can we take an example from 100 barrels of crude refined into feed stock and products. Europa took all except one barrel. Under clause 5.02 would the value of that one barrel have to be astronomical to produce the doubling effect? I would agree but that never happens. Was the position that the more of each barrel of crude taken by Europa the less was available for remaining products? Europa would take the whole of the naphtha, part of gas oil, small part, and none of the heavy ends. Proportions were known in advance but I think from Gulf's point of view there would never be any chance of their being left with one barrel. Am I correct that the value to be put on remaining products varied with the proportion of the barrel of crude taken by Europa? Yes, but there was little variation. Were the remaining products under clause 5.02 ever identified as to type in the Pan Eastern records? I think they were only identified as middle distillate and I think the word used is "residual". Middle distillate, part only going to Europa. Gas oil is in middle distillate category - I regarded them as the same thing. Was it unnecessary to identify them because the object of clause 5.02 was to double the Pan Eastern profit? They must have been identified because Pan Eastern sold them - they are not identified in any record that I have seen. Whatever their identity, did Pan Eastern get the amount necessary to double the profit? Yes.

This question of doubling its profit may be a fine point but it does not double its profit. The effect of clause 5.02 is to make available to Pan Eastern a profit equivalent to that which it earns on the naphtha and gas oil sales. That is from the other sales Pan Eastern doubles its profit on the naphtha sales? Correct.

10

"Would you look at clause 5.03 of the Processing contract, 1964 (EXHIBIT B5 of the Case Stated). Under what circumstances would it be necessary to invoke that doubling provision? I would think in the circumstances you suggested that is where there was left only say one barrel. Would not clause 5.02 cope with that situation? I would think it would be unreal.

TO BENCH: But would 5.02 cope with it? Yes, it could cope with it.

TO COUNSEL: Would 5.03 have to be invoked if Europa had taken crude only during the period? Yes. Had the crude refined in New Zealand? Yes. Would 5.03 have to be invoked if Europa had taken all refined feed stocks and products?

20

Europa is unable to do that but if theoretically that happened, yes. For all of Europa refinery's purchases under the 1964 contracts, are there two prices, first what Europa pays Gulfex and second what Pan Eastern pays Gulf? Well, as I understand it, Pan Eastern does not pay Gulf for Europa purchases. Are they parallel contracts? Yes. Does Europa get through Pan Eastern an amount equal to the difference between the two sets of prices? Yes, that is the effect."

30

Now, Mr Smith, it is a long passage from the evidence and I don't want to ask a question which covers the whole of that passage, but if you would turn to p.181 line 16, would you agree with the position as stated in the remainder of that paragraph? No, I don't think today I would give the same answer.

Would you agree with the answer expressed in the sentence beginning at line 19 namely,

"The effect of clause 5.02 is to make available to Pan Eastern a profit equivalent to that which it earns on the naphtha and gas oil sales."

40

I think I would express it today that cl.5.02 determines the price at which Pan Eastern will sell the surplus production and then carry on exactly as it is worded there.

7192 B

Now look back at p.181 line 16 which having referred to the lack of any identification of the products dealt with under cl.5.02

"Whatever their identity, did Pan Eastern get the amount necessary to double the profit? Yes. This question of doubling its profit may be a fine point"

would you agree with that

statement, that this "may be a fine point"? Not today I wouldn't, it is more than a fine point.

TO BENCH: Is it convenient that a moment ago when asked this question

"Whatever their identity, did Pan Eastern get the amount necessary to double the profit?"

Not today.

What would your answer be? My answer would be an absolute rejection of the term "doubling" on the grounds that the word itself is quite inappropriate. Pan Eastern's profits are derived from the purchase and processing of crude oil into products, and its profit arises ^{from} ~~from~~ purchase, processing and sale and it does not arise from doubling which has a notional connotation.

TO COUNSEL: Now turn to p.185, line 19

"Under the 1964 contract, did Pan Eastern end up with a profit which gave Europa through Pan Eastern the expected profit on its purchases? On feed stock purchased? The term "expected profit" worries me a bit: it gave the profit in accordance with the contract. That could be calculated as you said earlier simply by comparing prices under parallel contracts, the feed stock supply contract on the one hand and processing contract on the other? Yes, but the calculation does not produce a profit. The purchases and sales did? Yes. Calculation had to be based on purchases and sales."

is there anything in that paragraph you would wish to modify today? There are two particular words in that paragraph, one is the word "expected" and the other "parallel". If the word "expected" as used here means preconceived, able to be determined by foresight, or even unvarying, then the word "expected" is quite wrong. "Parallel", having now had time to consider it, I think should be substituted by the word "related".

Now please turn to p.176 line 30

10 "Is the position in respect of the crude that was sold by Pan East to Gulf and equivalent in quantity to crude by Gulfex to Europa - is this the position - the contract originally provided for a 15% profit to Pan Eastern which when doubled would give Europa the equivalent of a 15% discount through Pan Eastern? The 15% which was on crude oil only gave Pan Eastern a profit. Was that profit then doubled under clause 5.02 or clause 5.03? Yes. Did Europa then effectively through Pan Eastern get the full 15%? Actually no. Because of the letter variation? Correct. Following the letter variation, did Europa get that exact 15% partly through a direct discount? And the balance through Pan Eastern? That is the net effect on Europa's cash flow."

do you
 want to modify any of the statements in that paragraph today? In two respects, I don't think I need to repeat what I have said about doubling, but it applies in this paragraph also. The second respect is that Europa though Pan Eastern obtained the
 20 equivalent, I don't think it was ever identified as being exactly the same as the actual discount, I should say the difference between the purchase

price by Pan Eastern and the selling price by Pan Eastern.

In the case of the crude oil equal in quantities to the crude oil supplied as such under the feedstock supply contract, was there any products left for Gulf to sell? This crude, of course, was not processed on account of Pan Eastern. Therefore there could have been no products.

Was what happened then, that under cl.5.03 there was
 10 to be a sale of crude by Gulf to Pan Eastern, processing of that crude by Gulf for Pan Eastern, and the purchase by Gulf from Pan Eastern on the resulting products? No, I don't understand it that way, I don't interpret it that way.

Please look at cl.5.03 at p.3142

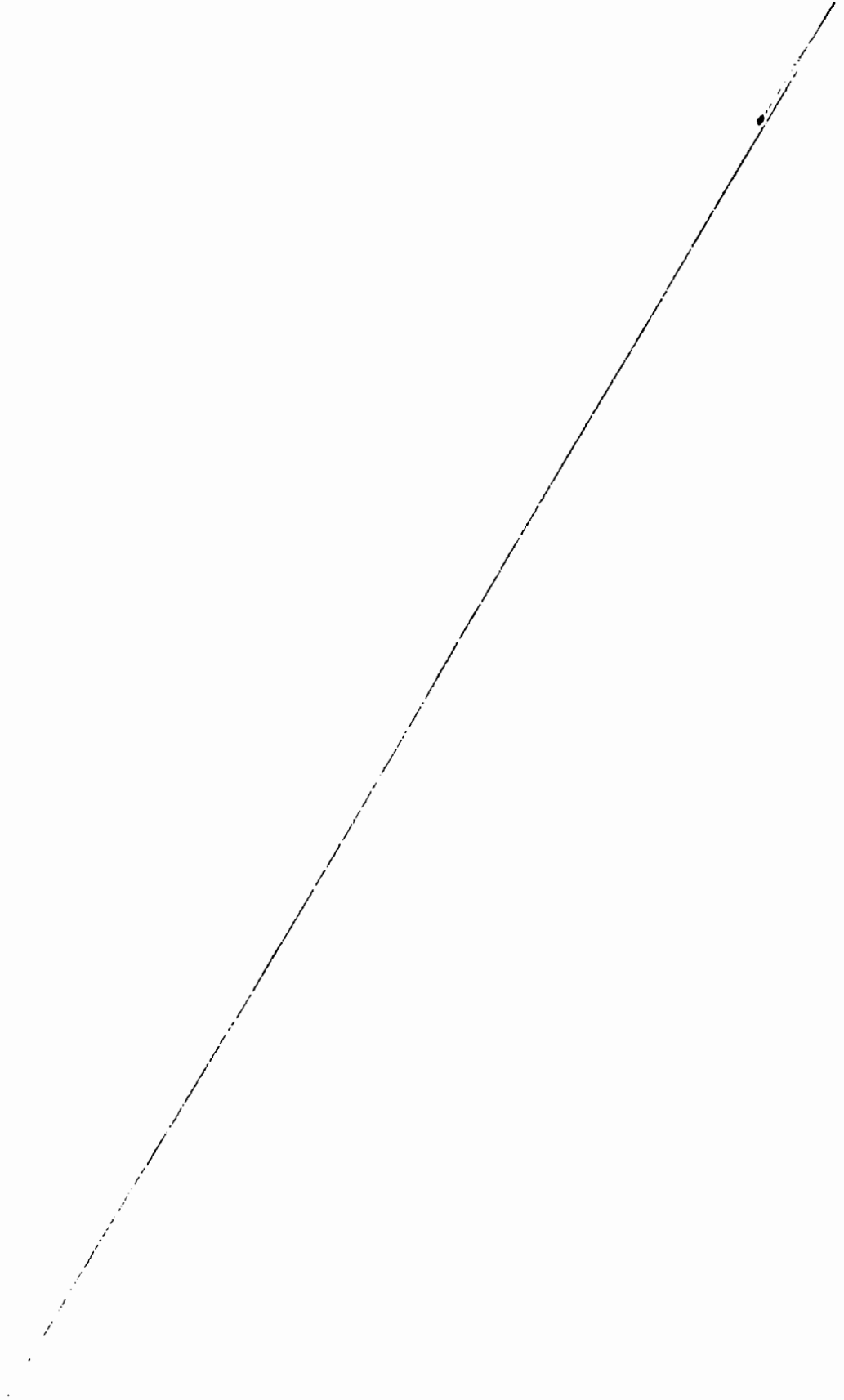
"If the transactions referred to in Clause 5.02 fail to return to Paneast a total amount of money equal to that in Clause 5.02 hereof, Gulf agrees to supply additional crude oils, arrange for the processing thereof and for the purchase of the products therefrom so as to return said amount to Paneast."

Yes. What is your understanding of the way in which an amount equal to the difference between the purchase price to Pan Eastern of the crude and the resale of that crude to Gulf is obtained? It is obtained under the

provisions of cl.5.02. About half way through that
 20 clause I quote "an amount of money equal to the difference between the prices to be received by Pan Eastern for the crude oil, feedstocks and finished products", the words "crude oil" I emphasize. In other words, the sale value of the surplus production of gas, oil and all of the heavy fuel oil would be established at such a level as to return to Pan Eastern a proper equivalent and including the profit on the purchasing sale of crude oil as such, and then as I understand it, if under that cl.5.02 Gulf
 30 found itself in the position of having to pay a

very high price to Pan Eastern for the surplus production, it could at its option resort to additional processing.

Well now would you please look at the first sentence



of cl.5.02

"Pancast will have available from the processing of crude oil hereunder additional petroleum products to those to be purchased under the provisions of Clause 5.01 hereof."

do you agree cl.5.02 would not apply where Europa had taken crude only during the period? No, I couldn't agree, I don't think that sentence at the beginning of that clause has that effect. Now turn back to p.181 of your evidence line 34,

Would 5.03 have to be invoked if Europa had taken crude only during the period? Yes."

do you wish to modify that? I think I should have qualified that answer previously, that it was
 10 absolutely clear that at no stage would Europa have taken crude only. With that in mind I don't think the question arises. Was the first shipment under the 1964 contracts a shipment of crude only (EXHIBIT NO.
 No. 7 7 - SCHEDULE OF ALL SHIPMENTS), does EXBT 7 show under the first item "Crude Only"? Yes. I would like to comment on that, I would like to point out from schedule EXBT NO. 7 that there were 2 shipments loaded in the quarter ended 30th June 1964; one of these shipments was for crude oil as such, the
 20 other shipment was wholly naphtha. Pan Eastern's transactions are completed on a quarterly basis. Let us now go to p.14 of your brief of evidence please, I want to ask some questions about arrangements between Europa Oil and Europa Refining, were the memoranda in the Case Stated EXBTS 13, 14, and 15 first supplied to the Commissioner in July 1972? You will have to help me on this, I can't recall that.

TO BENCH: You know the memoranda being referred to,
first of all? Yes. (MEMORANDA EXBT 8)

TO COUNSEL: Is the first one 1st June 1972 to the
Secretary, Europa Refining Company Ltd asking in
paragraph 1 whether there was any contract agreement
or correspondence between Europa Refining and Europa

Oil in respect of supply of feedstocks, crude oil or petroleum products during the tax years with which we are concerned? Yes. Are the next two documents letters both dated 7th July 1972 to the Commissioner of Inland Revenue, one from Europa Oil and the other from Europa Refining? Yes.

I read paragraph 1

"Concerning any contract agreement or correspondence between [the two companies]"

now turning to

10 p.14 of your brief, can you say when the memorandum or arrangements was drawn up and signed by Dr Law and Mr Carmichael? No, I can only guess.

When did you first see it? I would have first seen it when it was being drawn up, as to what date that was I can't answer, I don't know.

Can you say what year it was? I am almost certain but I have no evidence to support this, that it was completed in February 1965, and I say this because of the insurance problem associated with this document and the fact that our policies were renewable
20 on 28th February each year.

Now coming to the three memoranda in EXBT 15, each signed by Mr Todd, when did you first see those memoranda or any of them? Again I can't be definite about this. The only clear recollection I have is the discussion with Mr Todd at which he expressed great concern over the effect of the Law/Carmichael document, but I cannot put a date to it.

Do you recall having a discussion with Mr Phillips of Inland Revenue Department concerning the Europa Refining, Europa Oil supply arrangements in early
30 1969? I recall such a discussion, I will have notes on it which I have not yet checked up, I can accept there was that discussion.

(LETTER 10TH JANUARY 1969 FROM MR PHILLIPS TO EUROPA
REFINING COMPANY LTD, AS RESULT OF WHICH THE INTERVIEW
FOLLOWED - EXBT NO. 9)

"The Profit and Loss Accounts attached to the returns of
income for the years ended 31 March 1965 to 1968 inclusive make
no reference to the purchase and sale of refinery feedstocks
or refined products.

10 "The letter from Dr. G.A. Lau dated 11 July 1966
concerning Europa Oil (N.Z.) Ltd explains this by mentioning
that feedstocks are sold to Europa Oil (N.Z.) Ltd at landed
cost.

