

In the Privy Council

ON APPEAL FROM THE COURT OF APPEAL OF NEW ZEALAND

BETWEEN
THE COMMISSIONER OF INLAND REVENUE
Appellant
AND
EUROPA OIL (N.Z.) LIMITED
Respondent

Record of Proceedings VOLUME 1

MACKRELL & CO.,
Isigo Place,
31 Bedford Street,
Strand,
London W.C.2.

Agents for
CROWN LAW OFFICE,
Wellington,
New Zealand.
Solicitors for Appellant

MACFARLANES,
Downgate Hill House,
London E.C.A.

Agents for
MORISON, TAYLOR & CO.,
Wellington,
New Zealand.
Solicitors for Respondent

ON APPEAL FROM THE COURT OF APPEAL
OF NEW ZEALAND

BETWEEN THE COMMISSIONER OF INLAND
REVENUE

Appellant

A N D EUROPA OIL (N.Z.) LIMITED

Respondent

C A S E S

The Cases of Appellant and Respondent are contained in Volume 7.

RECORD OF PROCEEDINGS

The Record of Proceedings consists of six volumes. The principal contents of each volume are:

- Vol. 1 Supreme Court: Case Stated
Evidence for Objector
- Vol. 2 Supreme Court: Evidence for Respondent
- Vol. 3 Annexures to Case Stated
- Vol. 4 Objector's exhibits
- Vol. 5 Respondent's exhibits
- Vol. 6 Reasons for judgment of the Supreme Court
and of the Court of Appeal

INDEX OF REFERENCE

PART I

No.	Description of Document	Date	Volume and page
1	<u>IN THE SUPREME COURT OF NEW ZEALAND</u> <u>Case Stated</u> (Annexures to Case Stated are in Volume 3)	11 July 1966	<u>Vol.1</u> <u>p.2</u>
2	<u>Notes of Evidence:</u> <u>Evidence for Objector:</u> <u>Bryan James Todd</u> Examination in chief Cross-examination Re-examination		26 90a 152

No.	Description of Document	Date	Volume and page
	<u>Neville Keith Smith</u> Examination in chief Cross-examination Re-examination <u>Louis J. McCord</u> Affidavit <u>Evidence for Commissioner:</u> <u>Walter Lewis Newton</u> Examination Cross-examination Re-examination <u>Wayne Alvin Leeman</u> Examination Cross-examination Re-examination <u>Brian Henry Charles Tyler</u> Examination Cross-examination Re-examination		160 169 194 200 <u>Vol. 2</u> 2001 2066 2085 2087 2127 2137 2139 2165 2201
3	Reasons for judgment of McGregor J.		<u>Vol. 6</u> 6001
4	Formal judgment of Supreme Court	8 May 1969	6046
	<u>IN THE COURT OF APPEAL OF NEW ZEALAND</u>		
5	Notice of Motion on Appeal from judgment of McGregor J.	16 July 1969	<u>Vol. 6</u> 6047
6	Reasons for judgment of Court of Appeal: North P. Turner J. McCarthy J.	21 November 1969	6048 6078 6109
7	Formal judgments of Court of Appeal Allowing Appeal As to costs	21 November 1969 2 February 1970	6122 6123
8	Order Granting final leave to appeal to Her Majesty in Council	2 February 1970	6124

PART II - ANNEXURES AND EXHIBITS

Mark	Description of Document	Date	Page
	<u>Volume 3:</u>		
	<u>Annexures to Case Stated:</u>		
A.	Petroleum Products Sales Contract - Gulfiran and Europa	3 April 1956	3001
A1.	Letter - Gulf to Bryan Todd	11 April 1957	3015
A2.	Letter Gulfiran to Europa	10 March 1964	3016
A3.	Memorandum of Agreement Relative to New Zealand Refinery - Gulfiran and Europa	3 April 1956	3017
A4.	Contract of affreightment - Gulf and Europa	3 April 1956	3021
A5.	Letter - Gulf to Europa	10 March 1964	3046
A6.	Letter - Gulf to Europa	30 October 1964	3047
A7.	Contract for Organization of Pan-Eastern	3 April 1956	3049
	Third Schedule - Processing Contract		3057
A8.	Letter - Gulf to Europa	10 March 1964	3071
A9.	Letter - Gulf to Pan-Eastern (reduction price of crude sold to Pan-Eastern during 1958)	24 August 1959	3072
A10.	Letter - Gulf to Pan-Eastern (similar reduction for 1959)	30 August 1960	3074
A11.	Letter - Gulf to Pan-Eastern (similar reduction for 1960)	30 June 1961	3076
A12.	Letter - Gulf to Pan-Eastern (similar reduction for 1961)	12 March 1962	3078
A13.	Letter - Gulf to Pan-Eastern (similar reduction for 1962)	8 February 1963	3079
A14.	Letter - Gulf to Pan-Eastern (similar reduction for 1963)	21 February 1964	3080
A15.	Letter - Gulf to Pan-Eastern (termination when Whangarei on stream)	10 March 1964	3081
A16.	Letter - Gulf to Pan-Eastern (reduction in crude price for 1964)	3 March 1965	3082
A17.	Letter - Gulf to Pan-Eastern (similar reduction for 1965)	17 March 1966	3083

Mark	Description of Document	Date	Page
A18.	Agreement- Gulfiran and Europa (If processing Contract in-operative by force majeure, Europa may rescind Petroleum Products Sales Contract).	3 April 1956	3084
A19.	Pre-Emptive Agreement - Europa and Gulf	3 April 1956	3086
A20.	Deed: Option to Purchase Shares in Europa held by Todd Investments between Todd Investments and Gulf.	3 April 1956	3094
A21.	Guarantee between Gulf and Europa (Guarantee by Gulf of Gulfiran's performance under the Petroleum Products Sales Contract)	3 April 1956	3097
A22.	Agreement of Assignment between Gulf and Propet (Assignment by Gulf of Contract of Affreightment to Propet.)	15 October 1956	3100
A23.	Letter - Gulf to Europa (Guarantee by Gulf of Propet)	15 October 1956	3103
A24.	Agreement between Europa and BP (New Zealand) Limited (Supply to Europa of certain refined products)	18 December 1961	3014
A25.	Letter - Pacific Trading & Transport to BP Trading Limited	8 June 1962	3108
	Letter - BP Trading to P.T.T. (Confirms payment by BP Trading to P.T.T. of commission equivalent to 10 per cent of BP Trading's posted price f.o.b. Abadan, in consideration of P.T.T. procuring Europa to enter into above agreement) (A24)	12 April 1962	3109
B.	Feed Stock Supply Contract between Gulf Exploration and Europa Refining Co. Ltd.	10 March 1964	3112
B1.	Letter - Gulf Exploration to Europa Refining (reduction in price of crudes)	16 March 1965	3130
B2.	Letter - Gulf Exploration to Europa Refining (reduction in price of Naphtha)	16 March 1965	3131

Mark	Description of Document	Date	Page
B3.	Letter - Gulf Exploration to Europa Refining (reduction in price of gas oil).	16 March 1965	3132
B4.	Letter - Gulf Exploration to Europa	30 June 1966	3133
B5.	Processing Contract between Gulf and Pan-Eastern	10 March 1964	3134
B6.	Letter - Gulf to Pan-Eastern	16 March 1965	3147
B7.	Letter - Gulf to Todd Participants	16 March 1965	3148
B8.	Contract of Affreightment between Propet and Europa Refining (For transport of supplies under Feed Stock Supply Contract)	10 March 1964	3149
B9.	Letter - Propet to Europa Refining (Backhaul of surplus products)	10 March 1964	3171
B10.	Ancillary Agreement between Gulf and Europa Refining (Adjustment in freight rates if at termination of Contract of Affreightment Europa Refining has paid more than Alternate freight rates (as scheduled) had they been applicable).	10 March 1964	3176
B11.	Guarantee between Gulf and Europa Refining Company Limited (Gulf guarantees performance by Gulfex of Feed Stock Supply Contract and by Propet of Contract of Affreightment)	10 March 1964	3185
B12.	Reorganisation Agreement between Gulf and Todd Participants (If requested by Todd Participants Gulf will concur in capital reconstruction of Pan-Eastern increasing capital to 500.00 x £1 shares etc.)	10 March 1964	3188
B13.	Letter - Gulf Oil Corporation to Todd Participants	10 March 1964	3198
B14.	File of Correspondence - between Gulf and Europa leading to the letter agreements marked A9 to 14, 16 and 17.	31 January 1958 to 4 September 1961	3199

Mark	Description of Document	Date	Page
C.	Relevant portion of financial accounts furnished in support of Return for year ended 31/3/59		3246
C1.	Same for year ended 31/3/60		3250
C2.	Same for year ended 31/3/61		3254
C3.	Same for year ended 31/3/62		3258
C4.	Same for year ended 31/3/63		3261
C5.	Same for year ended 31/3/64		3265
C6.	Same for year ended 31/3/65		3273
D.	Letter - District Commissioner of Taxes to Europa	21 November 1963	3278
D1.	Letter - District Commissioner of Taxes to Europa	22 November 1963	3279
E.	Calculations used by Commissioner in arriving at amended amounts of other assessable income		3280
E1.	Statement accompanying notice of amended assessment in respect of income for year ended 31/3/60		3282
E2.	Same for year ended 31/3/61		3283
E3.	Same for year ended 31/3/62		3284
E4.	Same for year ended 31/3/63		3286
E5.	Same for year ended 31/3/64		3288
E6.	Same for year ended 31.3.59		3290
F.	Letter - Commissioner to Bryan Todd	27 June 1963	3291
F1.	Letter - Dr Lau to Commissioner - Objection to amended assessment for year ended 31 March 1960	7 April 1965	3292
G.	Letter - Dr Lau to Commissioner - Objection to amended assessments for years ended 31 March 1961 - 1964	28 March 1966	3294
H.	Statement accompanying notice of amended assessment in respect of income for year ended 31/3/65		3297

Mark	Description of Document	Date	Page
I	Calculations used in arriving at amounts of assessable income for years ended 31/3/60 and 31/3/64		3299
J	Letter - Dr Lau to Commissioner - Objection to amended assessment for year ended 31 March 1965.	11 July 1966	3300
K	Letter - Commissioner to Bryan Todd enclosing amended assessment for year ended 31 March 1960	30 March 1965	3303
K1.	Letter - Commissioner to Europa	5 April 1965	3304
K2.	Letter - Dr Lau to Commissioner - objection	20 April 1965	3306
K3.	Letter - Commissioner to Dr Lau	5 May 1965	3309
K4.	Letter - Commissioner to Europa	17 December 1965	3313
K5.	Letter - Commissioner to Dr Lau	19 May 1966	3314
	<u>Volume 4:</u> <u>Objector's Exhibits</u>		
A	Copy of Platts Oilgram	11 October 1955	4001
B.	Part of 1952 Annual Report and Accounts of Ampol Petroleum Limited		4008
C.	Part of 1961 Annual Accounts of Ampol Petroleum Limited		4010
D1.	Part of 1953 Annual Accounts of H.C. Sleigh Limited		4012
D2.	Part of 1954 Annual Accounts of H.C. Sleigh Limited		4013
D3.	Part of 1955 Annual Accounts of H.C. Sleigh Limited		4014
D4.	Part of 1956 Annual Accounts and Chairman's Review of H.C. Sleigh Limited		4015
E.	Caltex/Europa Supply Contract	21 December 1936	4017

Mark	Description of Document	Date	Page
F1.	Refinery Project Reports - Gulf	25 November 1944	4048
G.	Refinery Project Report - Bechtel-McCone	23 April 1945	4057
H.	Refinery Project Report - Snodgrass	22 September 1954	4068
I.	File of Caltex Cables and Correspondence 1955	4 February 1955 to 24 June 1955	4076
J.	Frankel and Newton paper "Profitability of International Oil Companies"		4112
K.	Correspondence between Stafford L. Sands and Controller of Exchange	5 March 1956 to 29 March 1956	4118
L.	H.C. Sleigh Limited Annual Report 1968		4129
M.	Part of New Zealand Refining Company Prospectus		4130
N.	This correspondence is Annexure Exhibit B14 to the Case Stated (pp. of Record not duplicated)		
O.	File Naphtha Reformer Discussians 1958		4132
P.	Letter - Bryan Todd to Commissioner of Inland Revenue	20 March 1963	4141
	Memorandum - Bryan Todd to Commissioner	20 March 1963	4143
Q.	Letter - Bryan Todd to Commissioner	3 July 1963	4150
R.	Letter - Minister of Finance to Bryan Todd	5 July 1963	4151
	Letter - Bryan Todd to Minister of Finance	3 July 1963	4152
S.	Extracts from Damle Report		4153
T.	Extracts from Paper by Professor Leeman at 15th Annual New East Conference 25/26 April 1963		4175
U.	Extract from Copy Agreement between Shell and Todd Bros.	September 1955	4177

Mark	Description of Document	Date	Page
V.	Copy Pan Eastern Accounts 1963		4179
W.	Correspondence AMP, Gulfiran, re extension of credit and Paneastern retentions 1960.	22 September 1960 to 1 December 1960	4181
X.	Extracts from Pan Eastern Internal Trading Accounts 1957-1965.		4186
Y.	Offer by BP Trading to Europa in respect of supply of feedstock to Whangarei Refinery	13 November 1962	4242
Z.	1936 Caltex Contract Correspondence. (Extracts only duplicated)		4256
AA.	Pan Eastern Accounts for 1961		4261
BB.	Mr Smith's note of Mr Tyler's interviews - 25/2/63		4265
CC.	Mr Smith's note of Mr Tyler's interview - 14/3/63		4272
DD.	Mr Smith's schedule of matters under inquiry by Department February 1963-March 1965		4274
EE.	Statement showing equivalent half Paneastern profits at % f.o.b. value gasoline imports of Europa		4276
FF.	Comparison of Refining Margins		4277
GG.	Crude production to satisfy Europa's requirements		4278
HH.	Summary December 1963 trading accounts of Pan Eastern		4279
II.	Certificate of Europa Oil (N.Z.) Limited as to Gasoline delivered to Defence Department between 1/9/68 and 28/2/69	21 March 1969	4284
JJ.	(Industries and Commerce Department - Imports gasoline 5/11/55		
and	(
KK.	(Industries and Commerce Department - Imports gasoline December 1968.		4285
LL.	Letter - P.T. Mahon to Solicitor-General	24 June 1965	4294

(x)

Mark	Description of Document	Date	Page
MM.	Letter - Solicitor-General to P.T. Mahon	23 July 1965	4297
	<u>Volume 5:</u> <u>Commissioner's Exhibits</u>		
1.	Gulf-Europa Contracts 1962	27 December 1962	5001
	Processing Contract	do.	
	Feed Stock Supply Contract	do.	5021
	Contract of Affreightment	do.	5039
	Letter - Propet to Europa Refining	do.	5061
	Guarantee	do.	5066
	Reorganisation Agreement	do.	5069
	Letter - Gulf to Todd Participants	do.	5079
	Letter - Gulf to Pan-Eastern	do.	5080
	Letter - Gulf Iran to Europa	do.	5081
	Letter - Gulf to Europa	do.	5082
	Letter - Gulf to Europa	do.	5083
2.	Examples of Armslength Sales 1955-1959		5084
3.	Maps showing Oil Producing Centres		5085
4.	Chart - 1956 contracts		5087
5.	Chart - 1964 contracts		5088
6.	BP-Europa merger correspondence 1959		5090
7.	Draft Processing Contract - Gulf-Europa	29 September 1955	5101
8.	Annual Reports to Shareholders of Europa 1956 and 1957	15 October 1956	5108
		19 September 1957	
9.	Todd Group of Companies - Charts		5109
			5110
10.	Pan-Eastern Accounts (1961/1965)		5112

Mark	Description of Document	Date	Page
11.	Pan Eastern Accounts (1959 and 1960)		5123
12.	Internal Gulf Memorandum	10 September 1959	5126
13.	Replacement of Exhibit 2 - Examples of Armslength Sales 1955-59		5127
14.	Extract from New York Times of 5/4/56 - "Gulf Advancing \$120,000,000 to Union Oil on Convertibles"		5129
15.	Extract from De Chazeau & Kahn - Integration and Competition in the Petrol- eum Industry		5130
16.	Mr Tyler's Minute of Meet- ing with Mr Smith	13 February 1963	5132
17.	Mr Tyler's Minute of meeting with Mr Todd and Dr Lau	21 February 1963	5135
18.	Mr Tyler's Minute of meeting with Mr Todd and Mr Smith	14 March 1963	5140
19.	Mr Tyler's Minute of meeting with Dr Lau and Mr Smith	14 March 1963	5144
20.	Mr Tyler's Minute of meeting with Mr Todd	19 March 1963	5147
21.	List of Dates relevant to production of documents		5155
22.	Mr Tyler's Interim Report No. 1	25 March 1963	5158
23.	Chief Inspector's File Minute	25 March 1963	5170
24.	Commissioner's file minute	25 March 1963	5171
25.	Pan Eastern figures obtained by Mr Tyler from Mr Smith	29 March 1963	5172
26.	Mr Tyler's minute of discussion with Mr Smith	5 April 1963	5173
27.	Condensed accounts of Pan Eastern sent to Crown Law Office		5176

Mark	Description of Document	Date	Page
28.	Commissioner's Minute	20 June 1963	5178
29.	List of Reference Books and Trade Publications considered by Mr Tyler in course of investigation		5179
30.	Mr Tyler's note of discussion with Mr Smith	17 February 1964	5181
31.	Mr Tyler's Report - "Pricing of Petroleum Products imported into New Zealand"	March 1964	5182
	Part V - Europa and Gulf		5224
32.	Mr Tyler's note of discussion with Mr Smith	2 November 1964	5267
33.	Mr Tyler's note of discussion with Mr Todd	5 November 1964	5268
34.	Mr Tyler's note of discussion between Dr Lau and Commissioner and himself	12 April 1965	5270
35.	Mr Tyler's note of discussion between Messrs Todd/Phillips/Tyler - Refinery	31 May 1965	5275
36.	Income analysis Statements This Exhibit dealt with the years from 1959 to 1966 but statements in respect of three years only were duplicated for Court of Appeal		
	Year ended 31/12/61		5277
	Year ended 31/12/62		5287
	Year ended 31/12/64		5297
37.	Colour chart "Europa's share of Pan Eastern's profit at various steps expressed as a profit per gallon on Motor Gasoline imported by Europa"		
	Produced to Supreme Court separately.		-
38.	Table of figures re Colour Chart showing Europa's share of profit at various steps		5311A
39.	Letter - Minister of Finance to Dr Lau	15 June 1966	5312

Mark	Description of Document	Date	Page
40.	Correspondence supplied by Gulf to Pittsburgh Tax Authorities	17 August 1955 to 3 August 1960	5313
41.	Pan Eastern Articles of Association	1 June 1956	5349
42.	Extract from Platt's Oilgram Price Service	20 April 1955	5370
43.	Extract from Oil and Petroleum Year Book 1958		5371
44.	Letter - L.G. Hucks (BP.NZ) to G. Rees Jenkins, The British Petroleum Company Limited	5 February 1959	5372
45.	Caltex first proposal - 1955 - Calculation by Mr Tyler of return to Europa		5374
46.	Caltex Second Proposal - Calculation by Mr Tyler of return to Europa		5375
47.	Table showing freight saving as at 1 January 1956 under Agreement with Caltex		5376
48.	A.M.P.-Gulf correspondence re 1961 accounts		5377
49.	Letter - AMP to Commissioner regarding Pan Eastern dividends received by AMP.	13 July 1965	5397
50.	Pacific Trading and Transport Co. Ltd. Balance Sheet as at 31/5/67 supplied to Commissioner by Europa		5399
51	Correspondence between P.T. Mahon and Solicitor-General	4 October 1966 to 12 February 1969	5400
	Certificate of Registrar of Court of Appeal of New Zealand		Vol. 6 6125

The Printed Record contains all documents in evidence in the Supreme Court and in the Case on Appeal in the Court of Appeal except the following omitted by consent of Solicitors.

(A) Such parts of the following Exhibits as were not referred to by the witness producing them in the Supreme Court:

<u>Exhibit</u>	<u>Nature</u>	<u>Record</u>
B	Ampol 1952 Annual Report	Vol.4, 4008
D1	H.C.Sleigh Ltd. 1953 Annual accounts	4012
D2	ditto (1954)	4013
D3	ditto (1955)	4014
D4	ditto (1956)	4015
L	H.C.Sleigh Ltd. 1968 Annual report	4129
M	N.Z.Refining Co. Prospectus	4130
T	"Arab development in the emerging International economy" by S.A.Leeman	4175
U	Agreement between Todd Bros. Ltd. and Shell Company of New Zealand Ltd.	4177
(B)	The plans attached to:	
G	Bechtel McCone Report	4057
O	Gulf Naphtha Reformer Report	4137
(C)	The following documents:	
E	Certain agreements with Caltex forming part of Exhibit E	Ex.E:4017
F	Exhibits F2 and F3 relating to refinery projects	Ex.F:4048
X	Certain of the vouchers forming part of Exhibit X	Ex.X:4186
36	Certain of the "Income analysis statements" forming part of Exhibit 36	Vol.5, 5276
	All documents annexed to the affidavit Louis J. McCord	Vol.1, 200

CHRONOLOGICAL LISTS.

During the hearing before it, the Court of Appeal requested Counsel to supply a chronological list of relevant events in the case and Counsel for each party furnished a list accordingly. For convenience, these two lists are reproduced in the Record as follows:

Appellant's list Vol.5 p.5418

Respondent's list Vol.5 p.5437

IN THE PRIVY COUNCIL

ON APPEAL FROM THE COURT OF APPEAL OF NEW ZEALAND

Between

THE COMMISSIONER OF INLAND REVENUE

Appellant

And

EUROPA OIL (N.Z.) LIMITED

Respondent

RECORD OF PROCEEDINGS

No. 1

Case Stated

Supreme Court
No. 1
Case Stated
11 July 1966

pursuant to section 32 of the Land and Income Tax Act 1954.

1. AT all material times the Objector was a duly incorporated limited liability company having its registered office at Wellington where it carried on the business of importer and distributor of petroleum products.

2. DURING material times the Objector was associated with certain other incorporated companies in the following manner:

(a) Todd Investments Limited (hereinafter called "Todd Investments")

20 Incorporation: (a) in New Zealand

(b) Date: 24 December 1935

Shareholding: Majority of shares comprising its paid-up capital owned by a group made up of members of the same family (hereinafter called "the said family"). Todd Investments owned the majority of the shares comprising the Objector's paid-up capital.

(b) Associated Motorists Petrol Company Limited (hereinafter called "Associated Motorists")

30 Incorporation: (a) In New Zealand

(b) Date: 19 March 1954

Shareholding: All the shares comprising its paid-up capital were owned by or on behalf of the Objector.

(c) Pacific Trading and Transport Company Limited (hereinafter called "P.T.T.")

Incorporation: (a) In England

(b) Date: 22 March 1962

Shareholding: All the shares comprising its paid-up capital were owned by the Objector.

- (d) Europa Refining Company Limited (hereinafter called "Europa Refining")

Incorporation: (a) In New Zealand

(b) Date: 17 July 1962

10 Shareholding: The Majority of the shares comprising its paid-up capital were owned by Todd Participants Limited, hereinafter called "Todd Participants", a company incorporated in New Zealand, and all the shares of which were owned by members of the said family.

- (e) Gulf Oil Corporation (hereinafter called "Gulf")

Incorporation: In United States of America

- (f) Gulf Iran Company (hereinafter called "Gulfiran")

Incorporation: In United States of America

Shareholding: A subsidiary of Gulf

- (g) Gulf Exploration Company (hereinafter called "Gulfex")

Incorporation: In United States of America

20 Shareholding: A subsidiary of Gulf.

- (h) Pan Eastern Refining Company Limited (hereinafter called "Pan-Eastern")

Incorporation: (a) In the Bahama Islands.

(b) Date: 1 June 1956

Shareholding: Shares comprising its paid-up capital were owned equally by Associated Motorists and Propet Company Limited, a subsidiary of Gulf.

3. DURING material times certain agreements were entered into in respect of supplies to the Objector as follows:

30 The agreements are divided into three groups as under.

FIRST GROUP

The 1956 Agreements and Amendments with Gulf and Associates.

SECOND GROUP

Agreements in respect of purchases by Objector from BP Group.

THIRD GROUP

The 1964 Agreements and Amendments with Gulf and Associates

FIRST GROUP

THE 1956 AGREEMENTS AND AMENDMENTS WITH GULF AND ASSOCIATES

<u>Title</u>	<u>Date</u>	<u>Parties</u>	<u>Summarised Effect</u>	<u>Exhibit</u>
10 <u>Petroleum Products Sales Contract</u>	3. 4.56	Gulfiran and Objector	Gulfiran agrees to sell to Objector bulk of Objector's requirements of refined petroleum products.	A
-	11.4.57	do	Extending credit terms to 120 days from date of lifting cargo	A1
-	10.3.64	do	Termination when Whangarei Refinery comes on stream.	A2
20 <u>Memorandum of Agreement relative to N.Z. Refinery</u>	3. 4.56	Gulfiran and Objector	If a refinery is established in New Zealand during the period of Petroleum Products Sales Contract, Objector's requirements of gasoline refined from crude oil produced by a Todd Company is excluded from that contract.	A3
30 -	10.3.64	do	Re termination when Whangarei refinery comes in stream.	A2 (above)
40 <u>Contract of Affreightment</u>	3. 4.56	Gulf and Objector	Objector to ship its petroleum products requirements by Gulf procured tankers to New Zealand ports, at AFR/ rates subject to alternate freight rates settlement on expiry of contract	A4
-	10.3.64	do	Re termination when Whangarei Refinery comes on stream	A5
-	30.10.64	do	Modifications for four voyages from 7 October 1964	A6

THE 1956 AGREEMENTS AND AMENDMENTS WITH GULF AND ASSOCIATES - CONTINUED

<u>Title</u>	<u>Date</u>	<u>Parties</u>	<u>Summarised Effect</u>	<u>Exhibit</u>	
10	<u>Contract for organisation of Pan-Eastern</u>	3. 4.56	Gulf and Objector	Gulf and Objector to incorporate or to procure incorporation of Pan-Eastern in the Bahamas with a capital of 100,000 x £1 shares, half each to Gulf and Objector or their nominees, whereupon Gulf to execute Processing Contract with Pan-Eastern. (Third Schedule).	A7
20	-	10.3.64	do.	Gulf will not exercise right of winding-up Pan Eastern on termination of Petroleum Products Sales Contract and Contract of Affreightment.	A8
30	<u>Processing Contract</u>		Gulf and Pan-Eastern	Gulf to sell to Pan-Eastern for 10-year term crude to produce gasoline equivalent to the quantity which Gulf-iran is to deliver to Objector. Gulf to process this crude at the expense of Pan-Eastern. Pan-Eastern to sell the resultant gasoline to Gulf.	A7 (Third Schedule)
	-	24.8.59	do	Reduction in price of crude oil sold to Pan-Eastern during 1958.	A9
40	<u>Processing Contract</u>	30.8.60	do	Ditto for 1959	A10
	-	30.6.61	do	" " 1960	A11
	-	12.3.62	do	" " 1961	A12
	-	8.2.63	do	" " 1962	A13
	-	21.2.64	do	" " 1963	A14
	-	10.3.64	do	Re termination when Whangarei Refinery comes on stream	A15
	-	3.3.65	do	Reduction in price of crude oil sold to Pan-Eastern during 1964.	A16
50	-	17.3.66	do	Ditto for 1965	A17

THE 1956 AGREEMENTS AND AMENDMENTS WITH GULF AND ASSOCIATES-CONTINUED.

<u>Title</u>	<u>Date</u>	<u>Parties</u>	<u>Summarised Effect</u>	<u>Exhibit</u>
<u>Agreement</u>	3. 4.56	Gulfiran and Objector	If processing Contract inoperative by force majeure, Objector may give notice within 2 years to rescind Petroleum Products Sales Contract.	A18
10 <u>Pre-emptive Agreement</u>	do	Objector and Gulf	From date to Dec. 31, 1966 Objector agrees not to sell its undertaking without giving first option to buy to Gulf. Consideration: \$500,000	A19
20 <u>Deed: Option to Purchase Shares in Europa held by Todd Investments</u>	do	Todd Invest.. ments and Gulf	Option to Gulf to this effect.	A20
<u>Guarantee</u>	do	Gulf and Objector	Guarantee by Gulf of Gulfiran's performance under the Petroleum Products Sales Contract	A21
30 <u>Agreement of Assignment</u>	15.10.56	Gulf and Propet	Assignment by Gulf of its rights and obligations under the Contract of Affreightment to Propet Co.Ltd. a wholly owned subsidiary of Gulf.	A22
	15.10.56	Gulf and Objector	Guarantee by Gulf of Propet	A23

SECOND GROUP

AGREEMENTS IN RESPECT OF PURCHASES BY OBJECTOR FROM BP. GROUP

(BP (New Zealand) Limited and BP Trading Limited (hereinafter called "BP Trading") are wholly owned subsidiaries of British Petroleum Company Limited of United Kingdom).

<u>Title</u>	<u>Date</u>	<u>Parties</u>	<u>Summarised Effect</u>	<u>Exhibit</u>
40 <u>Agreement</u>	18.12.61	Objector and BP (New Zealand) Ltd	Supply to Objector of certain refined Products	A24

AGREEMENTS IN RESPECT OF PURCHASES BY OBJECTOR FROM BP. GROUP-CONTINUED

<u>Title</u>	<u>Date</u>	<u>Parties</u>	<u>Summarised Effect</u>	<u>Exhibit</u>
-	12. 4.62	BP Trading to P.T.T.	Confirms payment by BP Trading to P.T.T. of commission equivalent to 10 per cent of BP Trading's posted price f.o.b. Abadan, in consideration of P.T.T. procuring Objector to enter into above agreement	A25

THIRD GROUP

THE 1964 AGREEMENTS AND AMENDMENTS - GULF AND ASSOCIATES

In view of the impending commencement of operations of the Whangarei refinery, further agreements dated 10.3.64 were entered into, some of which were varied by later agreements dated 16.3.65 and 30.6.66. These agreements are summarised below. The refinery is owned by New Zealand Refining Company Limited (hereinafter called "N.Z. Refining") in which Europa Refining held a minority interest entitling it to utilise part of the refining capacity of the refinery.

<u>Title</u>	<u>Date</u>	<u>Parties</u>	<u>Summarised Effect</u>	<u>Exhibit</u>
<u>Feed Stock Supply Contract</u>	10. 3.64	Gulfex and Europa Refining	Supply by Gulfex to Europa Refining of latter's requirements of N.Z. feed stock, and certain refined products not available from Whangarei refinery	B
	16. 3.65	do	Temporary reduction in price of <u>crude oils</u> supplied under Feed Stock Supply Contract from 1.4.64	B1
	do	do	Ditto as to <u>naphtha</u>	B2
	do	do	Ditto as to <u>gas oil</u>	B3
	30. 6.66	do	Additional temporary reduction in the price of Kuwait and Iranian light crude oils as from May 2, 1966	B4

THE 1964 AGREEMENTS AND AMENDMENTS WITH GULF AND ASSOCIATES-CONTINUED

<u>Title</u>	<u>Date</u>	<u>Parties</u>	<u>Summarised Effect</u>	<u>Exhibit</u>
10 <u>Processing Contract</u>	10. 3.64	Gulf and Pan-Eastern	Gulf to sell to Pan-Eastern quantities of crude oil equal to the quantities of crude oil required as such and the crude required to produce the equivalent quantity of other feed stocks to that which Gulfex is obliged to supply under The Feed Stock Supply Contract	B5
-	16. 3.65	do	As Gulf has temporarily reduced price of crude, gas oil and naphtha under Feed Stock Supply Contract, corresponding reduction made in prices to be paid to Pan-Eastern under the Processing Contract.	B6
20 -	do	Gulf and Todd Participants (majority Shareholder in Europa Refining)	Confirmation of above price reductions	B7
30 <u>Contract of Affreightment</u>	10. 3.64	Propet and Europa Refining	For transport of supplies under Feed Stock Supply Contract	B8
-	do	do	Backhaul of surplus products	B9
40 <u>Ancillary Agreement</u>	do	Gulf and Europa Refining	Adjustment in freight rates if at termination of Contract of Affreightment Europa Refining has paid more than Alternate freight rates (as scheduled) had they been applicable	B10
50 <u>Guarantee</u>	do	Gulf and Europa Refining	Gulf guarantees performance by Gulfex of Feed Stock Supply Contract and by Propet of Contract of Affreightment	B11

THE 1964 AGREEMENTS AND AMENDMENTS WITH GULF AND ASSOCIATES-CONTINUED

<u>Title</u>	<u>Date</u>	<u>Parties</u>	<u>Summarised Effect</u>	<u>Exhibit</u>
<u>Re-Organisation Agreement</u>	10. 3.64	Gulf and Todd Participants	If requested by Todd Participants Gulf will concur in capital reconstruction of Pan-Eastern, increasing capital to 500,000 x £1 shares etc.	B12
10 -	do	do	If Gulf requests Pan Eastern to advance to Gulf or its nominee amount paid for new shares subscribed for under the Reorganisation Agreement Gulf indemnifies Pan-Eastern if borrower fails to repay. Similar indemnity by Todd Participants.	B13
20				

A file of correspondence between Gulf and the Objector leading to the letter agreements marked "A9 to 14, 16 and 17" is annexed hereto and marked "B14".