"Would you please advise:

- 20
- (a) At what stage the property passes to Europa Oil
(N.Z.) Limited.
 - (b) What are the circumstances of payment by Europa Oil
(N.Z.) Limited to Europa Refining Company Limited
and by Europa Refining Company Limited to Gulfex.
 - (c) Are there any other transactions not recorded in
the Profit and Loss Accounts for the above years.

"Could you please supply this information and also make
arrangements for your records to be available for examination
by the Special Inspectors."

paragraph 2

of that letter, is there an express reference to
statement attributed to Europa Oil that feedstocks
were sold to Europa Oil at landed cost? Does this
refer to the July 66 one, Yes.

30 When Mr Phillips interviewed you about this matter,
did you inform him that there was no written contract
between Europa Refining and Europa Oil? Yes.

Did you inform him that as a result of there being no
written contract, there was no precise time at which
the property passed? I would think so.

Did you inform him that to avoid any difficulty over
ownership in the event of loss by fire, the feedstocks
were insured under a policy which treated either
Europa Refining or Europa Oil as owner? Yes I could
have said that.

Was there such a policy? Yes.

Is the position then that during the tax years with which we are concerned the feedstocks were insured in the names of Europa Oil and Europa Refining? The reason why the policy ...sorry, the answer to that is yes.

10 Will you add any qualification? The policy was in the name of "Europa Oil/Europa Refining". There had been great difficulty in negotiating the policy because, as I have shown in my evidence, the physical identity of the feedstocks after they are delivered to N.Z. Refining Company is lost. This posed the question of insurable interests. We had a rather peculiar policy, indeed, I think it would be rather unique that underwriters agreed to an indemnity

based on whatever course of action was adopted and agreed by the users of N.Z.Refining in settling the apportionment of any loss by fire or other cause of petroleum whilst in the possession of the N.Z.Refinery. A further reason for the joint name in the policy was that Europa Oil had never given up its right to use capacity at the N.Z.Refinery and indeed it did so in respect of Kapuni condensate. The question of title and when ownership or title passes in the legal sense I think created one or two problems and may be even some misconceptions, in the previous case, and although not a lawyer, I can understand the problem arising in the legal mind when this matter is ill-defined. It gives accountants the same problem. However, firstly in connection with Pan Eastern processing and secondly in connection with the N.Z.Refining problems, I have come to accept that title is not at all important. From the practical point of view in the day to day business in running an oil company or an oil refinery. What is important is entitlement, and by means of entitlement the companies finally get the product to the ultimate consumer. From the point of view of the M.S.L.A. the two companies had a difficulty that if they defined the point in time when ownership of finished gasoline passed as being after Europa Refining became possessed of finished gasoline, that company could well be in breach of the Distribution Act. On the other hand, if the time at which title passed was defined as before processing of the feedstocks took place, then Europa Refining would be clearly in breach of its Gulf contract. The matter was then left according to my understanding that title passed at some undefined

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stage between those 2 points. Mr Smith, at the time of this interview, did you know of the existence of the memoranda signed by Mr Todd EXBT 15 to the Case Stated? Yes.

Did you inform Mr Phillips? No, I'm not sure whether Mr Phillips' request was for written contracts but whether it was for written or any sort of contract, I'm afraid I did not regard the memorandum as coming within the scope of his request.

10 Did you inform him that the position was not as set out in the letter from Dr Law to which Mr Phillips had expressly referred in his letter to Europa Refining? I'm sorry, I can't answer that, I can't remember.

And if Mr Phillips says that he understood from the discussion what was involved by a sale of feedstocks from Europa Refining to Europa Oil, what would your comment be? I don't think that is quite right. If I recall you put it to me just a moment ago that I told
20 Mr Phillips that title passed at an undefined stage. And you said earlier, I think, that you also told him there was no written contract? Correct.

Well, if Mr Phillips says that his understanding following the discussion with you was that Europa Refining sold feedstocks to Europa Oil, would you say that was an unjustified interpretation of anything that was said? It seems to have been established that I did tell him title passed at an undefined stage. If that is correct, then it would be an
30 unjustified assumption... I really need to check my notes I think.

Do you recall having an interview with Mr Kennerley of the Inland Revenue Department in November 1968 in relation to an exchange difference of funds held

overseas at the time of devaluation? That is quite familiar.

Was Mr Kennerley accompanied by Mr Nota? I think I can say yes.

Do you have notes of that interview? Probably.

Did you inform Mr Kennerley at that interview that when the refinery came on stream it was intended that Europa Refining would sell refined products to Europa Oil? I just can't recall...this was an
10 exchange rate discussion.

Did you inform him that as a result of what happened at the M.S.L.A. hearing Europa Oil itself was formed to process the crude through the N.Z. Refinery? I am sorry, I can remember an exchange rate discussion following devaluation, but not the rest of it. I am going to suggest to you what else would be said on this, that you said that as Europa Refining was named as the purchaser in the contracts with Gulf, ~~Europa Refining was named as the purchaser in the~~
20 ~~contracts with Gulf,~~ Europa Refining had to purchase the feedstocks and then sell them to Europa Oil at cost? I can't comment on that, sorry.

If the evidence is to that effect, will you say it is wrong? Yes.

Now I would like you to look at the letters of objection in the Case Stated EXBT 28, is EXBT 28 the letter of objection dated 25th March, 1971, by Europa Oil in respect of amended assessments for the years 31st March 1966 to 31st March 1968? Yes.

30 And that letter was signed by you? Yes. Was this some 4 months after the Privy Council decision in the first case? Yes
Was this at a time when Europa Oil considered the special situation of Europa Refining and Europa Oil as being a critical factor? Yes, we had arrived at that conclusion by then.

And does the third stated ground in paragraph 3 of the objection refer specifically to the purchase by Europa Oil of feedstocks from Europa Refining? Yes. Would you agree that this letter of objection was settled with some care? Yes.

And was counsel's advice taken as to the form of the letter? Legal counsel, yes.

Do you say that a mistake was made in the way paragraph 3 (c) was formulated? Yes.

10 Would you care to explain the position as you see it? I think we have to go back to the letter sent by Dr Law in 1966 in connection with the 1965 year assessment. This is the first time that Europa Oil raised as one of its grounds of objection the circumstances of the purchase by Europa Oil under the 1964 feedstock supply contract, or the 1964 Gulf contract arrangement. And in that letter also reference was made to Europa Oil purchasing feedstocks from Europa Refining. Now at that time in 1966 the
20 previous case had not been heard. Although Europa Oil had attempted to obtain from the Commissioner grounds for his assessment, it was unsuccessful and was in the difficult position of objecting to assessments, the grounds for which it did not understand. All the objection letters which have been sent either signed by myself or by Dr Law have been drawn up by legal counsel and they are signed on the advice of legal counsel. Having started this particular objection in the 1966 letter on the
30 grounds of purchase by Europa Oil of feedstocks, it seemed rather difficult to change horses in mid-stream, or to change that wording would be more appropriate. Insofar as I was concerned, I was aware of the difficulty posed by the mistake made in the

very first letter and I thought it could be argued from the wording of the letters, particularly the later letters, that Europa Oil was obtaining some entitlement to production at an undefined stage as I have already outlined. Whether this is so I am not sure, but I put it to legal counsel on this basis and from memory the answer I got was, it can be developed, the important point is to raise the objection as an objection the change of circumstances of purchase by Europa Oil. With hindsight, which is always the best sight, I think the letter should have been worded "the circumstances of the payment of purchase costs by Europa Oil for the purpose of obtaining finished products delivered to its coastal terminals" and then carry on with the rest of the wording.

Are you saying that you knew at the time you sent this letter that paragraph 3 (c) was wrong and that your legal adviser advised you to send a letter which you knew was wrong? No, Sir, I am not saying it was wrong. I am saying with hindsight, it could probably have been better worded. This, of course, you are looking at a letter 1971 developed from a whole series of earlier letters, that you must bear in mind.

Is the position then that you deliberately informed the Commissioner that the purchase by Europa Oil from Europa Refining was of feedstocks at a time you knew it to be wrong? It depends on the precise meaning of the word "feedstocks", I have described my understanding of the position, that Europa Oil took title at an undefined stage in the refining process after the feedstocks entered the refinery and before they became finished products. It was my understanding that notwithstanding the wording of paragraph 3 (c) in EXBT 28 this point could be developed.

You said this letter was to follow Dr Law's letter of 1966, at the time the letter of 25th March, 1971, was settled, would you have available to you and in front of you Dr Law's letter of objection of 11th July, 1966? Between Dr Law's letter of 1966 and the March 1971 letter, I think there were a great many letters of objection, so the March 1971 letter would have been looked at in the light of the letters immediately preceding it. Do you know that
10 in Dr Law's letter of objection he stated that Europa Refining had to sell the feedstock to Europa Oil before it is refined? Yes... that could mean, of course, before it was completely refined. Was the first information given to the Commissioner about the arrangement between Europa Oil and Europa Refining related to products as in the memoranda, was that first given to the Commissioner in July 1972? Yes I believe that is right.

By that time had Europa Oil's objections been
20 disallowed and had it asked for a Case Stated? Yes. And you were content to have the objections to the assessments considered by the Commissioner on the basis set out in those letters of objection? I can only say that the legal advice we had was that the objection letters were in order.

In respect of petroleum supplies are there 2 main accounts in the books of Europa Refining, first shipment accounts in respect of each shipment, and secondly, the Europa Oil current account with Europa Refining? I think the shipment accounts to which
30 you refer don't form part of the basic ledgers but in the nature of memoranda accounts from which the current account with Europa Oil would be maintained. On advice from Gulfex of the F.O.B. and freight

cost of a particular shipment, is an account in respect of that shipment opened? That is the practice, yes.

Was that account then debited with the landed cost of that shipment? Yes, when the cost became known. At the end of a year or other period, was the debit balance in all the shipment accounts cleared by charging the amount to Europa Oil's current account? You say "at the end of the year", the entry was made up to the end of the year quote a long time after the end of the year.

Would you agree that in some instances a clearing entry refers to the charge to Europa Oil being for feedstocks? Yes, I think it does.

No. 10 "PURCHASES OF FEEDSTOCK FROM OLYMPIC LAUREL" - EXBT NO. 10 ... that is a typical shipment account? That appears to be so, yes.

And is it headed "Purchase of Feedstock" and then the name of the shipment? Yes.

20 And does it show half way down the account a charging entry to Europa Oil for a sum of \$927,692? I think it shows a transfer from this purchases account in Europa Refining's books to Europa Oil current account in Europa Refining's books.

Is that final entry a clearing adjustment to Europa Oil's account resulting from an amended invoice received from Gulf? Partly that and partly the result of an insurance claim.

30 Now does Europa Oil's current account in Europa Refining's books record payments by Europa Oil to Europa Refining? Yes.

These are recorded as advances? Yes.

In that current account is the total amount debited

to Europa Oil at the end of a period the total of f.o.b. costs, freight, harbour board charges and marine insurance only? Yes, I think so.

Would you agree that there is no mention in that account of a refinery fee for processing feedstocks into products? Yes, that is correct.

Would you agree there is no record in that account of the payment for coastal shipping charges? The coastal shipping charges form part of the refining fee and
10 are not shown in the account.

No. 11 PURCHASES OF FEEDSTOCKS EX VARIOUS SHIPS - EXBT NO. 11

Is that a copy of Europa Oil's current account in Europa Refining's books from April 1964 through to March 1970...look at the first page, the letter which accompanied the accounts? I don't seem to have it.

Are the accounts the copies of Europa Oil's current account in Europa Refining's books? They were purchases for several ships and computer tabulations,
20 but not the accounts you asked about.

4.15 EVENING ADJOURNMENT

MONDAY, 19TH FEBRUARY, 1973

CROSS-EXAMINATION OF MR SMITH CONTINUES:

- Mr Smith, I want to go through some of the accounts information supplied by you to Inland Revenue Department and I want just first to show you a copy of a letter of 22nd December 1972 from you to the Commissioner
- No. 11 enclosing certain papers (EXBT NO. 11 - EUROPA OIL CURRENT ACCOUNT IN EUROPA REFININGS' BOOKS): are the papers accompanying that letter a copy of Europa Oil's
- 10 current account in Europa Refining's books from April 1964 through to July 1970? Yes.
- I want to show you now a letter of 13 December, 1972, from you to the Commissioner enclosing the papers
- No. 12 referred to in the LETTER (EXBT NO. 12): I wonder could you turn to what is p.7 of EXBT 12, treating letter as p.1, ... do you have p.3 before you of Europa Oil current account in Europa Refining's books which accompanied that letter of 13th December 1972? Yes.
- 20 Is the last entry on that page for March 1971 and does it record a transfer feedstock purchases with the folio J.192 and the amount of \$10,863,173? Yes. Is that a debit entry in the account? Yes. Look at EXBT 10, is that the shipment account in respect of "Olympic Laurel" shipment? Yes. Does it record also for March 1971 by way of transfer to the Europa Oil account again with folio J.192 a credit of \$927,632? Yes. Is that \$927,632 thus part of the \$10,863,173 referred
- 30 to in the EXBT 12 account? Without reference to Folio 192 I can't be absolutely certain, but on the face of what I am looking at now I would agree with what you said.
- Do both items have the same folio reference J.192? Yes.

Were there a number of other shipment accounts cleared by the same journal entry J.192? Yes.

Are there 2 legs to a journal entry such as J.192, the shipment account on the one hand and the Europa Oil account on the other? Yes.

As a matter of double entry accounting does each form part of the books of Europa Refining? Yes.

Please look again at EXBT 11, letter being treated as p.1, please turn to p.4, at the middle of the page,
10 is there an item under March 1966 of an adjustment feedstock 10 of £345,389 as a credit to Europa Oil's account? Yes, March 1965.

Look at the top of page, I think the very first entry carry over in 1965 and then it carries on to 1966? Yes, that is correct.

Please turn to the next page, and under date 30 September 1966, is there a debit to Europa Oil feedstock shipments 11 and 12 for £709,064? Yes.

Turn over to what is the second last page, under
20 entry for August 1969 is there shown a debit of \$912,879.91 with respect to feed stock purchases shipment 35? Yes.

Look at EXBT 7 "SUMMARY FEEDSTOCK TANKERS", at p.3 of that schedule is the grand total landed cost for shipment 35 shown as \$912,880? Yes.

That corresponds to the previous figure rounded off? Yes. Turn again to EXBT NO. 12 and to the third last page, does it show under entry for March 1972 a feedstock purchase clearing entry of
30 \$12,077,739? Yes.

NO. 13 (EXBT 13 - EUROPA REFINING BALANCE SHEET SCHEDULES AND EUROPA OIL DEBTORS 31st MARCH 1967 31 MARCH 1967) These schedules were supplied by you to the Department? Yes.

Now I want to deal with p.2 first which is a list of balances in Europa Oil Ltd books? Yes.

Are there 2 items referring to Europa Refining, the second named Less Liability for Feedstock Tankers and does it record that Europa Oil owes Europa Refining £679,283 for feedstock tankers? Yes ...I should say it shows a liability in respect of those tankers rather than the way you expressed it, the amount owed or owing for those tankers.

10 Is it correctly recorded as a liability for feedstock tankers? No, I don't think it is so correctly recorded, the schedule is prepared by a clerk in the Accounts Department and he probably should have recorded here a liability in part for petroleum to be received from Europa Refining, but to expect such a clerk to do that in this connection is probably expecting too much.

Were accounts in Europa Oil prepared under your supervision? Yes.

20 Now please turn to p.1 and does the £679,283 there correspond with the same figure on p.2? Yes.

Now is the total liability at p.1 of Europa Oil to Europa Refining shown as £208,099? I'm not quite sure how we expressed that, who was owing who.

I put it the wrong way, does p.1 show that Europa Oil has a credit balance in the books of Europa Refining at that date of £208,099? Yes.

And is that made up of the £887,382 current account balance less the amount of £679,283 corresponding to the same figure on p.2? Yes.

30 And is that shown as less liability for 2 named shipments? Yes.

Do you say that was a mistake too? It is a mistake in the sense only that it only shows part of the

story. What is happening is that we are looking at a particular single item, or 2 items in this case, which form part only of the whole pattern of arrangements between the 2 companies. These arrangements between the 2 companies encompassed the intention that what Europa Oil pays for or the purpose of its payments is to secure finished products delivered to its coastal terminals, and these particular entries deal with only part of those total payments.

10 Mr Smith, as an accountant, would you agree that it is most desirable that entry of accounts be 100% accurate? Well I have difficulty with that question; as a general statement I agree with you 100%, but I cannot agree that entries should always be made simply on the grounds of accounting expediency.

Now you gave those two schedules to the Inland Revenue Department in November 1972, have you ever either orally or in writing advised the Inland Revenue Department that those schedules cannot be taken at face
20 value? At the time the schedules were given to Inland Revenue I had no idea that the particular point we are now discussing would ever arise. I have not informed them of the distinctions now being made, in relation to these schedules.

I show you EXBT No. 7, at p.1 is shipment No. 16 in respect of "Phillipine Sea"? Yes.

Under the grand total column is the landed cost of that shipment \$626,492 and is that conversion into N.Z. dollars of the £313,246 referred to in EXBT.13?

30 Yes.

Please turn to p.2 similarly in respect of shipment No. 17, "Las Piedras" is the grand total \$732,073, the conversion of the £366,037, EXBT 13, p.1? Yes. Now turning back to EXBT 13 p.1, is the last entry

an item in respect of stock on hand at balance date for Europa Refining and is it the f.o.b. freight and insurance for "Gulf Hansa" in transit to N.Z.? Yes. Is the position that in its accounts Europa Refining showed in the balance sheets any stock in transit to N.Z.,? *Yes.*

Did Europa Refining ever show in its books as being on hand any stock which had already arrived in N.Z.? No...the reason for this was that closing entries
10 in connection with stock were not established partly because of problems with N.Z. Refinery until many months after 31st March in each year. The reversal entry in connection with shipment No. 35 to which you have just referred me showing on the current account in Europa Refining's books was not put through until August but it related back until March. By the time these entries were able to be finalised there was, of course, none of that stock left either at N.Z. Refining or anywhere in Europa Refining or Europa Oil.
20 At this stage it therefore was convenient to treat the whole of the stocks in N.Z. as Europa Oil.

Mr Smith, you said it was convenient to do that, but on your statement as to the legal relationship between the two companies was it accurate? No, on that basis it was not strictly accurate, even though at the time the entries were made the stocks had all gone their various ways. There should have to be quite accurate been established the position at 31st March and stock entries made in each company's books of
30 account.

Mr Smith, as an accountant you are aware of requirement of s.98 of the Land and Income Tax Act relating to returns of trading stock? No doubt I should be, I can't recall it.

Do you recall s.98 is concerned with valuations of trading stock? I think that would be correct, yes. And do you recall that where a taxpayer carries on a business he is obliged to record in his income accounts any changes in the trading stock position from one balance date to another? Yes..it appears that I have overlooked it and it appears that our auditors have done likewise, because they have not drawn attention to it.

10 Did the auditors have the memoranda EXBT 15 in the Case Stated produced to them? If that note was not produced to them, and I can not be positive about its production, I can be positive that the contents of the note would have been conveyed to them verbally. Well now before we leave EXBT 13, turn back to p.2 and is there an entry there N.Z. Refining Company Ltd, Loan Account £250,000 at 31 March 1966 and £125,000 31 March 1967? Yes.

20 Please explain that item? These amounts are the balances of an original sum of I'm not sure I think £500,000 loaned by Europa Oil N.Z. Ltd to the N.Z. Refining Company Ltd under the terms of a loan agmt. entered into between those two companies. As part of the financing proposals for the setting up of N.Z. Refining Company, the participants, of which Europa Oil was one, agreed to make the loan.

I omitted to deal with one matter under EXBT 12, as recorded in the letter were there enclosed the copy of Europa Oil's Computer Tabulation Account recording
30 advances to Europa Refining in respect of "Gulf Swede" and "Cephalonia"? Yes.

And those are two of the shipments in EXBT No. 7? Yes. Please turn to the last page of EXBT 12, the Computer Tabulation, and does it show a number of items in

Europa Refining's current account in Europa Oil's books? Yes.

And is the first item advances f.o.b. "Gulf Swede"??

^{Yes} And two items down, is the item freight "Gulf Swede"? And the next item H.I.R., does that refer to Whangarei Harbour Board charges? Yes.

I would like now to refer you to a short passage in Mr Todd's re-examination p.46 line 25, this was in relation to the possibility that Europa Oil could
 10 calculate in respect of a shipment from Gulf under the 1964 contracts how much it would get by way of dividends from Pan Eastern as a result of that shipment, I'll read the passage, these are Mr Barton's words and Mr Todd's words that I am reading to you,

"Did the payment involve an international exchange transaction? Yes. Could you at the time when you placed the order 75 days before loading know what the exchange rate was going to be at the time when the credit period expired? It was at least 195 days, no possibility whatever, we were always at risk."

my question,

Mr Smith, is, does the provision relating to exchange in the feedstock supply contract apply to all Pan Eastern? No...perhaps I should say the relativity of exchange rates in this connection is found in a
 20 provision of the processing contract which requires conversion of the U.S. dollar figures used in connection with purchases of crude oil, payment of processing fee and sale of resulting products, to be converted to £ sterling at an exchange rate determined 15 days after the end of each quarterly period. Was the net profit to Pan Eastern calculable in U.S. dollars? I'm sorry, I have difficulty with that, I can answer by saying it can, of course, be calculated in any sort of dollars.

9212 A

Were the prices both in the purchases from Pan Eastern and sales and processing for Pan Eastern in U.S. dollars? The settlement of those amounts was as I recall it to be in £ sterling, determined 15 days after the end of each quarter, and Gulf's

And Europa Refining was not obliged to pay Gulf until 120 days after the date of loading? That's right.

As a result of that practice, were there substantial sums invested by Europa Refining in London on a semi-permanent basis? No...it is the semi-permanent basis though that is in question.

Over a considerable period, did Europa Refining have sums in millions of dollars invested in London? Yes.

10 Being advance payments by Europa Oil, which had not yet been paid to Gulf? Yes.

Now in recent years has there been a substantial suspense credit to Europa Refining under the alternate freight provision? Yes.

Has Europa Refining offset that credit to some extent by not paying Propet for some of the freights? By agreement with Gulf Europa Refining has from time to time deferred payment of freight invoices amounting to from time to time somewhat less than the freight
20 suspense credit.

Have the payments deferred in that way reached as much as 2.6 million dollars in 1971? This is where a major arithmetical error occurs. I had better explain this, as it is significant, I think. The figure of 2.6 million shown under deferred freight on this table according to our records should read 1.9 million. The discrepancy in the figures comes about this way, that at 31st December 1970 a suspense credit in excess of 2.6 million dollars, had built up, and agreement with Gulf was reached
30 that 2.6 million dollars, including amounts previously deferred, could be deferred on freight invoices. Now at 31st March only 1.9 million of that 2.6 million has actually been deferred.

By May or June 1971 2.6 million may have been deferred. We have been dealing with deferral payment by Europa Refining to Propet...has Europa Oil in turn deferred payments due to Europa Refining? Well taking the position covered by this table, Europa Oil has moved from a position where it would make advances around about loading date to a position of 120 days more or less.

Is the reason why Europa Oil has not paid Europa Refining at the date of loading that Europa Refining has been deferring its payments to Propet and Gulfex? No, I think the reason why is that Europa Oil paid its available money to the Commissioner following the last tax case and this left Europa Oil without surplus funds.

Is the result of the deferral by Europa Refining of payments to Propet and Gulfex and the change in the time of payment by Europa Oil to Europa Refining that Europa Oil has enjoyed part of the benefit of the alternate freight provision? I don't know that that could be said, what has happened here is that the table appears to attempt to relate the amounts owing, including deferred freight, by Europa Refining to the Gulf companies with that owed by Europa Oil to Europa Refining. The figures in each year are quite different, and on the current account basis which was operated between the two Europa companies no identification was made nor is it possible, that an identification of the items making up the balance owed by Europa Oil to Europa Refining could be established. To establish such items arbitrary allocations of payments and receipts would have to be made.

The balance is simply a current account balance

without definition.

We know Europa Oil paid no interest to Europa Refining?

Yes.

We know as of 31 March 1971 Europa Oil owed Europa Refining in excess of 5 million dollars? Yes.

We know that partly due to the deferred freight credits there was a substantial amount of over 5 million owing to Propet and Gulf by Europa Refining? Yes.

We know Europa Refining did not pay interest to Propet and Gulfex? Yes.

Is it the position that if Europa Refining had called on Europa Oil to pay at the date of loading, it could have invested at interest a sum running into millions?

I don't think that is quite right: it would depend

on whether Europa Oil agreed to pay on date of loading and whether it was able to pay on date of loading. There was a change in circumstances where Europa Oil's ability to make advance payments was taken away from it. So it is purely hypothetical. I think Europa would have refused in those circumstances to make payments on date of loading.

For the whole of the period up to late 1970 when the Privy Council decision, did Europa Oil pay at the date of loading? I know it generally did, but I can't be absolutely definite that it always did.

And in the course of the 120 days between the receipt of a payment by Europa Oil and the making of a payment to the Gulf companies, how many shipments would that be? I suppose on average, although each year did differ somewhat, there were 10 tankers in the course of a year. Therefore in 4 months, there would be 3 and one-third tankers.

And what would the approximate amount to be paid by Europa Refining to the Gulf companies in respect of 3 and one-third tankers be? At a quick guess 3 and one-third million, possibly more sometimes and less at others. But I should comment that in the later

years, particularly 1970 and 1971, there were more than the average of 10 tankers, there may be 12. Now after allowing for the deferred freight credit, has Europa Refining in these tax years still owed substantial sums to Gulfex and Propet? Yes.

In each of the last three years was the balance owing over three million dollars? Yes.

And Europa Refining has not paid interest on those amounts? No.

10 How has it come to be that Europa Refining has owed the Gulf companies over three million dollars and hasn't had to pay any interest? Because the supply terms negotiated by Mr Todd included amongst a great many other benefits the benefit of 120 days interest free credit.

Now during these years were ~~there~~^{there} at times substantial amounts owing by Gulf companies to Pan Eastern? Yes. And did the Gulf companies pay interest to Pan Eastern on their indebtedness? No.

20 (PAN EASTERN ACCOUNTS - EXBT 15) Now running quickly through the balance sheets, as at 31st December, 1965, did Gulf companies owe Pan Eastern 2.9 million dollars? Yes.

Was the amount as at 31st December 1966 1.2 million dollars? Yes.

As at 31st December 1967 was the amount .9 million dollars? No.

Sorry, 2.5 million dollars? Yes.

As at 31st December 1968 was it 1.8 million dollars?

30 Yes.

As at the end of 1969 was it 2 million dollars? Yes.

And as at the 31st December 1970 was it 1.5 million dollars? Yes.

MORNING ADJOURNMENT

11.31 COURT ADJOURNED

11.46 COURT RESUMED

Now Mr Smith, I want to go to EXBT 5, I want to complete the sequence so far as the exchange of correspondence between the Europa Oil and Department of Industries and Commerce at that stage is concerned,

No. 16 I want to show you three further documents. (EXBT 16)

The first is letter of 26th April 1965 from Director of Trade Practices and Prices Division to Europa Oil enclosing a questionnaire which was replied to in

10 EXBT 5? Yes.

The next letter is one of 11th August 1965 from the Secretary for Industries & Commerce to Europa Oil relating to Europa Oil's reply in EXBT No. 5, (EXBT

No. 17 NO. 17) (read) ..does that letter refer to the receipt by the N.Z. Refining Company on behalf of Europa Oil of one shipment of crude oil and four shipments of feedstocks? Yes, it does.

And the next letter is letter in reply from Europa Oil to Department of Industries and Commerce of

No. 18 20 27th August 1965 (EXBT NO. 18), perhaps I'll read it out (read), now this is a letter signed by you? Yes.

Amongst the documents which you submitted to Industries & Commerce Department, was the ancillary agreement in respect of freight included? I am quite sure in respect of both sets of contracts, that is 1956 and 1964 it would have been included.

Unfortunately the letter is a little unclear on this.

Does not the letter refer in the five numbered paragraphs to five separate contracts? Yes.

30 Is there any mention of the ancillary agreement?

There is no mention of the ancillary agreement as a separate contract because we always regarded it as part of the contract of affreightment.

Now there is no reference in this letter to any processing contract or otherwise to Pan Eastern? No, that is because it is not asked for.