4. IN furnishing returns of income on the undermentioned dates to the Commissioner of Inland Revenue (hereinafter referred to as "the Commissioner") for income tax purposes the Objector declared that it had derived income during the income years ended on the 31st day of March 1959 to 1965 inclusive as follows:

<u>Income year ended 31. March</u>	<u>Assessable income</u>	<u>Non-Assessable income</u>	<u>Date of receipt by the Commissioner of the return of income</u>
1959	£178,056.18. 4	£ 75,299. 5. 0	30 December 1959
1960	154,427. 8.10	118,243. 0. 0	15 December 1960
1961	186,103. 1. 0	165,206.10. 0	8 January 1962
1962	251,856. 9.11	164,012. 0. 0	24 December 1962
1963	353,765. 1. 4	426,080. 0. 0	4 February 1964
1964	840,038.12. 0	2,533,813. 0. 0	18 February 1965
40 1965	341,250. 7.10	-	8 February 1966

Copies of the relevant portions of the financial accounts furnished in support of the said returns are annexed hereto and marked "C" "C1" "C2" "C3" "C4" "C5" and "C6" respectively.

Footnote

The said return for the income year ended on the 31st day

of March 1964 was initially treated as returning as assessable income the amount of £659,411. 10. 7 shown in the profit and loss account for such year. This was for the reason that schedule 1 of the said financial accounts showing certain adjustments made in arriving at the said amount of £840,038.12.0 was not received by the Commissioner together with the said return. The objector however states that the said schedule was included with other schedules sent to the Commissioner.

5. FOLLOWING the receipt of each of the said returns for 10 the income years ended on the 31st day of March 1959 to 1964 inclusive the Commissioner made an assessment of the Objector's liability for ordinary income tax and social security income tax in respect of the income for the year to which the particular return related. Details of each such assessment and the date on which it was made are as follows:

	<u>Income year</u> <u>ended</u> <u>31 March</u>	<u>Assessable</u> <u>income</u>	<u>Non-Assessable</u> <u>income</u>
	1959	£178,056.18. 4	£ 75,299. 5. 0
20	1960	154,427. 8.10	118,243. 0. 0
	1961	186,103. 1. 0	165,206. 10. 0
	1962	251,856. 9.11	164,012. 0. 0
	1963	530,272. 0. 0	426,080. 0. 0
	1964	659,411.10. 7 *	2,532,833. 0. 0

	<u>Income year</u> <u>ended</u> <u>31 March</u>	<u>Ordinary income</u> <u>tax</u>	<u>Social Security</u> <u>income tax</u>	<u>Date of</u> <u>Assessment</u>
	1959	£ 75,611. 6. 0	£13,354. 5. 5	28 February 1960
	1960	65,600. 4. 6	11,582. 1. 2	28 February 1961
30	1961	79,093.15. 6	13,957.14. 7	7 February 1962
	1962	106,711.15. 4	18,889. 4. 0	14 February 1963
	1963	246,075.12. 0	43,520. 8. 0	20 February 1964
	1964	280,138.16. 5	49,455.17. 3	28 February 1965

* Assessed on the basis referred to in the footnote to paragraph 4 hereof.

In making the said assessment in respect of income for the income year ended on the 31st day of March 1963 the Commissioner made certain adjustments to the assessable income shown in the return for such year as follows.

Assessable income returned	£353,765. 0. 0
Increase in stock valuation as advised in letter of 22 November 1963	10,353. 0. 0
Motor Spirits Industry Pool provision as advised in letter of 21 November 1963	<u>216,154. 0. 0</u>
	<u>£580,272. 0. 0</u>

Copies of the said letters dated the 21st day of November 1963
10 and the 22nd day of November 1963 are annexed hereto and
marked "D" and "D1" respectively

6. IN the month of February 1963 the Commissioner began an
investigation into the affairs of the Objector. At that
time and also at the date of the letter dated the 27th June
1963 hereafter in this paragraph referred to, the latest
return of income which had been furnished to the Commissioner
by the Objector was, as appears from the particulars of dates
of receipt set forth in paragraph 4 hereof, in respect of
the income year ended on the 31st day of March 1962. This
20 investigation included (inter alia) the arrangements made
by the Objector for the supply to it of petroleum products.
In the course of such investigation the Commissioner had
knowledge of and considered the Petroleum Products Sales
Contract (Exhibit "A") and related agreements dated 3rd
April 1956 of the First Group referred to in paragraph 3
hereof. By letter dated the 27th June 1963 (Exhibit "F")
the Commissioner notified the Objector that after consultation
with the Solicitor-General he proposed to take no action
to disturb the present position.

30 7. SUBSEQUENTLY the Commissioner made one or more amended
assessments of the Objector's liability for ordinary income
tax and social security income tax in respect of income for
each of the income years ended on the 31st day of March 1959
to 1964 inclusive. Details of the latest assessments so
made before the 18th day of December 1965 and the dates on
which such latest assessments were made are as follows:

<u>Income</u> <u>year ended</u> <u>31 March</u>	<u>Proprietary</u> <u>assessable</u> <u>income</u>	<u>Other assessable</u> <u>income</u>	<u>Total assessable</u> <u>income</u>
1959	-	£165,240. 18. 4	£165,240. 18. 4
1960	-	673,866. 8. 10	673,866. 8. 10
1961	-	635,914. 1. 0	635,914. 1. 0
1962	£637,927. 6. 7	828,126. 9. 11	1,466,053. 16. 6
1963	670,680. 0. 0	1,014,409. 6. 2	1,685,089. 6. 2
1964	732,920. 0. 0	1,493,237. 19. 2	2,226,157. 19. 2

10

<u>Income</u> <u>year ended</u> <u>31 March</u>	<u>Non-Assessable</u> <u>income</u>	<u>Ordinary</u> <u>income tax</u>	<u>Social security</u> <u>income tax</u>
1959	£ 75,299. 5. 0	£ 70,164.10. 0	£12,393. 1. 5
1960	118,243. 0. 0	286,361.19. 9	59,539. 19. 8
1961	165,206.10. 0	270,263. 9. 0	47,693. 11. 1
1962	162. 0. 0	363,653.12. 2	62,109. 9. 9
1963	180. 0. 0	434,363.17. 8	76,080. 14. 0
1964	180. 0. 0	637,865.15. 4	111,992. 17. 0

Date of assessment

20

1959	17 December 1965
1960	30 March 1965
1961	17 December 1965
1962	17 December 1965
1963	17 December 1965
1964	17 December 1965

Details of the calculations used in arriving at the said amounts of other assessable income are contained in the schedule annexed hereto and marked "E". Copies of statements which accompanied notices of the said amended assessments in respect of income for the years ended the 31st day of March 1960 to 1964 inclusive are annexed hereto and marked "E1" "E2" "E3" "E4" and "E5" respectively.

8. PRIOR to making the amended assessments in respect of income for the income years ended on the 31st day of March 1959 and 1963 referred to in the preceding paragraph the Commissioner on the undermentioned dates made amended assessments of the Objector's liability for ordinary income tax and social security income tax in respect of income for such years as follows:

Income Year ended 31 March 1959

Assessment made on the 26th day of March 1964

Assessable income returned	£178,056. 18. 4	
Add - adjustments	£17,988	
assessed as		18,000. 0. 0
Assessable income		196,056. 18. 4
Ordinary income tax		83,261. 7. 5
Social security income tax		£14,704. 5. 5

Assessment made on the 5th day of April 1965

10	Assessable income	£172,904. 18. 4	
	Ordinary income tax	73,421. 14. 0	
	Social security income tax	12,967. 17. 5	

A copy of the statement which accompanied notice of the last mentioned agreement is annexed hereto and marked "E6".

Income Year Ended 31 March 1963

Assessment made on the 7th day of March 1964

	Assessable income per assessment referred to in paragraph 5 hereof	£530,272. 0. 0	
	Non-assessable income	426,030. 0. 0	
20	Ordinary income tax	246,304. 4. 7	
	Social security income tax	43,520. 8. 0	

9. BY letter dated the 30th day of March 1965 enclosing the amended notice of assessment for the income year ended on the 31st day of March 1960 referred to in paragraph 7 hereof the Commissioner advised the Objector that further information had become available since June 1963 and upon reconsideration by the Solicitor-General of the legal position in the light of this information he had been advised by the Solicitor-General to disallow part of the deduction claimed in respect of expenditure by the Objector on supplies to it under the contracts. He had decided to act accordingly and had therefore made the amended assessments. The said letter

is the letter marked "K" which is referred to in paragraph 17 hereof.

10. THE Objector received the following sums from Associated Motorists on the dates respectively referred to hereunder. Each such sum was paid out of moneys received by Associated Motorists from Pan-Eastern:

	<u>Date</u>	<u>£ N.Z.</u>
	31.3.59	75,781. 5. 0
	17.2.60	100,375. 0. 0
10	19.1.61	150,562. 10. 0
	23.1.62	150,562. 10. 0
	23.1.63	100,375. 0. 0
	"	100,375. 0. 0
	29.4.63	200,750. 0. 0
	11.11.63	202,750. 0. 0
	18.3.64	2,323,000. 0. 0
	27.3.65	404,000. 0. 0

11. P.T.I. received from BP Trading the following sums on the dates respectively referred to hereunder.

	<u>Date</u>	<u>£ N.Z.</u>
	7.6.63	59,526. 8. 10
	23.5.64	69,029. 13. 9
	23.9.64	8,256. 4. 0
	10.9.65	23,098. 11. 1
20	27.1.66	12,747. 0. 3

12. THE Objector objected to the assessment in respect of income for the income year ended on the 31st day of March 1960 referred to in paragraphs 7 and 9 hereof on the grounds set forth in its adviser's letter dated the 7th day of April 1965 a copy of the relevant portion of which is annexed hereto and marked "F1". (The letter dated the 27th day of June 1963 referred to therein is Exhibit "F").

13. THE Objector objected to the assessments in respect of income for the income years ended on the 31st day of March 1959 and 1961 to 1964 inclusive referred to in paragraph 7 hereof on the grounds set forth in its adviser's letter dated the 28th day of March 1966. A copy of such letter is annexed hereto and marked "G".

14. THE Commissioner on the 12th day of May 1966 made an assessment of the amount on which in his judgment ordinary income tax and social security income tax ought to be levied

on the Objector and of the amount of such taxes in respect of income for the income year ended on the 31st day of March 1965 as follows:

<u>Proprietary assessable income</u>	<u>Other assessable income</u>	<u>Total assessable income</u>
£731,592. 0. 0	41,011,748.15. 0	£1,743,340.15. 0
<u>Non-assessable income</u>	<u>Ordinary income tax</u>	<u>Social security income tax</u>
10 £857.13. 6	£433,233. 3. 4	£75,831. 3. 2

Copies of statements accompanying notice of such assessment are annexed hereto and marked "H".

15. THE Commissioner allowed in part the objections referred to in paragraph 12 hereof (in respect of the income year ended on the 31st day of March 1960) and in paragraph 13 hereof (in respect of the income years ended on the 31st day of March 1959 and 1961 to 1964 inclusive) and accordingly on the 19th day of May 1966 made amended assessments of the Objector's liability for ordinary income tax and social security income tax in respect of income for the income years ended on the 31st day of March 1962 and 1964 and on the 25th day of May 1966 made an amended assessment of the Objector's liability for ordinary income tax and social security income tax in respect of income for the income year ended on the 31st day of March 1960. Details of the amended assessments so made are as follows:

<u>Year ended 31 March</u>	<u>Proprietary assessable income</u>	<u>Other assessable income</u>	<u>Total assessable income</u>
1960	-	£661,204. 8. 10	£ 661,204. 8.10
30 1962	£637,927. 6. 7	828,126. 9. 11	1,466,053.16. 6
1964	708,148. 0. 0	1,466,367. 16. 10	2,174,515.16.10
	<u>Non-assessable income</u>	<u>Ordinary income tax</u>	<u>Social security income tax</u>
1960	£118,243. 0. 0	£280,980. 9. 0	£49,590. 6. 9
1962	162. 0. 0	354,653. 12. 2	62,109. 9. 9
1964	780. 0. 0	626,446. 3. 5	109,977.11.10

Details of the calculations used in arriving at the said

amounts of assessable income in respect of the income years ended on the 31st day of March 1960 and 1964 are contained in the schedule annexed hereto and marked "I". The said amended assessment in respect of the income year ended on the 31st day of March 1962 involved a reduction in the amount of tax only, the amounts of income remaining as set out in paragraph 7 hereof.

16. THE Objector objected to the assessment in respect of income for the income year ended on the 31st day of March 1965 referred to in paragraph 14 hereof on the grounds set forth in its adviser's letter dated the 11th day of July 1966 a copy whereof is annexed hereto and marked "J".

17. ANNEXED hereto and marked "K" "K1" "K2" "K3" "K4" and "K5" are copies of letters or copies of relevant portions of letters which passed between the Commissioner and the Objector or the Commissioner and the Objector's adviser or the Commissioner and the Objector's Chairman of Directors in relation to the aforesaid objections.

18. THE Commissioner considered the objection referred to in paragraph 16 hereof and allowed the objection in respect of marketing legal expenses £7,916. 17. 9. Accordingly the Commissioner on the 30th day of August 1966 made an amended assessment of the amount on which in his judgment income tax and social security income tax ought to be levied on the Objector and of the amount of such taxes in respect of income for the income year ended on the 31st day of March 1965 as follows:

Assessable proprietary income as previously	£731,592. 0. 0
Other assessable income as previously	<u>1,011,742. 15. 0</u>
30 Assessable income as previously	1,743,340. 15. 0
Less marketing legal expenses	<u>7,916. 17. 9</u>
Assessable income	<u>1,735,423. 17. 3</u>
Non-assessable income	<u>857. 13. 6</u>
Ordinary income tax	<u>429,863. 8. 11</u>
Social security income tax	<u>70,417. 7. 10</u>

19. UPON the remaining objections referred to in paragraphs 12, 13 and 16 being disallowed the Commissioner was required to state this case.

20.

1. The Objector contends that the Commissioner was wrong in disallowing as a deduction in each of the years in question the proportions of cost price of purchases referred to in Schedules "E", "I" and "H" thereof. The grounds for such contention are:

- 10 (a) (i) Following inquiry into the affairs of the Objector the Commissioner considered in 1963 the liability of the Objector to tax arising out of the contracts involving the Objector, Gulf, Gulfiran, Pan-Eastern and Propet and in due course determined that the Objector was not liable for the additional tax now claimed in the amended assessments referred to in paragraphs 7, 14 and 17 hereof. The Commissioner's letter of the 27th day of June 1963 (Exhibit "F") was a notification to the Objector of the Commissioner's said determination. The said determination was in fact and in law an exercise by the Commissioner of his statutory discretion under section 22 and/or 111 of the Land and Income Tax Act 1954 whereunder he determined that amended assessments would not be made for the year ended 31 March 1964 or for any previous years.
- 20
- 30 (ii) In making the said amended assessments against the Objector for the years ended 31 March 1960 to 1964 inclusive the Commissioner reversed his own determination notified in his said letter dated 27 June 1963 (Exhibit

"F") in that he disallowed as a deduction in each of the said years such part of the total purchase price for supplies paid to Gulfiran in each year as was equivalent to one half of the income earned by Pan-Eastern.

(iii) The reason advanced by the Commissioner in his letter to the Objector dated 30 March 1965 (Exhibit "K") for making the said amended assessments does not itself constitute a lawful justification for the re-exercise of a statutory discretion which had already been exercised in 1963 in respect of the identical subject matter with knowledge of relevant facts and circumstances surrounding the derivation of income by the Objector from the Contracts hereinbefore described.

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(iv) By reason of the foregoing the Objector contends that the Commissioner was precluded by his determination notified to the Objector in the said letter of 27 June 1963 from making on the 30th day of March 1965 and on later dates the said amended assessments for the years ended 31 March 1960 to 1964 inclusive.

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(v) By reason of the foregoing the Objector further contends that the said determination communicated to the Objector by the Commissioner's said letter of 27 June 1963 was intended by the Commissioner to be binding on himself and to be acted on by the Objector. On dates subsequent to receipt of the said letter and acting in reliance on the determination contained therein the Objector negotiated and completed the series of contracts described in paragraph 3

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3 hereof as the "1964 agreements and amendments with Gulf and associates" and the Objector also distributed by way of dividends as tax-paid profits the sums of money which the Commissioner in his said amended assessments now claims is assessable to tax.

- 10 (b) (i) In respect of the groups of agreements described in paragraph 3 hereof as "The 1956 Agreements and Amendments with Gulf and Associates"
- "Agreements in respect of purchases by the Objector from the BP Group"
- "The 1964 Agreements and Amendments with Gulf and associates"
- no agreement or agreements or arrangement to which the Objector was a party had or has the purpose or effect of in any way altering the incidence of income tax payable by the Objector or of relieving the Objector from its liability to pay income tax within the meaning of s.103 of the Act.
- 20 (ii) if the said s.103 is applicable to the 1956 and 1964 groups of agreements (which is denied) then the application of the said section must in each case either annihilate the Petroleum Products Sales Contract and Feedstock Supply Contract thus leaving no income to be taxed in the hands of the
- 30 Objector or leave the said Contract unimpaired which thus results in no further assessable income coming notionally into the hands of the Objector.
- (iii) if the said s.103 is applicable to the 1956

and 1964 groups of Agreements (which is denied) then whatever Agreement or Agreements are annihilated as a result of the operation of the said Section, the result cannot be to bring further assessable income into the hands of the Objector.

- 10 (c) The Objector has in the case of each of the said groups of agreements paid to a third party as part of the purchase price for goods bought by it in the course of its business the respective amounts disallowed by the Commissioner and set out in the said Schedules "E", "I" and "H", and the amounts of such payments constitute in each case expenditure exclusively incurred by the Objector in the production of assessable income within the meaning of s.111 of the said Act.
- 20 (d) No part of the expenditure incurred by the Objector referred to in the last preceding sub-paragraph hereof constituted an investment or expenditure of capital on the part of the Objector within the meaning of s.112(a) of the said Act.
- (e) Any contention by the Commissioner that the expenditure incurred by the Objector referred to in sub-paragraph (c) of this paragraph constituted an investment or expenditure of capital amounts to the raising of a fresh ground for the amended assessments hereinbefore referred to and the Commissioner is precluded from now setting up this or any other ground other than those upon which he based each of such amended assessments.
- 30 (f) In respect of the 1956 and 1964 groups of agreements the Commissioner has made amended assessments of proprietary tax against Associated Notorists whereunder he implicitly asserts the validity for income

tax purposes of each and all of the said agreements and by reason of making the said amended assessments of proprietary tax the Commissioner is precluded from making contemporaneous amended assessments against the Objector whereunder he asserts that the same agreements are absolutely void.

(g) In respect of the agreements involving purchases by the Objector from the BP Group the Commissioner has assessed for New Zealand income tax the income earned during the relevant years by P.T.T. and has at the same time assessed the Objector with proprietary tax in respect of the said income received by P.T.T. and by reason of the said assessments the Commissioner is precluded from making contemporaneous amended assessments of income tax against the Objector whereunder he asserts that the said agreements are absolutely void.

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2. The Objector contends that the Commissioner was wrong in treating as assessable income of the Objector pursuant to s.88(a) of the said Act the sums designated under the heading of "Increase in provision for Motor Spirits Industry Pool" in the said Schedules "E", "I" and "H". The grounds for such contention are that wholesale prices of petrol based on margins for wholesalers such as the Objector are fixed by the Minister of Industries and Commerce. The excess or shortage of income arising from such margin is held by the Objector and other wholesalers in the industry pending a correction through either variation in the landed cost price of imported products or by variation in the selling price at the direction of the said Minister. In the case of a shortage in any relevant year the Objector included the full price margin in its receipts and debited the Motor Spirits Industry Pool and followed the converse procedure

in any year when there was an excess. The Objector contends that credits appearing in the accounts of the said Pool do not constitute income of the Objector.

21. THE Commissioner contends:

A. With relation to the adjustment of the assessable income of the Objector for each of the years in question in respect of the purchase of petroleum goods by the Objector:

10 (1) That he was not precluded from making the assessment of all or any of the amended assessments to which the objections herein relate.

(2) That the sums designated under the head of "proportion of cost price of purchases disallowed" in the said Schedule "E" (relating to the years ended 31 March 1961, 31 March 1962 and 31 March 1963), and in the said Schedule "I" (relating to the years ended 31 March 1960 and 31 March 1964) and under the head of "proportion of cost of purchases disallowed" in the said Schedule "H" (relating to the year ended 31 March 1965) were not exclusively incurred
20 in the production of assessable income of the Objector for the respective years and are barred from deduction by virtue of s.110 of the Land and Income Tax Act 1954 in that they are not deductible expenditures expressly provided for under s.111 or any other provision of the said Act.

(3) If it is contended by the Objector that the said sums or any of them were expended under a contract or contracts entered into in order to assure a long term source of supply of petroleum products for the Objector, that such expenditure is barred from deduction by virtue of s.112(a)
30 of the said Act as being an investment or expenditure of capital.

(4) That (a) The Petroleum Products Sales Contract annexed hereto and marked "A" and the related agreements annexed hereto and marked "A1" to "A23" both inclusive, the incorporation of Pan-Eastern and the

carrying out of the said Contract and
agreements

- (b) The agreements between the Objector and
BP (New Zealand) Limited and between P.T.T.
and BP Trading annexed hereto and marked
"A24" and "A25" respectively, the
incorporation of P.T.T. and the carrying
out of the said agreements
- (c) The Feed Stock Supply Contract annexed hereto
and marked "E" and the related agreements
annexed hereto and marked "B1" to "B13" both
inclusive, the Contract and agreements
referred to in (a) of this sub-paragraph,
the incorporation of Pan-Eastern and the
carrying out of the Contracts and
arrangements

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in each case constitute an arrangement having the purpose
or effect of altering the incidence of income tax or
relieving the Objector from its liability to pay income
tax under s.108 of the said Act.

20

AND THAT

- (d) the effect of applying the said s.108 is
that the Objector had a rebate entitlement or
other profit or gain at the end of each of the
years in question or derived a rebate or other
profit or gain during such year in either case
equal to the sum in respect of such year
referred to in sub paragraph A (2) of this
paragraph, which sums constitute assessable
income of the Objector for the respective
years
- (e) if contention (d) above is rejected the
effect of applying s.108 is that the Objector
derived assessable income

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(i) as and when it received the sums referred to in paragraph 10 hereof or as and when it became able through its control of Associated Motorists to procure payment to itself of these sums

(ii) as and when it became able through its control of P.T.T. to procure payment to itself of the sums comprising the amounts referred to in paragraph 11 hereof

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and the Commissioner will ask this Honourable Court, if it accepts contention (e) above, to exercise its powers of making and/or increasing assessments in respect of the year ended 31 March 1964 and of amending or reducing the assessments for each of the other years in question.

B. With relation to the adjustment of the assessable income of the Objector for each of the years in question in respect of the provision regarding the Motor Spirits

20

Industry Pool:

That the sums designated under the head of "Increase in provision for Motor Spirits Industry Pool" in the said Schedule "E" (relating to the years ended 31 March 1961 and 31 March 1963) in the said Schedule "I" (relating to the years ended 31 March 1960, 31 March 1962 and 31 March 1964) and under the head "Increase in Motor Spirits Industry Pool Balance" in the said Schedule "H" (in respect of the year ended 31 March 1965) constituted assessable income of the Objector for each of the respective years, being profits or gains derived by the Objector from a business under s.83(a) (now s.83(1)(a)) of the said Act.

30

AND the Commissioner will ask this Honourable Court, if it does not accept this contention B, to exercise its powers of making or increasing the assessment in respect of the year ended 31 March 1959 by increasing that assessment by the sum of £21,181 being the amount by which the assessable income of the Objector for that year was reduced by the Commissioner in respect of the Motor Spirits Industry Pool.

22. WITHOUT detracting from the generality of the Commissioner's Contentions in paragraph 21 hereof, the
10 Commissioner does not necessarily accept any allegations of fact in the Objector's contention nor the factual basis upon which they are claimed to be made.

23. THE questions for determination of this Honourable Court are:

Whether the Commissioner acted incorrectly in making the assessments in respect of income for the years ended 31st March 1959, 1961 and 1963 referred to in paragraph 7 hereof and for the years ended 31st March 1960, 1962 and 1964 referred to in paragraph 15 hereof and for the year ended
20 31st March 1965 referred to in paragraph 18 hereof, and if so, in what respects should such assessment or assessments and which of them be amended.

DATED at Wellington this 11th day of July 1966

'D.A. Stevens'

Commissioner of Inland Revenue

Supreme Court
 No. 2
 Objector's
 evidence
 B.J. Todd
 examination

SUPREME COURT

NO. 2

NOTES OF EVIDENCE

10 MAHON OPENS AND CALLS

BRYAN JAMES TODD: I am Managing Director of Europa Oil (K.Z.) Limited. Associated Motorist Petrol Company, wholly owned subsidiary of Europa.

I have been associated with the affairs of Europa since the incorporation in 1931 of Associated Motorists Petrol Company Limited. I was associated with it before the incorporation. I took part in the original concept and it was incorporated in October 1931 and I became General Manager. What was the company's first supply contract of gasoline?

- 20 First supply contract in which I participated in the negotiation was made with the Russian interests - the contract was between my company then known as Associated Motorists Petrol Co. (A.M.P. Limited) - at a later point of time the same name was adopted for a subsidiary company, but at the time of the contract with Russian Oil Company it was made with A.M.P. This Russian contract was around 1932. The contract was made in 1932. That contract ran until the end of 1936. I then made after various negotiations a new contract with Caltex. We had already experienced difficulties in procuring
- 30 supplies under the Russian contract during the period of its operation and we were in the position where we had to have some security for continuation of supplies. I took part in negotiations for 1936 Caltex contract - indirectly a very

prominent part. Directly, no. My brother Desmond was the direct negotiator and I played an indirect part in the negotiations at that time.

Coming back for the moment: this contract ran from 1936 and throughout the war years until after the war.

You were appointed Managing Director in mid-1930s? Yes. My father died in 1942 and I was then appointed Chairman of Directors - there was no title named Europa - this was still A.M.P. At that time I was Chairman and Managing
10 Director. And about when was it that Europa Oil took over the functions of A.M.P.? It was simply a change in the name of the company. I cannot give dates; it would be some time in the early 1950's I would think.

Since the time when you became Managing Director you travelled extensively overseas in the interests of the Company? Yes. And I have gained some knowledge of the oil industry by that means. I put emphasis on some. What particular area have you some knowledge of? Especially the area in which the Caltex Company with whom I had regular
20 dealings was engaged - that is east of the Suez area. And did you get some knowledge as time went by of posted price concept in oil prices? Yes, I gained knowledge of that in the days before the execution of the contract with the Russians, that is in 1930 to 1932 period. And how did that work? Posting price? The oil industry both domestically and internationally depends upon a service which is provided daily by Platts Oilgram, and associated with that a weekly report of market quotations in the National Petroleum News which is jointly owned by the same organisation as owns
30 Platts Oilgrams. And this Platts Oilgram and National Petroleum News obtains market quotations for crude oil and products? Yes. On what basis was the posted price prepared - who are the persons who state what the posted price is? The posted prices - and also market quotations - are

the result of the gathering of information from widespread sources by Platts Oilgram staff and I guess agents, and the compilation of those daily activities is published in the daily Platts Oilgram publication.

I produce as EXHIBIT A a photo copy of an issue of Platts Oilgram for demonstration purposes. Point out the information dealt with? This exhibit is under date of 10th May 1967 - no, I am looking at the invoice date which Europa Oil as a subscriber has received dated 10th May 1967. On
10 the invoice are stated the conditions governing the gathering and reporting of oil prices and news events by Platts Oilgram. The attached copy on the second page is the Chicago edition which is airmailed to us dated Tuesday 11th October 1955.

TO BENCH: Just below the date in that area is a lot of illegible typing - does that matter - on the front page? I can decipher it. Europa Oil N.Z. ...

TO COUNSEL: The specimen tendered here was taken at random, Tuesday, 11th October 1955, and shows "Prices for Business day of 10th October 1955" and then news items briefly reported -
20 eleven pages of prices covering the principal markets of the world. They cover different types of crude oil and petroleum products, different localities in the world where they have been sold and they give prices operating at each market area.

Turning to the fourth page of prices - find there Carribean and Far East Refined Product Prices - Page 6/ - comment on what these figures mean and what is dealt with there? These figures deal with refined products prices - and they refer under the respective five columns of sources in
30 the Carribean - six columns - Carribean and Far East - refer to reported prices posted by a range of named companies who have export facilities, at those respective places. And they cover the various grades of petroleum products which are the subject of exports as listed. Taking one example -

Motor Gasoline division - 93 octane premium figure under
Aruba 11.5? That is the quotation which Esso Export
Corporation offers to sell 90 octane premium ex their
refinery port at Aruba in the Carribean - 11.5 means
11.5 U.S. cents per U.S. gallon. Same example, 93 octane does
not have figures for first column? That means that there is
no 93 octane gasoline available.

TO BENCH: There seems to be a typical example of 79 octane
available at all these six places apparently? Yes.

10 TO COUNSEL: Any other point you want to mention there? No.

So that this is the method by which industry is advised from
day to day of market rates right throughout the world?
Yes.

Now moving to something else: would you give us a
brief description of some of the changes that have taken place
in the oil industry after World War II in regard to sources
of production? Before World War II what was the principal
production and export area? Before World War II, and going
to the time we made our Russian contract, there were only two
20 sources on which export prices were published. Roumanian
export prices ex Black Sea, Constanta, and the United States
Gulf of Mexico - United States at that time - I speak of
the early thirties - was the major oil producing and major
oil exporting country in the world. The Constanta prices
had little bearing upon world trade. The United States
Gulf of Mexico prices were the accepted price indices for
world trading in petroleum products.

Before World War II the large discoveries were
made in Venezuela and I think I am right in saying that the
30 market quotations for world values were extended to cover the
United States Gulf of Mexico and the Carribean. The
Carribean reflecting the volume derived from Venezuela.

Then emergence of Persian Gulf. It is well known
that around about 1908 I think a large discovery of oil had

been made in what was then known as Persia and now known as Iran by a company controlled by the British Government which was then known as Anglo-Persian Oil Company but has subsequently changed its name to the British Petroleum Oil Company, and perhaps for convenience I refer to it as British Petroleum Company. No other discoveries were made in - I should add that a long time back in history oil was discovered in the Dutch East Indies but the Dutch East Indies whilst being an important geographical source for Australia and New Zealand
10 is not and never has been regarded as an oil producing country of any great substance in the world scene.

In 1934 oil was discovered in the island of Bahrein in the Persian Gulf and that discovery was made by the Standard Oil of California which company for mutual benefits made a fifty-fifty partnership with a very large American Oil Company now known as Texaco Incorporation. They formed this jointly owned subsidiary domiciled in the Bahamas (or registered in the Bahamas) to jointly carry out the functions which they envisaged. The Corporation was California Texas
20 Oil Company Limited.

In pre-war years steps were taken to establish production from Bahrein and immediately after World War II there was a very quick acceleration in oil production in the Middle East area. It is right to say that there was an immediate acceleration in the exploration for oil throughout the Middle East/Persian Gulf area following the Bahrein discovery. And vast discoveries had already been made in Saudi Arabia, also a concession held jointly by Standard Oil of California and by Texaco. In Kuwait, a Sovereign State
30 under British protection, the discovery was made by the Gulf Corporation and the exploitation of that discovery was undertaken jointly by Gulf and B.P. The war years intervened and these vast discoveries did not effectively come onto the market until the post-war period. By the time you get to

around 1950 the Persian Gulf had developed to a major
production area? By 1950 from memory the Persian Gulf area
was beginning to have an impact on world production. When
was it that Platts Oilgram began to cover quotations for
Persian Gulf crude oil? I think the crude oil postings
commenced about the mid fifties. I am not sure of the date.
And is it also right to say that by 1957 in addition to the
Abadan refinery owned by B.P. there had been established large
scale refineries in Saudi Arabia and Bahrein, and a partial
10 refinery in Kuwait, and posted prices for products were also
by 1957 being published by Platts Oilgram? That would be
correct, yes. Prior to 1957 had the product prices in the
Persian Gulf area been listed as opposed to official posted
prices? I can only say this: that according to my knowledge
up to 1957 I was only aware of the posted prices for crude
oil. I had no knowledge of the so-called listed prices for
products. What listed prices were - who listed them?
I had no knowledge at all in 1957. I know distinctions now
between published posted prices which emerged in Platts
20 Oilgram 1957 and the so-called listed price. The difference
is that the listed price was a privately listed price, not
for general publication.

Now these Middle East countries, with regard to
the production of oil and refining of oil in those countries,
is there any tax or royalty paid by the producing company on
production of crude oil? Yes. How does that work? To
answer that I would need to give some history of facts and
royalties. The B.P. Company which had made a concession
agreement with the Ruler of Persia back in 1908 agreed to pay
30 eight cents per barrel royalty: fixed royalty to be paid in
gold. That arrangement survived until Mousssadeq confiscated
the properties of B.P., the producing fields and the Abadan
Oil Refinery. This was about 1950 I think. In Venezuela
at some point in time, perhaps some time in the 1940's, the

oil companies there made their peace with the Venezuelan Government on the vexed question of royalty or tax by agreeing to pay a tax of 50% of the realised value of the oil produced. The upset in Iran was largely due to the known situation in Venezuela and the more lenient attitude of the emerging American companies with their new discoveries in the other Persian Gulf areas.

SHORT ADJOURNMENT.

What was the position then in Iran? Between 1950,
10 the date of confiscation, and 1954, Iran completely ceased producing oil and the Abadan Refinery was non-operative. After 1954 - during 1950-1954 Mousadeq was deposed and the Iranian Government invited some solution to the problem which resulted in a consortium of international oil companies being established to acquire the original B.P. concession, production concession and the Abadan Refinery and the shareholding of the consortium was eventually resolved at 40% B.P., about 23% Royal Dutch Shell, 7% each of a number of American oil companies including Gulf Oil Corporation, and a few percent.
20 divided up amongst about seven other relatively small American companies. One of the 7% participators was the French C.F.P. company.