Would you agree that throughout the letter Europa Oil is referring to Europa Oil's feedstock requirements and its arrangements with its suppliers Gulf? To answer that we have to go back to the first letter received from the Department in April 1965. It was in our mind that these pricing enquiries affected not
10 only crude oil and feedstock supply contracts, which were in the name of Europa Refining, but also finished product supplies contracts in the name of Europa Oil, and additionally the results of the pricing enquiries would reflect right through product pool accounts to wholesale and retail pricing, and would affect also such matters as marketing margins. In these circumstances it would be difficult for Europa companies to know exactly how to handle the Department's enquiries and in particular whether we should
20 for this purpose try to keep the two companies always apart or whether for this purpose it would not be more convenient both from our own and the Department's point of view for Europa Oil to handle the whole matter. Now without being able to be definite about times or even people, my memory is quite clear that we put our problem to the Department, probably to Mr Beadle, and he accepted it would be most expeditious to deal only with Europa Oil. This matter was also adverted to at various times during the course of
30 the pricing discussions. In connection with EXBT 18, and whether or not the ancillary freight contract was produced with this letter, I remember very clearly a discussion between Mr J.P. Lewin and Europa staff at which Mr Todd quite freely discussed the effect

of the ancillary agreement and there was not the slightest suggestion from Mr Lewin, or any other officers present, that he was unaware of that contract. Was the statement by Europa Oil at p.2 of the letter concerning crude oil and feedstock ships "received on our behalf by the Refining Company since the commencement of operations" correct? In the context of this case absolutely incorrect, but in the context of the arrangement made with the Industries and Commerce
10 Department, whilst not still strictly correct, met the arrangement that had been made with that department.

Now I want to pass to another matter and show you several letters, the first being a letter from Europa
No. 19 Oil to Gulf Oil of 3rd October 1963(EXBT 19) (read), - the attachment is not included with the letter (continued to read letter) now, Mr Smith, in paragraph 2 of the letter is Mr Carmichael referring to the same party Europa Oil as having feedstock
20 requirements and as having had petroleum product requirements under the earlier contract? I think again you have to look at the whole pattern of how feedstocks were brought into N.Z., processed at Whangarei Refinery and delivered as finished products. The practice was for the users of the refinery to notify the N.Z. Refinery firstly what their product requirements would be and then to inform the refinery the types of feedstocks they proposed to tender. From this the refinery drew up...it was actually a
30 computer programme...indicating the required dates of arrival and quantities and types of feedstocks needed to produce the requirement of finished products. In the case of the two Europa companies Europa Refining would ask Europa Oil, not by means of letter...

A Director of Europa Refining talks to himself as a Director of Europa Oil? I accept that, and then Europa Refining was in the habit of informing N.Z. Refinery. Now in the case of EXBT 19 it is dated 3rd October 1963, long before the refinery came on stream. It is certainly a letter sent by Europa Oil. It deals with two things, feedstocks and products, feedstocks being under Europa Refining contracts but products being under Europa Oil contract. The point I wish to make is at this point of time it was quite unclear when one contract would run out and the other one would take over. I see no significance at all in the letter having been written in those circumstances and signed "Europa Oil". Further to my knowledge just about without exception during the operation of the 1964 contracts we took care to try and make sure that communications with Gulf were from Europa Refining.

Now on that last point I am going to read a passage from evidence of Mr Todd (p.35 line 13)

"On matters referred to Mr Carmichael and others, was it usual to identify Europa Refining in correspondence? I shouldn't think so." now what have you to say

about that? I think Mr Todd is mistaken... having heard that evidence given, I took the trouble to check with Mr Carmichael and he told me he did take care to communicate as Europa Refining particularly when ordering feedstocks from Gulf, so I am basing my statement on what he told me, and also on my own memory of what happened.

Reverting to the letter of 3rd October 1963, is the position that Europa Oil was openly informing Gulf that Europa Oil had feedstock requirements at the N.Z. Refinery? I am sure that Gulf would understand whatever was said in the letter that feedstock requirements were Europa Refinings.

No. 20 I refer you to Gulf's letter (EXBT NO. 20) in reply and addressed to Europa Oil dated 30th October 1963, I read the first and last paras (read) and p.2 the final paragraph

10

"Please refer to your letter on this subject dated October 3, 1963, in which you pointed out the problems involved in providing an accurate forecast of your product and feedstock requirements for the first six months of 1964. You may be assured that we fully understand and appreciate the difficulties involved in predicting your requirements when such factors as refinery startup date, exhaustion rate of product stocks, etc., are unavailable. During the next few months we assume you will revise your forecasts as the various factors are determined and we trust that you will continue to keep us informed."

20

"I am sure you will understand that the above analysis of your feedstock requirements is necessarily preliminary and therefore subject to modifications which may become desirable in the light of additional information. After the refinery has come on stream and you have developed a clearer picture of actual refinery operations, I expect you will be in a better position to estimate your feedstock requirements. Based on the information you can give us on your requirements we would be prepared on a cargo by cargo basis to vary a make-up of feedstock deliveries in order to accommodate your requirements."

30

now would you agree that the whole of that letter is concerned with Europa Oil feedstock requirements for N.Z. Refinery? Only if you have a very very strict analysis of the words in the letter without regard to the circumstances applying at the time it was written. Did Gulf say "Europa Oil we are not dealing with you, we are dealing with Europa Refining"? Gulf was dealing with both Europa Oil and Europa Refining, and a lesser requirement of finished products would automatically mean a greater requirement of feedstocks. At that point the two different requirements were completely interwoven.

40

Let me move to another point of time when the requirements were not interwoven, I show you letter dated 28th July 1969 (EXBT 21) written by Carmichael in

name of Europa Oil to Gulf Oil (read) now, I think you said a few minutes ago that you checked with Mr Carmichael and he had informed you he was very careful in differentiating between Europa Refining and Europa Oil? I hope I made it clear that he differentiated in ordering... I am sorry if I didn't make that clear.

Would you agree that in that letter he is informing Gulf that Europa Oil is providing feedstocks for the
10 N.Z. Refinery? That is what he says, yes.

In this background, is there any documentation to suggest ~~it~~ it was material to Gulf whether it was Europa Oil or Europa Refining which put feedstocks into the N.Z. Refinery? Well, there are two important

items I can think of, maybe more; the first one, of course, is the contract which refers to Europa Refining having the right to process feedstocks into finished products at N.Z. Refinery. I think the important evidence is the evidence on exchanges and Gulf's restlessness, their enquiry as to what Europa Refining was doing with the feedstocks in N.Z.? I think this is evidence of their concern.

10 Was the first naphtha exchange in 1967? I believe so, from memory.

Has Gulf ever complained in writing that Europa Oil is apparently putting feedstocks into the N.Z. Refinery? Not to my knowledge.

Would you not agree that Gulf's concern was its supply relationship with the Europa group? I don't really know Gulf's mind, that is the problem I can have with the question, I can assume anything.

Have you any evidence to the contrary? I don't think so, no.

No. 22
20

I now show you a copy of pamphlet (EXBT NO.22)... is that a pamphlet in relation to the Whangarei Refinery which shows on the inside cover that it is with the compliments of Europa Oil (N.Z.) Ltd? Yes. Now please turn to question 6, just read to yourself the answer to question 6, does it refer to the subscription of capital being by or on behalf of Europa Oil? Yes.

30 Now please turn to question 11, does it record that each company will import feedstocks from its own sources? Yes.

And question 18, does reference to each marketing company treating or blending products in any way it wishes, necessarily refer to Europa Oil? No, I don't think so.

Has Europa Refining ever been a marketing company?
 No, but Europa Refining Company could have been a
 marketing company, it was free to sell products to
 whomever it liked, but of course that intention was
 frustrated by its failure to obtain wholesale licences
 ...there is no date of issue on this copy, and I
 would like also to comment that "Issued with compli-
 ments of Europa Oil Ltd", doesn't mean any responsible
 members of Europa Management approved the issue of
 10 the booklet, I don't know whether they did or not.
 It could have been Europa's advertising department,
 or quite likely the personnel department who had many
 queries of the nature which would be most easily
 answered by sending such a booklet as this.
 I want to deal with passage of your evidence at p.15

20

"I was present at Plenary meetings on 28 June 1968 and
 1 July 1968 between Oil Companies and the Government
 Interdepartmental Committee on the Oil Industry at which
 meetings Mr B.D. Kennerley representing the Commissioner of
 Inland Revenue stated that subject to confirmation with the
 Commissioner he was able to commit the Commissioner to the
 bench mark levels and would let us know if the Commissioner
 did not accept. No notification was ever received that the
 Commissioner did not accept the bench mark levels."

now

Mr Smith, has the Commissioner ever assessed Europa
 Oil on the basis of the bench marks? No.
 Has the Commissioner ever referred to the bench marks
 in connection with the assessments in his correspondence
 30 relating to the assessments? No.
 Has Europa ever suggested to the Commissioner that
 it should be assessed on the basis of bench marks? No.
 Did you attend many of the oil pricing meetings?
 With one or two minor exceptions, I shouldn't have
 said "minor", just with one or two exceptions, I
 think I attended practically all the meetings.

Q224 A

Would you agree it was made clear at oil pricing meetings that the Commissioner's interest in benchmarks related to s.20 of the Act affecting the international companies? Section 20 was certainly mentioned by Mr Kennerley but in the exchanges of conversation or discussion which followed Mr Todd participated and there was no mention to him in those

discussions that he ought not to participate because s.20 would not apply to Europa Oil.

At that time were you aware that the only provisions invoked by the Commissioner against Europa were ss.111 and s.108? That is a hard one too, my difficulty is I wasn't too sure what the assessments were about, but as a general statement I think it could only be said that the Commissioner was using s.111 and s.108. Have you attended meetings in relation to oil pricing
10 in later years when there was again reference to the Commissioner's attitude to bench marks? I attended up until the end of 1971.

Do you recall attending a meeting on 6th April 1970, some minutes indicate you were present? I accept it as most likely I would have been there.

Would you agree that at a meeting about that time, after the Commissioner's representative had referred to bench mark prices, Mr Todd asked whether the
Commissioner's decision would be under s.20, to which
20 the answer was "yes"? Well, all I can say is that I know s.20 has been mentioned at discussions, I can't confirm or deny what you have just put to me.

Now I want to show you a passage in a letter, which I am not at this stage going to ask to be received as an exhibit, and then ask for your comment on the passage (Topic set aside to enable counsel to take instructions on the matter over the lunch hour).

I pass to EXBT V. produced by Mr Todd (p.64) ... as it shows on face, it is concerned with two elements,
30 f.o.b.s, and freights? And two values for each
Coming first to freight element, in calculating expenditure under the Gulf contracts, have you used the freight rates under the ancillary agreement? Yes/
Now we know that as events have turned out, they

have been considerably lower than A.F.R.A. rates under the affreightment contract? Yes.

Are they well under the bench marks for freights? If you look at crude oil in isolation, I don't know if it would be too far under bench marks. For naphtha they were significantly under bench marks.

We know from Mr Todd's evidence and the references (p.43) that the advantage under the ancillary agreement stood at 3.3 million dollars as at 31st
10 March 1971? Yes.

Were those freight benefits realisable on 31st March 1971? No.

Were they dependent on what happened to rates over the whole 10 years of the 1964 contracts? Yes.

I am going to show you now the account for Europa Refining Company Ltd, complete account for the tax
No. 23 years in question (EXBT 23), please turn to the accounts for year ended 31st March, 1971, I am going to read the note attached to the account '

20

"Arising from contracts relating to Marine Freights, suspensory credits amounting to \$2,800,000 have been built up. These credits have not been included in the accounts as they are not realisable until after 31st December 1973 and could be significantly reduced if freight rates continue their current downward trends."

Yes.

Is the position then that this benefit has never been treated as income by Europa Refining? That is correct.

I might read you two passages from Mr Todd's brief
30 and ask you then to comment (deferred).

Is it Europa Refining will or may benefit from the ultimate freight not Europa Oil? Yes.

Coming to the f.o.b. element, were the f.o.b. prices payable by Europa Refining under the feedstocks supply contract generally well above bench marks?

The position varied from time to time. In 1968 for example, naphtha f.o.b. element, which is only one part of the total bench mark level established by

Government, was below. The table EXBT V. would indicate that the alternate freight rate was below bench mark component of freight by approximately the same amount as the f.o.b. prices would be above the bench mark f.o.b. And the result of that is that the net landed cost incurred by Europa Refining was slightly better than the bench mark levels, and thus the tax payable on those base levels is the same as if bench marks had been met both in total and for
10 each component.

Does that answer assume that Europa Refining has paid tax on the alternate freight benefit? Tax was in fact paid on the similar alternate freight benefit received under the 1956 contract, and I have been able to assure myself that tax will be payable.

Is the position that Europa Refining has had the benefit of deferred freight credit and will not have to pay any tax until the conclusion of the ancillary agreement and then only on the net balance at that
20 time? The answer to that depends on what you mean by "net balance".

If the word "net" is omitted, is the answer "Yes"? Yes, but the other point I wanted to comment also was Europa refining having had the benefit of this alternate freight, in its cash flow Europa Refining has certainly benefited, not to the full extent of the freight credit but largely so. The benefit has not been absolute.

Just as a final question on this topic, we have been
30 dealing with the position of Europa Refining, now I want to turn to Europa Oil and ask this question, over these tax years did Europa Oil pay substantially more to Europa Refining in relation to f.o.b. and

freights than bench mark values? Europa Oil paid various elements, some of which can be identified to f.o.b. and freight costs of feedstocks, but Europa Oil's aggregate payments were for finished products. To the extent the component part of the total payment can be related to the landed cost of feed stocks in N.Z., and answer to your question is "Yes".

LUNCHEON ADJOURNMENT

10 2.15 COURT RESUMED

Mr Smith, this is not an exhibit, but I would like you to look at the letter I am showing to you, please take your time to read through it but concentrate particularly on middle paragraph on p.2, as to which I want to ask you a few questions in a few moments... now, in the course of a letter dated 4th February, 1969, from Mr Mahon, counsel for Europa Oil to the Solicitor-General, was it said "I know you have always asserted that the bench marks claimed by the
20 Department of Industries and Commerce have no bearing on this", the "this" referring to the claim for tax up to 1st April 1968? Yes.

Would you just read over to yourself paragraph 2 and paragraph 3 of the letter, and then at p.3 paragraph numbered (1)? I think probably the word "this" now it has been pointed out to me, could have several meanings in the whole context of the letter, but on the first reading I did relate it to the offer up to 1st April 1968. However, it is a very long letter,
30 and deals with a good deal of information. It is a statement attributed to the Solicitor-General that he has asserted bench marks have no bearing on this. In view of the length of the letter it would require a great deal of study and careful construction

to relate the word "this" to anything in particular.
 Now I want to pass to a reference in Mr Todd's brief
 at p.67 lines 22 to 29 relating to the taxable income
 of Europa Refining (read)

"Furthermore, during the period of the Gulfex/Europa Refining 1964 contract from 1 April 1965 to 31 March 1971 (the period of the disputed assessment against Europa Oil), Europa Refining, exclusive of dividends from its shareholding in the New Zealand Refining Company, has earned New Zealand taxable income of \$4,559,247. Much of this fine performance is derived from the quality and stability of its supply and affreightment contracts with Gulf."