Now moving to this - what was the ultimate agreement reached on the amount of tax paid on production? By the time the consortium agreement was reached, an agreement had been made between the other Middle East States and the Oil companies in those other areas which reflect the same terms as the Venezuelan agreement. That was 50% tax on realised price. And the Iranian consortium agreed to adopt the same
30 tax provisions with the Iranian Government. On what basis was the value of crude oil fixed for the payment of tax? On the actual realisations: market price for crude oil. Just on that point - was there in 1960 when one of the major crude oil producers in Saudi Arabia reduced crude oil prices?

In 1960 the Standard Oil of New Jersey which had an undivided interest in the Saudi Arabian concession which it had acquired earlier from the two original concession holders already named cut the price of crude oil by 2 cents a barrel, approximately 1% of the value; two American cents per barrel, which is approximately 1% of the value. Within about eight days all other producing companies in the Middle East met that cut price. The response of Sovereign States that owned concession - it was most vigorous opposition. This affected the royalty. And this was confined to the Middle East? The effect of this spread to Venezuela because oil is mobile and the European market is the watershed area where Middle East oil and Venezuela oil comes into competition. That was part of the result of the price reduction.

Just at this point, would you say something of the overall operation of International Oil from production of crude down to marketing of refined product? I should say that they reflect the realities of the market place in each phase of oil production, refining and ultimate realisation.

20 First of all, you have profit element in production phase? Profit element in production phase, yes. Because you get on your hands a barrel of crude oil that has a market value at that point? Yes. So you have a profit element arising from production of the crude oil? Yes. Then the next phase is refining? Yes. Not necessarily. Depends whether refining is done. There is a market for crude oil in crude form and of course that is reflected not only in International - but derived from activities of those companies engaged only in oil production and no other stage. They sell their oil on

30 the open market, or by long-term contract. If International Company goes into the refining phase, there is a further profit element in that? Yes; International oil companies - yes. Then if they move into the phase of marketing refined products, there is a profit element in that? There is a

difference between the price at which marketing company
acquires it and the price it sells it at, but I would not
like to say there is always a profit. Might be profit to
marketing company, but not in overall integrated operation?
There is not always a profit made everywhere in marketing.
I think everyone endeavours to make a profit. Then what
about aspect of marine transportation of oil and products?
Marine transportation of oil represents in world total shipping
tonnage more than half the total tonnage. And in turn, the
10 large oil companies own something like on average about 50%
of their tanker requirements in subsidiary shipping
companies. They own 50% of the world tanker fleet - own and
operate. The other round 50% of tanker tonnage is owned by
independent tanker owners, but of course is employed by the
Oil Companies in the movement of their oil, either by charter
or ordinary freight rates. By three means of acquiring.
A proportion by long term charges; a proportion by shorter
term charter; and a floating relatively small proportion by
spot charter. Is there a recognised ruling freight rate in
20 the world for tanker voyages? During the war the Governments,
allied Governments, set up standard rates called M.O.T. rates
and U.S.M.C. rates. When the war was over the convenience of
having these Government determined rates based upon the
realities of the tonnage movements was realised by the
industry and a panel of independent shipping brokers was set
up to relate the overall world tonnage in operation under
long term, short term and spot tanker rates. These
determinations were made on a periodical basis, made
periodically, and the realities disclosed were then accepted
30 by the oil companies to apply not only to those vessels which
they had chartered in but also to apply to their own owned
vessels. This system is called the average freight rate
assessment, abbreviated A.F.R.A., and is internationally
accepted by the industry and by Governments as being a

convenient and real determinant of the going rate from time to time.

In operating different phases of international company operations, would they normally set up different companies to handle different phases? In the International field the answer is generally and almost unexceptionally yes. So you have in the case of International company an integrated net work of companies which carry out between them different phases of overall operation? Yes.

10 And now about the way that refining is carried on in some Middle East Countries: in Middle East countries there were some large scale refineries that produced the full range of products? Yes. And you may also have a refinery that only produces part - a Topping Plant? Yes. But in the case of large-scale refinery - take Bahrein for example - the oil when extracted from the ground is going to pay a tax on royalty of half the market value of the crude? Yes. We refer to the period before Opec. Before 1961? Yes. Now, large quantities of oil thus produced are refined at Bahrein
20 and the refinery comes out with the refined product at Bahrein? Yes. To your knowledge is there any income tax at Bahrein other than this royalty tax paid on crude oil production? My knowledge is not precise on the whole of the Middle East area. According to my knowledge, which I can regard as well founded, there is no income tax for example in Kuwait, none whatsoever. And no tax levy on profit made in the refining process in Kuwait. The same is true according to my knowledge in various very large refinery operating at Ras Tanura, Saudi Arabia. I believe there is
30 no tax levied on profits of the very large Abadan refinery. In the case of the Bahrein refinery, there is no income tax on the profits of the Bahrein refinery which are derived from the production of oil produced in Bahrein. Bahrein refinery is in the exceptional situation that it has a

capacity I think of about the order of 200,000 barrels a day.

Only approximately 30,000 barrels a day are derived from Bahrain but there is a short pipe line from the mainland of Saudi Arabia and some 170,000 barrels a day are piped across for refining. I believe the Government of Bahrain imposes not an income tax but a small tax which is called an uplift tax on the products produced from imported Arabian oil.

TO BENCH: What is the position in Aruba where all crude oil comes from Venezuela? No, I cannot answer that.

10 TO COUNSEL: One or two other points. Regarding refining profit that remains, refiners' margin, is that the basis on which the present New Zealand refinery works? Yes. The profit return on the New Zealand Refinery is the typical refiner's margin that can be earned at refineries of similar type elsewhere in the world? The margin is precisely the same. The method by which it may be earned would differ.

Now the OPEC emergence in 1961. Yes. That is the abbreviated title of Organization of Petroleum Exporting Countries. Its members consist of the Government
20 representatives of the Middle East, oil producing States and Venezuelan. It is to use a convenient term adopted by Doctor Frankel, a well known petroleum economist, as a Trade Union of oil producing companies. It had its origin in the great upheaval which arose from the price cut of two cents a barrel in 1960 which I have referred to earlier. The protesting States took a very strong view that as this price cut would deny them of revenues that they would impose
30 strictures upon the producing companies. And the form in which the strictures were applied was to impose a rigidity for the future on the posted price of crude oil produced in those protesting countries. The effect of this of course was to freeze the tax taken on the oil produced at the 50% of the posted price regardless of what might be from time to time the actual realisations if the normal forces of competitive

markets were to continue to apply. So that the crude posted prices under this system were really tax reference prices? Yes, the term "tax reference prices" appeared in the oil lists.

What about market quotations for Persian Gulf crude oil? The posted prices are the only published prices and they have been rigidly static ever since OPEC's recommendations were enforced by the Sovereign States were adopted.

10 What about market quotations from Persian Gulf: did they move, on crude? There are no market quotations. The only price published is the posted price. Market quotations for products in Persian Gulf? They are posted and they do reflect from time to time changes in price. Some fluctuations. On this matter, is there a term used in the industry of upstream profits and downstream returns? That is a term that has got into vernacular of the industry in recent times. The traditional main source of Oil Company revenue and profits is the production and sale of crude oil.

20 And that is the upstream operation. At the other end of the stream we have the ultimate downstream operation of marketing. From the standpoint of crude oil producer, everything beyond the production of crude oil is downstream. From the standpoint of the marketer, everything else is upstream. Everything is upstream to wholesale price? Every function is upstream. These are functions of refining.

 And has the availability of these upstream profits had any influence on marketing pressure or activities by International companies? Yes, very marked effects. How

30 does that operate? Principally in the drive for market position in the downstream function of marketing. In the early days, going back twenty or thirty years, that form of competition in the marketing function led from time to time to destructive price wars. There has been a very substantial

change in philosophy since those old days and the competition in the marketplace is no longer characterised by price control - rather the reverse. Great and lavish expenditures by those who wish to penetrate a given market competitively. In other words, instead of price cutting which is a tool that has been long since rejected, the companies who have as their main source of revenues unlimited facilities for production of crude oil will attempt to dominate a market by very expensive competitive activities which a less fortunate company may not be able to match. Expenditure to get or to dominate a product market? They do not now adopt the price cutting of products in order to dominate the market? That is a tool which has been for long years abandoned.

Now coming to the narrative of your own company's contracts for the purchase of gasoline. You mentioned the Russian contract and then the 1936 Caltex contract? Yes. What were the main terms of your Caltex contract in regard to supply? The supply provisions as to price were originally established in the 1936 contract wherein Caltex agreed to supply motor gasoline at the lower of the lowest current market quotations for the nominated quality or specification as published in the National Petroleum News, United States Gulf of Mexico quotation, or Californian quotation for export, whichever was the lowest.

With regard to the freight arrangement on Caltex contract? That made a provision which was current in the petroleum industry at that time, and it was the same provision as was made in the Russian contract and that was the adoption of what was then known as a staging point principle. The very substantial source of supply when the Russian contract, which was of Black Sea origin, was for New Zealand/Californian export market. California in those early days was a very substantial exporter. And the Russian contract recognised that an adjustment would be made on the cost of freight from the Black Sea to New Zealand to the equivalent cost of freight

California to New Zealand. By the time we made the Caltex contract in 1936 operative, operating from 1937, the Dutch East Indies had become a very important supply source for New Zealand. And in the negotiations with Caltex they were persuaded and agreed to accept for supply to New Zealand the staging point of Dutch East Indies. And a provision was made in the contract whereby although my company had the responsibility of procuring its own chartered tankers, adjustments would be made from time to time on the actual
10 freight paid by us and the deemed rate of freight, or deemed cost of freight had the products been shipped from the Dutch East Indies.

TO BENCH: Caltex made an allowance in their f.o.b. price at their refinery to cover the extra cost of freight compared with the freight cost from the Dutch East Indies? No. This is not how it was handled at all. The invoice price of the products was the price in accordance with contract provisions, that is the market quotation which in those days was in effect only two market quotations - United States Gulf Area and
20 Californian export. The invoice price was the f.o.b. quotation price at the lower of those places. The question of freight adjustment was simply one of determining the difference between freight actually paid and what would have been paid had the same price been derived from the accepted staging point which for the purpose of our contract was the Dutch East Indies. Caltex gave us cheques or credits for these adjustments.

TO COUNSEL: No adjustment of invoice prices but credit for extra freight? Yes. Credit that arose out of freight
30 contract with Caltex? Yes. And those are the broad terms of the Caltex contract that ran from 1937 onwards? Yes. One or two minor variations in the passage of time.

Then the contract term was renewed at some point? The first contract ran for fourteen years, up to 1951. And

then renewed to 1956, 1951 to 1956, terminating at the end of 1956. In 1952 while the Caltex contract was running, did there emerge one brand service station war between companies? Yes. And where did this start? It broke out openly in England, solo agreements. In England in I think 1951. It was promoted originally by the Shell Group and the Standard Oil of New Jersey Group. The same war broke out in Australia and New Zealand in 1952, being introduced simultaneously by those companies or their related companies. Standard of New Jersey as such were not in New Zealand but they had a 50% interest in a company called Stanvac. At that time their products were Plume and Atlantic. The Shell Company under the name of Shell, and Stanvac Company under the name of, I think, Plume, and certainly Atlantic. The techniques which were adopted called for great expenditure of capital and involved very heavy marketing costs in various ways. The main elements of one brand, or as called in England Solo Station activity, was to acquire either direct ownership by purchase of Service Stations or by making large loans on the security of the property, with exclusive dealing contract, by attaching to the same contracts irrevocable powers of attorney in favour of the Company and many such devices.

In Australia for example, Shell and Stanvac were marketing companies, also B.P.? Yes. Ampol? Yes. Sleigh and Furr Pull? Yes. And Caltex (Australia). At that time Ampol Sleigh and Purpull were independent Australian companies? Yes, independent of overseas companies. Same position as Europa in New Zealand at that time. Those Australian companies had supply contracts each of them with Caltex? Yes. And what action was eventually taken with regard to protecting those three Australian independents from this Solo Station war?

2.15 p.m. 17/2/69

We were speaking about one brand service station war and how it developed in Australia. These Australian independent companies would have had to then try and fight that war against the Internationals in Australia? Yes. And was that your own position in this country as the only independent company? Yes. Did you take up this problem with Caltex in 1952? Yes. And what were your discussions with them? It came about in this way: I went to London
10 in early 1952 on my way to New York, and quite fortuitously I found that Mr W. Bramstedt, the President of Caltex, was visiting London from New York. He invited me to have a chat with him and we discussed the One Brand War and he told me that New York had decided to grant to what were referred to as the Caltex supply accounts the three Australian companies and Europa - in Australia and New Zealand facilities by way of finance to assist them to defend themselves against the attacks on their service station outlets by the two companies who had started this One Brand War. He told me that what
20 was in their mind was to grant facilities of finance by way of permitting the supply accounts to deduct one cent per gallon or 10% - the two figures were more or less the same per cent, because at that time gasoline - the market quotation was about 10 cents per gallon - 10% related to f.o.b. price, or one cent per gallon. He invited me to discuss the matter in more detail with his company when I went to New York as I had planned to do very shortly afterwards. How was it proposed that these funds be used by the independent company? That arose when I went to New York. I had a discussion
30 with the Chairman of the Board of Caltex, Mr Howard Herron, in New York. Mr Bramstedt, Mr Pinckard and Mr Singleton were then the top officers of Caltex. They discussed in some general detail the way in which the plan would be put into operation. They were not prepared to hand the cash

over but they were prepared (this was a plan not an offer)
they were not prepared to hand over cash but were prepared to
allow their supply accounts to short pay on invoice the amount
yet to be determined which would be say 10% of the value.

They were not prepared to allow their supply accounts to
have the uncontrolled administration of the funds which would
be thereby accumulated. In Australia, Caltex owned a
subsidiary named Martin Properties Limited and the proposal
was that the funds be handed into Martin Properties Limited
10 and all proposed expenditures by the Australian Independent
Supply accounts would be vetted by Martin Properties before
the expenditures would be approved. The funds were to be used
for meeting the attacking companies, Shell and Stanvac, on
their own ground. Used to finance service stations or
purchasing stations? Partly by one and partly by the other.
The character of the war changed slowly as time went on. But
I would say partly by one in general and partly by the other.

The funds would be paid into Martin Properties who had
right of control? Each of those supply accounts would take
20 proper steps in the view of Caltex to hold their retail
outlets and therefore their volume of business which all went
back in terms of crude oil production to their parents, and
to some extent in this regard they looked on their Australian
supply accounts as the alter ego of their own Caltex market.
At that time they also told me what they had in mind: from
time to time in accordance with accumulation of the funds,
they would require supply accounts to sign promissory notes.

That was what they proposed in Australia; did they
raise with you what you might do in New Zealand with Europa?
30 At that time they were not prepared to make any positive
proposals. They remarked that they had no such company as
Martin Properties Limited in New Zealand and as their final
decisions on a number of questions relating to the handling
of the Australian situation had not been completely resolved

they preferred to withhold making any positive proposals to me. Then while you were in New York did you get into contact with someone acting for Ampol Sleigh in this problem at the time? Yes, at the Caltex office I was introduced to Mr Garfield Barwick (MR WHITE OBJECTS).

You discussed with Mr Barwick the problems from Ampol Sleigh point of view? Yes.

Then you did not take the matter further at that point in New York? No. And then in New Zealand were representations being made to the Government in connection with this problem? Yes. By Europa, and the Government of New Zealand to deal with the matter passed the Motor Spirits Distribution Act 1953, which extensively restricted the activities of the overseas oil companies in the acquisition of like interests in service stations as it was going on in Australia.

The next step was that you were in Sydney in 1954? Yes. In Australia on my way to Europe and New York. I then discovered what result had been obtained on the Caltex proposals with the Australian independent companies. I had meetings with the Managing Director of Ampol, Mr Walkley, and the Managing Director of Pur Pull, Mr Landon Smith. They confirmed to me that they were now in receipt of, in one case, Mr Walkley, one cent per gallon and Mr Smith said 10%, but both it happened were identical. I did not meet the Sleigh people because their head office is in Melbourne, but I was given to understand that the same allowances and the same plan was in operation with Sleigh. Did they say on what terms the money was to be held? Yes, the money was to be treated as loans with rather vague conditions as to obligation, if any, for repayment.

When you went on this trip, did you get to New York and raise again with Caltex whether you could get the same kind of concession on your account in New Zealand? Yes, I raised that quite vigorously. The response was that as the

New Zealand conditions were different because of the Motor Spirits Distribution Act, Caltex would not make similar grants. You were protected by the legislation in this country? That was their idea. How far you were protected is a different matter? I would like to say that I felt a very strong case for asking for the same treatment because we were not by any means out of the wood. Any way you were turned down? Yes.

I produce a copy of the Ampol published accounts for
10 the year ended 30th September 1952 in which reference can be found to this concession to Ampol. (EXHIBIT B) Statement of Accounts, page 15, item "Long Term Loan" - under Current Liabilities - £227,500. And on page 12, there is a statement - in the Directors' Report - the early part refers to acquisition of sites.

I now produce a copy of the accounts of Ampol for
1961. (EXHIBIT C.) Balance Sheet - "Issues of Paid Up Capital" page 18. Reference under heading "Supplementary Information", paragraph 1. Item above that page 18,
20 3,000,000 deferred ordinary shares.

I now produce published accounts of H.C. Sleigh Limited for the years 1953, 1954, 1955 and 1956. (EXHIBIT D 1-4). In the 1953 accounts there is an item in the Balance Sheet under heading "Application of Funds" Long Term Loan. In the 1954 accounts £447,410; 1955 accounts £657,493; 1956 account - wiped out and transferred to deferred shares £742,340. Chairman's Review, first page.

We now turn to the approaching termination of the Caltex Supply Contract - due to expire at the end of 1956?
30 Yes, I think so. I produce as EXHIBIT E copies of Caltex Supply Contract. This is the original contract signed on 21st December 1936 at Wellington. Caltex executed at Nassau in the Bahamas on 30th March 1937. That contract was for 14 years in two periods - eight years with right of renewal for another six years, and then by agreements of extension

through to an ultimate expiry date in 1956.

We now have to consider a new contract - you are now at the point where you have to consider a new contract. Did you take up with Caltex the question in 1956 of starting a new supply contract? Yes. You told us they would not run to any of these Australian concessions; any other points they took regarding terms on which they would be prepared to supply in future? There were two other major questions. One was the decision by Caltex not to extend into any new contract from 1957 onwards, the basing points allowance on 10 freight. The Dutch East Indies. The view that Caltex took was that the Middle East/Persian Gulf area had now become the world centre of gravity for export international trade, and in particular the trade East of Suez, and which area had now or was emerging as a pricing area in its own right. That provided they supplied us at the going Persian Gulf rates, there was no longer any case for the old concept of a basing point allowance on freights. On the current relative - or on the indicated relative - prices ex Persian Gulf as against the 20 current reference prices which were employed under the old contract, namely, by that time the United States Gulf and Carribean, the loss to us of the basing point freight allowance represented a net increase in cost landed in New Zealand. Furthermore, in the passage of time between 1936 and the renewal of our contract in 1951, we had been able to persuade Caltex that on the question of interpretation of the terms of the contract in respect of price, United States Gulf of Mexico, which was related to a given - specified product - that because there was provision in the Caltex 30 contract to meet the quality of competitive gasoline, which had slowly improved, we had argued that while we were entitled to the improved gasoline we were entitled still to the old price index for the original gasoline. The effect of that progressively was that by 1956 by two separate negotiations we had obtained agreement that as the original pricing

provision had disappeared altogether, or the nomenclature of that type of gas had disappeared, we were still entitled to treat it as the notional price, and we claimed on one occasion 1/8th of one cent a gallon and then subsequently another 1/8th, or 1/4th of one cent. Caltex pointed out that they could no longer tolerate the force of such argument and I had to confess we were without argument on that point. The net result was therefore that we were faced with substantial increase in actual landed cost for the future.

10 A fresh Caltex supply contract would be on worse terms than the one you had before? Yes, so we started to look for other fields. We looked at the Gulf Oil Corporation. I only looked at that. Had you ever met them before? Yes. I had always regarded Gulf as offering the possibility of a potentially satisfactory relationship with my company; and in 1944, 1945, the end of 1944 and end of 1945, I had the opportunity of meeting the then Chairman of the Board of the Gulf Corporation and through him meeting some of his senior officers who told me that whilst they were not at that time

20 in a position to supply products, they had in prospect vast reserves of crude oil. Both in the Middle East, Kuwait and in Venezuela in the Caribbean. They raised with me the question of establishing an oil refinery in New Zealand; and in the consideration of possibilities of such the head of the Gulf Refinery Division in Pittsburgh, then a Mr Austergaard, prepared one and then subsequently another refinery project for establishing of a refinery in New Zealand. This was still 1945. I now produce the projects they prepared - there are three projects actually.

30 (EXHIBITS F1, F2 and F2.) That is a project worked out in details, with mechanics and economics of setting of a refinery in New Zealand? They are conventional engineering projects that go into great detail - just as we had prepared for the New Zealand refinery.

At that same period, 1944/45, did you have a further project which you had prepared for you by Bechtel-McCone dated 23rd April 1945? I produce that as EXHIBIT G. Was the second project aimed at a smaller type of refinery than what the Gulf project had contemplated? Yes. And you did not proceed with that in 1945? No. Was there a reason for that? The capital cost in relation to the volume which we had of sales in New Zealand and the problems of imbalance in products were serious obstacles. Imbalance in regard to higher and lower grades. Gulf were most willing to explore any possibility of creating an outlet for their crude oil. It did not get as far as the partnership proposal, but Gulf had made it clear they would be willing on terms to be agreed on if we felt the project was viable to assist materially in provision of capital. The form of assistance was not gone into in detail but they were ready to take a share of equity and to make a substantial amount of funds available by way of debenture capital. To what extent at that time were Gulf in the marketing area? At that time Gulf was regarded as a very rich but very conservative company. Outside of the United States it had no marketing of its own. It disposed of its crude oil from Venezuela and the Middle East by sales to other international companies. Other international companies at that time were active in the marketing field? Other than B.P. B.P. were of a somewhat similar character to Gulf. That is they were also a crude oil rich company - that is a company which has more crude oil than market - more crude than it has a market for either by way of its own market or by way of contracts with other companies. Gulf and B.P. were something the same in that regard and we had other international companies who were crude deficit companies. They were bigger in market than they had crude oil. What about marketing product? In 1944/45 I think this is the case - Gulf had no market other than outside international company

contracts except for one - other than one exception. That
is they had in respect of their long term sales contracts
with other international companies, reserved the off take
from refinery production derived from crude sold to those
companies of the fuel oil heavy ends. So that while they
had no light end market, they had already in 1944/45 a
substantial position in world affairs in fuel oil. I should
perhaps explain that the character of fuel oil disposal is
entirely different from the character of light end disposal -
10 fuel oil disposal is largely by contracts for ships bunkers
to international shipping companies or to power houses for
generation of electricity or other well locked up contractual
positions.

That was your initial job in 1944/45, and then in 1954
did you renew contact with them with regard to pending
termination of the Caltex contract? Yes, knowing the
conservative character of Gulf and not having any personal
acquaintance after a lapse of ten years, I arranged with a
friend to introduce me, and as a result of that friend's
20 introduction I had an invitation to go to Pittsburgh, the
headquarters of Gulf, in about May or June 1954, June 1954.
There I met the Vice President, Mr Jack Paton, a Mr W.
Blackledge who was senior officer of Gulf's Crude Oil
Division, and a couple of technical people whose names I have
forgotten. Mr Paton was a bit cautious. He said to me that
their relations with the other international companies was
such that they would want to look very carefully at the
treading on any one else's toes, I remember the phrase so
well. But he was quite interested in the question of going
30 into matters - they were interested in a refining - setting
up a refinery in New Zealand.

The question of Europa's volume? We looked at that
and that appeared to be a substantial deterrent. The
thought was then raised "Could it not be possible for Gulf

to supply us with a balanced feed stock which would match Europa's market position". This was not an unconventional proposal. It represented the purchase of what is called spiked crude oil, that is crude oil with an added mixture of light ends. The question was raised - would New Zealand Customs Department have any regulations or taxes or duties which would penalise the importation of a spiked crude, and I undertook on my return to New York to check with the New Zealand office in New York the Customs determinations. I

10 found that there were no obstacles in the way of bringing in either spiked crude or in any varying degree of spiked crude. It had been arranged during my Pittsburgh visit that Gulf officers would come to see me in New York after I had cleared this question, and I had a visit and a number of talks with a Mr Clancy, 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 because our volume was still the deterrent it did not look altogether

20 attractive. I had for a long time had the strong notion of getting into the refining business in New Zealand and I was reluctant to give up the project entirely. Was there any mention of a refinery operation that might be done using a Gulf refinery? Yes, this threw quite a new light on the possibilities of getting into refining on a viable basis. The idea was that by using an overseas Gulf refinery where the economics of size would make the project financially viable, we could perhaps get together. Anyhow, did you at that time have another project done for you regarding a possible New Zealand

30 refinery? Yes - we are speaking of 1954 - I wished to be as well informed as possible on this question of refining and not to accept the views of one company only, and I commissioned Mr C.S. Snodgrass, an oil refinery consultant engineer of Washington, D.C. to prepare for me a refining project based on Europa's needs in New Zealand.

This is a copy dated 22nd September 1954 of that project (EXHIBIT H). An eight-page project. What was the result of your study of that? It was an independent report. It showed that the capital cost would be high, and again the economic viability was somewhat doubtful.

What was your next contact? That was in February 1955 with Gulf. Mr Clancy and Mr Roe came to see me in New Zealand. By this time they had progressed to the point where they wished to pursue actively the proposition of engaging with us in a refinery operation outside New Zealand. Did you know yourself at that time the approximate margin that might be earned on a refinery operation? Yes. I had had the studies made which were addressed primarily to capital cost, operating cost, engineering projections for a refinery in New Zealand. I knew very well indeed what was the refinery margin in an east of Suez operation - that was about one United States dollar per barrel of crude. At that time. If Gulf and Europa got into a refinery operation, whether owning a joint refinery or whether paying a processing fee, what would be the arrangement about the offtake from the refinery? The off-take - Gulf of course had a ready market for the heavy ends. But east of Suez had no market for the light ends. And there appeared to be a high degree of mutuality of interests in Europa and Gulf joining together in such an operation. Profit sharing basis? That was discussed - the problem is well known to be a very difficult complex one. And I think I might deal with that later. But basically the resolution between us seemed to be that we went fifty/fifty for better or for worse.

Following these discussions, did the matter reach a further stage of discussion in New Zealand? Yes, to a stage where these two Gulf officers wished to go back and clear up questions of policy on this project of our getting together. It began to look like something which might well materialise.

They went back to Pittsburgh. And then what happened? In January 1955 I had a visit from Mr Frank Martin, a regional Director of Caltex, and he was not a stranger. I had known him for twenty years or more and I told him that I had come to the end of the tether in negotiations with Caltex and we would not be doing business, after the expiration of the 1956 contract. This was subsequent to my discussions in the United States with Gulf but before the arrival of Messrs Clancy and Roe in New Zealand. After Clancy and Roe went away, was there further contact with Caltex? Yes, Frank Martin reported to New York what I had told him and I had a long cable from either Bramstedt or - I think Bramstedt from New York to the effect that they would spare no effort to regain our business - or to retain our business.

The next thing was that I received a cable to say that Alex Singleton, the Vice President in charge of sales of Caltex, world wide, proposed to come to New Zealand to see me. I prepared a file in which I have these cables and letters regarding Caltex 1955 discussions. I produce that file. (EXHIBIT I). In that file is a reference to Mr Singleton who was to come to New Zealand. He in fact came. The first cable was when Martin had reported to New York and it was signed Bill Bramstedt, dated 3rd February at New York. Did you when you saw Singleton in New Zealand indicate to him that you had other negotiations under way? Yes. Did you say with whom? No. And did you mention the type of things you were discussing? I was rather reluctant to, but due to the fact that I had had twenty years of very pleasant association with Caltex I felt I should give them an opportunity for a further chance, in spite of frustration of the recent negotiations in New York. How did you describe to him the other negotiations? I told him that we had in prospect an overseas refining processing arrangement. You did not say with whom? No. He asked me finally with whom; I declined to say. He

also asked the terms and I declined to say. I told him

nothing more than just that we had this refinery processing arrangement in prospect. As this file shows, eventually did Caltex come across with a proposition to you? Caltex in the short time Singleton was here, he obtained authority from New York to offer me an overseas refining operation, and he obtained in a cable the contents of which he relayed to me from Auckland on 26th February the basic elements of the operation. He must have been in touch with New York while he was here?

10 Yes. His whole time while he was engaged on this question. The offer they put to you, was it the type of arrangement you entered into with Gulf? It consisted of three parts - basic proposals set out in telegram of 26th February. There were some missing elements in that that did not enable me to make a complete evaluation and these were transmitted to me by two cables, one dated 1st March from Bramstedt, New York, and the other by 'phone from Singleton from Sydney. The three communications gave enough information to make a study of the economic and practical aspects of the project.

20 COURT ADJOURNED 4 p.m.

CASE RESUMED 19/2/69.

Last night we were discussing the 1955 Caltex negotiation; the gist of the matter was that they made a proposal to you which you got in telegram form? Yes. Then eventually did they alter that proposal? They gave me the factual outline of the proposal in telegram form in a series of three telegrams, and as a result of my company's study of the proposal it was acceptable to us. I telegraphed to say that the proposal was acceptable and invited Caltex to send 30 officers to New Zealand to conclude in documentary form the agreement reached. Three officers of Caltex came to New Zealand to give effect, as I understood it, to the proposals, to develop the contractual documents which would emerge. I was however confronted with an impasse. The leader of the

group was a man who I had never previously met - the other two one being the senior counsel of Caltex, senior legal counsel, and the other being a highly accomplished accountant who occupied the position of Secretary of the parent company - I discovered were enjoined not to speak. The leader of the delegation endeavoured to persuade me to change the terms of the understanding. I declined. What was the difference that they now wanted you to agree to? The difference is not on the file. The leader of the delegation, A. Ernst, endeavoured
10 to persuade me that there should be another approach to the disposal of the fuel oil which would be generated from the refining operations contrary to the understanding embodied in the exchange of cables. This would have had a very important effect upon the division of profitability. We reached a complete impasse and I brought matters to a head by writing a letter to Mr Ernst at his hotel in Wellington enclosing copies of the cables which in my view clearly established the understanding reached. This is a file of correspondence; the letter I refer to was dated 28th April 1955. (Witness
20 reads letter). (EXHIBIT I.)

Next day you cabled Mr Bramstedt in New York and re-stated the position and said you had written to Ernst on that matter? Yes. The letter is in the file. On 4th May another cable from you to Bramstedt? Yes. You then got a cable back from Bramstedt on 6th May? Yes. He wrote me on 27th May setting out the way in which he said this misunderstanding had arisen. This is a letter from Bramstedt to me. (Letter read). He there explained the errors they had made. Also under the same date, 27th May 1955, is an outline of proposed
30 future operating plan. They in effect proposed setting up jointly owned Bahamas Company and were they there dealing with refining products in the same manner as Bramstedt had urged to you? No. The proposal was distinctly different from the original proposal. It followed the train of thought in his

letter of 27th May? No, it did not follow that train of thought. Did you agree then to what they proposed in their outline operative plan? Mr Singleton made a special visit to New Zealand and brought the plan with him and endeavoured to persuade me to accept it. I advised him that it was unacceptable, and I wrote the subsequent letter of the 24th June. In fact was the deal finalised with Gulf in the end a better deal than this Caltex proposal? Yes. And what was the basic difference between the deals? The method of division of profit was basically the same - setting up of a 10 50/50 Bahamas company to share equally the profits derived from the project as set forth in the project statement of 27th May 1955, Caltex statement. But the material difference was that whereas in the Gulf proposition as in the original Caltex proposition the actual crude oil required to manufacture Europa's requirements of gasoline would be bought processed and sold in the revised Caltex proposition, an artificial lesser quantity of crude oil would be processed. Their Gulf proposition was a better deal from Europa's point 20 of view? Yes. And it was realistic.

As a result of that negotiation falling through, did you have a meeting with some of the Gulf officers to discuss their proposals? Yes. I had a brief meeting in Honolulu which coincided with the movement of some Gulf officers from Pittsburgh to Tokyo and we found Honolulu a convenient meeting point. There we confirmed generally the ideas which had been discussed in the February meeting in New Zealand, and we paid particular attention to the problem of designing a protection for the joint refining industry against what is 30 well known in the industry as a refiner's squeeze. I think the simplest way to illustrate that would be to refer to the tables which are shown in Dr Frankl's study of refining profitability. This is a paper by Dr. Frankl and Walter L. Newton, they are acknowledged experts in this field? I do

not know if there is any such thing as an expert in this field. They are acknowledged eminent economists and writers in this very complex field of oil pricing. I produce that as EXHIBIT J. This is a photo copy of a paper given to me in London. To answer simply counsel's question (pencil notes were on Dr. Frankl's own copy), Tables 1, 2, 3, 4 and 5 show the refiner's margin - refinery margin in various acknowledged refining areas. Table 1 relates to the United States east of California area - a margin there of \$1.08 at one date.

10 Looking at page 6, those are refinery margins for those years: what is it that brings about refiner's squeeze? The Venezuelan/Caribbean table illustrates how in a certain area the profitability can be squeezed, and what I was concerned with was that if a similar situation arose and predictably might well arise in east of Suez refining would be run unprofitably rather than profitably. In the case of an integrated oil company having its own resources of crude oil production from which are generated - which historically had been the main source of profits - what are referred to
20 as the upstream profits an oil producing company would not necessarily reduce his operations because of the lower profitability in refining because he would have recourse to his main function - main and primary function of producing crude oil. That is what he is particularly interested in. So that he can afford to take the rough with the smooth.