} 0

and I want to show you now
 a summary of the assessable and non-assessable income
 of Europa Refining Company Ltd for the years in
 question (EXBT NO. 24)...if these are correct, does
 it appear that Europa Refining during period
 in question returned assessable income totalling 1.2
 million dollars? Yes.

20

Is the difference between that 1.2 million dollars
 and the 4.5 million dollars quoted by Mr Todd the
 contingent freight credit under the ancillary
 agreement as at 31 March 1971? Yes.

And as you know that was not taxable income of those
 years? No, but it is earned in those years.

Is the 1.2 million assessable income from interest
 derived by Europa Refining? Not wholly.

Is it very substantially from interest? Yes, it is
 very substantially.

} 0

Was this from the investment by Europa Refining of
 the advance payments made by Europa to Europa Refining
 referred to this morning? Yes.

Before we leave Europa Refining, were any of Europa
 Refining's transactions with Gulf Companies and Europa
 Oil ever referred to in Europa Refining's profit

and loss accounts? No, they are not referred to in
 the profit and loss account because the net result of

entering those transactions into the profit and loss account would not have affected the results shown in any way, and it seemed a rather useless exercise to go to the trouble of including them.

Now I want to refer to another passage in Mr Todd's brief at p.69 lines 8 to 12 (read)

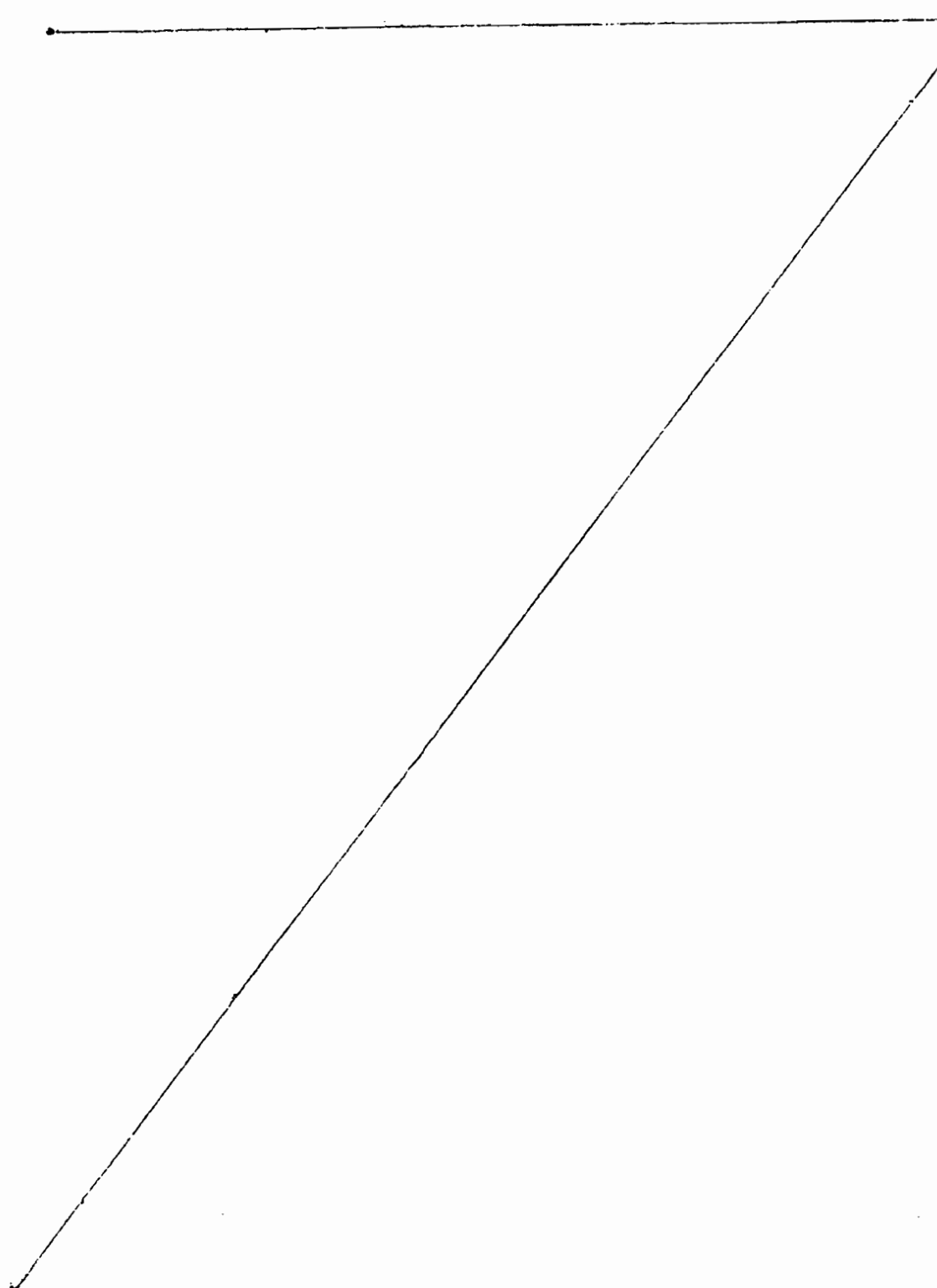
"Europa Oil (N.Z.) Limited's taxable earnings in New Zealand for the financial years 1964 to 1971 inclusive aggregated \$12,201,272, an annual average earning of \$1,525,159, excluding the assessments before the Court."

10

10 expert knowledge of the tanker market; I then contract with Mr. B. to re-let the tanker on favourable terms; I appoint John I. Jacobs, well known London firm to be managing agents in respect of that tanker. The result of that transaction returns to me say £100,000; I should have included in this that I had formed a £100 company. Now in this transaction I have no capital, no assets and no staff, and I did not attend directors' meetings because I had appointed Mr Jacobs my alternate. It seems to me in these circumstances I can justifiably claim to be in some part of the tanker business and I do not think if I contended to the Commissioner that I had made no earnings from the tanker business because of the factors I have mentioned that he would accept that contention."

in that

hypothetical case is the taxpayer hiring the vessel



from Mr A and chartering it to Mr B? Yes.

We know that in Pan Eastern Pan Eastern deals only with Gulf companies? Yes.

Would you agree that the position in the hypothetical example is quite different in that respect from Pan Eastern? In that respect, yes, but not in the respect that the companies do not have staff, own assets or *have* ~~just~~ substantial capital.

No. 25
.10

Finally I just want to refer you to a document that was submitted to you some days ago (EXBT NO. 25) I show you a schedule of shareholding as at 31 March 1964 in relation to Todd Participants Ltd and Todd Investments Ltd ...are the shareholdings and percentages correctly set out in that schedule? No...there is no registered shareholder entitled "Family of A. Todd" or "S.M.White" or "B.J.Todd" or "Sir Desmond Todd".

20

If the shareholdings of members of the family in family trusts in each case are grouped under those separate references, is the statement correct? In that case the statement is arithmetically correct, but that does not mean from my answer that it is correct in any other sense. I have a further comment on the schedule, the schedule itself is headed "Shareholding at 31.3.64", however, the shareholding shown in bottom part of schedule is derived from the company's register in 1969, and I understnad the reference to Dr Law's letter of February 1970 was in connection with s.131 assessments. C.P. Todd Estate is shown as a shareholder in respect of Todd Investments Ltd but in fact the late Mr C.P. Todd did not die until 1st July 1965.

30

RXD BARTON: I would like you to go back to the documents in EXBT C.S.15 the Law/Carmichael memorandum and the other undated notes...within the Europa Refining and Europa Oil companies, which officers would need to know the substance of the undated notes in order that what Mr Todd wrote should be carried into effect? The general manager Mr Carmichael, myself, the Chief Accountant, an Officer called the Refinery CO-Ordinator and perhaps the Operations
10 Manager.

From your knowledge and dealings with each of those persons over the last few years since 1965 are you able to say whether each of them was aware of the substance of those notes? Leaving the General Manager and myself out of it, who would know of these matters by being present at the time they were formulated, I verbally informed the Chief Accountant of the arrangement and jointly with the General Manager we informed the Refinery Co-Ordinator. I am
20 not certain if or how the Operations Manager was informed. In turn I would expect the Chief Accountant to inform appropriate members of his own department. Would you turn to the so-call Law/Carmichael memorandum C.S.15, it is fair to say it was put to you or at least the possibility was put to you that that memorandum may have come into existence in 1969, what do you say to such a suggestion? As I said before I can't be absolutely sure of the date when it was entered into, but I believe it was entered into in
30 February 1965 because the insurance problem associated with this matter needed to be solved before 28th February. I can say quite definitely from my memory but without being able to produce any evidence that it was not entered into in 1969.

Would you turn to the next page in C.S.15, does that document have the words "Advance Payments" in lines 1 and 3? Yes.

Evidence has been given about the change in the first line, are you able to say how the word "payment" got into the third line? Yes, when the matter of the Finance Company Investment Regs. was considered, and it was felt desirable to change the word in the first line "advances" to "advance payments" a note was
 10 taken by myself to that effect. I had the document No. 2 in C.S.15 retyped, and it came back with "payments" in both lines and this error was initially overlooked.

Immediately the error was noticed the third note was issued and the word "payments" was deleted from line 3.

TO BENCH: What was the form in which they appeared before they went into typewriter, dictated, hand-written or what? Taking the case of the very first
 20 note, which was prepared, I think the secretary was called in to the discussion and the note dictated to her. In the case of the second note I think I would have given her the original and just simply said to her "change the word 'advances' to 'advance payments'" without realising that "advances" appeared twice in the letter.

TO COUNSEL: Now please look at EXBT No. 8 which is the letter to Europa Refining from C.I.R., did the secretary of Europa Oil receive a similar letter to
 30 the one that the secretary of Europa Refining received? Yes, I believe so.

And is..was there in fact a fourth letter from the Commissioner to Europa Oil? Yes.

And it was in similar terms to the letter from the Commissioner to Europa Refining Company Ltd? Yes, I recollect very similar.

Up to the receipt of that letter, had you received any specific request to supply to the Commissioner the matters referred to in paragraph 1 of the letter? Yes, I believe one of the Inspectors had asked me whether there was any written agreement between the two Europa companies.

10 Are you able to pinpoint when that request may have been made? No, I'm sorry, memory fails me.

When you received this request, incidentally, it is addressed to the Secretary, how did it come to be dealt with by you? Mainly because I had been dealing with tax matters on behalf of Europa since the first investigation in 1963. I also am the secretary ... or was, I should say, the Secretary of Europa Refining Company.

After receiving this request what steps did you take
20 to comply with it? The request of June 1972 asks "Whether there was any contract"..well, I knew there had been a contract, it was the Deed 30th September 1964. The first step then to reply to this letter was to locate that cancelled contract. I went to the Security Officer and asked did he have it. He took out his envelope in my presence and produced the cancelled contract and the deed of cancellation. I saw from his envelope that it referred to some such words as "arrangements Europa Oil, Europa
30 Refining", there were other papers in the envelope and I asked for them. The other papers turned out to be the Exhibit C.S.15 so that having located these various pieces of paper they were then all

produced to the Commissioner in response to his request. Up until that time I would have thought any attempt to locate particularly the Law/Carmichael agreement and the first of Mr Todd's written notes would have been quite fruitless.

I take it that over the period of the tax investigation you have been asked from time to time to supply documents and information to Tax Inspectors? Yes, there have been many telephone and personal, that is
10 person-to-person, as well as written requests for literally thousands of pieces of paper.

Have any of these requests ever to your knowledge been declined? No.

Have there been from time to time occasions when officers of the Department have come to the premises of the company for the purpose of examining documents relating to the companies' operations? Yes.

Have facilities been made available to those officers for that purpose? Yes.

20 Are you able now to give any estimate of the number of days that the officers have been present? Well, since 1963 it would run into months. At a guess in connection with the present period some weeks perhaps.

After the despatch to the Commissioner under cover of letter of 7th July 1972 EXBT 8, were there visits to the offices of the company from Tax Department Inspectors? I left the employment of Europa I think on 31st July 1972. Since that date there have been quite a few telephone discussions and some personal
30 visits from Inspectors.

Now do you remember being asked in cross-examination about a visit from Mr Kennerley and another man in November 1968? Yes.

Was that visit largely concerned with the question

of taxability of gains made in exchange transactions?

Yes.

EXBT GG Do you now produce your note of that meeting (EXBT GG)?

Yes.

When was that note prepared? The note would be prepared either the day of the visit or the day following. The practice was, that is my practice, following any visits to dictate what I considered to be all the important points covered in the discussion.

10 The notes of course are not a word for word report. Where the typist has put certain words in italics... sorry, quotation marks, this is just a pattern which she had evolved and I am not trying to import that they are exactly what was said, but I do say they convey the sense of what was said.

Now we have already had in evidence sufficient to indicate to the Court who the first three men are for whom copies were intended, but tell us about the fourth and why a copy should go to him? Mr J.G.

20 Hutchison was legal counsel employed internally by Europa Oil N.Z. Ltd.

Now please read that memorandum? (Read)..Could I just comment on two small points in this, as I recall it when the question was put to me on Friday I did recall the exchange problem which Mr Kennerley discussed with me, but I couldn't remember discussion the question of Europa Oil and Europa Refining, the I think, the note bears that out, this was basically an exchange discussion and I point out in paragraph
30 3 half way through Mr Kennerley interrupted my exposition of what the arrangements were, and on p.2 first paragraph, the reference there to "other companies" means other Europa companies, not other oil companies.

Now the next matter in sequence in this aspect in EXBT No. 9, letter from Phillips to you as Secretary of Europa Refining Company dated 10th January, and you will see a copy of that was sent to Mr P.T. Mahon for his information by Mr Phillips? Yes.

Now would you look at paragraph (a) in that letter, at the time when that letter was received are you able to say whether there was any clear view as to the legal answer to that question? I am not sure that there was any clear legal view. I have already stated the position as I myself saw it, that title in the strict legal sense was not at all important, it was entitlement that was important.

Would you now produce a memorandum dated 23rd January 1969 of a conversation which took place between you and Mr Phillips (EXBT HH) was this memorandum prepared in accordance with the practice you described a few minutes ago? Yes.

And was the Mr Phillips who called at 9 a.m. the same man who wrote the letter of 10 January 1969? Yes. Please read the memorandum, dated 23rd January 1969, copies sent to Mr P.T. Mahon (read).

Now that memorandum and the earlier one GG deals in part with the position of feedstocks, these are the Europa Refining and Europa Oil, and you were asked many questions about statements made or attributed to officers of Europa Oil on that matter? Yes.

What was your understanding of the position about feedstocks being imported into N.Z. as between Europa Oil and Europa Refining? My understanding was quite clear. I think we have to go right back to the time when Todd Participants Ltd, the parent company of Europa Refining was formed in 1960, as

a result of the refinery discussions which Mr Todd had in London and from which he could see the means by having a N.Z. Refinery participant, Europa Oil nominate an affiliate to escape the pre-emption provisions under the Gulf 1956 contract. The next thing was the formation of Europa Refining and that company's contract with Gulf Exploration and in that contract there is reference to Europa Refining having the right to use capacity at the N.Z. Refinery to process its finished product requirements for sale either to Europa marketing or to others in N.Z. So that intention is also expressed in the Gulf contract. The next thing is the circular to shareholders which Mr Todd exhibited as part of his evidence and in which again the intention of Europa Refining to sell finished products in N.Z. is again clearly set out. I think the next step is probably the formal deed of supply entered into between Europa Oil and Europa Refining on 30th September 1964. Following the cancellation of that deed there was perhaps a slight upset in the intention due to the Lau/Carmichael agreement but this was promptly corrected by Mr Todd in the note he recorded, which again goes back to the original intention. That note from memory in its second sentence states

30

"Europa Refining Company Ltd. will use its refining capacity on behalf of Europa Oil (N.Z.) Ltd. for processing feedstocks and manufacturing petroleum products. Europa Oil (N.Z.) Ltd. will insure all feedstocks, intermediates and finished products in the Refinery and will uplift the finished products so produced in accordance with established Refinery Programmes." I think this clearly

expresses the intentions. So from that whole history going right back to 1960 it seems abundantly clear to me what the intention was. It seems that the mechanics of carrying out the intention brought about mainly by the Motor Spirits Distribution Act and I mention that Act only to show why things were

done and not because I think it has any other relevance the mere fact of the mechanics of this tends to obscure the intention. I think one cannot take a part only of those arrangements and look at it in isolation. The companies did what they had to do. Although from time to time there is mention in letters and other records of feedstocks passing from Europa Refining to Europa Oil, and particularly this occurred in the objection letters sent by Europa Oil to the
10 Commissioner, those objection letters were framed originally at a time when Europa could get no indication whatsoever of what its own contentions in the objection letters should be, and I understood the position to be that, provided broad general contentions were made, that would satisfy the position. It was unnecessary, and indeed impossible, to put forward in precise detail everything that would, for example, be canvassed before the Court. So for my part having a look at the whole of the arrangements
20 there isn't any doubt that Europa Refining was not selling feedstocks to Europa Oil.

When you use the word "feedstocks" what meaning do you attribute to it? I have changed my mind on the meaning of the word over a period. Initially feedstocks to me meant anything going into the refinery or in the refinery, so that petroleum, to use an even more generic term, until it became finished products was in fact feedstocks.

In your discussions with officers of the Department
30 were you able to form any view as to the meaning they attributed to the word "feedstocks"? No, the matter was never canvassed to that extent. I did not know from them exactly what they took out of

what I had told them, and I certainly did not foresee this particular problem arising, otherwise it would have been so simple at any time up till now to have corrected what appears to be a misunderstanding.

Would you look again at EXBT 9, the letter to you by Mr Phillips, you see in the second paragraph of that letter there is a reference by Mr Phillips to a letter almost three years before from Dr Law? Yes.

When you saw Mr Phillips on 23rd January, almost a fortnight after that letter, do you recall any discussion of what Dr Law has said in his letter of July 1966? No, I am sure if there had been any discussion it must have been on a very minor key otherwise it would be recorded in these notes.

If feedstocks had in the mind of Mr Phillips meant petroleum before it went into the refinery, and if you had understood him to mean that, would you have had any difficulty in answering his question (a) in that letter? No, none at all. If I had understood clearly or been told their thinking it could have been so easily corrected.

I want now to move to an entirely different topic, EXBT 7, relating to the shipments, would you please look at shipments 1 and 2 both in the tanker "Gulf Finn", you were asked whether there were any shipments of crude oil exclusively and your attention was directed to shipment 1? Yes.

Were shipments 1 and 2 both within the one quarter for the purposes of the contract between Gulfex and Europa Refining? They were within the one quarter, that is the quarter ended 30th June 1964, but this was for the purpose of the processing contract, not the supply. I mentioned that in my evidence on

Friday but I don't really think I rounded it out. The point in my making that comment was that within the quarter 30th June 1964 there would be surplus production arising from the processing of the naphtha

shown on the Gulf Finn shipment No.2. which surplus production would be available to be sold at a price to return to Pan Eastern the equivalent of the profit on crude oil arising from the Gulf Finn Shipment No.1. A further comment is that shipment No. 1 was a shipment brought to N.Z. by Europa Refining and consisting only of Kuwait crude oil at the specific request of N.Z.

Refining Company as a start up cargo which was
 10 allocated to Europa Refining. In the start up of N.Z. Refinery about that time in order to get the refinery on stream, discussions were held between N.Z. Refinery and the user companies, as the result of which each company was allocated a certain type of feedstock which it should import. This was the reason for Europa Refining importing a whole single cargo of crude oil.

From EXBT No.7 running down the shipments, after shipment No.1 which was of Kuwait crude oil, the next
 20 shipment of Kuwait crude oil to be imported by Europa Refining did not load until after a period of two years had elapsed.

Coming to a different topic again, p.66 line 18 of cross-examination

"Were accounts in Europa Oil prepared under your supervision? Yes"

Yes", what did supervision consist of in relation to the preparation of the totality of Europa Oil's accounts? When I answered Yes to that question I was, of course, thinking of the final published accounts. My supervision goes briefly something like
 30 this: Draft accounts of balanced sheet and profit and loss accounts, are prepared by the Chief Accountant and submitted to me together with his comments. He will make suggestions and recommendations on any

matters he thinks fit. For my part I look at these draft accounts and ask him questions on any matters which I see fit. Concerning supporting schedules which are prepared for purpose of finalising annual accounts, I may or may not see these. They are used to a large extent by the Auditors and in a lot of matters of course I have to rely on the Auditors. Now the documents that were put to you EXBTs 11 and 12 what about those in relation to any supervision that you may have been giving to them? Other than having a general understanding of the accounting system in operation in this particular case that duplicate current accounts are kept in each company's books, I would not normally see these ledger accounts. There is no need for me to do so and, again, it would be impossible if I were required to do so. Although the accounts we are considering here do not have a great number of entries, some of the entries are summarised by computer before being entered herein.

10

20 In the Europa group of companies there would be tens of thousands of entries going through the ledger accounts and I can't cope with that number.

4.15 EVENING ADJOURNMENT

TUESDAY, 20TH FEBRUARY, 1973 - CASE CONTINUED:

RE-EXAMINATION OF MR SMITH CONTINUES:

Mr Smith, I want to ask about the procedure followed by Europa Oil in the discharge of its total indebtedness to Europa Refining, how did Europa Oil go about discharging that indebtedness? It made payments by way of advances to Europa Refining in respect of the landed cost of crude oil and feedstocks brought to N.Z. In turn Europa Refining paid the invoiced
10 amounts to Gulfex and Propet. Europa Oil also made payments either to or to the use of Europa Refining in respect of Whangarei Port Charges.

Europa Oil would also make payments to or to the use of J.B. Westray in respect of insurance premiums.

And Europa Oil would make payments by way of advances on behalf of Europa Refining to N.Z. Refining for processing fees which included the cost of distribution by coastal tankers to ports around N.Z.

You were asked some questions about why Pan Eastern did not receive interest from Gulf or Propet, what
20 explanation, if any, is there for that? The position is firstly that the contract does not provide for such interest charges, and I do recall discussing the matter many years ago, or some years ago anyway, with Mr Todd and he told me he preferred not to squeeze Gulf on that matter...that was his expression.

Would you please look at EXBT 18, p.2, a letter to Industries and Commerce written by you, the second line on p.2 "We notified the suppliers in advance of our estimated requirements", which company
30 precisely notified the suppliers in advance? Europa Refining.

Line 3 "And then issued official purchase orders

for the exact quantities required", which company precisely issued the official purchase orders? That particular paragraph actually refers to item 6 on p.1 of EXBT 18. It is correct that Europa Refining as it was required to do did notify Gulf of requirements in advance. But this particular paragraph referring to the issue of official purchase orders is related to paragraph 6 of the letter referring only to supply of lubricating oils and greases.

10 You were asked in cross-examination about this word "doubling" that is used in relation to the processing contract, did you have cause some years ago to make enquiries of Gulf for documentation which is now in part EXBT A.A.? Yes.

How did you come to ask for that documentation? In preparation for the previous case Mr P.T. Mahon asked what accounts were available covering the operations of Pan Eastern. I was able to produce for him only the formal balance sheet and quarterly statements
20 which had been sent to N.Z. Mr Mahon was concerned however, with the basic accounting records and this resulted in an enquiry being made of Gulf. At that time I had no knowledge of what accounting records would be maintained by Gulf. The accounts produced in EXBT A.A. were the result of that enquiry.

What do those accounts show about this matter of doubling? I think the accounts show absolutely clearly how Gulf interpreted on their own initiative the provisions of the processing contract between
30 Gulf and Pan Eastern. The accounts show that Pan Eastern in accordance with that contract bought crude oil, paid a processing fee, and sold all of the resultant products at prices and on the basis

established in the contract. And this is how its profits were derived.

When you say "on their own initiative", what do you mean by that? I simply meant that until the enquiry was made of Gulf we were not aware of what practice Gulf had in fact adopted.

The next matter relates to some questions that were put to you concerning paragraph 5 of Case Stated pp.10 and 11, now what was the position about the
10 accounts of Europa Oil over the period covered by that paragraph? In his evidence Mr. Todd stated that the profits of Europa during the years 1964 to 1971 were 12.2 million dollars. The question I was asked with particular reference to p.11 of the Case Stated was, were the profits for the years 1966 to 1971 5.2 million dollars. This question puzzled me somewhat because I could not reconcile at that time profits of 7 million attributable only to the years 1964 and 1965. I have since had the opportunity of
20 looking at the figures again and there are three reasons which account for an apparent discrepancy. The figures quoted in Mr Todd's evidence are correct. They were taken from the published consolidated accounts of Europa Oil. The consolidated accounts include the profits of five wholly owned subsidiary transport companies of Europa Oil and these companies do nothing but carry Europa petroleum products. They owe their existence to the fact that they hold certain transport licences. Their operations are
30 part of Europa's integrated operation in N.Z. There are one or two other minor companies included in the consolidated accounts but their profit contribution is negligible. The second point is that

in arriving at the figures of assessable income shown on p.11 pool balances are taken into account. The pool balances are not easily explained, but briefly Europa adopted the practice of recording as its income in each year only that income which equated with the allowed margin in each year. If the actual margin was greater or less than the allowed margin in any year Europa would make a provision in its accounts for the over or under recovery. However, the Commissioner
10 disallowed this practice and assessed Europa on a cash basis. Therefore, the assessable income in a period when the pool balances, which were very substantial from time to time, were being run down would be less in Europa's tax return than actually shown in the published accounts. I have not been able to quantify the amount because it is a complex job. The third point is that during the years in question Europa Oil made substantial loans to
20 petroleum and other mining companies, and in terms of the legislation it was entitled to write off these loans and claim them as a deduction for tax purposes. There were substantial amounts involved in these years.

You were asked some questions about the alternate freight rate credit and the fact that in Europa Refining's books there was an Auditor's note dealing with the contingent nature of that credit.

Are you able to say anything about the realisation of that contingency? Yes, on 30th June 1972 BP
30 acquired an interest in Europa to the extent of 60% of the ordinary shares. Following this BP's parent company undertook negotiations with Gulf which resulted in Europa and Gulf agreeing to cancel the

contracts. I can say that as of today entries have been made in Europa Refining's books to record the realisation of that freight credit.

You were shown in the course of a brochure EXBT 22, have you had an opportunity of looking at that brochure since it was put to you? Yes.

Are you able to assist the Court by indicating who published it? As far as I can determine it is a brochure prepared by N.Z. Refining as a public relations effort. This public relations effort was offered to all of the user companies who could if they wished have their names applied to the publication, as was done in this case by Europa Personnel Department, in much the same way as a Four Square grocer would apply his name to Four Square calendars. You were asked some questions about the attitude of the Inland Revenue Department and the Solicitor General to the relevance of Bench Marks, remember that? Yes.

20 Since the establishment of the Inter-departmental Committee dealing with pricing, approximately how many meetings of that Committee would you have attended while you were an officer of Europa Oil? Hundreds, maybe two hundred, I'm not sure, it is hard to answer, there were a very great many.

What was the purpose of the meetings of that Committee so far as Europa Oil was informed? We understood the purpose of the Committee and the meetings which were had with that Committee was really threefold,

30 to establish pricing as such with all the ramifications which followed on from the establishment of import pricing, secondly exchange control purposes and also for taxation purposes. At one of the very early meetings Dr P.H. Frankel attended and at that meeting

he referred to pricing by ordeal of Inland Revenue. I took this remark to mean that, if pricing agreements were not negotiated, then the companies could be faced with an ordeal by the Commissioner exercising his powers of determining prices. In respect of the other companies operating in N.Z., this would be done under s.20. I have seen assessments in earlier years made on other companies under s.20. No case under s.20 has appeared before the Courts. Europa was
10 required or summoned to attend these meetings. At no time was Europa Oil ever released from the Bench Mark levels required. Europa could not be assessed under s.20 because it is a N.Z. company. However, assessments have been made under s.108 and s.111, and as a matter of comment it has always seemed to me, in view of the fact that Europa met the Bench Mark requirements, that these assessments should not be withdrawn. Formal affidavit of Mr McCord produced together with documents referred to.

[ALL EXHIBITS ANNEXED TO AFFIDAVIT OMITTED.]

I, LOUIS J. McCORD, of Pittsburgh in the Commonwealth of Pennsylvania in the United States of America make oath and say as follows:-

1. THAT I am an officer of the Gulf Oil Corporation, a corporation existing under and by virtue of the laws of the Commonwealth of Pennsylvania in the United States of America, that I am an Assistant Secretary of the said Gulf Oil Corporation and am duly authorized by such Corporation to make this affidavit.

2. THAT exhibited hereto are:

10 (a) A book marked "A" and containing, marked as indicated, the following documents:

A1 Contract for organization of Pan-Eastern Refining Company Limited dated the 3rd April 1956 between Gulf Oil Corporation and Europa Oil (N.Z.) Limited with First Schedule (Memorandum of Association of Pan-Eastern Refining Company Limited) Second Schedule (Articles of Association of Pan-Eastern Refining Company Limited) and Third Schedule (Processing Contract between Gulf Oil Corporation and Pan-Eastern Refining Company Limited).