And in the final analysis, if there is a loss in refining he has recourse to profits to support that loss. We adopted the philosophy that if we were dealing with a major international integrated company we would be entitled
30 under the circumstances of a refiner's squeeze to obtain some sort of protection as would be inherent in the integrated company's own system. In these discussions did you discuss this aspect with the Gulf people? This aspect was discussed with the Gulf people earlier. It was

discussed with Caltex prior to the Honolulu meeting and a provision in the Caltex outline was made for some such guarantee return in such circumstances. And it was again discussed when I met the Gulf people in Honolulu.

After you had had your discussions in Honolulu, what was the next step in the Gulf negotiations? The next step was a Gulf group came to New Zealand to put the arrangements into documentary form. These people were Mr Parkman Clancy, who by then had been appointed to foreign crude oil co-ordinator, 10 Mr Martin, of the Gulf International Shipping and Mr Herbert Manning, legal counsel.

People you had seen in Honolulu prior to that were Clancy, Martin and David Bonner, refinery technician.

They came to New Zealand, and did they prepare draft contracts when they were here? Yes. Were the drafts finally agreed between you all in New Zealand at that time? Yes. And what was the next step? The next step was that on their return Mr Paton, Vice President, wrote and suggested some small and inconsequential changes to the draft which 20 we agreed to. And did you go to Pittsburgh in January 1956? Yes, correct. And was it there that you looked at inconsequential amendments or had that been done? I am not sure; I know we had agreed to them.

Then after you had these meetings at Pittsburgh, did you go down to the Bahamas? Yes. The purpose of that visit was threefold. Gulf informed me that they intended to set up a wholly owned subsidiary company in the Bahamas which would hold their interests in our proposed joint refining operations. This company was also intended to 30 undertake world-wide shipping operations, not to be limited to our operations. That was purely a Gulf function but they had informed me of this arrangement. The second purpose was before any company which would engage in buying and selling of crude and petroleum products could be

registered in the Bahamas certain clearances would be required from the United Kingdom Treasury and the United Kingdom Ministry of Fuel and Power. I am not sure whether the clearances from the United Kingdom Ministry of Fuel and Power had not already been obtained. I produce a copy of the written application made to the Control of Exchange at Nassau with reference to setting up of the company dated 6th March 1956 and signed by Mr Sands. The reply is attached dated 9th March 1956 from Control of Exchange, and then
10 final permission dated 29th March 1956 from Control of Exchange (EXHIBIT K).

That letter from Mr Sands was a summary of the contracts which were to be signed? Yes. After the receipt of the consent contained in Taylor's letter of 29th March 1956 I returned to Pittsburgh and executed the necessary contracts on the 3rd April 1956. The Case Stated contains true copies of the following contracts - Petroleum Products Sales Contract, Memorandum of Agreement relative to New Zealand Refinery, Contract of affreightment, Contract for
20 organisation of Pan-Eastern, Agreement re force majeure, Pre-emptive Agreement, Option to purchase shares, Guarantee of Performance of Contract.

Was there a particular advantage you secured under sales contract with reference to sources of supply of gasoline? There were several advantages. I do not suggest these in order of importance, but a very material advantage was that Gulf has the obligation to supply Europa not from a designated source but from any source of Gulf's or to be procured by Gulf. In other words, it was a
30 global obligation. Another substantial benefit under the supply contract was that the provision for price of the products supplied was related to the lowest price quoted in Platts in either of the major world pricing centres, namely the Gulf/Carribbean pricing area, or the east of Suez.

Returning to global supply - does that mean if force

majeur in east of Suez they would have to supply from
Carribean? Yes, or somewhere else, and if all their own
facilities by some curious condition were out of action, then
they had the obligation to procure from others. That of
course was a very material advantage. Also they were to
supply the whole of Europa's requirements and that again is
a very material consideration and not normal in the usual
long-term supply contract. The usual thing is a fixed
10 quantity per period. The buyer then takes the risk; if he
is over ordered he has to unload at his own risk and if he
has underestimated he must find another source, and this
under certain crises in the oil industry which happen from
time to time could be a very onerous obligation if a fixed
quantity contract were entered into. What is meant by
Distress Cargo? It is a term which does not appear much in
current literature and the term does not imply what it seems
to imply. Distress sales in warehouses - dry goods - are
usually the result of fire, bankruptcy, situations of that
20 sort. The whole of the oil industry from well to consumer
is very highly geared. There is little margin in storage
facilities - certainly in production, that can be regulated.
But once oil is produced above ground, it must be promptly
moved. Tank farm facilities, storage facilities, at export
loading ports are very small in relation to the volume of
movement. Shipping has to be moved with great accuracy.
Co-ordination. The same thing applies in refinery
operations. A typical European refinery would have about
five days' storage of crude oil. To illustrate, the New
30 Zealand Refinery which is geographically one of the longest
sea hauls of crude was originally designed for five or six
day crude storage. Today we have, because of our physical
difficulties, something like ten days' storage of crude
and/or feed stocks. On the products side the storage is

equally tight. And the margin of storage according to location of refinery will vary quite a bit, but always in a tight squeeze. The reason for that is that in a typical refinery about 50% of the capital cost is related to storage facilities, and if world wide the industry did not gear itself to tight programme, the capital investment in refineries could rise astronomically.

Use of the term "Distress Cargo" - a refinery has to keep going. A phrase used in refining industry "refinery is a bicycle" has to keep running or it will fall over. And what happens from time to time is that a refinery in say a European complex may because of its rather rigid capacity generate each of products from a barrel of crude - it may find itself with a projected surplus of a particular product. There is a highly sophisticated exchange practice between companies which helps to alleviate these unbalances. Where mutual interests permit the exchange to take place. But there are times when a refinery which may be one of the most financially well placed companies in existence may have a surplus of some product which it simply cannot find a place for; that surplus is a distress surplus, and it has to sell at a lower price to clear its tanks - won't sell regardless of price, but is forced to sell, and price may find a willing taker somewhere. Otherwise unloading of that quantity would not take place.

On this processing contract, is that the kind of contract that is made in different parts of the world by people who do not have a refinery? Yes, there are a large number of processing contracts between all sorts of parties. Some where a company will buy crude or feed stocks and pay a processing fee to have them refined? Yes. One example is H.C. Sleight Limited, Australia? Yes, they buy crude and have it processed by Australian Oil Refineries Limited in which they have no interest.

TO MR CH: Do they take light and heavy? I cannot accurately answer that, but I believe they have some arrangements with their crude supplier, Caltex.

TO COUNSEL: EXHIBIT L - 1968 Annual Report of H.C. Sleigh Limited which refers on the back page to their processing arrangements. It is correct that in the case of the New Zealand Refinery the oil companies concerned have processing agreements with that Refinery? Yes. I produce the prospectus of the New Zealand Refinery Company Limited which on page 8 describes the intended operation of the processing agreement (EXHIBIT M).

Now about contract of Affreightment - you have there the secured provision that the cost of freight would not be greater than the deemed Abadan/New Zealand voyage? Yes, regardless of where the supplies may be loaded that the cost would not exceed a deemed Abadan/New Zealand voyage. The reason for that is that Abadan was by this time probably the predominant source area for New Zealand. Abadan is not necessarily the nearest to New Zealand as far as freight is concerned, but in the case of other countries their freight costs to New Zealand would not exceed the Abadan/New Zealand rate.

Then the provision for alternative freight rate? Yes, that gave a ceiling to the cost of freight. If there was any excess over the AFRA rate at any time which was beyond your alternate freight rate, then that would be placed to your credit in a freight rate suspense account? Yes. If the AFRA rate were higher than the alternate rate, although we would pay at the AFRA rate, the difference would be credited to a suspense account. That was intended to be a running suspense account which might be in credit or debit at different points of time over the whole contract term. The end result would only be known at the end of the contract. Did you calculate what you thought Europa might earn under

this freight contract as at 1955/56? Yes. This was a contract with Europa so any profit would be Europa's income in New Zealand? Yes. Did you try to make an estimation at that time of what this might be worth to Europa over the contract period? On the best of information and advice as to the expected trend of freight rates, it appears at the time we made the contract that Europa would derive over the whole span of the contract a profit in the suspense account of approximately $1\frac{1}{2}$ million pounds sterling. That was on
10 the assumption that there would not be a slump in tanker freight rates? On the assumption that freight rates at that time were hardening after having gone through a depressed period, and on the assumption of some future stability in freight rates - that would be a reasonable prediction.

SHORT ADJOURNMENT

We have been speaking of your estimate of time of what profit might accrue to Europa under freight contract: what happened regarding freight rates after 1956? The tanker industry at some point in time which I can't say from
20 memory ran into a very severe and prolonged depression. The tanker industry has periods of very high profits and of heavy depression. Contrary to expectation, freight rates became heavily depressed. The result was that over the actual currency of the 1956 contract the amount to Europa's credit at termination of the contract was approximately £65,000? Yes, £65,000 profit. And this of course was income earned by Europa and tax paid on it? Yes. Just in passing - this Gulf freight contract was a better proposition than the proposed Caltex freight rate contract? At the
30 time of the proposal it was obviously a better contract. In comparison with the pre-existing freight contract with Caltex that expired in 1956? No. Not as good in the calculated result. Caltex was not going to renew that particular contract? They were not going to renew the provision for the basing point adjustment.

You did say that the advantage Europa got was global supply facilities for gasoline - also the product price being lower of the two quotations would apply wherever the product was shipped from? Yes.

Then there was provision in these Gulf contracts for payment by Pan Eastern the posted price of a specified quantity of crude oil? Yes, the contract sets that out. Details of specifications. And then did you also have agreed deemed yields from each barrel of crude in the form of percentages? The contract sets out in the words "deemed yield" what was in fact typical and accepted yield of the quoted crude oil in a standard refining operation of that sort. Gasoline at 25%, kerosene 11%, distillate 13%, residual 40%, processing lots 6%. Those approximate the same experience we have in the New Zealand Refinery for that quality of crude.

Just coming to the processing fee that was agreed to be paid - that was 47.5 United States cents per barrel of crude oil delivered by Gulf? Yes. And you anticipated a gross refiner's margin of one United States dollar per barrel crude. So that the estimated net refining margin to be earned by Pan East would be approximately 52.5 United States cents per barrel of crude. Those figures were in conformity with the normal market quotations at that time? They were a realistic expression of the profitability based upon the current price of crude oil, current cost of processing, and the current values of the respective product yields.

Then with regard to the products as well as having percentage designated, you also had, did you not, a designated deemed quality of each product? Yes. For example, gasoline was deemed 70 octane and the other products had also deemed qualities? Or deemed standards of quality? The quality of gasoline was determined at the then octane rating which was provided in Europa supply contract. In

other words, refining process was to refine to that octane - that Europa required for its New Zealand market. The other part of the question I cannot give an exact answer. I can say this: that there would be little room for any flexibility.

Now then coming to the formula: was that set in the form of trying to secure some pre-determined level of profit from Pan Eastern? No, I would not describe it that way. I would describe it as being a provision to relieve
10 Pan Eastern from risks which could arise, for example, from a refiner's squeeze, and to provide some sort of compensatory mechanism to recognise the imbalance in profit contributions to the refinery process. In the respective yields and off-takes of motor gasoline and heavier ends. Perhaps it will be seen from my description of the Caltex negotiations where it was agreed initially that Europa would derive the whole of the profits arising from the refining of gasoline and the other party would take the profits from the heavy ends - on that very point negotiations broke down. In the joint
20 venture concept of this refinery project with Gulf, it had to be recognised that basically Europa was contributing more than half the profit earned of the refinery process due to its off-take of the gasoline. Nevertheless, in the practical circumstances of finding a contractual mutual accommodation between the parties in a 50/50 participation in result Europa felt that it was proper that there should be some protection against erosion of profits which might arise from circumstances outside the production of gasoline. And the formula provisions were put forward to offer some
30 sort of stability in the overall earnings to be shared.

The formula is set out in the Case Stated (EXHIBIT 7A) - organisation contract. Third Schedule on page 3 are deemed percentages (Paragraph 5). Then at page 6, paragraph 608, quality specifications. Then at page 7, net

earnings which include formula.

Your estimated net refiner's margin, 52 United States cents, that in your view could have been affected by factors outside your control? Yes. The object of the formula was to act as a stabiliser if possible against the depression of Pan Eastern earnings? It is a complex question. Had the pattern of crude oil costs and product values remained as they had been for some considerable time and had they remained unchanged or without material change, 10 the formula would have had no real effect. The formula was provided to offset fluctuations which would adversely affect the contribution which gasoline was making to the total earnings of Pan Eastern. With the New Zealand refinery we have very great problems of dealing with just this same question.

Anyhow, the agreements with Gulf were then put into operation and they began to operate according to their terms? Yes. Was there in April 1957 an extension of time granted by Gulf regarding the payments to be made to Gulf under sales 20 contract? Contract between Gulf Iran and Europa. I negotiated with the Gulf people for more beneficial terms of payment. The background of that was the competition in marketing in New Zealand was becoming increasingly rigorous. And one of the developments was a considerable extension of credit by wholesalers in this country to retailers, to service stations. Part of the continuation of the severe war in marketing. Extra credit facilities were being given to obtain the output, the favours of those stations. And I put it to Gulf that it was reasonable for them to make some 30 contribution to this problem and they agreed to give improved credit terms against those provided in the original contract. That agreement is contained in a letter from Gulf with EXHIBIT A1.

Then moving along through 1957 and coming to 1958,

did you observe the level of Pan Eastern earnings and how they were getting on in comparison with expectations? Yes. What was that position? I suppose I can describe it as like in many other predictions in oil industry, if expectations were found to be considerably wrong. Profit of Pan Eastern - there had developed in the value of crude and products a marked reversal from the historical experience. Crude prices actually increased. Gasoline prices fell and the middle and heavy ends prices increased. It was something which was quite unprecedented, at least to my knowledge. The provisions of the formula which were agreed to give a protection against movements, or adverse movements of the sort that might be expected from the historic pattern - the provisions of the formula instead of helping had the reverse effect and were defeating the very purpose they were designed to perform. I got in touch with Gulf about this. I wrote to Mr Paton on 31st January 1952 and raised the matter with him. I produce my file of correspondence which dealt with negotiations that then took place. (EXHIBIT N). (Exhibit B14 in the Case Stated).

Was the anticipated return of Pan Eastern expressed in cents per gallon, 2.5? No. The profits of Pan Eastern is expressed in terms of earnings which can be related either to the quantity of crude input which was estimated to be about 50 cents per barrel of crude - 4 barrels of crude are necessary to make one barrel of gasoline and there you manufacture one barrel of gasoline with \$2 profit in refining operation. If you relate half that profit to gasoline, then one barrel of gasoline yields \$1 profit which, as there are 42 United States gallons in a barrel, in terms of gallons of gasoline the return is $2\frac{1}{2}$ cents per gallon. That is the end result of the flow of the computation. It would be wrong to simply say that gasoline makes $2\frac{1}{2}$ cents a gallon profit. This is the end result of the same computation.

That was the first quarter of 1957. Then you say

"During the second quarter of 1957 crude prices advanced, gasoline prices receded, there were some minor changes in prices in products other than fuel oil which generally has remained at the higher level, with a resultant reduction in overall refinery margin from the first quarter peak to a level somewhat better than the average of the year 1956. The effect of the formula was, however, to sharply reduce Pan-Eastern return to 2.09 cents per U.S. Gallon

10 "That position has generally remained unchanged until this time - latest calculations showing Pan-Eastern return down to 1.965 cents per U.S. gallon.

"I am not unkindful that Pan-Eastern should not expect to enjoy a return insulated from the overall fortunes of the industry but it does seem apparent at a time when the industry is enjoying an improved price for crude oil and when overall refining margins have not deteriorated, a formula which results in a substantial reduction in Pan-Eastern's return is a somewhat unrealistic one.

20 "I would have much preferred to talk this over with you rather than write, but I feel that it is now timely to bring this matter before you. I know that one may depend upon you for most sympathetic consideration of this matter which seems to need some revision.

"I shall await your views with great interest."

 You were suggesting that Gulf should agree to a revision of that provision in the processing contract? As to the formula. I did not regard our interests as insulated from - Then you had Mr Paton's reply of
30 4th March 1953, and in effect he there suggests the matter be allowed to ride along a while? Yes, to the end of the third quarter of the year. He suggests if these corrections do not eventuate then we can attempt to devise a new formulation - he suggests we bring the matter up again in

July or August. The second last paragraph - so he wants
the matter held over? Yes. Then the letter of 17th March
from you agreeing to hold over? Yes. Then you wrote again
on 10th July 1958? Yes.

"I am writing to you now further to my letter to
you dated 31st January and your letter of 4th March, in which
you kindly suggested my bringing up this subject again in
July or August.

10 "Since my letter to you in January there has been a
further deterioration in the relationship between crude oil
and gasoline prices with a resultant decline in the Formula
return which has now fallen to 1.71 cents per U.S. gallon as
at 30th June 1958.

"This demonstrates fairly clearly that some revision
of the Formula is needed to stabilise Pan-Eastern's return
more in sympathy with the market generally.

20 "% study of the market value of a composite barrel of
products assessed in terms of the deemed yield and product
prices employed in the Processing Contract shows a movement
upwards from \$2.883 per barrel as at 1st January 1955 to a
peak of \$3.324 per barrel at 31st March 1957, followed by a
steady decline to \$2.750 per barrel at 30th June 1958.

"Over the corresponding period the Formula return
moved from 2.50 cents per U.S. gallon up to 2.87 cents at
31st March 1957 and subsequently declined sharply and reached
1.17 cents per U.S. gallon at 30th June 1958.

30 "The accompanying graph expresses these movements in
terms of percentages and illustrates the relative imbalance
between movements in the value of a composite barrel of
products and that of the Formula return. It will be
observed that the former has fluctuated between plus 15.30%
and minus 3.00% whilst the latter has fluctuated between
plus 9.2% and minus 31.6%

"Over the same period the price of crude has

advanced by C.6%.

"It would appear desirable in our mutual interest that some mechanism should be found to give a more relative result to Pan-Eastern operations.

"I will greatly appreciate your considered views and as the subject is one in which you will have had wide experience I feel sure with your help a satisfactory revision will be found."

Now there you put to him the composite barrel result
10 for demonstration purposes? Yes. And you wrote again to
Mr Paton on 20th October, really - reminder? Yes.
October 24th he replied to you: what is the reference there
to naphtha? That is a project which we were developing with
Gulf about that time regarding the possibility of setting up
a refinery in New Zealand to manufacture our gasoline
requirements here, which of course would have replaced the
Pan-Eastern contract. It had considerable attractions to
us from the point of view that as seen from earlier evidence
we had always been desirous of being in the refining business
20 in New Zealand, and with the growing availability of
naphtha derived from a topping of crude rather than wholly
refining it a relatively low capital cost for plant could be
installed it appeared in New Zealand to manufacture Europa's
gasoline requirements here rather than overseas. Naphtha
reformer is the plant you use to get the gasoline product
from the virgin naphtha. It is just a skin off the top
from a primary distillation unit. So primary distillation
overseas and then the final distillation of naphtha for
gasoline in New Zealand. It just happens we are now
30 performing the counterpart of that operation in New Zealand
refinery - bringing in naphtha - I am speaking now of my
own company. We bring in naphtha - very largely naphtha to
the New Zealand refinery. That is under the 1964 contract.

Then you replied to Mr Paton on 1st December -

"Thank you for your letter dated October 24th on this subject, in which you also refer to the subject of the establishment of a naphtha reformer coupled with entry into the Australian market. I have delayed my reply awaiting Mr Desmond Todd's return to discuss with him his talks in London with Mr R.H. Hoffman."

Who was Mr Hoffman? The newly appointed manager of the newly formed Gulf Eastern Company with headquarters in London.

10 "Contrary to your impression that we are lukewarm regarding the latter matter, we are most interested. Obviously on an undertaking of this size and complexity many formidable problems would have to be examined carefully between us but from the outline Mr Paulin gave me on the telephone, the proposition has much merit, and we would like to go into this fully when you are ready."

It appeared that they had the impression from Mr Desmond Todd that you might be lukewarm on this? It appeared so, but there were no grounds. I corrected that
20 impression. You are again putting to him the composite barrel suggestion? Yes. Then you say -

"On the question of taxation to which you refer in your letter, the position is that the graduated scale of New Zealand Company taxation reaches its maximum at £7,650 per annum, so that the practical effect, except in the case of small business, is that Company Tax is at the flat rate of 10/- in the £1, viz. 50%. The newly introduced Dividend Tax can with some minor exceptions be reckoned at a flat rate of 7/- in the £1, viz. 35%."

30 There does not seem to be any reference to taxation? It is in the naphtha reforming file. It had to do with the interest Gulf had if they came into a naphtha venture in New Zealand.

As at the end of 1956 were you still getting these

low returns at Pan-Eastern - had the returns improved?

I don't think so. And then on January 30th 1959 Mr Paulin writes to you -

"Further to your cable No. 253, attached is a self-explanatory letter authorizing the freight invoice deferment."

He accepts the composite barrel formula.

"With reference to the pricing formula, we agree that using a composite barrel would be more realistic than the one we formerly used. However, in going over the figures you sent us, we feel a slight revision is necessary to make Pan-Eastern's earnings more realistic."

Was that in effect he agreed to some form of revision? Yes. I wrote to Mr Hoffman acknowledging that. Then on February 17th 1959 a cable from Paulin and in effect he was suggesting a flat 2.5 cent per gallon earning basis? Yes, this is 2½% per gallon earning to Pan-Eastern. This is the end result computation.

Did you agree with that proposal? No. You said so in your cable of February 17th 1959? Yes. What was your reason for not agreeing? The original offer Mr Paulin refers to - 2½ cents per gallon was never an offer at all. It was part of the discussion that took place in Honolulu when we were going into and developing the problem of a formula to provide this cradling or stabilising effect. And one of the Gulf party said "Why don't we cut loose from the whole problem and give Pan-Eastern a guarantee of 2½ cents per gallon?" I rejected that at that time. I again rejected it after the cable of 17th February 1959, as the record shows.

COURT ADJOURNED 1 p.m.

2.15 p.m. 19/2/59.

We got to the point - 2.5 cents flat earning, you said you had rejected that proposal? Yes. What were your

reasons? Two rejections - one suggested originally - the basic reasons were first we have never, although we liked to get the fullest extent possible the safeguards, we had never agreed with philosophy of accepting assurances that involve some underwriting, and the prospects in the Pan-Eastern profitability we felt were greater than $2\frac{1}{2}$ cents related to a gallon of gasoline and therefore we felt that anyone offering to underwrite such a flat figure must be including an underwriting premium. We would prefer to take the risk ourselves. That has been generally our policy within certain limitations. That was one version, an important aspect of our philosophy.

At the time of the 1956 negotiations Europe and Japan were each on the threshold of a vast increase in automobiles, motorcars, and we felt that in those markets the demand for gasoline which had been relatively low in previous years would show a sharp increase and prospects were for a relative improvement in the price of gasoline compared with other products and we felt that in the risks operation of the Pan-Eastern refining company there would be respective benefits arising from that anticipated increase in global gasoline requirements. The third thing was that it was quite clear that the wartime restrictions on octane ratings which had survived considerably after the war would eventually be released and the octane ratings in the free world outside the United States would reflect the already sharply increased octane ratings within the United States. It is well known of course that there is more profit to a refinery in making high octane gasoline than in making low octane gasoline. And another quite important reason in such a contract was the question of inflation. A fixed figure would give no protection against devaluation of money which was progressively occurring in all currencies. These are the reasons which prompted our rejection in 1956 and in 1959.

Going to correspondence with Gulf, there is a letter from Gulf Oil dated 26th February 1959? Yes. Two letters of that date, one signed by Mr Paton and one by Mr Paulin. One is a proposed contract variation whilst the other explains - the letter signed by Mr Paulin is the one that advises that they have accepted in principle the proposal I had put forward of a composite barrel basis. And the attached letter of 26th February was a formal amendment to the contract which was signed by Mr Paton and it was proposed that I as a director of Pan-
10 Eastern should sign on behalf of Pan-Eastern with another director representing Project. Then you replied on 25th March 1959 and raised various matters which we need not go over at this point. We couldn't accept the proposal in the form it was put. Then you have an exchange of cables? Yes. State the gist of those, that is, where the idea of a discount on crude came from? Turning to the cable of 14th August 1959 from Paulin to yourself, received on 14th August - "Necessary to sustain desired earnings PanEastern stop You agree we prepared
20 immediately make necessary adjustment in BRoks Gulfiran and PanEastern Stop Our people Pittsburgh maintain this method more satisfactory in event you do not agree we prepared revert original formula plan however our opinion you stand to benefit using voluntary crude discount stop regards = Paulin" Was this in effect a proposal to bring Pan-Eastern earnings up to the originally anticipated level by granting a voluntary discount on the crude oil sold by Gulf to be refined? That was the effect. Then you cabled Paulin on 17th August 1959? Yes. Reply of 18th August. So in the result it was the voluntary crude discount that was finally adopted? Yes, that
30 was the proposal that emanated entirely from Gulf and I finally accepted it, with qualification that is covered in some subsequent cables, some cables in this file that clarify the questions raised by me. Cable of 21st August to Paulin says - "Acknowledge your tel 19th we wish to be guided by your

recommendation, and in view of your expressed preference for
crude discount we accept this method to apply as per exchange
of cables stop. Please convey to all concerned at Gulf our
sincere appreciation."

Case Stated EXHIBIT A - letter from Gulf granting
reduction of price of crude oil sold to Pan-Eastern. There
were in the following years letters in which a crude discount
was granted in order to keep Pan-Eastern earnings up? Yes.
Next letter A10 - figure of 5 cents for that year; next year
10 13 cents. And so on to A14. Was the effect then that over
the following years of the contract it was always necessary for
them to make some crude discount because Pan-Eastern earnings
did not reach the desired level in each of those years?
Discounts were granted by Gulf to Pan-Eastern to give to Pan-
Eastern refining profits which reached the minimum level.

You said before lunch that you had been having
discussions with Gulf in 1958 regarding setting up of naphtha
refinery in New Zealand? Yes. Did Gulf prepare at that time
a project specification for you? Yes. I produce my file of
20 papers regarding those discussions and also specifications.
(EXHIBIT C).

As events turned out, that proposal never became an
actuality? No. In 1959 the Shell Company obtained an
agreement with the New Zealand Government to establish a
refinery? Yes. The Shell Company obtained an agreement
with the then Government to have exclusive right to build a
refinery to cover the whole of New Zealand's requirements.
The agreement was reached in 1959. I have reason to think
the negotiations covered part of the span of our negotiations
30 with Gulf. However, did the Government finally decide in late
1959 that the establishment of a refinery should involve
participation of all the companies? That was after strong
protest made by myself. I cannot say all the other companies
made protests. I made very vigorous approach to Mr. Dash, then

Prime Minister. The Government modified the proposal. And then was there signed a participant Agreement? That was not signed until March 5th 1962. That agreement involved setting up of new refinery in New Zealand? It was an agreement between parent companies of the marketing companies here and Europa. Negotiating overseas and signed overseas. Then Europa formed a new company to hold the shares relating to Europa group interests in New Zealand Refining Company Limited? No, Europa did not. The shareholders in Europa formed another
10 company, called Europa Refining Company, which had no corporate relationship with Europa Oil, a separate company but basically the same shareholders. Europa Refining Company took up shares in New Zealand Refining Company in terms of the participant agreement.

You said that the New Zealand Refinery Company does not buy and sell feed stock but processes feed stocks on behalf of the oil companies? Yes, on a processing fee basis. How is that done? Although New Zealand Refining Company does not buy the feed stocks and does not sell the products, the
20 revenue obtained by New Zealand Refinery Company Limited which is ultimately available for distribution to its shareholders, and its shareholders not only include the five participating oil companies but also include shareholders being members of the public in New Zealand - the undertaking given to Government was that these overseas companies would not have more than 60% equity, and there would be 40% New Zealand equity. Europa's participation, refining participation, was to be made out of the 40% New Zealand holding and the remainder was offered to the public - the effect is about 30% of total equity is held by
30 general public of New Zealand Europa Refining Company - agreement was that as between the five companies they would take up their equities vis a vis one another in proportions of Mobil International 30%, Shell Petroleum 25%, B.P. 20%, Caltex 12½% and Europa 12½%, but vis a vis total shareholding

each of these ratios are diminished by 25% dilution of public held equity. So that the figure you have suggested is correct. Europe has about 10% holding of total capital. Because of the proposed construction in New Zealand Refinery, did you have to negotiate with Gulf in regard to the supply of feed stocks for the refinery? The previous question was how was the New Zealand Refinery to be remunerated. Remuneration proposals are set out in the prospectus, but are based on the same concept as we discussed for Pan-Eastern, i.e. refiner's margin. New Zealand Refinery earns the same type of margin as Pan-Eastern? In general I say yes, but problem is much more complicated. It is not a case where you have only two partners.

TO BERNER: The individual companies own the feed stock, have it processed and pay a processing fee to New Zealand Refinery? Yes. Then they pick up their products again? That is a general expression of what in fact is a much more complicated business.

TO COTTRELL: How you had to negotiate with Gulf for a supply of your feed stocks for refining at the New Zealand Refinery? Yes. And did you agree with Gulf that new arrangement be done on existing Pan-Eastern structure? It was necessary because of Europe's thoroughly unbalanced yield requirements for the New Zealand market to negotiate for supply of a feed stock which would after processing through New Zealand Refinery yield a pattern of products suited to Europe's New Zealand market. And that necessitated a partial refining of the feed stock overseas. Getting rid of the heavy ends as much as possible. The other marketing companies in New Zealand, did they have the same type of market for various products as Europe or more heavy end market? To generalise, the overall market requirements in New Zealand, lumping all companies together, required a specially prepared feed stock - that no crude oil in its virgin state would have been suitable for any one

marketer in New Zealand market. So that in varying degrees all companies bring in partly refined feed stock.

Now you eventually negotiated a series of contracts which would replace the 1956 contracts? Yes. But basically it was a question of altering the refining that had been done now for this partial refining? No, the source of the feed stock became the Kuwait topping plant partly owned by Gulf Corporation, complete change in supplies and in supply source.

TO BEUCH: Was the supply source still Gulf? Gulf Corporation,
10 yes. Crude, but a different crude but still one of the Gulf crudes - Kuwait crude and Kuwait naphtha. These went to Kuwait topping plant as distinct from the previous contract when Iranian Aghajari crude went to Abadan refinery. Then after New Zealand Refinery, Kuwait crude belonging to Gulf went to Kuwait topping plant and product of topping plant shipped to Europa Refining for delivery at Marsden Point.

TO COUNSEL: How the contracts you signed in 1962 pursuant to this arrangement? These were not acted on, signed but superseded, by 1964 contracts. (Another series of contracts were entered
20 into in 1962 but were superseded by contracts in 1964).

Now coming to 1963, were the affairs of Europa and A.M.P. investigated by officers of the Inland Revenue Department in early part of 1963? Yes. Consideration was given to these 1956 contracts, and did you produce those contracts to the Department? We produced the contracts towards the end of the Inspector's investigation of the company's affairs; the contracts themselves were made available to the Commissioner. And also did the Inspector concerned ask you for information on various aspects of the contracts and on
30 various aspects of the petroleum industry? Yes. On 20th March 1963 I wrote to the Commissioner and enclosed a memorandum which I prepared at the Inspector's request. The Inspector was a Mr Tyler. He put various questions or propositions to you and you gave the Commissioner this memorandum in reply?

I produce a copy of letter (EXHIBIT F).

Mr Tyler's thesis was that the Pan-Eastern earnings were a discount of the price which Europa paid for gasoline? That was a constantly reiterated assertion. Did he refer to the fact that there were such things as discounts off crude oil and petroleum products prices? Yes. And did you express any view to him as to availability of . . .? I told him that to the best of my knowledge and information there was no such thing in 1955 and 1956 when I negotiated the contracts.

10 That would not include . . .? Mr Tyler raised the question of spot cargoes and distress cargoes and whilst I had never been in that market I did not contest with him that there could be and might well be such things, but they had no interest to us because we wanted a secure source of full supply over the period.

You discovered later that on the same day, 20th March 1963 - you wrote the letter - on that same day the Commonwealth Taxation Board of Review released its judgment in International Oil Case which they had been
20 considering? I was not aware of that then, not until a great deal later.

It appears from the memorandum you took up with him his attempt to convert the refiner's margin into a discount for gasoline? Yes. Anyhow these enquiries were concluded and you eventually received a letter dated 27th June 1963 which is EXHIBIT F on the Case Stated? Yes. You replied to that letter? Yes. (Not in Case Stated). That is my letter of reply. (EXHIBIT Q). And then you also produce your letter to the Minister of Finance of 3rd July 1963 and his reply dated
30 5th July 1963? (EXHIBIT R). Your letter dated 3rd July 1963 to Commissioner, did you ever receive any reply to that in the 1963 period? No reply.