20 A2 Contract of Affreightment dated the 3rd April 1956 between Gulf Oil Corporation and Europa Oil (N.Z.) Limited.

- A3 Agreement of Assignment dated the 15th October 1956
between Gulf Oil Corporation and Propet Company Limited.
- A4 Letter dated the 15th October 1956 from Gulf Oil
Corporation to Europa Oil (N.Z.) Limited guaranteeing
performance of Propet Company Limited under the Contract
of Affreightment.
- A5 Petroleum Products Sales Contract dated the 3rd April
1956 between Gulf Iran Company and Europa Oil (N.Z.)
Limited.
- 10 A6 Letter Agreement dated the 11th April 1957 between Gulf
Oil Corporation and Europa Oil (N.Z.) Limited amending
the Petroleum Products Sales Contract by extending time
for payment.
- A7 Agreement relative to New Zealand Refinery dated the 3rd
April 1956 between Gulf Iran Company and Europa Oil (N.Z.)
Limited.
- A8 Pre-emptive Agreement dated the 3rd April 1956 between
Europa Oil (N.Z.) Limited and Gulf Oil Corporation.
- A9 Deed dated the 3rd April 1956 between Todd Investments
20 Limited and Gulf Oil Corporation.
- A10 Agreement dated the 3rd April 1956 between Gulf Iran
Company and Europa Oil (N.Z.) Limited relating to right
to rescind Petroleum Products Sales Contract.
- A11 Guarantee dated the 3rd April 1956 between Gulf Oil
Corporation and Europa Oil (N.Z.) Limited.
- A12 Letter dated the 24th August 1959 from Gulf Oil Corpora-
tion to Pan-Eastern Refining Company Limited advising
temporary crude oil price reduction.
- A13 Letter dated the 30th August 1960 from Gulf Oil Corporation:

temporary crude oil price reduction.

A14 Letter dated the 30th June 1961 from Gulf Oil Corporation to Pan-Eastern Refining Company Limited advising temporary crude oil price reduction.

A15 Letter dated the 12th March 1962 from Gulf Oil Corporation to Pan-Eastern Refining Company Limited advising temporary crude oil price reduction.

10 A16 Letter dated the 8th February 1963 from Gulf Oil Corporation to Pan-Eastern Refining Company Limited advising temporary crude oil price reduction.

A17 Letter dated the 21st February 1964 from Gulf Oil Corporation to Pan-Eastern Refining Company Limited advising temporary crude oil price reduction.

A18 Letter Agreement dated the 30th October 1964 from Gulf Oil Corporation to Europa Oil (N.Z.) Limited modifying the Contract of Affreightment with regard to four consecutive clean product voyages.

20 A19 Letter dated the 3rd March 1965 from Gulf Oil Corporation to Pan-Eastern Refining Company Limited advising temporary crude oil price reduction.

A20 Letter dated the 17th March 1966 from Gulf Oil Corporation to Pan-Eastern Refining Company Limited advising temporary crude oil price reduction.

A21 Letter dated the 13th March 1967 from Gulf Oil Corporation to Pan-Eastern Refining Company Limited advising temporary crude oil price reduction.

(b) A folder marked "B" and containing, marked as indicated, the following documents:

- B1 Reorganization Agreement dated the 27th December 1962
between Gulf Oil Corporation and Todd Participants Limited.
- B2 Letter Agreement dated the 27th December 1962 between Gulf
Oil Corporation and Todd Participants Limited as to in-
demnifying of Pan-Eastern Refining Company Limited.
- B3 Letter Agreement dated the 27th December 1962 between Gulf
Iran Company and Europa Oil (N.Z.) Limited terminating the
Petroleum Products Sales Contract and the Memorandum of
Agreement Relative to New Zealand Refinery both dated the
10 3rd April 1956.
- B4 Letter Agreement dated the 27th December 1962 between Gulf
Oil Corporation and Europa Oil (N.Z.) Limited terminating
the Contract of Affreightment and Guarantee Agreement both
dated the 3rd April 1956.
- B5 Letter Agreement dated the 27th December 1962 between Gulf
Oil Corporation and Pan-Eastern Refining Company Limited
terminating the 1956 Processing Contract.
- B6 Letter dated the 27th December 1962 from Gulf Oil Corporation
to Europa Oil (N.Z.) Limited concerning the exercise of
20 rights under sub-paragraph (b) of Paragraph X of the Contract
for Organization of Pan-Eastern Refining Company Limited.
- B7 Processing Contract dated the 27th December 1962 between
Gulf Oil Corporation and Pan-Eastern Refining Company
Limited.
- B8 Feedstock Supply Contract dated the 27th December 1962
between Gulf Exploration Company and Europa Refining Company
Limited.
- B9 Contract of Affreightment dated the 27th December 1962
between Propet Company Limited and Europa Refining Company
30 Limited.

- B10 Backhaul letter agreement dated the 27th December 1962 between Propet Company Limited and Europa Refining Company Limited.
- B11 Guarantee dated the 27th December 1962 between Gulf Oil Corporation and Europa Refining Company Limited.
- (c) A book marked "C" and containing, marked as indicated, the following documents:
- C1 Contract for organization of Pan-Eastern Refining Company Limited dated the 3rd April 1956 between Gulf Oil Corporation and Europa Oil (N.Z.) Limited.
- C2 Memorandum of Association of Pan-Eastern Refining Company Limited.
- C3 Articles of Association of Pan-Eastern Refining Company Limited.
- C4a Letter Agreement dated the 10th March 1964 between Europa Oil (N.Z.) Limited and Gulf Iran Company terminating the Petroleum Products Sales Contract dated the 3rd April 1956.
- C4b Letter Agreement dated the 10th March 1964 between Europa Oil (N.Z.) Limited and Gulf Oil Corporation terminating the Contract of Affreightment and the Guarantee Agreement dated the 3rd April 1956.
- C4c Letter Agreement dated the 10th March 1964 between Pan-Eastern Refining Company Limited and Gulf Oil Corporation terminating the Processing Contract of 1956.
- C4d Letter Agreement dated the 10th March 1964 between Europa Oil (N.Z.) Limited and Gulf Oil Corporation concerning the exercise of rights under sub-paragraph (b) of Paragraph X of the Contract for Organization of Pan-Eastern Refining Company Limited.

- C5 Processing Contract dated the 10th March 1964 between Gulf Oil Corporation and Pan-Eastern Refining Company Limited.
- C6 Feedstock Supply Contract dated the 10th March 1964 between Gulf Exploration Company and Europa Refining Company Limited.
- C7 Contract of Affreightment dated the 10th March 1964 between Propet Company Limited and Europa Refining Company Limited.
- C8 Ancillary Agreement dated the 10th March 1964 between Gulf Oil Corporation and Europa Refining Company Limited.
- 10 C9 Backhaul Letter Agreement dated the 10th March 1964 between Europa Refining Company Limited and Propet Company Limited.
- C10 Pre-emptive Agreement dated the 3rd April 1956 between Europa Oil (N.Z.) Limited and Gulf Oil Corporation.
- C11 Deed dated the 3rd April 1956 between Todd Investments Limited and Gulf Oil Corporation.
- C12 Guarantee dated the 10th March 1964 between Gulf Oil Corporation and Europa Refining Company Limited.
- C13 Reorganization Agreement dated the 10th March 1964 between Gulf Oil Corporation and Todd Participants Limited.
- 20 C14 Letter Agreement dated the 10th March 1964 between Gulf Oil Corporation and Todd Participants Limited as to indemnifying of Pan-Eastern Refining Company Limited.
- C15 Letter dated the 16th March 1965 from Gulf Oil Corporation to Pan-Eastern Refining Company Limited advising temporary price reductions on Kuwait and Iranian Crude Oils, gas oil and naphtha.
- C16 Letter dated the 16th March 1965 from Gulf Exploration Company to Europa Refining Company Limited advising temporary price reduction on naphtha.

- C17 Letter dated the 16th March 1965 from Gulf Exploration Company to Europa Refining Company Limited advising temporary price reduction on Kuwait and Iranian Crude Oils.
- C18 Letter dated the 16th March 1965 from Gulf Exploration Company to Europa Refining Company Limited advising temporary price reduction on gas oil.
- C19 Letter Agreement dated the 16th March 1965 between Gulf Oil Corporation and Todd Participants Limited recording consent to the reductions evidenced in the letters marked
10 C15 to 18 inclusive above.
- C20 Letter Agreement dated the 30th June 1966 between Gulf Exploration Company and Europa Refining Company Limited making additional temporary price reductions on Kuwait and Iranian Light Crude Oils.
- C21 Letter dated the 30th June 1966 from Gulf Oil Corporation to Pan-Eastern Refining Company Limited advising additional temporary price reductions on Kuwait and Iranian Light Crude Oils.
- C22 Letter Agreement dated the 30th June 1966 between Gulf Oil
20 Corporation and Todd Participants Limited recording consent to the reductions evidenced in the letters marked C20 and C21 above.
- C23 Letter Agreement dated 31st October 1970 between Gulf Exploration Company and Europa Refining Company Limited making additional temporary price reductions on Kuwait and Iranian Crude Oils.
- C24 Letter Agreement dated 31st October 1970 between Gulf Exploration Company and Europa Refining Company Limited making additional temporary price reductions on naphtha.

- C25 Letter dated 31st October 1970 from Gulf Oil Corporation to Pan-Eastern Refining Company Limited advising additional temporary price reductions on Kuwait and Iranian Crude Oils and naphtha.
- C26 Letter Agreement dated 31st October 1970 between Gulf Oil Corporation and Todd Participants Limited recording consent to the reductions evidenced in the letters marked C23 - C25 above.
- 10 C27 Letter Agreement dated 11th December 1970 between Propet Company Limited and Europa Refining Company Limited assigning Propet's rights and obligations under the Contract of Affreightment dated 10th March 1964 to Gulftankers Inc. and enclosing Guarantee of Propet Company Limited
- C28 Letter Agreement dated 20th September 1971 between Gulf Exploration Company and Europa Refining Company Limited making additional temporary price reductions on Kuwait and Iranian Crude Oils.
- 20 C29 Letter Agreement dated 20th September 1971 between Gulf Exploration Company and Europa Refining Company Limited making additional temporary price reductions on naphtha.
- C30 Letter dated 20th September 1971 from Gulf Oil Corporation to Pan-Eastern Refining Company Limited advising additional temporary price reductions on Kuwait and Iranian Crude Oils and naphtha.
- C31 Letter Agreement dated 20th September 1971 between Gulf Oil Corporation and Todd Participants Limited recording consent to the reductions evidenced in the letters marked C28 - C30 above.
- 30 C32 Letter Agreement dated 20th September 1971 between Gulf Oil Corporation and Pan-Eastern Refining Company Limited regarding prices and charges under the Processing Contract marked C5 above.

(d) A folder marked "D" and containing, marked as indicated, the following documents:

- D1 Letter dated January 30, 1959 from Propet Company Limited to Europa Oil (N.Z.) Limited regarding freight invoice deferment.
- D2 Letter dated September 22, 1960 from Associated Motorists Petrol Co. Ltd. regarding voting and payment of dividends from Pan-Eastern Refining Company, Limited.
- 10 D3 Letter dated December 1, 1960 from Gulf Iran Company to Europa Oil (N.Z.) Limited re right to defer payment of invoices.
- D4 Letter dated December 1, 1960 from Pan-Eastern Refining Company, Limited agreeing to act in accordance with the terms and conditions of the letter agreement of September 22, 1960 from Associated Motorists to Pan-Eastern Refining Company, Limited.
- D5 Letter dated March 28, 1967 from Gulf Iran Company to Europa Oil (N.Z.) Limited terminating the Petroleum Products Sales Contract of April 3, 1956.
- 20 D6 Letter Agreement dated October 4, 1963 between Gulf Oil Corporation and Europa Oil (N.Z.) Limited regarding the discharge of Gulf's obligations stipulated in paragraph 10 of the Pre-emptive Agreement.
- D7 Letter Agreement dated March 9, 1964 between Todd Participant Limited and Gulf Oil Corporation terminating the Reorganization Agreement of December 27, 1962 and the Letter Agreement of the same date concerning subscription to shares in Pan-Eastern Refining Company, Limited.
- D8 Letter Agreement dated March 9, 1964 between Gulf Iran

Company and Europa Oil (N.Z.) Limited terminating Letter Agreement of December 27, 1962 regarding the Petroleum Products Sales Contract, dated April 3, 1956, and the Memorandum of Agreement relative to New Zealand refinery, dated April 3, 1956.

D9 Letter Agreement dated March 9, 1964 between Gulf Oil Corporation and Pan-Eastern Refining Company, Limited terminating the Processing Contract between the parties dated December 27, 1962, and the

10 Letter Agreement between Gulf Oil Corporation and Pan-Eastern Refining Company, Limited dated December 27, 1962, regarding the termination of a Processing Contract made between the parties in 1956.

D10 Letter Agreement dated March 9, 1964 between Gulf Oil Corporation and Europa Oil (N.Z.) Limited terminating a Letter Agreement dated December 27, 1962 regarding the termination of the Contract of Affreightment and Guarantee Agreement of April 3, 1956, and the

20 Letter Agreement of December 27, 1962 regarding the exercise by Gulf Oil Corporation of certain rights under the Contract for Organization of Pan-Eastern Refining Company, Limited dated April 3, 1956.

D11 Letter Agreement dated March 9, 1964 between Propet Company, Limited and Europa Refining Company Limited terminating the Contract of Affreightment, dated December 27, 1962, and the Letter Agreement regarding backhaul transportation, dated December 27, 1962.

D12 Letter Agreement dated March 9, 1964 between Gulf Exploration Company and Europa Refining Company Limited

terminating the Feed Stock Supply Contract of
December 27, 1962.

D13 Letter Agreement dated March 9, 1964 between Gulf Oil
Corporation and Europa Refining Company Limited ter-
minating the Guarantee Agreement of December 27, 1962.

3. THAT in my capacity as Assistant Secretary of Gulf Oil
Corporation I have access to those files of the Corporation in
which are kept the contracts to which Gulf Oil Corporation and
its subsidiaries are parties, and having examined those files I
10 am able to say that to the best of my knowledge the above-
mentioned contracts detailed in paragraph 2 hereof are true and
correct copies of the contractual documents which are or at any
time have been in force between Gulf Oil Corporation and its
subsidiaries, or any of them, on the one part, and either Pan-
Eastern Refining Company, Limited or Europa Oil (N.Z.) Limited,
Todd Investments Limited, Europa Refining Company Limited and
Todd Participants Limited and their subsidiaries, or any of them,
or any person acting directly or indirectly on behalf of any of
them, on the other part, as reflected in the files examined by
20 me.