In moving forward to March 1964 - did you on 10th March 1964 execute a new set of contracts for refining,

transportation and supply of refinery feed stocks? Yes. And these supersede the 1962 contracts. These contracts are feed stock supply contract (EXHIBIT B in Case Stated) between Gulf Exploration Company and Europa Refining Company. There is Processing Contract (EXHIBIT B5 in Case Stated). That is Gulf and Pan-Eastern. The Contract of affreightment (EXHIBIT B8 in Case Stated) made between Propet and Europa Refining Co. Limited. Had Propet developed into a shipping company of considerable size? Yes. My own knowledge of affairs of Propet stem from the fact that in 1956 Europa's affreightment contract was with Gulf Oil but at Gulf's request some time later than 1956 they asked that the freighting contract be assigned to Propet. Propet and AMP were the two co-shareholders in Pan-Eastern. Then contract for back haul of surplus products (EXHIBIT B9 in Case Stated) The ancillary agreement relating to alternate freights is EXHIBIT B10 of Case Stated. Agreement for reorganisation Pan-Eastern EXHIBIT B12 of Case Stated; and Agreement as to Indemnity of Pan-Eastern EXHIBIT B13 of Case Stated. What was the effect of this agreement for reorganisation of Pan-Eastern? I am a bit stuck to answer that.

TO BENCH: Route of the oil from Gulf to Europa Refining under the new arrangements. Gulf Exploration Company in Kuwait supplied crude oil. Then that goes to a topping plant in Kuwait. Whose oil is it when it reaches topping plant? That needs a bit of explanation. Give me the various stages and various companies involved and then I might be able to understand better the dissertation? We get the crude from Gulf Subsidiary to Kuwait Topping plant. Who owns the crude when it gets there? Contractually Pan-Eastern. Then does Pan-Eastern still own the processed oil that comes from the topping plant? Yes. Well then, the higher grades are brought to New Zealand from Kuwait? Yes. Ownership ex refinery of the light grade is sold back to Gulf Exploration. And then

Gulf Exploration under the supply contract ships that to
Europa Refinery per medium of Propet Shipping Contracts. You
don't know when property in it passes from Gulf to Europa
Refining? That is expressed in the contracts I think.

There may be an idea, this is true in the minds of
some laymen, that refining is done on a batch process. This
is the problem we have in getting good appreciation of situation
in Marsden Point. Each participant owns his own oil and
oils are different. It is conceivable that the thought might
10 arise that each participant's own oil is processed separately
at Marsden Point. But that is not the case at all. The
Refinery has the problem of blending the respective
participant's oils which then lose their physical identity
and the processing is done by a continuous stream process.
There is no way of identifying in the product out turn whose
product has come from whose oil. And so there is a deemed
yield for each participant according to the type of feed stock
supplied and in accordance with the programme prepared in
advance on the computer by the Refinery to get an optimum stream
20 operation. Because of complexity frequently the forward
programming has to be adjusted by a set of retrospective
calculations.

TO COMRESHI: What is the manner in which Pan-Eastern earns its
profits? You asked me did I execute a series of documents on
10th March 1964 - the contract between Pan-Eastern and Gulf is
not Europe contract and I have an idea that whilst I as a
Director of Pan-Eastern signed, the date of execution between
the two contracting parties might have been another date.

By what method does Pan-Eastern earn its profits under
30 the 1964 arrangement? In principle not dissimilar to the
generation of profits in the 1956 agreement, but in practice
there are substantial distinctions. One distinction is this -
that Pan-Eastern gets crude oil and then resells only a half
processed product. And one of the major troubles in terms of

Europa's ultimate interest in naphtha and at the time the contracts were made there was no posted price for naphtha, in 1964. The yield at the Kuwait topping plant is set out in the Pan-Eastern processing agreement I think, and it is a realistic statement of yield for that type of operation.

But because there is an absence of posted prices there is another set of determinations of values. And a Gulf Subsidiary sells crude to Pan-Eastern, Pan-Eastern pays for refining, sells naphtha back to Gulf Subsidiary and Gulf

10 Subsidiary sell to Europa refining. Pan-Eastern makes a profit in the operation.

10. BENNET: Pan-Eastern and Gulf Subsidiary will have to settle on a price for the naphtha? Yes. Is that worked on a formula? Yes it is on a formula. There were at that time no posted prices - the thing resolved itself in the end. And one further question - Gulf Subsidiary gets the naphtha from Pan-Eastern? Yes. And resells to Europa Refining? Yes. Do you know if it sells to Europa refining at the same price as it is purchased from Pan-Eastern? The same price it has

20 paid Pan-Eastern. So no profit on that transaction? No.

10. COUNSELL: And with regard to the freight contract of 1964, is that similar in structure to the 1956 freight contract? Yes. Is that running at the present time on a favourable basis to Europa? Yes, on a very favourable basis. Might turn out different from the old one? The old one was not bad, but this one looks very much better to me.

From the commencement of that 1964 freight contract to 30th November 1958 the profit balance in suspense £593,000 sterling. Then on the 30th March 1959 your company received an amended assessment of income in relation to the year ended 31st March 1960? Yes. And on the same date an assessment against AIF also in respect of 31st March 1960? Yes.

30 (EXHIBIT K. of Case Stated) Did you have prior notice of any kind before receiving that letter and assessment that the

Commissioner had changed his mind? Came out on a clear blue sky.

EXHIBIT K3 of Case Stated, page 4, Mr Twigg's letter of 5th May 1965. This statement - "It is considered that discounts off the posted prices are, and have been at all material times, available on arms length long term sales." Has your company been able to obtain since March 1965 any further information of the alleged new information other than what is contained in that letter? We have made repeated applications to the Commissioner for the alleged new information and have received no satisfaction, they have said it is not available.

TO BENCH: Have you made further enquiries of your own in regard to discounts on posted prices available on long term sales? There are discounts available today, but I still say there were no discounts available when I negotiated earlier in contracts in 1955, 1956 when I signed the contract I unhesitatingly say that neither myself nor any member of my company had any knowledge that discounts on long term contracts could be obtained on posted prices.

TO COUNSEL: The information you have seen with regard to availability of 1956 discount on products is Volume 11, Commonwealth Taxation Board of Review Cases, Case No. 53, p.296, para. 93: "On the evidence, we find that the posted prices of Middle East crude oil and the listed prices for petroleum products for the calendar years 1954, 1955 and 1956 represented prevailing f.o.b. prices in a market which at that time had established itself as a market independent of the other world oil markets at the U.S. Gulf and the Caribbean." Yes. Secondly, the document already referred to by Dr. Frankel and Mr Newton (EXHIBIT J) are the tables used in establishing refinery margins in the Persian Gulf as at 1955, 1957 and 1959, do they refer to posted prices? Yes, that is so. Table 5.

CASE RESUMED 20/2/69

Frankel/Horton Report Tables with regard to Refinery
Margins (EXHIBIT J). Look at that Exhibit and could you draw
the Court's attention to some passages there? - Table 5 - the
authors of this Paper have obviously adopted the same method
of assessing refinery profitability as I referred to in my
evidence on representations made by me on behalf of Pan-
Eastern to Gulf to amend the formula. I proposed that the
composite barrel form of establishing the profitability be
10 adopted and I notice here that the same form is used by the
authors, that is what they describe as Typical Yield Volumes.
They treat it as one barrel of crude yielding proportions of
that barrel of the individual products, and then they calculate
the market values of those proportions. And taking the year
1955 - total value from one barrel of crude yields 92% of
products (Column 1). The rest of it is loss. And the
addition of those composite fractions adds to \$2.36. Cost of
crude taken at the market price is \$1.26 leaving as stated in
the Table gross refinery margin per barrel of crude \$1.00.
20 What prices are used in 1955? Footnote shows prices used
(a) quotations f.o.b. Abadan - price per barrel; (b) simply
a yield - division of gasoline into aviation and motor.
Fraction of aviation gasoline and fraction of motor gasoline.
Yield was 19; these figures add to 19. (c) breaks gasoline
into two octanes - 20% at 90 and 80% of 79 octane. Estimated.
(d)-(e) Iranian Light Crude Oil f.o.b. Abadan. (e) cost of
crude oil per barrel.

Posted prices have been used there? Yes. This
paper was published in November 1959. One or two parts of the
30 text that follows tables that refers to refined product prices
East of Suez? Yes. Page 6 of Table 5 subheading "Refining
East of Suez". Second paragraph is relevant and top part of
the third paragraph. Authors have said top part of third
paragraph that the reference to Iranian consortium - loss

competition there than obtains elsewhere. Small reference on top of page 7 - sentence begins at end of page 6 - "Also there is some political pressure towards making products available to countries in Indian Ocean area at prices lower than are now quoted".

Then moving away from that topic and coming to another document: it came to your attention that there had been an oil price enquiry in India in 1961 - to examine the pricing involving various petroleum products in India. I sent away to get a copy of that. Indian Government Committee 10 presided over by Mr Dangle. I obtained not the whole, but first the preface to it, then the section dealing with refined products, and finally the summary of conclusions and recommendations which included crude oil and refined products. I produce a copy of the Dangle Report (EXHIBIT S) pages 41-56 (inclusive). Page 136 is summary to date. Referring to the last page of EXHIBIT S which contains at the bottom a summary of discounts which the Committee thought ought to be adopted after 1st April 1961? The figure for gasoline is 20 5% on f.o.b.

Those three references - Commonwealth Board of Review Case, Frankel/Newton Paper and the Dangle Report, are they the three references you have been able to find where some determination is made regarding posted prices for refined products east of Suez? Yes - for comparable periods - periods referred to in those reports. Around 1954 to 1961 is the period covered in those reports.

Further, you found some literature that refers to the question whether major oil companies will price cut against each other? Yes. I produce a publication which is an 30 article by Mr Leeman of the University of Missouri which refers to oil company marketing at different places. I refer to two passages which I have marked, pages 37 and 39 of the publication. (Reads then). These are from an article by

Mr Leeman. He mentions the oligopolist-which company is he referring to? It is a well known word which relates to seven International oil companies - Royal Dutch Shell, B.P. Company, Standard Oil of New Jersey, Standard Oil of New York (now known as Socony) Texaco Company, Standard Oil of California and the Gulf Oil Company. Those are the seven.
Article produced as EXHIBIT T.

Coming back to posted price for products - was there an agreement made between Todd Bros. Limited and Shell in
10 September 1955 for a joint venture in New Zealand? What was that? That is a joint venture for exploration of oil in New Zealand. This agreement provided for sale of any crude that might be extracted in pursuance of that joint venture? Yes. And what was the price the Shell agreed to pay? It would be preferable if I explained that the typical joint venture agreement in respect of exploration for and ultimate production of oil gives each party to the venture what is called an undivided interest in oil so produced. It is not a trading company; it is a joint interest; but each party derives title
20 at well head for his own share for his own disposal. This particular venture because Todd Brothers had no facilities for disposal of its share of any oil discovered it was agreed that Todd had the option to require Shell to purchase from Todd its share of the oil produced. What was the price obtained by Shell? That is set out in the agreement and is the posted price. Shell undertook to pay posted price of the oil at the normal source for New Zealand's current oil supplies with any adjustment which might be necessary to take care of quality differences and with an added value to cover
30 the cost of freight from the normal supply source to New Zealand. I produce a copy of agreement; the provisions are on page 25. (EXHIBIT U). Clause 12, commencing page 25.

Do you produce a copy of the balance sheet of Pan-Eastern as at 31st December 1963, together with statement of

income Pan-Eastern during year ended 31st December 1963.

(EXHIBIT V.). Item there under Shareholders' Equity?

That figure is \$U.S.11,510,869 plus net income for the year totalling \$14,000,000 odd, less dividends paid during the year of \$2,239,000, balance \$12,400,510. That was dividend paid in that year. What was the reason there for retaining earnings of Pan-Eastern? That is a policy established from the early days of the operations of Pan-Eastern. As I have indicated earlier, we had never lost sight of the possibility of transferring our refining interests to New Zealand Gulf as the other shareholder co-operated in this matter as they had always indicated they were prepared to come in with us on such a project. During every year of Pan-Eastern's fiscal operations, during every trading year, it paid a dividend to each shareholder, and AMP's dividend was always recorded annually from first year of receipt 1958 in the New Zealand accounts. These dividends were always returned in our income tax returns - AMP and in Consolidated Europa accounts.

10
20 TO BENCH: It seems that the main assets are moneys owing by Propet and Gulf Iran? I have to confess I am frequently puzzled by balance sheets myself. I cannot explain this; I would need time. Pan-Eastern would be owing money to Gulf Iran for purchases rather than the other way, I would have thought? There will be an explanation.

TO COUNSEL: Gulf agreed with you to accumulate earnings, what was the object? The object was by retaining earnings the possibility of using those retained earnings in a further refining venture - to establish a refinery. And those retained earnings were represented in foreign exchange? United States dollars converted to sterling under the terms of the agreement. So that did you in each year retain earnings in Pan-Eastern to meet this contingency? Yes.

You said yesterday the eventually it became

apparent that the New Zealand Government would want all the companies participating in a refinery in New Zealand? Yes. And would you have to provide funds for that? Yes. And what was the total estimate in the first place of that New Zealand Refinery? The estimate given by Shell to the New Zealand Government when Shell obtained the monopoly agreement was £22,000,000 sterling. And you said that shortly after that the Government then revised the agreement so as to make all companies participants? Yes. So did it look then as if you would have to find some proportion of £22,000,000? Yes. And did you continue to retain some part of Pan-Eastern earnings in Pan-Eastern to meet that expenditure? Yes. Then was at some later time the estimate of the cost of the New Zealand refinery revised? Yes. During the period of between late 1959 and March 2nd 1962 when there were prolonged and difficult negotiations on the participants' agreement, the estimation written into the agreement - I think estimated figure, was somewhat reduced. March 2nd 1962 - Prospectus is dated 23th September 1962.

20 Referring to New Zealand Refinery participants Agreement dated 5th March 1962 entered into between B.P. Co. Limited, London, California Texas Oil Corporation, Europa Oil (N.Z.) Limited, Shell Petroleum Co. Limited and Mobil Petroleum Co. Incorporated - on page 6, last sentence of first paragraph, "To the extent that the total of the revised estimate prepared by Shell under clause 4.02 and the cost of land is greater or less than £18,000,000 (then the amount of New Zealand £5,713,713) New Zealand shall be proportionately adjusted as the case may require - 4.1

30 estimated cost of the project to be £18,000,000 excluding cost of land but including the cost of all ancillaries and housing for key personnel." Clause (b) of 4.02 states "And if the total of such revised estimates together with the cost of land exceeds £20,000,000 the participants shall

review the position before committing the Refinery to proceed."

At March 1962 an estimate of £18,200,000 in the prospectus towards the end of 1962 there is an estimate of just under £10,000,000, but that excludes land. £18,000,000 excluded land too. What was the reason for that alteration to estimate? The original estimated 22 million was the Shell estimate. Estimate from Participants agreement was also Shell estimate. Shell had the responsibility to prepare the project specifications and get contractors' bids. The bids that came in were much below Shell's estimates, and the figure which is given in the prospectus is in respect of the bid which was accepted. And of course there was not a bid for the whole - one major contract and then supplementary contracts. So that in substance the estimate in Participants' Agreement was a great deal higher than the contract prices. Was the result therefore that your company's contribution was not a proportion of £22 million but a proportion of between £9 and £10 million; actual contribution was £514,000? In share capital, but in addition participants undertook to make loans to make difference between share capital funds and advanced capital. And in due course did you bring those retained earnings of Pan-Eastern into the hands of A.M.P. by way of dividend? Retained income was ultimately paid out in dividends. Was that in March 1964? Yes. The accounts would show it as that; it may have been earlier.

And having been paid out to A.M.P. they found their way in due course to Europa Shareholders? Under Retention Tax law at the time they had to be passed on by Europa to its shareholders. Who paid 7/- dividend tax on dividends received from Europa.

And did you have the agreement with Gulf to postpone if you wished payments on invoices for products up to the extent of your share of retained Pan-Eastern

earnings? Yes. And what was the advantage to you? The
advantage to Europa was that it made available in Europa's
circulating funds the amount of credit which Gulf agreed to
give. It gave Europa further liquidity in this company?
Yes. And then Gulf was secured because of your interest to
A.M.P. in retained earnings of Pan-Eastern? Yes. I now
produce as EXHIBIT W three letters dated 22 September 1960,
22 September 1960 and 1 December 1960. The first letter is
to Gulf Iran from A.M.P.; second letter to Pan-Eastern from
10 A.M.P.; third letter to Europa from Gulf Iran.

Do you now produce copies of the Pan-Eastern
Trading Accounts for the years 1957 to 1965? (EXHIBIT X).
They are internal trading accounts of Pan-Eastern. The
originals are in Pittsburgh. I saw a range of originals.
These have come from Pittsburgh. They do not include
invoices, vouchers, etc., but are the book entries which
affect the results in Pan-Eastern.

Turning now to the Pacific Trading and Transport
Company. Exhibit A24 in Case Stated: this is the
20 agreement between Europa and B.P. for the purchase of Gas
Oil, lighting kerosene and fuel oil. Agreement commenced
on 18th December 1961. The Agreement to continue until
New Zealand Refinery came on stream or in other events.
Then was it part of the arrangement that you incorporated
Pacific Trading and Transport Limited which would earn a
commission on the sales from B.P. to Europa under the
contract EXHIBIT A24? Yes, that is so. Commission was I
think 10%. Based on what? Based on the f.o.b. value -
posted price. The terms of commission are set out in
30 EXHIBIT A25 of Case Stated under letter from B.P., London,
dated 12th April 1962. Relevant part - "In respect of
each delivery of gas oil, lighting kerosene and fuel oil
purchased and paid for by Europa under the Supply agreement
we shall pay to you commission .. Addressed to P.T.L.

"Payment of the said commission shall be made to

sterling at your registered office in England and shall be due and payable on demand not earlier than 60 days after the date of each delivery by BP N.Z. to Europa under the Supply Agreement." How did this arrangement to incorporate P.T.I. arise? At some time prior to dates of the letters I had discussions with B.P. Trading Company, London, who were agreeable that their New Zealand subsidiary should enter into a supply contract with Europa New Zealand for the supply of these products. They were not agreeable that any discount would be granted for the supply of these products into New Zealand. They were however agreeable to pay commission to a subsidiary company of Europa in England.

TO BENCH: When was P.T.I. Company incorporated? It was incorporated for this purpose. And it is a wholly owned subsidiary of Europa? Yes.

TO COUNSEL: They were not prepared to invoice into New Zealand showing a discount. So they paid commission to subsidiary in London. These were their own terms. So that by that means the New Zealand transactions took place at posted prices? Yes. (Mr White objects to leading questions).

TO BENCH: What I can't understand: why did Europa incorporate this subsidiary P.T.I.? London were not prepared to invoice into New Zealand at less than posted price. Had B.P. Trading London who were invoicing to B.P. N.Z. agreed to give Europa a commission they then would be obliged in their consular invoices in respect of declaration on these invoices to disclose this discount. And they required a separate corporate entity so as to relieve themselves of that situation. I am speaking for what I think was in B.P.'s mind.

Short adjournment.

I produce as EXHIBIT Y proposal from B.P., London contained in letter form dated 13th November 1962 referring to supply of feed stocks for the proposed Whangarei refinery. I put this in to show that apart from financial returns under Appendix B there is a proposed formation of a Bahamas Company which involves B.P. forming a 100% Bahamas subsidiary, and then the Bahamas Company to be owned 50% by Europa interests and 50% by B.P. Bahamas subsidiary

The other point I refer to is section 7 of the
10 General Terms and conditions of Sale - attached at the end of the Exhibit - "Duties and Taxes", section 7. This reads:

"(a) The amount of any new or increased taxes, duties, fees or other similar charges (hereinafter called "taxes") which may hereafter be imposed or levied by any governmental or local authority upon the crude petroleum supplied hereunder, or upon the export, delivery, sale or use of such crude petroleum, or upon the production, manufacture, storage or transportation thereof, or upon any vessel or pipeline use in such transportation shall, subject to sub-section (b)
20 of this Section, be for the account of the Buyers.

"(b) No new or increased taxes at any time imposed or levied, as specified in sub-section (a) of this Section, in respect of any stage before the crude petroleum in question passes the tankship's permanent hose connection at the loading port shall be for the account of the Buyers unless and until the Sellers notify the Buyers of such new or increased taxes. From the date such notice is received by the Buyers the said new or increased taxes shall as aforesaid be for the account of and paid by the Buyers unless the Buyers forthwith notify
30 the Sellers that they elect not to pay such new tax or taxes or, in the case of any increased tax, the amount by which such tax is increased. If the Buyers do so notify the Sellers, then, unless the Sellers elect forthwith to take such new tax

or taxes, or the amount of increase of any such increased tax, for their own account, the Agreement shall terminate with effect from the date on which the said notice is received from the Buyers. No due or other charge on any tankship of the Buyers at the port of loading shall be deemed to be a tax for the purpose of this sub-section (b).

"(c) Any sums payable by the Buyers as aforesaid and paid by the Sellers for the account of the Buyers shall be added to the price as herein stated of the crude petroleum supplied hereunder and shall be reimbursed by the Buyers to the Sellers."

If further tax were imposed by one of the Middle East Governments, for example, that is carried by you? Yes. Under the terms of that proposal. That proposal never came into force. But in Gulf contract was there any similar requirement that the buyer carries the extra tax? No.

XXM: WILDE:

In your evidence you covered a long period? Yes. As far as revenue investigation is concerned, it did not begin until 1963? I think that is about the time, February 1963. And you told us that the Inspector was Mr Tyler? He was the Inspector in charge; he had assistants. Did he first make an enquiry because it was noted that A.M.P. had received non-assessable dividends from Pan-Eastern? I do not recall that. Enquiry was made to Mr Smith, Treasurer of Europa? Yes. But Mr Tyler saw you in February did he not? He saw me a number of times; I can't recall if I saw him in February. When he saw you he asked you a number of questions, which were then discussed? We had a number of discussions and I am sure he asked questions. I don't know if it was the other way round. These discussions were with you and Mr Smith? Yes. And both Mr Smith and Mr Tyler took notes at the time? Mr Smith took notes and I

don't think Mr Tyler took any in my presence. I am pretty sure on that. No notes at all? I would think not. I am sure he did not sit at a desk and take notes, or had a pad on his knee. He may have made jottings. Mr Smith on the other hand took notes. And he was investigating, Tyler was, a number of aspects of the industry including system of prices in operation? I have no knowledge of that. Did he not ask about prices in operation? Do you say you were under the impression at that stage that questions were all relating to Europa? I should think so. I put it that the system of prices in operation was a matter which was discussed? In general knowledge of pricing concepts - the literature on pricing, yes. And your views on the subject? Yes. The investigations - matter began in February; do you say you were aware or not of general investigation that went on for quite a considerable period? Of the industry? I don't think I was aware of anything more than Europa being questioned. Speaking now of 1963 or throughout? I was endeavouring to answer your question. In 1963 when Europa was being investigated I had no knowledge of general investigation of the industry. I think from memory I acquired that knowledge after the 31st March 1965 when I knew that other companies had received arbitrary tax assessments. You mean that all enquiries addressed to you up to then you regarded as relating to Europa? Oh yes.

Coming back to February 1963, Mr Tyler was shown copies of the 1956 contract? No, I don't think in February 1963. Was he in fact shown a copy? That would be very much later in the course of his investigations. I am speaking from memory. If I say he was shown contract in February or March would you disagree? I would like to help my memory, if I could recall the date on which the letter was written by me to the Commissioner. It was 20th March 1963. I wrote that at Mr Tyler's invitation. And

had he been shown the 1956 contract prior to that? I don't think so. The letter would record that. I am referring to 20th March: you don't think he had seen the contract at that time? (Letter EXHIBIT P). This letter to Commissioner refers to -

"I understand that Mr B.H.C. Tyler has discussed with you the investment of one of our subsidiaries in the Pan Eastern Refining Company Limited and has reported to you various questions he has raised with us regarding a processing
10 contract between that company and the Gulf Oil Corporation. Mr Tyler requested that we supply the Department with copies of this Agreement as well as agreements Europa Oil (N.Z.) Limited has with companies in the Gulf Group. He also requested a written memorandum covering the observations we have to make on various points he has raised in connection with Pan Eastern Refining Company Limited.

"As Mr Tyler will have told you, though we had from the beginning certain reservations as to our position regarding a contract between Pan Eastern Refining Company
20 Limited and the Gulf Oil Corporation, being both companies which are not domiciled in New Zealand and over which we have no control, from the beginning we made available to him the unsigned copy of the Agreement which we hold. However, we feel, and I was pleased to understand from Mr Tyler that you appreciate this, that we would be placed in a difficult position with the Gulf Oil Corporation and possibly in any future relationships with other overseas interests, if we were to hand over contracts which to say the least it may be doubtful whether in law we are required to do so at this or
30 any other stage. On the other hand, we are most anxious to remove from the beginning any doubt in your mind regarding the nature of the contract in question.

"From my discussion with Mr Tyler I realised that for a full appreciation of the contract it is necessary there

should be a better understanding of the many complex phases of the oil industry, and at his request I have prepared the attached memorandum which in the main is limited to answering the questions raised by Mr Tyler, and this memorandum is submitted without prejudice. I understand that after you have studied the memorandum there will be an opportunity to discuss it fully with you when I could fill in any gaps which may have occurred to you.

10 Regarding the contracts, I was very pleased to learn from Mr Tyler that you appreciate the delicate position we find ourselves in in our relations with the Gulf Oil Corporation and generally in respect of any future possible overseas relationships, and that you assured us through Mr Tyler that the copies of the agreements which are attached hereto will be studied by yourself and senior officers but that the papers will be returned to us and no copies taken. It is understood that you reserve for yourself the right at a later date to claim copies subject to our rights to then take such view as our legal position
20 may entitle us to do, though I trust you appreciate that we expect that such will not be necessary.

 "Please let me know when you should like to discuss the matter and I look forward to hearing from you.

Yours faithfully,

Bryan Todd

Documents and Memorandum per favour Mr B.H.C. Tyler."

 That letter suggests that he had seen the contract? Yes. "Documents and memorandum per favour"? If I can rely on memory, we had the utmost reluctance to produce
30 documents which were between us and third parties. And this is why I mentioned in my letter that we finally decided to assist the Commissioner by letting him see the documents. I would think it is most unlikely that Mr Tyler had access to those documents prior to this letter. But I could be

wrong. I suggest that Mr Tyler read the contracts in your office and then you at his request wrote the letter to the Commissioner? I do not think that is correct. Would you agree that at the interview when you discussed that, Mr Tyler raised with you a number of matters arising out of the contract? I think it is more correct to say arising out of examination of Europa's accounts. Did he not raise with you these matters - (1) the question of return on capital, February 21st? Yes, he raised that question. Return of 10 2½ million on Pan-Eastern £50,000? Yes, he raised that.

(2) All agreements were entered into on the same date? Yes.

(3) That Pan-Eastern had a limited business? I don't recall that.

(4) That Pan-Eastern had no refinery? Yes.

(5) That Gulf was the only supplier? I don't recollect that.

(6) That Gulf did not enter into similar agreements with other people? No. If he asked it I would be incapable of answering.

20 (7) Pan-Eastern profits appeared to be guaranteed? I don't recollect that.

To raise those matters he would need to have read the contract? I should not think so. I think that would have emerged from his examination of the accounts of Europa. Or in the alternative he would not necessarily have had to read the documents to be able to ask those questions. If he said he did you would not disagree? I could not disagree.

In your reply to the matters raised, did you say Pan-Eastern was a separate genuine refining venture? Yes.

30 The difficulty here is to answer precisely the question. It may have been no question asked; may have been information given by me in discussion. Did you say no discounts were allowed on products as posted prices for products reflected the International market? This language covers the effect

of what you said? I can't answer it in that form. It depends on whether we were discussing the period of 1956 or the contemporary period.

You are repeating what you said yesterday -

"I told him that to the best of my knowledge and information there was no such thing in 1955 and 1956 when I negotiated the contracts."? That is quite true. Can I take it from that that you say that when speaking to Tyler in 1963 regarding discounts you limited those remarks to 1955/56?

10 No. What should I take from it? Your questions are difficult - we had a very general discussion and Tyler was given not only very ready access to all our accounts but was given the opportunity of talking freely.

TO BENCH: Did these matters emerge from the general discussions you had? It may well be we were discussing in same context the 1956 period and the 1963 period. There had been a great change in world market scene in that period. So the question relating to the situation in 1956 - the answer would be very different from 1963.

20 TO COUNSEL: Period between 1956 and 1963 you mean there were discounts? Discounts on posted prices of crude oil in 1963 but not in 1956. And in respect of products? In my view at that time there would be little or no discounting of products in 1963. Earlier none whatever - none in 1956 to my knowledge, none whatever. I am sure this is what I remarked to Mr Tyler of my knowledge of the subject. Would it be fair to say you gave him no indication of any discounts on posted prices on products at all up to the time you were speaking? I think it is fair to say that as far
30 as Europa was concerned there would be little prospect of getting discounts on posted prices. You made it clear in what you said to him that discounts were just not available and you were referring to the time you were speaking - February 1963? No, I would think we were talking of the

contractual position of Europa which related back to 1956.
Did you not yourself say yesterday that you had referred to discounts on spot short term sales as the only kind of discount? Yes, but I do not know if yesterday I gave - In general scene, and this is where the ... To be fair to Mr Tyler some misunderstanding could have occurred.

Is it right to say that you covered a number of points in these discussions and set them out fully no doubt in your discussions at quite considerable length? No. Did
10 you in fact prepare a memorandum which you have summarising the views you expressed to Mr Tyler? No, I prepared a memorandum to answer six questions put to me by Mr Tyler with a request that I base my reply on these six points - he would like my reply on these points to be in the hands of the Commissioner in I think two days (Memorandum EXHIBIT P). Points 1 and 2 you deal with together? Yes. On 20th March 1963. Looking at page 4, last paragraph of passages dealing with 1 and 2 - "The foregoing section of this
20 memorandum is for the purpose of establishing that market quotations are the result of the interplay of the laws of supply and demand and competitive influences in a highly diversified industry."? Yes. That and the rest of what you say there is written as at 20th March 1963? Oh yes. I think that in reference to realities that had arisen in Near East situation. Speaking as at the date of the memorandum. And speaking generally over the industry as a whole? Yes, emphasis as a whole.

And in point 8 - that is where discount question was specifically raised - you there set out your view -
30 "Mr Tyler has made reference to the formula contained in the processing contract. When the contract was made this formula was included for the purpose of cushioning the possible effect of substantial price fluctuations either way." In the course of that memorandum you make no reference to

existence of discounts do you? No, I don't see any. I suggest that it confirms the view that you then expressed that there were none available? No. You are taking this whole discussion right out of context. Memorandum was dealing with points raised by Mr Tyler, and raised in the context of his continued assertions that the Pan-Eastern earnings were nothing but a disguised discount.

TO BENCH: But did you invite Mr Tyler to accept in these general discussions that discounts on posted prices were not available in regard to oil? I am sure I would say not available to Europa. I can be sure I would say not available East of Suez. That was in accordance with my knowledge at that time.

TO COUNSEL: And it would be that view particularly as set out in your memorandum which was submitted to the Commissioner? Memorandum went to the Commissioner. Anything reported by Mr Tyler to the Commissioner would be the result of your discussions with Mr Tyler? Oh no, I do not accept that. In reporting on what you said all Mr Macken had would be your memorandum and what Mr Tyler reported to him? No. I am sure Mr Macken had a great ...

TO BENCH: The information on your views that Mr Macken obtained could be obtained only from the memorandum and Mr Tyler's report of your views? Yes, he had no means of obtaining other knowledge of my views.

TO COUNSEL: Beyond that he had no other information than his officers had collected? No. You referred to letter of 27th June from the Commissioner to yourself? Yes. He makes it clear does he not that he had obtained legal advice? Yes. And it is also clear that the material he and his advisers had before them was the 1956 contracts, reports from the Department's officers and your memorandum and representations made by you and discussions in February-March-April 1963? I do not recall the text of the letter, but

I do not think that is correct at all. (Letter EXHIBIT F).

(Witness reads letter). He had available reports of his
officers? Yes. And would take those into account and
would take my memorandum into account. And you said he would
also take into account my discussions with Tyler. And the
contractual documents - and would reach the conclusion he
conveyed to me in letter of 27th June based upon those
factors. His letter does not say that. But he would have
those facts before the letter was written? Yes, my memorandum,
10 the contracts and reports. You now agree with what I had
put to you - you agree that the 1956 contracts had to be
examined to understand the set up properly? Yes. But
when you produced the 1956 contract you did not produce the
letter of variation at all, did you? At that time? I
think that is correct. You will agree that to get the
proper effect of the contract it is necessary to see the
letter of variation? No, I should not think so. But
certainly it is clear you left the Commissioner and his
advisers in ignorance of the existence of the letter of
20 variation? I prefer to say there was no intention. I
left them ignorant of the letter but there was no intention.

Is it not a fact and you agree that the letters
of variations show how the formula profit was varied to
bring the profit up to the level of 2.5 cents per gallon?
The letter of variation would show the discounts on crude
which had the effect of giving the return to Pan-Eastern
which was better than the return without the crude discount.
It would bring Pan-Eastern's profit to 2.5 cents? Not
entirely, because the letter agreements were the result of
30 extensive correspondence which gave an assurance of not less
than 2.5 cents. You mean B.14 correspondence in the Case
Stated? Yes that is so. And what you had said there and
what was said by Gulf representatives had not been produced
to the Inland Revenue Department? No. Because it had
no bearing upon the returns Tyler had already seen in our

accounts. That is not my explanation of why they were not produced. Do you want to give reasons for not producing that information? I think non-production was because it did not occur to us. It was not listed in our documentary contracts which were asked for and I do not think it occurred to anyone. You in evidence yesterday spent a considerable time explaining the importance of the correspondence? Yes.

10 Referring to 1963 - you had already in 1961 entered into a contract with B.P. which provided for a discount? B.P. - No, that is not so. Providing for a concession? No, a commission. It provided for a commission, and because called a commission it should not be regarded as a discount, do you say? Yes, not a discount into New Zealand. That was the terms on which B.P. offered. Terms of B.P.'s offer. Certainly you did not tell Mr Tyler about that in the year 1963? He may have seen it in the P.& T. accounts. I cannot say if he saw them. If he says he did not, will you dispute it? No.

20 And at that time in 1963 you had already completed another contract with Gulf? Yes. In 1962? Mr Tyler's investigation was 1963. In 1962 you had entered into a contract with Gulf - which I now show you? EXHIBIT 1. That is the 1962 contract - will you agree that the 1962 contract provided for discount? Yes. On crude oil. You did not inform Mr Tyler of the existence of the 1962 contract? He was investigating a series of tax years that had nothing to do with 1962. I did not disclose them - the matter never arose and I never disclosed them.

30 You had discussed discount question but did not disclose this particular matter in any discussion on discounts? Subject of the 1962 contract was never raised by you? No. I put it that if the Commissioner and his advisers accepted the position as you had presented it, they

could not have had the full information before them? I do not agree with that. I take it you suggest that these various matters from letters of variation onwards were not necessary for them to understand the position properly? That is right.

You told me earlier that at the time, February-March 1963 when discussions took place, you were unaware of any general investigation into oil industry? I said I was ignorant. Very soon after that you were aware that a general
10 investigation was taking place? No, I don't think I knew of any investigation until after 31st March 1965. I think I said that earlier. You have given evidence today about P.T.T. matters? Yes. Did you not meet Mr Tyler and Mr Phillips in November 1964? I don't recollect that. If they say you did and that enquiries at that time related to P.T.T. you would not disagree? No. I accept that. I take it then that at that time you would be aware enquiries were still proceeding into these matters affecting your company? I think there was quite a little curiosity on
20 the part of some of my staff. They did not understand why Mr Tyler occasionally came back and gave no reason for further enquiries. You were aware he was coming back on different occasions? Yes, but he declined to give any reasons. This was after 1963? Yes. In the period between June 1963 and October/November 1964 these visits would have been taking place? I could not say Yes or No. If he says so, then I accept it. But do you remember meeting Mr Tyler and Mr Phillips in 1964? No, I have no recollection. Remember any discussion at all regarding
30 P.T.T.? No. Do you recall that during that period, October/November 1964, informing Mr Tyler and Mr Phillips that new contracts with Gulf had been entered into? November, 1964, yes I do recall that. I remember that occasion. Not the date, but I remember there was an

occasion. If I say it was November 1964 you would not disagree? I accept the date as November 1964. At that time you were fully aware enquiries were still afoot into the contracts you had with B.P. Gulf and so on? No, I don't think I can answer that by a simple Yes. I had visits from these gentlemen. Sporadic visits up to then - but not to me - to the company. Which would indicate a continued interest in the company's affairs? Yes, except they were left in the position no disclosure for the reason of the sporadic enquiries. I knew inspectors were visiting very occasionally. I knew they were after information

LUNCHEON ADJOURNMENT

I have referred to letter of 27th June EXHIBIT F in Case Stated - in the last sentence of the first paragraph that letter refers to continued investigation? Yes. And the point referred to Solicitor-General as stated there is the validity of the contract? I had not read that into it. You wrote to the Minister of Finance and he replied. And you replied to his letter? Yes. That matter - no further correspondence arising in the matter of your assessments - I regarded the correspondence as concluded. And next was assessments at the end of March 1965? Yes. Had you yourself before that letter seen the Commissioner? I don't remember. The letter implies that and it may well be that - I just cannot clearly remember.

At this stage I refer to the date on which various documents were in fact produced to the Department: do you recall that you were asked in April 1965 for all copies of all agreements between Gulf Group and your own company? I think I was out of the country then. No, I returned on 1st April 1965 I think. Shortly after that do you remember?

TO BENCH: Remember shortly after being asked for copies of all the contracts with Gulf? Not personally, but perhaps my company was.

TO COUNSEL: Letter of 26th April addressed to you personally.

(Letter read). Did you receive that? I do not remember it.

You appear to have replied on 3rd May stating documents would be supplied? Yes. Have you a file with these letters on it? I don't think I have. In that letter you said documents would be supplied etc.? Yes. On 11th May 1965 that undertaking was given and contracts were delivered; but the contracts were supplied without the letter of variation? I do not know which contracts you are referring
10 to. 1956 and 1964 contracts? You did not want copies made - the new Commissioner wanted ...

TO BENCH: In April 1965 the Commissioner asked for copies of all contracts relating to Gulf group and Pan-Eastern? Yes - and contracts were supplied. Contracts in 1956 and further contracts in 1964? Yes. But in between there was a letter varying the formula of the 1956 contract? There was a series of correspondence which resulted in annual letter agreements which has all been given to the Court. But in 1965 when the contracts were supplied to the
20 Commissioner, did you supply the letter finally varying the formula? They were annual letters. Were those supplied? I cannot say.

TO COUNSEL: I put to you that contracts of 1956 and 1964 but letters of variation were not? If you say they were not I accept that. On 17th May 1965 contract documents were returned to you? On 17th December 1965 you received amended assessments for years ended 1959, 1961, 1962, 1963, 1964? I do not remember that but accept it. On 16th March 1966 Mr Rathgen wrote to you - "On the 20 September 1965 one of
30 my officers returned to you the draft copies of the 1956 and 1964 series of contracts between the various Gulf companies, the Europa group and Pan Eastern Refining Company Limited.

"I find that these agreements are required once more

and I therefore make a formal request for access to the signed copies of all these contracts. This request is made in terms of Section 13 of the Inland Revenue Department Act." That was received no doubt? Yes. On 25th March Europa Treasurer replied stating originals were overseas, is that right? (Roads letter) Correct. You did not have original copies apparently? Yes. I think they were what they call conformed copies. We did not have the original signed copies. As far as letters of variation are concerned, you had copies of those? No - those are between Gulf and Pan Eastern not Gulf and Europa. And you did not have copies of them? We certainly received them. At that point of time I can't say we did. Didn't you yourself countersign these letters? Yes, but that was overseas. I think in more cases than not the letter agreements were reached when I was overseas - and letters between Gulf and Pan-Eastern would be signed by me while there, because they required execution by other directors. May be occasions when letters were sent to me in New Zealand and signed. You signed letter dated 8th February 1963 (A13 in the Case Stated). It was sent to you and you signed that one here?

TO BENCH: Pan-Eastern would have these letters? Yes.

But didn't you also have copies in Europa office? Copies would be sent. You would have copies in Europa office in Wellington? Yes, but not necessarily at the time they were signed.

TO COUNSEL: Being signed from about 1959 on? Yes. And I was overseas every year. Coming onto Europa file each year? I would think so.

30 On 31st March 1966 another letter to Europa asking for six copies of the original - "... I would also like to have confirmation that the copies forwarded included all contracts or other documents amending the terms thereof relating to this matter to which the Todd group of

at 31st December 1955, and 31st March 1956? Yes. 20th

December 1962. Variable list of discounts over period from
1955 to 1959? Yes. If accurately set out it indicates
that West of Suez area at that time there is evidence of
discounts as listed? I could not give an acceptance of
that. If this is a correct extract from Platt's Oilgram
would you accept them as correct? Not as commercial
transactions - include sales to Government - they do not
represent commercial going rates whatever. And I cannot
10 interpret the asterisk reference under date 12th December
1962 relating to sales in Germany in 1955 and 1956 - Platt's
Oilgram is a daily publication and I cannot understand how
those came in under these dates. I reject this as evidence
of commercial sales. I reject that schedule as being a
record of commercial prices, I should say. I do not
regard them as discounts - they are prices to Governments
and prices to Governments are frequently negotiated on
entirely non-commercial considerations and any such prices
could not be interpreted as commercial discounts.

20 You spoke of Ampol Sleigh and another company
yesterday: what period did that cover? What period did
this cover? This covered the period 1952 onwards. When
did you first get to know there was some arrangement they
had? My evidence shows that in London in 1952 I was told
by Mr Bramstedt that a proposal of this sort was then being
given consideration by the management of Caltex in New York.
And you went to Australia to talk to heads? No, I talked
to heads of two of them in Sydney in passing. I was on my
way to London. And got full story from them? I got
30 confirmation of what I had discussed in London with Mr
Bramstedt and further my discussions in New York with
manager of Caltex in 1952 and my visit passing through
Sydney in 1954 confirmed these companies were in receipt
and had been in receipt of marketing allowance which Caltex

had discussed with me in 1952. The special nature of the arrangement was strictly confidential at that time. Was there at that time a knowledge in market place that they had a special arrangement in the industry at that time was there a suspicion that Australian companies had a special arrangement? I would think not. That was 1954. What period was covered by this special arrangement? Up to about 1956? May go right until to-day. But you have no knowledge of the situation in late 1950s? No. Or in the
10 sixties? No. Not as to this particular arrangement. I have some knowledge of other contractual conditions between Caltex and Ampol for example. I asked that because of what is reported in the Income Tax Reports in the Mobil case - have you read that? No. Mobil Oil Australia Pty. Ltd. v. Federal Commissioner of Taxation A.I.T.R.Vol.9, 133. On page 145 - "Counsel further said that the Commissioner's case was that the prices charged to the Taxpayer in respect of the base stocks and finished oils used by the Taxpayer during the four years in question, which the Taxpayer had
20 purchased from Socony Mobil Oil Company Inc. or from Magnolia Petroleum Company, were in any event in excess of prevailing world prices and in excess of prices which the Taxpayer would have paid for those items, or for items of comparable quality, if the Taxpayer had not been an affiliate of Standard-Vacuum Oil Company or Socony Mobil Oil Company Inc. Counsel further said that the Commissioner would tender, inter alia, evidence relating to the prices at which certain other Australian oil companies imported base stocks and finished oils during the relevant period, and
30 relating to the quality of those base stocks and finished oils which the Commissioner contended and would seek to prove were comparable in quality to the base stocks and finished oils imported by the Taxpayer." You have not heard of that? From the terms used "base stocks and

finished oils" without knowledge of the report I surmise that relates to lubricating.

In this early stage - I want to clear up (page 38 of the notes, line 25) you got the early Caltex contract. I put it to you, I suggest when you put in or produced evidence of the first Caltex contract you spent some considerable time speaking of Dutch East Indies basing point. As far as I can see there is no reference in contract to basing point in Dutch East Indies (EXHIBIT E, the contract) 10 it is the West Coast of North America as I read it? I can help you (witness looks at contract). Do you think you are wrong? Clause 8? I said the basing point for Caltex contract was deemed to be the Dutch East Indies. And I should read sub-paragraph (1) in middle of page 22 which says - "the provisions of this Article shall not apply in cases where Goods are sold and delivered at a loading port in the Dutch East Indies".

TO BENCH: Above it says Los Angeles? Yes - the provision is under subparagraph (2) on page 22 that the ... California less 20 7½% was the computed actual cost of freight from Dutch East Indies. You mean Dutch East Indies was 7½% less than California? Yes. Difficulty was when we wrote the contract it was Europe's duty to charter a ship to uplift the goods from the supply point, which in most instances was Bahrein Island, Persian Gulf, which was then a remote source of supply for New Zealand. The California market was still in existence and a lot of shipping moving from California into Pacific area, principally Japan. So there was a well established charter market for shipping ex Californian 30 ports. But in fact most of the supplies, or a substantial quantity of them being brought in by the dominant competitors in New Zealand, namely Shell and Stanvac, were coming from Dutch East Indies. There were no charter rates published at all between Dutch East Indies and New Zealand. Ships

employed in those days in that service were owned by the two companies, Shell and Stanvac. So that in order to establish realistic assessment of what would be the market rate between Dutch East Indies and New Zealand only practical way of assessing that was to take known market rates California-New Zealand less appropriate deduction for voyage miles and other considerations such as turn around. So then as a method of convenience, this formula was struck to establish the rate between Dutch East Indies and New Zealand. That
10 is why I read latter part first.

TO COUNSEL: Does that contract not provide that articles shall not apply where goods are sold at loading ports in Dutch East Indies? If loaded in Dutch East Indies we would automatically in our charter get the benefit of that reduced cost. Where was oil in fact coming from? Principally from Bahrein in Persian Gulf. And for that freight - still notional freight on voyage from Los Angeles? No notional freight on voyage from Dutch East Indies.

TO BENCH: Notional freight from Dutch East Indies equals
20 Californian freight minus 7 $\frac{1}{2}$ %? Yes. That is freight not for carrying goods from West Coast of California but from Bahrein? Yes.

TO COUNSEL: Variations have been put in - these are copies of the variations - variations of 22nd January 1940? Yes, I have it. What was the effect of that variation as of 22nd January 1940 - Gulf Coast for export quotations replaced by f.o.b. ship at Gulf for domestic and export Gulf Bulk Motor Gasoline, less \$.00125? Yes. Letter variation of 10th August 1954? Yes. Which resulted in
30 a freight contract? Letter variation for freight rate? I am referring to letter of 10th August 1954. Does that mean a freight rate was to be the lower of Ministry of Transport minus 10% for the schedule voyage charter rates? If you cannot help me on this, perhaps we can leave it

over. I can help you on first point - the original contract on page 4 provides that gasoline lighting kerosene and power kerosene to be sold and delivered hereunder shall be equal in quality to average of the best of the standard non-premium clear gasolines or lighting kerosene or power kerosene as the case may be which are sold competitively in New Zealand during the period of six months expiring 45 days prior to expected arrival. Sold competitively means sold by these other four companies. Pricing provision in the
10 original contract was in case of gasoline under Article 2(a) of page 5 lowest current price in National Petroleum News under either of following headings -Gulf Coast for export shipment U.S. Motor Gasoline or Pacific Export for 400 e.p. blend 65 octane and above. In the same contract the price for gasoline sold and delivered subsequent to June 30th 1937 shall be lowest current price quoted in National Petroleum News under either of following headings - Gulf Coast for export shipping, United States Motor Gasoline, or Pacific Export 55-55 United States Motor Gasoline. There
20 was therefore in the pricing provision a fixed index for price where there was in quality provisions an obligation to supply quality corresponding with best average of the others. In the course of time the quotation Gulf Coast for Export Shipping U.S. Motor Gasoline was deleted from the headings published in National Petroleum News and Caltex proposed that there should be substituted another quotation which was currently recorded, and that was Gulf Coast Bulk Motor Gasoline 60-62 gravity 400 e.p. 55 octane, unloaded. Now
30 what happened was that when Caltex made that proposal we said "You have an obligation to adhere to your original price provision and you have an obligation to meet improved quality of others under the quality provision". And we argued successfully but as the original price index of Gulf Coast for export U.S. Gasoline had gone, theoretically we

were still entitled to the benefit of that. And by interpolation we agreed after strenuous negotiation that Europa's view was correct and having looked at what prior to the disappearance of U.S. Motor Gasoline index we found next quality stage represented an 1/8¢ difference - \$00125. Caltex accepted this logic and for contractual purposes then substituted the 400 e.p. quotation but recognised we were entitled to 1/8¢ differential. To pay 1/8¢ less. When two listed that represented the difference in quotations
10 when the two quotations were still published. They perpetuated the price calculation in other words. At that point were you better off somewhat? Yes.

Go on to what happened in 1954? That letter of 10th August 1954 - another letter of 12th August 1954 attached? Two letters of 12th August 1954. That letter appears to preserve the freight adjustment you already had at the time you had this letter variation? I had a fairly extensive series of negotiations involving assignment of these freight contracts. I would prefer to
20 study them. EXHIBIT Z (1936 Caltex contracts correspondence - 1936 onwards).

You referred at page 58 yesterday, line 28 to the holding capacity of refineries - I suggest you have much under-estimated storage capacity? I thought you might say that. My knowledge is derived from negotiations with other oil companies in the New Zealand Refinery Consortium. There was strong opposition - degree of storage flexibility which Europa desired to see provided at Marsden Point. You were informed by those arguing against you
30 that storage was along the lines you had suggested, that is five days? Yes. Although I add that I was well aware that because of certain obligations imposed by French Government refineries in France were required to carry a very large reserve of crude for military considerations.

Not only France that is thinking of military considerations?
What is holding capacity at Marsden Point? I can't give
that. If Mr Newton gives evidence you would expect him to
give accurate information on these matters? It would be
much better than mine I would think.

You recognise him like Doctor Frankel as an expert
in oil economic questions? That is not easy to answer.
I understand Mr Newton is an expert in oil shipping.
Doctor Frankel is an expert on oil pricing. What they
10 will say I do not know.

You said on page 38 of the notes at line 5-
"In other words instead of price cutting which is a tool
that has been long since rejected, the companies who have as
their main source of revenues unlimited facilities for
production of crude oil will attempt to dominate a market
by very expensive competitive activities which a less
fortunate company may not be able to match". You were
limiting that to international companies? Yes who
basically determine pricing policies East of Suez. So
20 you accept that it is not a correct generalisation to say
that price cutting is a tool of the past? I say my
statement is correct regarding international companies
wherever they are. Firms seeking to enter the market do
use the weapon and this would extend to internationals as
well? Do you accept that? That is a question which
could involve many interpretations. I mean price cutting?
European market - although I am not well informed regarding
it - has been gravely affected by discovery of large oil
reserves in Libya by large companies who are not
30 international and until the Libyan Government introduced
certain price degrees on export price of Libyan oil these
newly arrived producers who were not international companies
and who had little or no place in the European market cut
the price of crude oil to force it into the market. That

is a well known fact of regional significance.

I have no knowledge of Mr Newton's knowledge of price cutting. A knowledge of the areas where it works? If he refers to European areas which I understand are his main areas, then I think his knowledge would be correct.

Page 33 top of the page - you referred to - figures of 2 cents a barrel are wrong - is that from what you have read? Recollection of what I have read and what I believe to be true. Watershed area - it is for an expert to go into finer aspect. What you say there as the position in 1948-49 at which point watershed became the east coast of United States? It depends ... If it has to do with fuel oil market I agree. I think what I said was sufficient to illustrate - to go into more profound aspects of watershed you have to take into account price of coal in United States. You agree with what I say on that subject? I would not agree what you said or what I said is precisely true under all circumstances. New Zealand is on watershed between Caribbean and Middle East? Yes. But I must qualify that also. It happens to be the watershed in terms of sea voyage distance but with the two recent developments which are important, namely development of giant tanker which cannot get passage through the Panama Canal, the marine watershed no longer exists except for employment of relatively small tankers which are passing out of the picture except for occasional transportation of refined products. There is a proposal for pipe line from Columbia to West Coast ports. The crude oil pricing structure in Venezuela is different from Middle East and geographical watershed when it comes to crude oil is not the economic watershed. New Zealand is not the economic watershed of Middle East crude as against Venezuelan.

Would this be right - would my observation be right about 1955/1956 - New Zealand is a watershed between

East of Suez and Caribbean? For what type of oil. Crude?

Definitely not for crude. Gasoline in 1955 I suppose when smaller tankers were still operating, yes. I think I would agree.

Did you in your understanding of posted prices equate them with actual market prices? Page 27- "Posted prices - and also market quotations - are the result of the gathering of information from widespread sources." You are talking there of compilation by Platt's Oilgram staff. Page 37 lines 12 - "Market quotations for products in Persian Gulf? They are posted and they do reflect from time to time changes in price. Some fluctuations." I think I said crude posted prices in Persian Gulf had become tax reference prices because of rigidity imposed by Government.

TO BENCH: But are not posted crude prices based on market quotations? No longer in the Persian Gulf.

TO COUNSEL: You referred to a list price as a private price? Three - posted prices for crude, market quotations for products, and list prices - listed prices which by understanding is were privately listed prices, not for publication. I am sure Mr Newton would know more about that than I do.

I put it shortly - posted prices are the prices at which the major companies are willing to sell to anyone f.o.b. in cargo lots? Is that a general statement? In the period we are considering - 1956 onwards? As to crude first? I believe that the posted price of crude was generally the going price of the market. F.o.b. in 1956. But I must qualify the second part of your question that most companies are willing to sell That is not necessarily so at all.

COURT RESUMED 21/2/69

XXM: (B.J. Todd) (continued)

You have looked at Caltex contracts - remember we were commenting on posted prices - I have referred to page 2 line 30 and the statement you made there - I refer you to voucher for oilgrams - this is the original EXHIBIT A.

A passage on that EXHIBIT A - read final paragraph on first column - "Following types of prices are not for "open spot" transactions and therefore are not included in price tables: Prices arrived at by discounts off a specified price; "market date of shipment" prices; prices named in contracts; prices arrived at in accordance with arrangements made prior to date of sale. Prices made to brokers, and prices in inter-refinery transactions, also are not considered in the tables except as noted." That speaks for itself. Do you wish to explain what you said about market quotations relating to posted prices? Yes, it speaks for itself but requires a good deal of explanation, all of which I am not competent to give. But I can illuminate the question. Platt's Oilgram is the market reference publication which all oil companies use in their transactions and contractual relationships. For example, my own company Europa has contracts here in New Zealand for supply of lubricating oils and we have two companies in New Zealand with lubricating oil blending plants and our contracts are based on the Platt's Oilgram prices, originally based on Platt's Oilgram prices and then perpetuated by escalations in supply price in accordance with escalations shown in Platt's quotations. In other words, for the purpose of those contracts Platt's is an ideal method of establishing contractual long-term relationships reflecting at all times the changes in market place which may occur from time to time. It would be in my view quite impossible for oil industry in its major operations world wide to conduct its

business which is principally long term contracts without the availability of some price reference source.

Otherwise the relationships between the buyer and seller would be at all times on an ad hoc basis and there would be no real contractual position at all binding the parties. I gave a brief description of the term "distress" and term "spot" in earlier evidence.

Regarding Caltex contract - EXHIBIT E and EXHIBIT Z - I had referred to letter variations and we had got to
10 letter variation of 10th August 1954? Yes. There is a letter of August 12th 1954 which deals with the Los Angeles less $7\frac{1}{2}\%$ rate - the contract was renewed in 1949? I rather thought it was 1951. At a time when there was no right of renewal? Yes. Two documents dated 8th September 1949 which provide for the extension agreement - supply contract extended for 5 years to 31st December 1956? Yes, that is right. That is the main substance I think. The freight concession and the direct discount on gasoline are therefore brought forward at that date? Freight concession
20 yes. Direct discount on gasoline in manner I described yesterday - but I would not like it recorded that this is direct discount on gasoline in relation to market price. It is unrelated to the market price. Then there is letter variation of the same date? Yes, in form of letter signed by ... That provides does it not for an increase direct discount on gasoline? No. Of the kind I am referring to - is it increase of direct concession in the Caltex contract? It is a direct adjustment.

TO BENCH: Is that adjustment an increase? A decrease from
30 the newly adopted price reference heading. So as to correlate the value to the value established in the original contract. In effect it is a decrease in contract price? Not quite that. Worked out in money? No, the contract price. Contract price was set out in the

original contract, being determined on description of certain named motor gasoline. Later that named motor gasoline disappeared from market quotations and a new named gasoline was substituted for convenience and the price of the new named gasoline was adjusted to conform to the pricing value of the original gasoline. But what is the effect of this letter of variation? Its effect is that if this had not been so stated we would have had an increase in price of gasoline. This has saved us from an increase
10 in price.

TO COUNSEL: And this was a new contract? It was renewal of the old contract. Because isn't it a new contract - new term adopting a number of provisions of the old contract? Yes, it is not a newly written contract. But the new contract adopts a number of the provisions of the old contract? Yes. And to add to that renewal says "WHEREAS Associated is desirous of renewing and extending said Agreement" so it is really a renewal of the old contract.

You say it did not increase direct discount on
20 gasoline? It saved us from an increase in price. It gave same effect as earlier contract? Yes. Your position was no better under 1949 arrangement? True. But in short was the same? Yes. Can you say what was the effect of the concessions to your company as a percentage of gasoline posted price per gallon in 1949? I can only say having established that it perpetuated under the new contract the same pricing as under the old contract it cannot be suggested that it is a discount of any percentage of old contract or any contract. It is the same thing. But
30 applying it as the same thing you can't answer my question either? That question is not capable of being answered. You say it is a special arrangement with Caltex? Yes.

And when this contract was completed or about to run out you were looking around for a new contract which

would be better than the one you had? No, that is not so at all. Only other party I talked to was Gulf. On the question of a supply contract for New Zealand. Did you not have any other discussions with any supply contracts at that time with any other company? Not serious discussions. What do you mean by serious - were you in contact with other Internationals? I think throughout the whole of our trading experience once we were accepted in the New Zealand market as a responsible company there were many friendly and tentative approaches from other companies not necessarily international but possibly including international. You had no other direct negotiations at this time for supply of any of your supplies in New Zealand market? This is 10 1955/56 - it is going back a long way and I am quite sure there were a number of companies who had indicated would like to do business but I never had any serious ... In those discussions at that time with other companies were you ever offered a direct rebate? No. I cannot say - there may have been some small companies I was not interested in 20 who may have made offer of some rebate but I have no recollection of it.

Were you not offered a rebate of gas oil by BP in February 1956? I have no recollection of it. If I indicate that I have information to that effect, would you consider it might be right? If you have information I think it is likely to be right. You would have to check your files to see the amount of that rebate in February 1956? I don't think I would have anything on the file. BP would be regarded as a major company? Very responsible 30 major company. Having reminded you of BP, do you think there may have been other cases of that kind? I have no record of that. But have you anything in your mind? No.

Amongst papers you have produced dealing with tenders there were three files - one dealing with Caltex, one

with Shell and one with BP? Yes. EXHIBIT Y is one tender. Shell and BP correspondence deals with 1960? I think it can be identified with feed stocks for the New Zealand refinery. Caltex proposals however relate to 1956? Yes. That is EXHIBIT I. Look at the telegram 3rd February 1955, first on file, sixth page of it - "Alec will be coming to see you to further develop the basic terms upon which a mutually satisfactory renewal of our contract might be agreed upon having regard for your longterm
10 interests and to the competitive offers you have at hand. We have no intention of letting business go by default. Your discussions with Frank have been useful in outlining your position as you know we had always planned that final discussions would be had at top level and Pink could be with you now if illness had not interfered with his plans. He would be deeply disturbed to feel that his incapacity has placed us at a disadvantage. Incidentally he is getting along well and talks of taking a boat to New Zealand in several weeks which of course is out of the
20 question. It is unfortunate that a date for decision which originally was towards the end of March has suddenly become advanced to a deadline of February 21 having due regard for our past association and for our present intentions and desires we feel confident you will give us every reasonable opportunity to compete. You will hear further from Alex. Best Regards - Bill Bramstedt."

What competitive offers would he be referring to? He is referring to the discussions I had shown on second page, refers to Frank. That was a visit from Mr Frank Martin,
30 a regional director of Caltex, which I told him that as a result of the unsatisfactory nature of my discussions with Caltex management in New York in 1954, Caltex were going to lose the business. Did you refer to competitive offers in the plural? No. You had only told him about one

matter - Gulf? Had there been competitive offers?

From Gulf yes. Any other offers? No. How Martin took the matter, I cannot speak for him. It relates to what Martin must have said to his management after discussions with me.

What was being suggested by Caltex in the proposals you had - included an actual refinery? The time of this telegram, nothing. I am speaking of time of the contents of the file? That file contains all the documents you have produced on this subject and covers the period dealing with proposals that Caltex made? This file is a record of discussions which then became negotiations. What exactly was proposed? The set up had resemblances to the set up which was later entered into with Gulf? Yes. It did however contemplate an actual refinery? Yes. With greater risk elements than you have in the Gulf contract? Yes. Profitability depended on all the products and did not hinge on gasoline alone? Yes. That is in the subsequent proposal. There were two - first one was to give Europa the whole of the profit, whole of the refinery profits on motor gasoline. Second proposal which was offered as first was in effect withdrawn was 50-50 profits.

TO BENCH: That meant that you were to an extent increasing Caltex shares because profits on gasoline were higher than profits on heavy oils? Precisely.

TO COUNSEL: Profitability depending on all products? Yes. And there was some limiting guarantee to the extent of having a floor? Yes. A guarantee of a floor profit. You said this was in two parts - the second part followed the difference of opinion that arose? Yes.

TO BENCH: Second part was visit of this difficult man to New Zealand? He offered alternative which Mr Singleton did not support.

TO COUNSEL: And then you got a letter and with it a proposal? Not with it. A letter and a proposal that did not tie up? The letter explained what in view of the President of Caltex was the difference of interpretation and he arranged for Singleton to come out with a newly prepared proposal. That is the last one? Yes. We did not agree on that. That was the one that was presented after you had given Caltex representative knowledge that you had this kind of proposition from another company? No.

10 What did happen? When Singleton came as a result of the alarm which Martin had conveyed to New York, Singleton came to see me and I told him with reluctance - because I did not convey to one company what another is offering - because of our twenty-year friendship I disclosed to him in February during his visit that we had a refinery proposal from another company. I did not name the company or any of the terms. You gave no indication of the terms at all? None whatever. Did you give any idea of the concept of the arrangement? None whatever. I limited my

20 information and my disclosure to him that we had a refinery processing deal offered to us and he put great pressure on me to disclose details. I firmly declined to give him any information. And he came up with the Bahamas suggestion? No. This was February 1955. But there was a Caltex Bahamas suggestion? No, he came up with an earlier proposal - the one which later was withdrawn. Amongst these arrangements was there a Bahamas proposal? Ultimately. Final one was Mr Singleton on second trip to New Zealand. This was proposal prepared by Caltex New

30 York for my consideration and contained Bahamas provision. That was the last proposal. It was the one which they put up to match their competitor you had told them about? I had not disclosed in the slightest. They know there was a competitor. As a result of that knowledge, was this

the final proposal they put up? Yes, without any prompting from me or any details at all. If they got any details they must have got it from another source? If they got any - it did not come from me.

So in those circumstances you were negotiating at that time with Gulf? Yes. Keeping in touch, not negotiating. 27th May 1955 - the date of the Galtex proposals. Summing up the position - this was a time when you did not consider you could get discounts on posted prices but you were
10 exploring possibilities of a satisfactory arrangement for the future? Yes. You said the negotiations with Gulf - you went in June 1954 to Pittsburgh? Yes. And you had discussions there which you have related, and Gulf representatives came to New Zealand in February 1955? Yes. And it sums up to say that 1956 contracts evolved out of your visit and those discussions in New Zealand in February 1955? My visit to Pittsburgh in 1954 and discussions in New Zealand, Yes.

I suppose at this time you assessed yourself the
20 general situation of oil industry when you set out to find a new contract? Depends what you mean by assessed. You would study general situation before taking on negotiations with any of the big companies? I continued to study literature that was available throughout the whole period, always looking to problem of renewal. Were you aware at that time there was a surplus of gasoline? It is difficult to answer in that form. Was not the situation as far as oil products was concerned changed by re-opening of Abadan refinery in 1954? Yes. And can you tell me whether you
30 were then aware that Gulf had a market for heavy ends but gasoline surplus? That is not correct. You did not understand that to be the situation? I did not understand it to be the situation. You said on page 59 in evidence, line 15, dealing with exchange - "There is a highly

sophisticated exchange practice between companies which helps to alleviate these unbalances", "where mutual interests permit the exchange to take place". I put it to you that very situation of Gulf at the time you negotiated with it was the situation you have there described? No. If the position is as I have said that Gulf at that time had surplus of gasoline, would you agree then that the situation was similar to what you described if not exactly the same? No.

10 I suggest to you that at this time Gulf was in that position - you say it was not? I think it was not. There again you think it was not: do you agree Mr Newton would be in a good position to know the situation as to Gulf's gasoline position at this date? I have no knowledge of what he knew. You were a purchaser ready to obtain and wanting to obtain gasoline and other light ends? Yes. And from the point of view of Gulf if as I have said Gulf had market for heavy ends and surplus of gasoline, the entering into arrangement with you was an ideal one? If
20 those circumstances were present I would say Yes. You were an established marketer in New Zealand? Yes. And what amount of gasoline were you prepared to take at that time? Whole of our market requirements, approximately at that time 2½ to 3 thousand barrels a day. Of gasoline.

In the circumstances that you referred to yesterday and if Gulf were in those same circumstances, you would expect Gulf to be ready to make a concession? I would say it would be both unthinkable and impossible to procure a concession from Gulf below the market rate on
30 gasoline - posted rate. On the grounds you told us that no-one would want to disturb the market? Generally true. But if you could achieve the same result by a different means then the situation was ripe for that to be done? No. Not correct.

TO BENCH: If there were other means it would not disturb the market - might be other means that would not disturb the market? Yes.

TO COUNSEL: The method you adopted of Pan Eastern arrangement did not disturb the market? The method Gulf and ourselves adopted did not disturb the market. Pan Eastern was part of that method? Yes. Do you know a writer on oil named J.E. Hartshorn? No. "Oil Companies and Governments"? No.

Page 157 - the passage I want to put to you is this -

10 "Independent customers for crude have for a long time now been able to get significant discounts off Middle East and even larger ones off Venezuelan posted prices, but in addition they have been able to secure less obvious advantages. Finance has been forthcoming from the majors for local refineries; tanker companies who are linked with significant buyers of crude have found steadier employment, at better than rock bottom rates for their vessels. Many forms of special inducement have been devised - for customers with bargaining power." - date of this is 1962

20 first edition? I think that author has reported quite knowingly of the situation in 1962. That passage referred to "for a long time now" - would that go back for a long time prior to 1962? I would be surprised. It depends on what is a long time. To 1955/56? I don't know what the author refers to. Finishing that off, is this a statement which is accepted - if you are able to sell a barrel of gasoline you are then in a position to sell 5 barrels of crude? It depends - Gulf have various crudes all over the world. You could not generalise. Kapuni crude produces 50%

30 gasoline. Indonesian crude produces about 45%, so you cannot generalise. Persian Gulf produces about 19% according to Frankel and Newton? That is light Iranian - other crudes in Middle East such as Eiocene crude of about 28 gravity which would produce less than 10% gasoline.