4. THAT to the best of my knowledge from my examination of the
files referred to in paragraph 3 above no other contractual
documents have at any time been entered into between Gulf Oil
Corporation, Propet Company Limited, Gulf Iran Company and Gulf
Exploration Company, or any of them, or any other subsidiary of
Gulf Oil Corporation, with any company or person acting directly
or indirectly in any way on behalf of either Pan-Eastern Refining
Company, Limited or Europa Oil (N.Z.) Limited, Todd Investments

Limited, Europa Refining Company Limited and Todd Participants Limited, or any of them, or any subsidiary of any such companies.

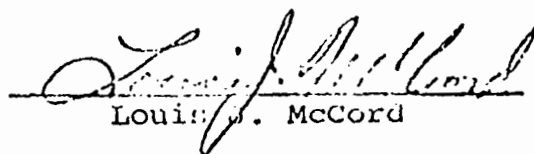
5. THAT the documents detailed in sub-paragraph (b) of paragraph 2 hereof were never acted upon by the parties thereto and were superseded by the documents detailed in sub-paragraph (c) of paragraph 2 hereof.

6. THAT also exhibited hereto and marked E1 to E39 inclusive are true copies of the accounts relating to the trading operations of Pan-Eastern Refining Company, Limited for the year of 1968.

10

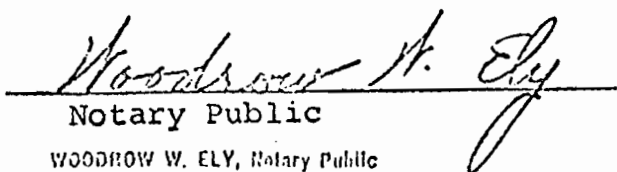
7. THAT copies of such trading accounts for the years 1966 through 1970 have been sent to Mr. Bryan Todd and I confirm that such copies are true copies of the original trading accounts of the said Pan-Eastern Refining Company Limited for the years stated.

No Commissioner of the Supreme Court of New Zealand and no Commonwealth Representative is conveniently available for the taking of this affidavit.


Louis J. McCord

SWORN at Pittsburgh in the
United States of America
this 22nd day of December, 1971
before me:-

20


Notary Public
WOODROW W. ELY, Notary Public
3318 Gulf Building, Pittsburgh, Pa.
My Commission Expires
February 17, 1973

MR RICHARDSON opens Case for the Commissioner

MORNING ADJOURNMENT.

MR TODD recalled at request of Mr Barton

BRYAN JAMES TODD (Sworn):

XXD MR RICHARDSON: I am going to read you the middle paragraph
on page 6 of Mr Newton's evidence-in-chief - "Although Gulf
is unlikely to have been certain of the extent and timing of
the increase in the posted price for Kuwait crude oil as at
end-October 1970, the new formula was probably designed to
10 cushion the effects of the expected increase in posted price
on the price of Gulf's supplies to Europa." Do you agree?
In the first place I don't know what is meant by "the new
formula". The second is this - that at the end of October
which is prior to the very significant Opec meeting which
took place at a later date, some time in November, who could
say what would be the result of that Opec International Oil
Company confrontation. It would be quite impossible for
anyone, and particularly myself, to envision in any way
what may come out of the November Opec meeting. The simple
20 answer to the adjustments agreed to between Gulf and myself is
that prior to the end of October there had been downward
movements in the values of oil. I negotiated with Gulf for
a reduction in the price of naphtha under the Gulfex Europa
Refining Supply Contract from a reduction of 12¢ a barrel which
coincided or can be explained by the somewhat recent
downward movement in postal price of naphtha of .3 of a cent,
we were negotiating on a factual depression in the market.
And similarly in respect of price of crude oil, I negotiated
a further discount which went from 18¢ to 24¢. I believe.
30 That is the complete answer, and I object to this as something
which is a completely wrong interpretation of the contemporary

situation.

I turn now to p.12 and I read you the third paragraph. "From this it appears that, envisaging the increase in posted prices in November 1970, Gulf granted Europa an increased direct discount on naphtha which, although it reduced the profit to Paneast, still cushioned Europa's naphtha price from the full effect of the posted price increase which would otherwise have applied."? Well, I suppose that what I have said already in respect of the
10 passage on page 6 applies equally to the passage which you have just read. There was no way of anyone envisaging the posted price increase in November 1970, neither Gulf nor I could have done that, and so I say the rest of the sentence is entirely inapplicable. I don't want to comment upon the language used "still cushioned Europa's naphtha price", because I don't quite know what that means.

REXM: NO QUESTIONS

IN THE SUPREME COURT OF NEW ZEALAND
WELLINGTON REGISTRY

BETWEEN EUROPA OIL (N.Z.) LIMITED

Objector

A N D THE COMMISSIONER OF INLAND REVENUE

MEMORANDUM OF McMULLIN J.

Before presenting his closing submissions for the objector Mr Barton said that he wished to call some evidence from an expert as to the meaning of the term "feedstocks",
10 the definition of which term was not in the glossary. He said that the evidence, if admitted, would be given by a Mr Wookey who was the relieving manager of the Marsden Refinery. Mr Richardson for the Commissioner said that, while he did not wish to place any undue restriction on Mr Barton, he considered that the term "feedstocks" was already defined in the contract by the parties. I said that in view of the difficulty of the matter I would not wish either party's case to fall by the wayside because of some lack of evidence on a point which may have become more in issue than was originally anticipated.
20 I said, however, that the Crown would be entitled on this basis to call evidence if it wished in rebuttal from another expert as to the meaning of "feedstocks", but that, in any case, it seemed to me that, whatever construction may be placed on the term "feedstocks" where it was at large, the indications were that the parties had themselves defined it for the purposes of their contract.

FURTHER WITNESS CALLED FOR OBJECTOR BEFORE COUNSEL PRESENTED
CLOSING SUBMISSIONS

MR PETHIG CALLS :

DONALD WILLIAM WOOKEY (Sworn): I am relieving
general manager of New Zealand Refinery Company. I am
currently manager of Shell Geelong Refinery. I have been
here since January. I have worked in refineries or matters
dealing with refineries since 1937, manufacturing, development
10 and so on since 1937, and that includes areas I have worked
in refineries in England, two in England, one in Holland,
here, Canada, Montreal and two refineries in Australia prior
to working in New Zealand.

You have before you a brief of evidence dealing with
the term "feedstock"? Yes.

"I am the relieving General Manager of New Zealand
Refinery Co.Ltd. I am currently the Manager of Shell
Geelong refinery.

The term "Feedstock" is not limited in meaning to
20 stocks received into the primary storage tankage at the
refinery at Whangarei from overseas tankers but means crude
oil, or any distillate stream or residual stream or any other
source of partially processed petroleum, as the feedstock
"charged" either to the primary distillation unit or to the
next unit in the production chain. "Feedstock" is the term
given to the "feed" or "charge" stock fed to each petroleum
processing unit.

In the case of the New Zealand Refinery the feedstocks
which are charged to the atmospheric distillation unit, which
30 is the primary or first stage unit in the refining process,
may consist of crude oil of various types, naphthas and

middle distillates of varying types which are fed or charged to this distillation unit. The streams which are produced from this distillation unit consist of an overhead stream of light gasoline and petroleum gases, a side stream of naphtha distilled or cut to the specification required for further processing in this Refinery, middle distillate similarly distilled or cut to the requirements of this Refinery, and long residue or "bottoms", being the undistilled residue after the production of the above-mentioned distillates. Part
10 of the long residue is charged as feedstock to a high vacuum unit which produces vacuum gas oil and heavy residue. Heavy residue is then used for the manufacture of asphalt by a process of blowing. The vacuum gas oil goes to intermediate storage for later reblending with other fractions. The middle distillate stream is charged as feedstock to the hydro-desulpherizer unit for the production of marketable gas oil to satisfy various New Zealand market requirements. The lighter side stream, being a design naphtha cut, is charged as a feedstock to the hydro-treater
20 unit and a stream from the hydro-treater unit is charged as a feedstock to the platformer (catalytic reformer) unit for the production of "platformate". The overhead light gasoline stream after treatment, is blended with platformate to produce (in refinery terminology) "Pool gasoline". Pool gasoline is segregated in two pools for ultimate production as premium and regular motor gasoline. Such pool gasolines are of a higher quality than the "straight run gasoline" which was the standard motor vehicle fuel in the 1920's but for modern engine requirements these gasolines are blended with
30 tetramethyl and tetraethyl lead to give higher anti-knock quality to the finished regular and premium motor gasolines on the New Zealand market today. In the processing chain between the primary distillation unit and the final processing units,

intermediate tankage is required for the purpose of holding or balancing the yields of feedstock from preceding units for feeding to the subsequent units and for blending purposes. The total intermediate storage capacity is 114,200 metric tons. Much of the feedstocks from earlier processing units are fed direct to subsequent units as "hot feedstock" and the feedstock taken from "intermediate" storage for subsequent further processing is termed "cold feedstock".

The term "feedstock" therefore in relation to
10 the New Zealand Refinery covers a range of streams from one process unit to the next as I have described. Nevertheless, the term feedstock has a much wider application than that which I have described in the present design of the New Zealand Refinery. If a catalytic cracker were installed in the New Zealand Refinery projected expansion then the feedstock for this unit would be derived from feeding or charging long residue, derived from crude oil from the primary distillation unit, to a vacuum distillation unit as
20 feedstock and the vacuum gas oil so produced then fed to the catalytic cracker.

Petroleum gases, which in the New Zealand Refinery are currently partially used as furnace feed and partially flared may also be used as feedstock for further processing into petro-chemicals. Petroleum wax, which is derived from waxy crude in certain refineries, is used as a feedstock to a detergent alkalate plant. Tetramer (a petroleum fraction) is also a feedstock for a detergent alkalate plant. In Australia Shell imports from Indonesia and elsewhere
30 certain feedstocks which are the result of primary distillation in those areas and are used as direct feedstocks to its catalytic cracking units in Australia."

XXM: Fair to say you are speaking from point of view of a refinery officer in giving your evidence? Yes.

Agree that usual meaning of "feedstock" in international oil industry is stock put into a refinery for processing?

I wouldn't agree. I have here a refinery dictionary. No, that is not so. Feedstock as I have said here is any product or hydrocarbon stream which is charged to any processing unit on a refinery no matter from whence it has come. If from within a refinery, or outside the refinery, as long as it is a charge stock to that particular refinery unit it is normally classified as a feedstock. Feedstocks may change but the definition doesn't. Feedstock contract in this case -

10 definition in that contract (Refers p.3113) - "means gas oil, naphtha, wide cut distillate, Kuwait crude oil, Iranian Light crude oil or Iranian Heavy crude oil or a mixture of two or more of them;" Agree that is recognised use of word "feedstock"? Those products can be classified as feed stocks but other products can be also. Kauri is a tree but every tree is not a Kauri. Feedstock is generic term. Any product moving from one unit to another unit is a feedstock. Term "feedstock" can mean what is put into

20 refinery and also what is charged at various stages within refining? Yes. Any charge stock to a plant which is part of a refinery, cat cracker, crude distiller, can all be put into category of feedstocks. (Reads definition at p.3113). "New Zealand feed stock requirements means the quantities of crude oil or derivatives thereof charged to the Refinery by Europa for the purpose of producing the pattern and quantity of refined products needed by Europa Marketing or Europa to meet their New Zealand market requirements for such refined products;" Definition means

30 quantity of crude oil or derivatives charged to Europa - agree recognised use of term? One, but not the recognised use. Products going from one place to the other are also feed stocks. Are you familiar with participants agreement? I

have only been in New Zealand one month. I have read the Agreement (Exhibit E).

AFTERNOON ADJOURNMENT.

Mr Wookey, turn to Clause 3.01, does it record a refinery would be constructed to have a certain tonnage per annum "and shall be designed to process suitable Middle East and Far East crude oils and naphthas"? Yes, that is the design purpose. Now turn to clause 9 - "In respect of each accounting period of the refinery company each participant

10 shall pay a fee to the refinery company for the processing of feedstock into products into products for that participant or its affiliates. The amount of the fee payable by each participant shall be equal to the sum arrived at in accordance with the formula Cf plus Cv plus or minus PLe. For the purposes of this formula - (1) Cf is the sum arrived at by applying to the total fixed costs of the refinery for the accounting period in question the processing percentage of the participant in question, subject to such adjustment as may be necessary under the provisions of Clauses 9.09 and

20 9.10. (2) Cv is the aggregate of the variable costs of the refinery for the accounting period in question properly attributable to the processing of each feedstock furnished, and the total yield of products obtained, by the participant in question or its affiliates, due regard being had, in assessing such costs, to the quality of the feedstock in question and the nature and extent of the processing necessary to produce therefrom the total yield of products obtained."

Now, would you agree that clause 9.01 in using the term "feedstock" is referring to what is put into the refinery by

30 the participants? In that particular sense it would appear to be referring to the previous ... my view is still that feedstock is a generic term of wide application, though I agree that where used in this particular clause it has a

restricted meaning, it would seem to be in that particular clause.

Now please turn to three pages further over to what is called 9.02 (subclause 4) and I'll read the first part of

it. (READ). Would you agree that again in that clause the word "feedstock" is used to refer to what is put into refinery by the participants? For deemed yield purposes it would seem that that is being used in that sense. I don't want to weary you with a lot of references but turn to Cl. 11.02 at p.29 (read). Would you agree that again in that clause the parties to this contract are using the term "feedstock" to refer to what is put into the refinery. They could be. Is it possible to identify physically a participant's petroleum after it is put into the stream at the refinery?
 10 Not really, once your feedstock which is given to refinery from

various companies is put into the refinery it is mixed together and it is not possible to identify what the particular barrel is of that particular product.

TO BENCH: Looking at clause 3.01, that would appear to suggest that this refinery was designed to process certain oils to produce certain requirements of finished products? (Nodded). Does it follow not every type of feedstock crude oil would be suitable for processing? Not every type of feedstock, cut out crude oil, if you have a specially light feedstock
 20 it may not be suitable. If you look at main products mentioned, from motor gasolines to bitumens, would that indicate to you some particular properties about the feedstock that would have to go into the refinery in first place to produce that result? Not really, there is such a variation but it could go other way round if you were given certain tonnage of certain feedstocks, it would be that based on the tonnage you would get certain products out of feedstocks. Would it be possible to say "it is no use sending us some feedstocks from Venezuela or some part of South America or a
 30 particular part of Russia, as we don't get the same result"? You can't really say that, given a desired yield you cannot automatically say from that what the feedstock shall be because there are a number of variables.

REXM: NO QUESTIONS.