Kuwait Gulf crude, is that approximate to Table 5? Table 5 relates to light Iranian crude and that was crude used in our 1957 contracts and Table corresponds with our own experience in Pan Eastern.

I have had maps prepared which show Venezuelan area and Middle East areas and names referred to in the Persian Gulf (Maps put in as EXHIBIT 3). The 1956 contracts - we have prepared a chart EXHIBIT 4. Dealing with products - first, top chart is called Actual and second

10 Notional. As far as Actual is concerned, the products relating to Europa came direct from Gulf? Yes, from Gulf Iran. Payment went to Gulf direct? Yes. Credit went to Pan Eastern as indicated? Payments that went to Gulf Iran were passed on as credit to Pan Eastern? I would not think so. And then whatever went to Pan Eastern was then divided 50% 50% - 50% to Gulf and 50% to Europa nominee, A.M.P? No this is quite incorrect way of stating the matter. Would you look please at the second part of the

20 chart and see if you agree with that? First is said to be actual - I disagree with that. Look at word Notional - is correctly used, do you agree? I have to study the chart first. I put to you my understanding of the position - step 1 on Notional refers to sale of crude to Pan Eastern? Yes. At posted prices. Then at step 2 it is notionally returned to Gulf for processing? Either to Gulf or to a refinery procured by Gulf. At Pan Eastern's expense. Then products are returned to Pan Eastern, Step 3? Returned from the refinery to Pan Eastern - refining carried out by Gulf but not necessarily at their refinery? Yes.

30 Step 4 is sale of products to Gulf and Propet? Sale of ex-refinery products to Gulf and to Propet. Including gasoline. At posted prices? Chart says gasoline at posted prices ... That needs a little qualification. I accept that for the purposes of the chart. Step 5 shows

movement from Gulf Iran to Europa - no joinder between end of red line into Gulf circle because gasoline that goes to Europa is not necessarily the same? Yes, that is right. Gasoline that goes to Europa is not necessarily gasoline that is returned to Gulf and Propet? Yes. It loses its identity but we get gasoline of same quantity and the same quality. Then sales to Europa are as set out above under heading Actual? Gasoline posted prices? Yes. Sales gas oil at posted prices less 5 cents a barrel? No.

- 10 Pan Eastern/Gulf agreement only rates for sale back to Gulf Iran for onward sale through Gulf system of gasoline. EXHIBIT A paragraph 5.02, last sentence. Wasn't the price to be paid by Europa for gas oil posted prices less 5 cents per barrel? Yes, but that section is not related to parallel operation in Pan Eastern.

TO BENCH: Is there not something in processing contract?

TO COUNSEL: Pan Eastern is concerned with gasoline? With crude oil and refining gasoline.

SHORT ADJOURNMENT

- 20 However the direct link between Europa and Pan Eastern is gasoline where both quantity and quality sold by Pan Eastern to Gulf is identical with the amount sold by Gulf to Europa? By Gulf Iran to Europa. You agree that under the contract paragraph 5.02 (EXHIBIT A) there is a direct discount to Europa under that? Yes, direct discount of 5 cents per barrel. But the position is under the Pan Eastern arrangement that Europa got a benefit which was tied directly to the quantity and quality of its gasoline purchases from Gulf? That is an over-simplification.
- 30 The Pan Eastern/Gulf contract provided that Pan Eastern will purchase crude from Gulf sufficient to make Europa's gasoline requirements only. The question of gas oil price under supply contract is another matter. You have over-simplified when you said that Europa received the benefit of the -

TO BENCH: Pan Eastern buys sufficient crude oil from Gulf to supply Europe's gasoline requirements? Yes. And buys that crude oil at posted prices? Yes. Then Pan Eastern is under the obligation to refine that oil through a refinery? Yes. Sub-contract? Yes. Then the products go back to Gulf Iran from Pan Eastern at posted prices? Yes. And Gulf Iran then supplies the equivalent quantity and quality of gasoline to Europe at the posted prices? That is an exact summary. And then Pan Eastern as the
10 refiner makes a gross profit of the difference between cost of crude and sale of products less refining costs? That is correct. And AMF has a half interest in Pan Eastern? Yes.

TO COUNSEL: You have said that you regard the Pan Eastern set up as a refining venture? Yes. No refinery in the Bahamas? No. Nothing there except a name on a door? An office - local directors and a secretary. Bookkeeping and accounts are they done there? Trading account under terms of agreement with Gulf are carried out by Gulf I think
20 in Pittsburgh. I have seen them in Pittsburgh. In the United States of America? I should think so. You also said as to your thinking in setting up a refinery in New Zealand? Yes. You agree it is normal to expect anyone in refinery business to take a refiner's risk? Not necessarily normal. You are already - your company is already in the New Zealand Refining Co. Limited as a shareholder? Yes. Where you hold a proportion of the shares? Yes. And therefore a proportion of the total investment? Yes. In your Pan Eastern setup the amount
30 you have put into it is £50,000? Yes. Broadly speaking your return is something like 1,000%? I have not made a calculation. 1000% per annum?

TO BENCH: In 1963 the income of Pan Eastern was \$2,750,000 roughly? Yes. \$200,000 capital -

TO COUNSEL: On the year it appears to be 1000% profit?

You pointed out you are an independent company, certainly not an international? Yes. But therefore your position needs to be considered as an independent? We consider it so. You rather put it this way - that you should be protected as if you were an international? No I did not say that. I say that we should endeavour to procure from international some of the protection which the international himself derives from the security and profitability of his crude oil resources. That is subsidiaries of international? No basically the international company as a whole that owns crude oil as mainspring of profits. And we regard ourselves as the alter ego of a branch of an international and would expect the same protection under adverse conditions that would be available from upstream profits of International. That is suggesting you be treated as if you were an international? To get that type of protection.

TO BENCH: You feel that in your relationship with Gulf you should be protected to a similar extent, protection of similar nature to protection Shell Oil N.Z. has from Royal Dutch Shell? Simply, yes.

TO COUNSEL: But therefore you need to examine your position claiming that you are a refinery enterprise? It is refinery sector of the industry, yes. And as a commercial venture one would expect you to take a commercial risk? One in commerce cannot avoid taking a commercial risk. If commercial risk is removed by arrangement or arrangements, then the commercial characteristics are really gone? No.

In this particular case, do you say you were taking a commercial risk? Had we not had the risk minimised by the protection of the formula we would have been taking a complete commercial risk. Do you say you are taking a commercial risk in this case under these agreements? Yes.

You took the stand in the negotiations with Gulf

that it was the gasoline which produced profits in the refinery and wanted to be protected against adverse conditions arising outside production of gasoline? The major part of profits in refining are derived from gasoline; I accept the rest of your question. You were in fact preserving for yourself the refining products from gasoline and claiming to be isolated from the price movements of the other products? I have to answer that rather differently from the way you put it. I cannot say Yes or No. In
10 so far as Gulf is concerned, we had to reach mutual accommodation on this problem and found a way of doing it. But the way you put the question to me was that we had the right to do these things. You had the right to discuss them? We had the right to negotiate. But the effect of that would be, however negotiated, that you would be isolated from two-thirds of the products in both quantity and value? No.

Let me refer to your letter of 10th July 1958 (B.14 of Case Stated) Appendix B dated 5th December 1958. In the second paragraph is value of composite barrels?
20 Yes, 2.911. Gasoline is 1.024. That is one-third or 35% of the total value? On that basis refining profit would be one-third? That is value of the barrel, not profit. These are values and not profits. But in your evidence you said it cost more to refine gasoline than other products? I don't know if I said that in evidence, but it is true. You are mistaking values for profits. Take value and take off cost? It does not emerge from this table. Is it correct that you are isolating two-thirds products in both quantity and value? No. Would you agree that if what I
30 say is right a person so isolated can hardly be regarded as being in refining business in a commercial sense? Anyone who achieves that position is a millionaire overnight. That is a very unrealistic proposition and could never be negotiated.

Coming about to properties of refining venture -
the characteristics - in this case no stock of crude or
products owned by the enterprise? Oh yes. The Pan Eastern
buys crude and sells the products. That is the way you put
the ownership of stock? Yes. Nothing in your balance sheet
of Pan Eastern to show holding of stock? I think not.
Pan Eastern itself does not operate a refinery? It procures
the operation of a refinery. It sub-contracts the refining.
It is a very normal thing. Operation performed by Pan
10 Eastern is to arrange for refining to be done? Yes. And
indeed that is in fact all it does, is it not? Yes. All
it does. And certainly does not take risk of changes in
price in purchase of crude and sale of products? Oh yes.

TO BENCH: How long - it buys a quantity of crude? Yes.

Over what period would it be holding that stock until sale
of products? It would be a matter of days or under any
circumstances a brief period. Well not much risk of
fluctuation in matter of days? No but I thought Mr White's
question was are we taking any risk in the fluctuation of
20 prices. Movement of prices from time to time. Isn't
there ordinarily despite movements up and down a relation
between crude prices and prices of gasoline particularly?
No. There can be disparities, quite substantial disparities.

TO COUNSEL: Wouldn't you think it normal to expect Europa to
buy from its own notional refinery? That could be quite a
normal arrangement. One would almost expect it if as you
have said you were wishing to integrate backwards into
refinery? No, a number of good practical reasons against
that. You have already recorded them? No, I haven't.
30 Give me an example? I can give reason. The financial
effect of Europa purchasing direct its requirements of
gasoline directly from Pan Eastern would be precisely the
same as the method in which it does purchase its gasoline.
The reason for Europa not buying gasoline direct from Pan

Eastern is based upon the principle which flows throughout these contracts of availability of products supplies to Europa from global sources.

TO BENCH: I think I understand arrangements with Gulf Corporation and Pan Eastern up to completion of refining, but when Pan Eastern has these refined products, why does it use Gulf Iran as an intermediate for supply to Europa? That is the question I will endeavour to answer. The convenient sources of supply to Europa may not be at the point of the refining operations. For example, if refining is done in Abadan and Pan Eastern uplifts the supplies and sends direct to Europa then there would be no reason why Pan Eastern should not have a direct sales relationship with Europa. But because of our global assurances from Gulf for supply of gasoline it may well be and has been that Gulf elect to supply the gasoline for Europa from a base quite remote from where refining is done. So that Gulf buy back into their system the quantity produced from Pan Eastern crude and supply gasoline of equivalent quality and quantity from another Gulf source. It would still be possible for Pan Eastern to do that but that would involve a very complex set of new buying and selling arrangements. Well I do not follow yet.

Pan Eastern buys crude oil and refines it at Abadan? Yes. Can't it advise Gulf Iran that it has so many barrels at Abadan? Yes. And instead of labelling those barrels with Europa labels, Gulf Iran says 'We will label same number and quality at another place for Europa and we will take these' That is precisely what happens. But why the resale back to Gulf Iran? It is simply a matter that simplifies. Otherwise there would then have to be another set of sale and purchase arrangements between Pan Eastern and the other Gulf supply source for Pan Eastern to take title, to a different physical quantity for shipment

to New Zealand. It is simply a matter of simplification.
Using Gulf Iran as holding company for gasoline? Sort of
banker for gasoline. End result is the same for Europa and
end result for Pan Eastern is the same.

TO COUNSEL: Moving to a different topic - as I understood it
you said that Gulf had no refining capacity East of Suez at
the time the 1956 deal was concluded? I think I said no
owned refining capacity East of Suez for gasoline other
than 7% acquisition in the Iranian consortium. As a member
10 of the Iranian Consortium Gulf acquired that 7% interest
in October 1954? Yes. And that was an interest in Abadan
refinery or included that? Yes. Through membership of
Iranian Consortium. According to my information, as a
result Gulf obtained oil processing capacity of 25 thousand
to 30 thousand barrels a day or 10 million per annum? I
would not question the figures. I do not know. At the
time you were entering into the contract, how much would you
be able to take as far as gasoline is concerned?
Figures were set out, 2,500 to 3,000 barrels a day. So
20 from that point you would not have been able to - you
would easily be able to be supplied from Gulf's proportion
of Iranian consortium? No, I do not think so. Question
of what other commitments Gulf may have made. I subsequently
know of other commitments. Did you know at that time? I
did not know at that time but now do. What kind of other
commitments? I now know that Gulf made arrangements to
dispose of Abadan gasoline production to Shell. When?
I do not know. However at that time what I said you do
not dispute? No. Were you aware at the time that Abadan
30 refinery was available? Yes.

As far as gasoline distribution organisation is
concerned at the time of entering into the contract, you
agree that Gulf had no distribution organisation in East of
Suez? Yes.

Looking at effect of the formula (referring to page 65 of Notes of Evidence, line 21 - this was put to you by Mr Mahon after considering formula etc., - "Was the anticipated return of Pan Eastern expressed in cents per gallon 2.5? No. The profits of Pan Eastern is expressed in terms of earnings which can be related either to the quantity of crude input which was estimated to be about 50 cents per barrel of crude, and I think - 4 barrels of crude are necessary to make one barrel of gasoline, and there you
10 manufacture one barrel of gasoline with \$2 profit in refining operation. If you relate half that profit to gasoline then one barrel of gasoline yields \$1 profit which - as there are 42 U.S. gallons in a barrel - in terms of gallons of gasoline return is 2½ cents per gallon."? Yes. I put it that whatever the position when contracts were signed, this was the result expressed in cents per gallon after letter variations and correspondence in 1958/59? It was result - 1958/59 correspondence assured that as a minimum. It guaranteed that return? No, it assured that
20 as a minimum.

LUNCHEON ADJOURNMENT

One or two more questions arising out of correspondence that led to the letter variation (B14 correspondence) - your graph: that graph you prepared shows that the formula that would produce the 2.5 cents in those early months? And in previous months to December 1954 - middle line is your line? Yes. And went to 30th September 1954? Original graph lines are in different colours. These are the same colour and I have difficulty in seeing
30 what the lines mean. I had a coloured copy - it should be on the files. The line which moves up and down along the line that does not move at all is the composite barrel? Yes I think so. And if that is right then what I said is correct: it is 2.5 as per formula right along through that

period? Yes. That appears to be the case. It was in that position for several months? Yes. The method which was finally agreed to in correspondence you said was proposed by Gulf? Yes. But it was of course an agreement to which you were a party? We accepted the Gulf proposals, that is by 'We' I mean Pan Eastern. And you accepted it in the thinking of Europa? I was director of Pan Eastern but was certainly interested in Europa's interests.

Those letters refer to voluntary discounts
10 initiated by Propet? I would have to check. (Letter A9 of Case Stated) The second sentence in the first paragraph; bottom of that page - "You of course, understand that action in this respect is entirely voluntary and is made without prejudice to any of our rights to insist that the price provisions be strictly adhered to in the manner and in accordance with the terms specified in the mentioned Third Schedule". In fact this was not initiated by Propet at all, was it? You raise a very interesting question. It is correct - I should say it was not
20 initiated by Propet. And secondly they were not voluntary each year because correspondences and cables makes it clear they were agreed to be made over whole period of the contract? The term "voluntary crude discount" I was told by Gulf is a well accepted trade term in international oil affairs. Voluntary cannot be disregarded altogether because it led to a misunderstanding shown in later correspondence in the same file. If I could find the letter it would be simpler to read the letter (B14 group) - the point I touched on is this - letter dated 4th September 1961.
30 "... I enclose photostats of the relevant correspondence on the Pan Eastern adjustment, this I think you will agree speaks for itself and will confirm to you that the arrangement made is in the form proposed by Gulf and is for the whole period. Parkman Clancy, as I have told you,

holds this view and I will be glad to have your confirmation that any doubt you may have had is now resolved." And that letter was written because at a meeting I had with Mr Bonner in Singapore shortly before that date he advised me that Gulf did not propose to continue to grant voluntary crude discount to Pan Eastern. He claimed that the arrangement only related to the years in which it had been granted and would no longer be granted. And I expressed disagreement with this interpretation of the arrangements made between Gulf and Pan-Eastern and on my return to New Zealand I undertook to set forth my views on this question and the correspondence - voluntary crude discount which would be granted from year to year. So there was some doubt in that as to what the arrangement really amounted to. I take it there is no doubt in your mind, from the paragraph you read, that grant was intended from correspondence? I had no doubt. That discount would be granted each year for the term of the contract? On crude oil if necessary - only if necessary. Not an undertaking to give a specific discount or any discount unless circumstances warranted it. Circumstances being - assure a minimum 2.5 return.

Turning now to Europe/SP contract of 1961 - (EXHIBIT A24 and A25). This was in respect of gas oil kerosene and fuel oil. And when was the date it was entered into? Commenced on 13th December 1961. That was negotiated by you personally? Not the agreement I am looking at; it was signed by Mr Carmichael. Who negotiated it? I negotiated the principles of the agreement in London. At that time do you agree discounts were available for products concerned? Yes for products concerned in this contract. There were no straight discounts provided for in this contract? No, none because not available for this sort of contract. They were available for these products - but not at this time for this type of - I say they were

available for this type of product but not for supply into New Zealand. Why? Because of upsetting situation of this end? Yes, international companies could not upset their prices. For that reason you had arrangement for a commission you say? BP offered this arrangement for a commission. You did not agree it comes within the term discount as understood in the industry? On no I think this when reduced to its reality is a discount - under another name.

10 When you obtained that contract did you give Gulf the opportunity of matching that offer? No, because Gulf did not supply gas oil from any source to the New Zealand required specification. Had you given the opportunity to do so? In 1956 contract and I won't elaborate this - Gulf had an obligation to supply Europa with gas oil with limitation of 20% in quantity of the gasoline supplied - paragraph 11.01 of 1956 contract. The contract limited the quantity of gas oil that Gulf had an obligation to supply but imposed no obligation on Europa to purchase it. Quality of gas oil
20 available from Gulf was at the time of the execution of the contract discovered to be inferior to the quality which was standard in New Zealand. And although I decided at that late stage not to interfere with the general drafting of the contracts, that we would only take an option to purchase from Gulf - because it was in grave doubt whether it would be commercially acceptable in New Zealand, and in fact that proved to be the case; it was not commercially suited to New Zealand. We did not take the matter further with Gulf when making this contract because Gulf was unable to supply.

30 Now the contract A24 does not provide for commission? No, no commission. EXHIBIT A25? Yes. Provides for commission to be paid to P.T.T.? Yes. By B.F. Trading Limited, London. The commission was paid to P.T.T. for arranging the contract? "We write to confirm

that it has been agreed between us that, in consideration of your having procured that Europa Oil New Zealand Ltd., (hereinafter referred to as "Europa") enter into the arrangement with BP (New Zealand) Ltd. (hereinafter referred to as "BP N.Z.") referred to in the second paragraph of this letter, we shall pay to you commission in accordance with the provisions of the third and fourth paragraphs of this letter."

That is the way it is stated, but P.T.T. was not in existence at time of contract between Europa and B.P.? I think not. Was there also freight discount under this contract? This is something on which my memory is not very clear. Second page of the letter? Letter of 12th April? Yes. I am not sure there is a discount. I am prepared to call it a freight concession? First part provides for a rate of freight ruling as determined by TALFI - by reference to TALFI which was a private form of rate assessment employed by BP, Company. And the second part appears to deal with rate of freight on fuel oil. I could not say there is a discount.

TO BENCH: Ordinarily rate of freight would be under B(i)?
20 But if that exceeds (i)(ii) there is a rebate? What I am stuck with is question - this seems to relate to fuel oil alone. Is that correct, because at beginning of that paragraph - "In respect of each delivery of gas oil, lighting kerosine and fuel oil purchased and paid for by Europa under the Supply Agreement we shall pay to you commission calculated as follows:-" (a) and (b)? There seems to be an alternative freight.

TO COUNSEL: According to our analysis freight discount granted under arrangement with P.T.T. amounted at times to 5/- to 6/-
30 per ton, say 3% to 10% depending on date of loading and port of discharge although during certain periods of contract it was much less? Do you think that sounds about right? Yes being a discount on TALFI rates but whether TALFI rate is a competitive rate I cannot answer. I think BP have dropped

TALFI subsequently. AFRA and TALFI purposes were the same?

Yes, but rates and mode of construction of the rates were different. But you think what I have said is probably accurate? I would accept it as accurate.

When this matter was discussed with representatives of Inland Revenue Department in 1963 and November 1964 remember it was put to you that the existence of this discount was out of line with what you had said in 1963? Yes. But you had not mentioned it earlier because it was a bait for
10 the feed stock contract? Amount of the discount was a bait. I looked on it, the amount of discount, as a bait - for the feed stock contract.

Now going from that BP contract in 1962 you had these proposals with BP, did you not, that you have put in? Yes. You would agree with me that what was put up at that time in the proposal made to you was a direct discount camouflaged through the Bahamas company? On crude oil, yes. On presentation of the proposals, the way proposal was written,
20 it appeared that on naphtha there was an intended discount and both would be put through as a commission through a Bahamas company. Is it not a fact that under that proposal you had the opportunity to accept straight discount from BP? I would like to see the papers. I have seen them a long time ago. I have not been through all the papers in the case.

What you have got there is not BP proposal - it is an outline suggested? That is the general character, but in some considerable detail. As in 1962 you in fact entered into a contract with Gulf - were you at same time in 1962 negotiating with BP and Gulf? No, not negotiating
30 with BP at all. (EXHIBIT Y). I was not negotiating with BP at all seriously I should say. But you did discuss with them a Bahamas arrangement? No. Didn't you talk to them about it? No. I did not enter into any serious discussion with BP at all. They wished to submit an offer

and I said "All right. Submit it."

In 1962 you were carrying out these negotiations with Gulf? Yes. At that time discounts from both enterprises were freely available on crude and products? On crude well known. Products not well known. This contract in 1962 with Gulf was signed? Yes. And not continued? Not proceeded with; no transactions took place under it. Was largely the same as the 1964 contract? Largely. Why did you not proceed with the 1962 contract but enter into another one? Principal reason was that subsequent to entering into the 1962 contract the Commissioner of Inland Revenue gave the Europa/Gulf/Pan Eastern contracts a clearance on the 27th June 1963. And in the light of that clearance we felt that we should conform in all respects if we could arrange with the other parties to the Gulf Corporation to revise the contracts to conform in character to the 1956 contracts. The contracts were basically the same, all of them, 1962, 1956, 1964. I am speaking in the light of 1963 clearance. The 1962 set of contracts were basically the same as the 1956 contracts which had been cleared for tax purposes. There was however one difference which related to the affreightment contract. Under 1956 contracts there was provision for an alternate freight suspense account which I spoke of earlier. When the 1962 contracts were being negotiated Gulf Corporation recommended that as Propet was now largely engaged in shipping, world wide, and as Propet were handling all Europa's shipping it would be a matter of convenience for Gulf to handle the shipping of Europa's affreightment requirements by Propet in association with Pan Eastern. This was the only major difference in pattern between the 1956 contracts and the 1962 contracts. And when the Commissioner gave his clearance we felt it desirable that the 1962 contracts should conform in all contractual matters with the pattern of the 1956 contracts. I went to Pittsburgh

some time prior to March 10th 1964 and re-negotiated that portion of the contract. The affreightment contract. And the 1964 contracts with that amendment were executed by me in Pittsburgh on 10th March 1964. Executed by you on that date? Yes.

Did you bring copies of the contract to New Zealand? Not at that time. My copy of the signed contract was taken by me to New York and deposited in safe deposit with a firm of solicitors in New York. Mr Elston Law legal counsel for Gulf but newly appointed as Gulf's Middle East Co-ordinator, in charge of re-negotiation on behalf of Gulf with the OPEC countries, came with me to New York that same evening and left that same night for Geneva for a six-weeks or two months' conference with OPEC. I had entrusted to him the completion of the Pan Eastern/Gulf processing contract which of course I was not able to do - it required certain completion in the Bahamas - and he undertook on my behalf to see that this was executed and that he would on his return from OPEC Conference send to me conformed copies of the 1964 contract. And there was considerable delay in actual receipt of the conformed copies. He did however confirm to me that very shortly after or through his secretary shortly after I left him in New York that evening, that the Pan Eastern contracts had been concluded shortly after 10th March 1964. I came back without any copies of the contract. I got them about three months later, I guess. You were aware of arrangements made in it and discounts? Yes. You said that you did this to conform - In 1964 Mr Tyler and Mr Phillips interviewed you? Yes, I mentioned that yesterday. At that time you told them that you had entered into a new contract with Gulf? Yes. You also told them you were going back to America to discuss the amount of the discount? Crude discount. I told them I was going back to discuss crude oil discount. And at this time the contract was already completed? Yes. Were there

in fact any further discussions to take place on crude discount? Oh yes. Contract itself set out amount of the discount? On crude oil yes. No, it sets out the price of crude oil. As far as crude is concerned it makes provisions for a 15% discount? No, it makes provision for posted price.

When you spoke to Mr Tyler and Mr Phillips on that occasion, you did not tell them about entering into a contract to conform with the 1956 contract? No. And you made no mention of any letter of June 1963 that you had received?

10 I would not remember. You said the only difference between 1962 and 1964 was difference as to freight? That is to the best of my recollection the only difference, the difference being in the contract of affreightment. 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?

20 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? Yes. Am I to take it that you took that out so it would not be in your 1964 contract? No. I think we agreed to another approach. Did you agree to the other approach for the same reason? What was the other approach, do you know? This was a very fringe provision in the feed stock supply contract. Isn't it exactly the result of the 1964 contract 2.5? Not quite, no. It is the end result, isn't it? No, not quite that. The effect of this is to agree on a base price which would then become the reference price upon which Gulf and Pan Eastern through joint consultation would agree upon the price for 93 octane

30

and 83 octane.

Passing now to the 1964 contracts? I want to say more about the processing contract. I wish to call to your attention provisions of Article 4.04 of both the 1962 and 1964 contracts. When I gave evidence of changes in contract I did not regard this as a material change at all from our point of view. But having read it I realised it was a considerable change from Gulf's point of view. Gulf had earlier than March become a little restless about the arrangement they had made for this assured minimum return on Pan Eastern under 1956 contract -
10 was a little too generous. And in the 1962 negotiations the provisions in Clause 4.03 were precedent to the effective provisions of Clause 4.04. Gulf felt that upon review they were rather too rigidly committed by the inclusion of the item under 4.03(a) which is in brackets and which has been quoted. And they suggested that they would be more content with the provisions of 4.04 if the rigidity in 4.03, or the effect that might lead to rigidity in 4.03, should be deleted. From our point of view it did not make much difference. My main
20 object in re-negotiating contract was variation in terms of the affreightment provisions.

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?
30 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. 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.

Pass from Whangarei crude to other crude which is referred to as B? Yes. Step 1, Crude notionally goes from Gulf to Pan Eastern? Sale of crude from Gulf to Pan Eastern to produce feed stocks and refined products? Sale of crude at a discount. Sufficient to produce feed stock and refined products? There are no refined products. Never have produced any. But under the terms of the contract? Only if the parties agreed. It was provided for but never been operated. And in fact the only function of Pan Eastern since the Whangarei with a small overlap when two contracts overlapped one another - the sale of crude to Pan Eastern is solely for manufacture of feed stocks, naphtha and middle distillate. (And refined products has never operated). And step 2 - returns for refining? Returned for refining? Having been refined the refined feed stocks and products go to Pan Eastern? If feed stocks are red line, red line should start on right hand side of Pan Eastern. Refining is done in Gulf sphere and not in Pan Eastern? Oh yes, I see; in actual fact it is done by Gulf. Refined feed stocks come to Pan Eastern and resale to Gulf and Propet of refined feed stock products? Yes. And the refined feed stocks and products are equivalent in type and quality with those that Gulf is selling to Europa Refining by only feed stocks. Last circle on left should be Europa Refining Company. Europa refining receives both Whangarei crude, naphtha, everything.

There is nothing to be sold to Propet is there? Oh yes. The other products from barrel of crude which are not uplifted from Pan Eastern on account of supply to New Zealand. For instance, fuel oil and other distillates.

What you give a picture of is crude coming into Whangarei,
naphtha and distillate arriving under B? Yes. To follow
this: the 1956 contracts terminated when refinery came on
stream? Not quite. Period when refinery was operating at
low capacity due to malfunction, so for some time old 1956
contract overlapped the new 1964, and certain point in time
1956 contract was cancelled before expiry date. When did the
1956 contracts expire? I think early 1964, about the end
of 1964 I think. They have expired? Oh yes. Do you not
10 procure gasoline supplies at the present moment - since 1964?
Not recently, but some time ago. Since termination of 1956
contract? Yes. Weren't they covered by 1964 contract? No.
This was very unfortunate experience in Europa history. Our
needs for gasoline coincided with Israeli/Arab conflict and we
were hard pushed to get gas from anyone. And similarly with
gas oil. And we had to go on the open market. A spot order.
We paid high prices for cargoes and for the freight. We paid
top world price for a charter-loss of - against going rate we
lost £120,000 on that particular shipment. Where did you buy
20 this gasoline? From Gulf and bought the gas oil from a
Panamanian refinery. Gulf supplied from the Caribbean, I think.

This gasoline you got from gulf? Yes. No new
contract document on the subject? No, we obtained it under
the provisions of the supply contract. Gulf demanded a premium
above posted price - it comes to my mind now. We discovered
a provision in our 1964 supply contract that they would supply
at posted price. That operated for these supplies of
gasoline? For all gasoline you received? I think only
one cargo from Gulf. I think we bought some elsewhere. Did
30 you not receive a discount for this to Pan Eastern? No.
This is quite distinct from the rest of your arrangement -
received no discount? Yes. We had no contract of
affreightment and had to pay the going rate - I think I am
wrong in saying no contract for affreightment - we had one

that provided we pay going rate and that was monumental -
about 170 thousand pounds for an 18 thousand ton ship.

Now about paragraph 5.01 of the 1964 contract
(B5). Am I right in thinking the sole purpose of that
paragraph in fixing a sale price for remaining products is to
double profit of Pan Eastern so that Europa as a 50% shareholder
gets the full benefit of the Pan Eastern profits on the supplies
purchased by Europa Refinery from Gulf Export at posted prices?
No. Your interpretation of that paragraph? - "... at the
10 same prices received by Gulfex under said contract. All
deliveries of crude oil not processed shall be made at the
loading port at which Paneast 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". And that in fact
is not the posted price? You say it is not - it was at the
time of the contract? Never in operation of the contract.
Do you agree it was at the time of the contract? No. It
was never intended that price by Gulfex to Europa Refining
20 would be at posted price notwithstanding formal provisions in
contract. Formal provisions in the contract were posted
price? Yes. For those products which had a posted price.
Which means, does it, that resale price from Pan Eastern to
Gulf was reduced retrospectively after the signing of the 1964
contract? I think there was one crude oil cargo which was
reduced retrospectively.

TO BENCH: Were the first cargoes paid for at posted prices?

No.

TO COUNSEL: But booked at posted prices? I think first cargo
30 was booked at posted prices on understanding that a
retrospective discount would be given before the time of
payment. I think the first was 10% and later 12 $\frac{1}{2}$ %.

COURT RESUMED 24/2/69

XXM B.J. TODD (continued)

When the Court rose we were speaking about gasoline coming into New Zealand after 1956 contracts had expired. Have you considered the matter since giving evidence. It seems to me that gasoline continued to come in in the years that followed - through Europa? Oh yes - when the refinery was malfunctioning, but that was before the 1956 contract terminated. That would be in 1964 - malfunctioning? It continued beyond
10 1964. When was it that the Whangarei refinery came on full stream? No, it had a long history of difficulties. In that period after 1964 did gasoline come in as if the terms of the 1956 contract had been carried forward? Take 1965? It was still having teething trouble in 1965. During that period did gasoline come in in terms of earlier contract? Yes, overlap of the two contracts, as I said before. Would you look at this and identify EXHIBITS A15, A2 - first A15 of Case Stated - letter of 10th March 1964, which refers to termination? Yes. Now A2 - termination of the supply contract? Yes.
20 Then A17 - letter of 17th March 1966? Yes. Do you know of any other correspondence which deals with termination of the contracts? I do not recollect any. So we can say that looking at A 17, letter of 17th March 1966, does that in granting the volume discount for 1965 assume the continued existence of the 1956 contract? Well it says temporary reduction in price would apply to crude oil purchased and sold in 1965 - second paragraph, last sentence. The effect of that was to provide $2\frac{1}{2}$ cents on gasoline supplied in 1965? I would not put it quite that way. I would put that it gave
30 a crude discount of 0.35 dollars per barrel to Pan Eastern.

Having dealt with that - clause 5.01 EXHIBIT B5 - looking at 5.02 - sole purpose of 5.02 was to double the Pan Eastern profits? No, I do not agree. Is it not the case as far as 5.02 is concerned? No. It is to equate - sale

of other products will equate the profit made by Pan Eastern on the products destined for delivery to New Zealand. You do not accept it as doubling? Not quite the way you put it.

Would you look at the second chart again (EXHIBIT 5) 1964 contract. Looking at two sections on Notional diagram - part A Whangarei crude provides for 15% of the sale of crude at posted prices going into Pan Eastern? Correct. Again looking at other Crude B - broad result there is to give Pan Eastern a profit which depends on the purchases by Europa from Gulfex chiefly? Yes, a very small profit. The operation of 5.01: operation is completed by the doubling provision in the contract 5.02 - equating provision? Equating of the prices received by Pan Eastern for crude oil feed stock and finished products sold under provisions of clause 5.01 and cost to Pan Eastern of crude oil and feed stocks and finished products processed therefrom as determined under clause 4.

Passing from that to the Exhibits B1, B2, B3 and B6. B1 letter dated 16th March 1965? Yes. Does that provide for a direct crude discount? Yes. And does B2 refer to direct naphtha discount? Yes. Similarly B3 direct gas oil discount? Not quite so. Distinction there is that Gulf used a different posted price index, which reduced the cost. Result of all those - there were automatic deductions in prices paid to Pan Eastern which is evidenced by B6? That is in accordance with the terms of the contract. In terms of clause 5.01 of the contract, and otherwise as you say. Coming back to B1 - the discount provided for is 10%? I do not see 10%. 16 cents a barrel? Yes. That is the effect, is it not? No. Pretty close to 10%. In case of Iranian light crude 20 cents. I understood posted price was \$1.60? No, \$1.59. Why is it not 15%? That is a very interesting point. It was 15% - that was amount agreed? No this 15% had been agreed between Pan Eastern and Gulf but there is an interesting reason why it was not agreed between

Gulf and Europa. 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 10 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 20 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 that 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 30 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. No other correspondence except what we have got? No.

Now about the Caltex contract, 1956 (EXHIBIT I), Clause 45 of the proposal? Yes. It says there - "Present discounts and payments, including preemptive payments, would be discontinued". You refer there to discounts? Yes. Are those the gasoline freights? No word "discount" there I take it to mean the 1/8th of a cent per gallon price adjustment which Caltex had agreed as I said earlier, by transposing the price reference heading in Platt's Oilgram and which I said before did not amount to discount but saved us from increase in cost. But Caltex in course of time in their invoicing system might have lost the thread of the history of that and very naturally because it is shown as a deduction of 1/8 cents from published price they might well have come to think of it as a discount. "and payments including preemptive payments"? Payments were the basing point - freight payments - which Caltex had been granting in the past. As I have described earlier. Freight is under word "payments" and concession on gasoline under heading "discount". Term "pre-emptive payments"? The strong desire of an international company when it makes a contract is to be sure that the fullest degree they can achieve to ensure that the buyer will not sell out his enterprise to a third party. And there was such a pre-emptive agreement. There was such an agreement with Caltex to that effect. There was a similar pre-emptive payment arrangement with Gulf? Yes. Under which half a million pounds was in fact paid? Half a million U.S. dollars was paid by Gulf. In the Caltex case was anything paid? Yes. Similar amount? No, much less. It was paid to the shareholders of Todd Investments. In case of Gulf it was paid to Europe.

Looking now at paragraph 26 of the same proposal -

"These processing profits would under present conditions enable the Bahamas Company to pay you the sterling equivalent of about \$623,000 and \$687,000 net for 1955 and 1957 respectively after applicable New Zealand taxes."? Yes. Did the proposal you there had before you assume that Europa would pay New Zealand taxes in its share of profits? No, I think it is a complete error on the part of the Caltex author. You do not think they could have assumed there would be taxes payable in New Zealand? Yes - and the figures I suggest illustrate otherwise. Very clearly.

10 Regarding BP, I asked you on Friday (page 135 line 10 of Notes of Evidence) - "When you obtained that contract did you give Gulf the opportunity of matching that offer?" and you replied "No because Gulf did not supply gas oil from any source to the New Zealand required specification." This is 1961? Yes. That is in A24 of the Case? Yes. This contract also dealt with lighting kerosene and fuel oil? Yes. I want to know whether you had given Gulf the opportunity provided for in the contract in respect of the other products?

20 In respect of fuel oil Europa has no storage facilities in New Zealand for fuel oil, and the contract made with BP was to draw fuel oil from their storage in New Zealand - no means of Europa entering fuel oil market unless it had access to another company's stores. It would have been pointless - did not regard it as covered by paragraph 11.02 EXHIBIT A? I suppose strictly yes - but in relationship we had with Gulf they knew the position. They had no kerosene to offer and we had no storage facilities. In the BP file - tender proposals 1962 (EXHIBIT 6) - I am not clear what is in the Exhibits.

30 In that file there were other letters - see what those are? Yes. Merger proposals are they not? Yes. Those related to 1959? No, letter dated 18th November 1959 personal and confidential letter. They refer to that time? Written at that time but they refer to the future. Agree they provide

for discount or commission to the Todd interests in respect of crude purchases? Page 2 of letter of 18th November? That is right. But "whereby a rate of discount or commission would be payable in respect of a proportion of the total crude acquired by the Holding Company" - Holding Company I think is the joint BP/Europa merger company. Method by which commission would be payable is set out in the appendices, I think. Written at the end of the year 1959. The sentence says "In addition, however, it would be the intention to enter
10 into a special Agreement with yourself" - what about that expression? I think this is a private and confidential letter - he is opening the way for further negotiations by myself in respect of what could be done in this holding company. I put it to you Todd interests rather than some other entity? No, the holding company, the BP/Todd merger. Next letter of 30th November 1959 - looking at the illustration - says "Clearly the figures included in these examples are conjectural and are put forward for illustrative purposes only. Equally the examples, as you see, both are based upon
20 the assumption that the total market in the example year 1964 is met from imported crude oil or charge stock refined in the projected refinery". First illustration, paragraph 4 - "Crude quantity to earn discount for Todd's account"? Yes. Anything you want to add as to what kind of discounts? No, I don't think so. Except again the proposal for whatever it was worth had very serious contingent liability under section 9 of the general terms and conditions for c.i.f. sales of crude petroleum, namely that the buyer assumed all the risk of
30 "any new or increased taxes, duties, fees or other similar charges (hereinafter called "taxes") which may hereafter be imposed or levied by any governmental or local authority upon the crude petroleum supplied hereunder, or upon the export, delivery, sale or use of such crude petroleum, or upon the production, manufacture, storage or transportation thereof, or

upon any vessel or pipeline used in such transportation, shall, subject to subsection (b) of this Section, be for the account of the Buyers." (Section IX(a) - General Terms and Conditions for C.I.F. Sales of Crude Petroleum - EXHIBIT 6).

Amongst the papers produced there was a draft dated 1955 of which this is a photostat? Do you recognise that, dated 29th September 1955? This is one of the many drafts we had in negotiating here in New Zealand with Gulf, the series of contracts which were eventually reached in 1956.

10 Whose draft would this be - prepared by you? Gulf prepared all the drafts. This was prepared in New Zealand? No, I think they brought a whole series of drafts with them and they were discussed in New Zealand and a lot of negotiations before agreement was reached. I would think this draft was brought by them to New Zealand. Would you look at paragraph 7.01 under PAYMENT? Yes. That provides for 1.91 dollars per net barrel of crude oil in New Zealand? Would that be posted price in fact at that time? That I believe was posted price at that time. In that draft it was suggested that the

20 figure per net barrel of crude should be 1.91 dollars? No, I think the draft was in error. It was never contemplated to have fixed price for ten years. In conformity with all long term contracts the price would escalate in accordance with movements of Platt's Oilgram. In early drafting this is simply reference to the then current price - Processing fee is 47.5? Yes. Which you did retain in the contract as constant? Yes, quite a good deal of negotiation regarding that. In this draft under paragraph 7.03 it provides that adjustment be made in processing charge by further

30 payment or refund as may be required when actual volume and yield figures are available at the end of the year? Yes, that is so. "... so that the net earnings of Bahama on each barrel of gasoline during the contract period shall equal twice the sum of the following" - the following is the

formula? Yes. Comparative picture - under contract if you look at A7, paragraph 6.04, Third Schedule page 5 processing contract - that paragraph provides for adjustments in the Contract? - "... subject to such adjustment upwards or downwards as shall ensure that the net earnings of PAN-EASTERN (before deducting administration expenses and income tax in the Bahama Islands) shall be as determined in accordance with Paragraphs 7.01 and 7.02"? Those are the net earnings. On looking at your reports to your shareholders
10 there is only one report I have seen in the 1957 report which refers to the long term contract - entering into long term contract with Gulf - this is in your produced papers, fourth paragraph draft processing contract EXHIBIT 7, Report to Shareholders of Europa 1957 EXHIBIT 8 - and 1956.

It is the 1957 report only that there is a reference and this reads - "A long term contract entered into with the Gulf Oil Group became effective towards the end of the financial year. Gulf is one of the world's largest
20 international Oil companies, with widely dispersed crude oil resources, and it is felt that this connection will prove to be of substantial benefit to the Company."

There is nothing in that report or any other indicating a backward integration into the refining business? No. And no reference to the very profitable venture - Pan Eastern? No reference in reports to shareholders? I agree. The general reference I think if one has been through all our Directors' Reports one will be impressed with their brevity.

Setting out of your own company - diagram of Todd Group of Companies? I agree with this, as far as I can say
30 at the moment (EXHIBIT 9).

REXM: There was put to you as EXHIBIT 2 some examples of product prices, 1955/1959? Yes. You did say that numbers of sales were expressed to be military organisations? Yes. Would you now look at EXHIBIT 2 and see if you can

identify the other types of buyers that are mentioned?

The Exhibit is headed "Examples of Armslength Sales and offers of Petroleum products 1951-1959". And heading of Column 1 is

"West of Suez" and there are a number of sundry references to types of petroleum products, quantities, and names of the buyer, the seller and the - in which the transactions -

You have got buyer described as Military; another buyer described as Canal Company, Panama? Yes. What is that?

United States Government owned, a corporation that operates

10 the Panama Zone and is responsible for all operations within the Zone. Those sales to military or canal company are all

Government sales? Yes. Do you regard Government sales as

a reliable guide to market sales? No, special contracts -

entirely non-commercial character. Only other reference are

German companies, unnamed? Yes. That seems to be very

curious under heading 1962 but seems to refer to some

transactions which took place in 1955 and 1956 - Platt's

Oilgram is a market pricing organisation which gives day by day information - there must be something very odd as far as

20 German sales are concerned.

Something arose about the retaining of Pan Eastern profits in Pan Eastern - contemplation of a proposed refinery

venture in New Zealand? Was that possible accumulation of

earnings there a thing you had in mind in negotiations with

Gulf contract? The whole of the profits were not retained -

dividends were paid every year. But there was a substantial

retention of profits and that was to accumulate overseas

funds in anticipation of Gulf and ourselves at some time being

able to engage in a New Zealand Refinery which was the

30 initial project on which the Gulf/Europa negotiations

commenced. The result would be if it got to stage where you

and Gulf had started a refinery here you would have sterling

exchange already available? Our share of it.

You said something in cross-examination about the

Gulf/Shell contract, but you did not explain what it was,
at the time when you were first talking to Mr Paton you said in
evidence that he did not want any deal that involved stepping
on someone else's toes? Correct, in 1954. Now did you
become aware at some stage of this Gulf/Shell agreement with
regard to crude oil production transportation refining and
marketing? I became aware later. This was Gulf/Shell
agreement you referred to in cross-examination? Yes. Just
briefly, what is the effect of that agreement? The

10 Gulf/Shell agreement - I said earlier that Gulf is a crude
rich company. But the Gulf/Shell agreement provides for, in
effect, a partnership between Gulf and Shell which starts with
lifting crude oil out of the ground. All the profits which
are derived from the crude oil produced in terms of the
contract are shared between the two companies. Shell does not
sell crude to Gulf in ordinary commercial concept.

TO BENCH: Does this relate to whole production of crude by
both Gulf and Shell? To the extent that Gulf/Shell/Kuwait
contract relates only to Kuwait. At the time contract was
20 signed minimum quantity Shell had to take was 550,000 barrels
per day. And those quantities have grown considerably since.
The agreement therefore provided for sharing of the production
of the oil and then it went downstream to sharing in the
profits of transportation and I suppose possibly the losses,
the profits in refining, and the profits in marketing wherever
in the world that Kuwait oil moved to. Marketing of all
products derived from that Kuwait oil. At the present time I
understand that the contract which is very voluminous includes
47 world wide refineries and the markets in those countries
30 where refineries are located. For example, the agreement
comprehends the Kuwait crude which Shell place in the New
Zealand Refinery and comprehends that that share of Shell's
marketing profits derived in New Zealand related to that
quantity of crude. So when you found out about this, did

you presume that - It became clear to me the morning of
Paton's remark about stepping on other people's toes.

SHORT ADJOURNMENT.

TO COUNSEL: Gulf/Shell agreement - there is a reference to it
in 11 C.T.B.R. (Case 53), paragraph 76 - "Although the
international "majors" were entitled to share in production
from the various areas in proportion to their holding in the
operating companies, the arrangements were flexible enough
for the offtake to be varied. Illustrating inter-group deals
10 in crude oil, B.P. contracted to sell large quantities of Kuwait
and Iranian crude to Jersey and Mobil and Gulf Oil entered
into a long term arrangement for the supply to Shell of large
quantities of Kuwait crude. In the Gulf-Shell agreement no
price was fixed but Shell agreed to share with Gulf the net
overall profit on production, transportation, refining and
marketing." You knew of the agreement long before this
judgment came out? Yes. And is there also reference to
same agreement in Mr Hartshorn's book at page 163? Yes.

You were asked some questions by Mr White as to
20 whether the formula did not give you some guaranteed return
and also whether crude discount variations did not give you
some guaranteed return? Just for the purposes of clarity -
how did the notion of the formula arise in your dealings with
Gulf Oil? The notion of the risk in a refining operation
arose through my consultation with Mr Snodgrass whom I have
referred to. Mr Snodgrass is an independent refinery
consultant. He had prepared the project of September 1954.
But he warned me that refining could be a risky business and
that I would be wise in treating with any crude producer to
30 get some sort of arrangement which could minimise that risk.
I would be wise to negotiate along those lines. Also looking
at that Caltex 1955 file (EXHIBIT I) (phone conversation
1/3/55) - is that along the same lines as the risk in the
refiner's operations? Yes, that was the result of my

discussion with Mr Singleton during his visit in Wellington
late February 1955 and his acknowledgement that there could be
grounds for pressing for some degree of protection against
that risk. Then when you came to deal with Gulf, what was the
position if you never had a formula for any agreement with
regard to refining margin? Risk would be solely ours. It
would be Pan Eastern's. Could Pan Eastern have got into a
loss on refining operations? Yes. It was potentially
possible. In the Caribbean at that moment refineries were
10 making a loss. So what in effect was secured by the
formula - what effect was the formula going to have on the
refinery margin? Contrary to the Solicitor-General's
suggestion to me that the formula was a guaranteed return, the
formula provision in the 1956 contract did not eliminate the
risk of Pan Eastern making a loss. There was still present
notwithstanding the formula a risk of loss. The effect of
the formula provision was however to reduce the element of
loss risk and likewise on the other side of the ledger, it
reduced the profit potential, the profit potential on a
20 conventional refiner's margin. To summarise, it was a
stabilising provision, stabilising or snubbing influence on
both sides - loss and profit sides.

Then to conclude this - by the time you were
negotiating with the Gulf on formula revision, in 1958/59, 1958,
were crude discounts becoming available at that time? At
that time I did not know there were crude discounts available
in 1957 and 1958. I have since learned that crude discounts
were beginning to become available to highly sophisticated
buyers. By that I mean people who had knowledge of world
30 events in the oil industry and dealing with those events day
by day.

You referred to Mr Hartshorn's book: did you
read that book in the week-end? Yes, I stated I had not seen
it. I have read it in the week-end. Does he in effect

confirm what you were saying about reluctance of international companies to get into price cutting of products? Yes. Also confirms the position of Gulf as a crude rich company.

And the fact that internationals will compete for products markets by different ways he explains but not by price cutting? Yes. Oil company exchange deals - in general how does that work? Oil company exchange occupied a very large staff of each oil company. The exchanges run into innumerable complex arrangements. Basic purpose of exchanges are to adjust the geographical imbalances of supply and demand, 10 of various products, beginning with crude and down through the whole products. There is great mutuality of advantage to be obtained by oil companies on exchanges. And that does not necessarily mean that exchanges are limited to the internationals - the seven sisters. It is much wider in its scope than that. For example, in Australia there are a number of refineries located around the perimeter of Australia. Each owned by a different company. By means of exchanges the individual marketing companies in one State, e.g. Western 20 Australia, will draw all their requirements from B.P. refinery company. And in turn for example B.P. will draw its Queensland requirements from AMFOL Refinery. And having mentioned those - that is the situation on exchanges throughout Australia in refinery. Saving is in transportation. In International scene there may be other advantages, such as exchanging a crude oil of a specification which one company needs in a locality with another crude oil which the other company needs each having discovered a crude unsuitable to itself. I think it is sufficient to say that exchanges 30 are a very big feature of the oil industry. And in the case of Gulf product sales contract is it correct that Gulf actually supplies gasoline? Gulf Iran supplies Europa with Shell Gasoline under an exchange arrangement between Gulf and Shell. First shipment came from Abadan and in course

of contract only one other shipment from Abadan. For a number of years rest came from Shell refinery at Curacao and in later years and for majority of the contract period from the Gulf refinery at Puerto Delacruz, Venezuela. The sale to Pancast of Gulf Iran gasoline would allow Gulf Iran to buy that or any other gasoline provided it met the requirements of Europa and complied with the quality in the contract.

The Solicitor-General asked you at top of page 87 whether or not the gas oil costs provided under paragraph 5.02 of the Sales Contract was not a direct discount to Europa of 5 cents a barrel - would you explain how that came about? I think it was not a discount. When the contract negotiations in New Zealand had reached a certain point towards conclusion of the drafting, it was ascertained that it was unlikely that Gulf would be able in fact to furnish Europa with the quality of gas oil required to meet New Zealand competitive specifications. The Gulf proposed that they would meet this situation by offering a price adjustment - compensatory price adjustment. We were however not satisfied to be committed to taking this doubtful gas oil regardless of price adjustment. And as the contract shows negotiation on this question ended by our taking an option only for this quantity of gas oil but no obligation to buy. In fact quantities you got from Gulf were they in fact inferior? Yes, they were inferior competitively and because of the exchange arrangements Europa had with other companies in New Zealand other companies refused eventually to accept this gas oil into their storage and marketing facilities. This was a negotiated - it was offered as a quality adjustment.

You were asked about there being any particular reason for the 50-50 nature of the venture with Gulf? A very simple reason for that - neither of us were prepared to concede a majority control to the other.

One final point - on 17th March 1964 the retained

earnings were paid out by Pan Eastern and on 24th March 1964
were paid out of Europa - as we know Europa shareholders paid
dividends tax of 35% of those dividends. Now if you had known
in March 1954 that the Commissioner's decision of June 1963
would be reversed, would you have paid out the dividends and
incurred the dividend tax? Individuals would incur dividend
tax? Answer is this - as Managing Director of the company
if I had known there was a tax liability on share of Pan
Eastern's profits neither I nor any directors could have
10 released those profits in their entirety for dividend
purposes.

MR MAHON CALLS:

NEVILLE KEITH SMITH. I am the treasurer of Europa Oil and also a director of that company. I am secretary of A.M.P. Also, regarding Europa Refining, I am secretary and director.

It was in February 1963 that the Inland Revenue Department first saw you with regard to enquiries about Pan Eastern and other related matters? Yes. And did you at different times have discussions with Mr Tyler, the inspector engaged on the task? Yes. A Mr Phillips also an inspector and a Mr Kennerley? Yes. Also were you present from time to time at discussions with Mr Tyler and Mr Todd? Yes. And now and then Doctor Lau was also present? Yes. You took a note as you went along of the points that transpired? Yes. These were first a note of my own talks and a note also of the discussions which Mr Todd was engaged in. In the case where I had discussions with inspectors on my own I recorded notes after the discussions had been completed. In the case of discussions with Mr Todd present and at times Doctor Lau, I took notes as the discussions proceeded. Mr Tyler kept notes? No, he took no notes at the time.

On Mr Tyler's first two visits he discussed with you Pan Eastern? Yes, true. And did you hand over to him on the 20th February 1963 the Pan Eastern contracts and associated contracts? Yes. Contracts in the Case Stated of 3rd April 1956 with Gulf? Yes. And Pan Eastern accounts were also handed over on the 20th February 1963. What you gave him were Pan Eastern accounts for year ended 31st December 1961? Yes. File would contain accounts for other years as well. And to the accounts for year ended 31st December 1961 were attached Auditors' statement by Price Waterhouse? Yes. Together with a note attached by Price Waterhouse? Yes. I produce accounts 1961 I showed to Mr Tyler with other documents attached. EXHIBIT A. The auditor's note,

last paragraph reads :- "Voluntary price reductions on crude oil have been granted to the company by Gulf Iran Company. Prior to 1961 the effect of such price reductions was recorded in the year subsequent to the year of sale; however, price reductions relating to crude oil purchased in 1961, as well as in 1960, have been reflected in the 1961 accounts."

Did Mr Tyler take these accounts away to some other part of the building for the purpose of study? Yes. And did he see you later in the day and give back the accounts and also the contract he had been inspecting? Yes. Did he ask any question of you with regard to the crude discounts which appeared in the Auditor's statement and which also appeared in the statement of income attached to the balance sheet? No. Now when he had returned accounts and the contracts, did he make any comment to you at all? Yes. He asked me in connection with the accounts were there any supporting papers. I told him there were processing statements. Mr Tyler then asked for two copies of each of the accounts, the processing statements and the contracts. I asked him did he have authority for this, and he quoted the appropriate sections of the Inland Revenue Act. I asked him also what was the purpose of his requiring these copies. He replied to the effect that he would lay his cards on the table and he regarded the contracts as a discount arrangement. Mr Tyler said that this was his view at that time and not necessarily that of the Department or of the Commissioner. I told him I had no authority to comply with his request for copies.

Before the 20th February he had other discussions with you about Pan Eastern and also one when Mr Todd was present? Yes. So that at 20th February he had some background - had contracts and had the Pan Eastern accounts? Yes.

On the following day the 21st February 1963 there was a meeting between Mr Tyler, Mr Todd, Doctor Lau and you? Yes. I was present also. At this meeting were all the

views on Pan Eastern arrangement discussed by each side? Yes.

Report (EXHIBIT BB) put in by consent. I produce this typescript note I prepared on 25th February 1963 which summarises discussions with Mr Tyler from his first visit on 13th February to the last phone call with him on 22nd February 1963. I also produce (EXHIBIT CC) a note I prepared of discussion between Mr Tyler, Mr Todd and myself on 14th March 1963.

This was also an exchange of views on the way Pan Eastern earnings ought to be regarded. And although there were one
10 or more talks between the parties between those dates, do the documents EXHIBIT BB and EXHIBIT CC really contain the basis of all discussions that took place at that time? Yes.

LUNCHEON ADJOURNMENT.

In February/March 1963 there would have been one or two more discussions but the notes produced cover all the points raised between Mr Tyler and the Company. Was there in due course submitted to the Commissioner a Memorandum of Mr Todd dated 20th March 1963 (EXHIBIT P)? Yes. Was there
20 some particular date by which Mr Tyler wanted discussions terminated and submissions made? Yes, he wished to finalise investigation at latest by 31st March 1963. And he told me this was for the purpose of, if deemed necessary, issuing a protective assessment. And then on the 29th April 1963 you sent to the Commissioner the letter EXHIBIT K? It was sent by Mr Todd.

Just looking at EXHIBIT BB of 25th February 1963, at page 1, first paragraph, it reads: "In some such matters I will know no more than Mr Tyler himself - not present at any negotiation - not in my present office at time
30 of signing of contracts - have only working notes in my possession) Where is P.E. Refinery? (I do not know - it has the right to use Gulf Refinery I understand)." working notes there referred to relate to extracts from Petroleum Products Sales Contract and the contract of affreightment. I had sufficient handwritten notes from my

predecessor on the formula contained in the contract to enable me to check the invoices coming from Gulf Iran and the Pan Eastern accounts which we received. The position was I used to use the formula and invoices and my information to make my own check of what Pan Eastern earnings ought to be in a given year. If any variation between your estimated Pan Eastern profit and Pan Eastern accounts, would you take that up with Gulf? Yes. Were there any disputes or arguments from time to time on that matter? Yes there have been. I cannot recall any exact dates. Arguments about details of accounts? Yes.

Looking at page 2 of EXHIBIT BB halfway down paragraph - "I have summarized as best I can remember the various points of view (not necessarily in order) as follows:" Summarised means what? I took notes of the interviews as they occurred but even at the best of times my handwriting is not all I would desire, and having taken these notes at conversation speed I had some difficulty subsequently in deciphering them. But with the notes beside me I did make this summary.

Then turning to page 3, near the bottom of paragraph 1 - "Mr Todd referred to the very low cost of acquiring say a half interest in Iranian Oil Wells - a Producing Venture - in such case would Mr Tyler suggest that the Producing profit is a discount to be brought to N.Z." This is obviously a note I have condensed too much. Obviously Mr Todd would not say this and I think it refers not to cost of acquiring the well, but to the cost of lifting the production. I don't think anything was said about low cost of acquiring the well.

Page 6, under heading "General" two thirds of the way down - does that refer to freight contract? Yes it must. Further reference is to freight rate. Staging point reference.

During Mr Tyler's discussions of February/March 1963, did he refer at any time to proposed New Zealand

refinery? Mr Tyler did refer to the New Zealand Refinery but I am not sure from memory whether it was the February-March period or later. But in respect of the New Zealand Refinery, did he understand the companies would have to bring in either crude oil or feed stocks? Yes. Did he ever raise any question with you in say 1963, 1964, as to how Europa proposed to bring in feed stocks? Yes. When was that? I think it was some time after June 1963 when Mr Tyler called and asked to see that part of the 1956 contract which dealt
10 with a New Zealand Refinery. Could you find this in the contracts? EXHIBIT A3 of Case Stated. That was the agreement he asked about after June 1963? Yes. He wanted to see how this agreement tied in with our supply arrangements for the New Zealand Refinery. I did not really tell him anything. He read it and he said that he saw that it did not so provide. He thought it made provision for supplies into the refinery? Yes.

I see from your note EXHIBIT BB that on 21st February there was some discussion with regard to the New
30 Zealand Refinery? Yes. And (page 3 of EXHIBIT BB para. 1) Was Mr Tyler's investigation in 1963 concerned with as far as you know future profits for New Zealand Refinery or with existing profits in Pan Eastern? It was concerned with existing profits from Pan Eastern. I do not know up to what years he was investigating - he wanted to finalise by 31st March 1963. Apart from that query some time after June 1963, with regard to the 1956 contract, did you get any other enquiry after say March 1963? No, I don't recall any enquiries until a long time after March 1963. Until when? From
30 memory towards the end of 1964 and in early 1965. It was November 1964 that he enquired about the feed stock contract with Gulf for New Zealand Refinery stock? Yes. So that would involve a Pan Eastern enquiry at that point of time? Yes.

Over the course of 1963 and up to March 1965,
was Mr Tyler and/or Mr Phillips enquiring into a great number
of different aspects of Europa operations? Yes, there were
a very great number of different enquiries. I produce a
schedule of different matters that they consulted me about.
(EXHIBIT DD). The list is not necessarily exhaustive. And
could you estimate the numbers of separate visits or phone
enquiries from say February 1963 to March 1965? Yes. There
were in excess of 80 such enquiries, either personal visit or
10 phone enquiries. And did you in the course of that period
produce to the Department quantities of documentary material
of all kinds? Yes. Is it right to say there were thousands
of documents, receipts, handed to them? Yes literally
thousands. Did the company comply with every request made to
them for documents and information? Yes. When Mr Tyler
asked you for a certain document or documents was it his
practice to tell you why? No. Did he encourage discussion
as to motives? No other than at the time of his request to
have produced two copies of the Gulf Contract and accounts,
20 when he told me that in his view they constituted a discount
arrangement I seldom if ever got any explanation from him as
to the purpose of his enquiry. Or the reasons for it. Even
though I asked questions on numerous occasions. You are on
quite friendly terms with him? Indeed, on first name terms.
The enquiry was conducted in a cordial atmosphere. But he
would make these requests but would not say why or discuss
what he wanted? Correct. And you say you would examine
his request and whatever it was you would immediately make it
available? That is so.

30 Now moving to something else - some questions were
asked this morning by Mr White and you looked at the record
at lunch time - regarding any purchases of gasoline from
Gulf after the New Zealand Refinery began to operate? Yes.
Now what was the last purchase from Gulf under the 1956

contract? A shipment of gasoline which loaded in November 1966.
Under A2 of the Case Stated dated 10th March 1964, it says
this - "This will confirm our agreement that the said contracts
shall be considered terminated by mutual agreement between us as
of the last day of the calendar quarter following the calendar
quarter in which the Refinery at Whangarei, New Zealand has
come on full stream, as determined by you and notified to us.
The termination of said contracts shall be without
prejudice to the enforcement by either of us of any accrued
10 rights and obligations thereunder as of the effective date of
termination". As at November 1966 had you notified Gulf of
Refinery being on full stream in accordance with the terms
of Exhibit A2? No. So you were still buying and treating
yourselves as buying under the 1956 contract up to November
1966? Yes. And can you tell us when it was that the
Refinery was finally accepted by the Refinery Company as being
on full stream? It was in the third quarter of 1966. So
it would not be operating in 1964 -- was there another
purchase of gasoline after the end of 1966 made by Europa on
20 spot basis? There was a purchase of gasoline made by Europa
of Gulf in October 1967 which was purchased in terms of the
1964 contract. That was a transaction which Mr Todd
regretted in his evidence? Yes.

I now produce as EXHIBIT EE statements showing
equivalent of half Pan Eastern profits as a percentage of
f.o.b. value of gasoline shipments imported by Europa for
period 1956/63.

TO BENCH: Third column is on basis of contract formula?
On basis of formula but with crude oil voluntary discounts
30 agreed by Gulf. So on right hand side are percentages -
if as Mr Tyler says the half Pan Eastern profits ought to
constitute discount, then figures on the right which run up
to 30% would be the discounts? Yes.

TO COUNSEL: I now produce (EXHIBIT FF) Table "Comparison of

Refining Margins" showing movement of refinery margins on these contracts before and after the signing of the 1956 contract.

TO BENCH: Are these the actual quarterly results of Pan Eastern? No, the results which would have been obtained by applying the formula.

TO COUNSEL: Column 1 is the refinery margin as it would be on posted prices 1955/59 - to the end of 1959. Then that is in accordance with the contract terms? Well the contract provided the formula. Leaving the formula out? Yes.

10 TO BENCH: How do you get the margin without using the formula? The figures in Column 1 are derived by comparing cost of crude oil at posted price plus refining fee of $47\frac{1}{2}$ cents with the value of the products which are produced from refining. And figures mean that for each barrel of crude processed there is a refining margin of for example in 1955, September, 56.2 cents U.S. Going down 1957 - difference between margin earned there and what you get on formula. 1955, September.

You would calculate these figures - with regard
20 to your column 2 - what level of crude discount do you take into account? For the whole of 1958 and 1959 discount of 15 cents per barrel except for March 1959 when no discount at all has been applied. Reason is that up to March 1959 the posted price of crude oil was \$2.04 per barrel and in March 1959 it reduced to \$1.86 per barrel. At that point of time you would not expect sellers to be selling under recently reduced posted price? Correct. The first period 1955 into 1956 is before any actual Pan Eastern operations? Yes. Before any contract with Gulf? Yes. That came in in
30 April 1956. Column 3 deals purely with contract formula and does not bring in extra concessions made annually? No.

TO COUNSEL: I now produce as EXHIBIT GG Table to show quantity of crude oil which Gulf was able to get rid of per day in terms of our contract with Gulf.

TO BENCH: Where does this information come from?

Calculation derived from gallonage of gasoline.

TO COUNSEL: Now about Pan Eastern trading accounts - did

you examine those when copies were brought here from U.S.?

I examined them only very generally; I did examine one month, that of December 1963, in detail. Could you see that they followed the same pattern - took one month as an example?

Yes. Without details of figures, in what manner are they constructed? On a monthly basis they show first the purchases

10 of crude oil by Pan Eastern. Secondly, the payment of processing fee by Pan Eastern. Thirdly, sales of gasoline produced by Pan Eastern to Gulf Iran. And fourthly, sales of other products produced by Pan Eastern to Propet. That is the general pattern of the month's transactions recorded in the accounts. Each quarter there are further entries to adjust the sales of finished products made by Pan Eastern in the monthly accounts at what I will call a regular exchange rate to the quarterly official exchange rate. Purpose of that - on a monthly basis the entries are recorded but the

20 exchange rate applicable to those purchases or sales is not known until the end of the quarter. When correct exchange rate is known an adjustment is made to the monthly entries. And then in addition you have the annual result? Yes.

Which is merely accumulation of quarterly earnings that have been established - and then to the extent required the earnings will be adjusted by a crude oil voluntary discount? Yes.

Granted by Gulf Iran to Pan Eastern? Yes.

TO BENCH: How is it that Pan Eastern has no overhead?

There is some and it is reflected in the accounts. Does

30 not seem to come in anywhere in the annual accounts? There are expenses in the Bahamas, not very much. It is possible those accounts might show interest income on bank deposits less miscellaneous expenses of \$85. There are Directors' fees.

TO COUNSEL: Accounts (EXHIBIT Y) the 1963 accounts - taking
December 1963 - I now produce as EXHIBIT EE my written summary
of the December 1963 trading accounts.

In that particular month, December 1963, a
characteristic month's trading as recorded in the trading
accounts of Pan Eastern? Yes, except for the errors. You
have looked at the other years contained in the Exhibit and
you say although you have not audited them they follow the same
pattern? Yes, all conform to the same pattern.

10 XEN: RICHARDSON: I have been employed by Europa Organisation
since October 1951. You said you are a Director of Europa
Oil and Europa Refining? Yes. Do you have in mind the
opening paragraph of EXHIBIT BB - summary of discussions you
had early in 1963 with Mr Tyler? Yes. He asked you a
question there about incorporation in the Bahamas and you said -
"In some such matters I know no more than Mr Tyler himself"?
Yes. Was this on his first visit to you? Yes. Is it
correct then that before 1963 you yourself did not know very
much at all about the Pan Eastern arrangements? Correct.
20 I suppose shareholders in this company Europa knew even less?
I think that is right.

When did you first know of the existence of the
cables and correspondence between Europa and Gulf - in 1958
and 1959 Exhibit H14 of the Case Stated? I cannot answer,
I don't know. Was it before or after Mr Tyler's first
visit to you in 1963? I would say after. About what
percentage return would Europa have expected around 1955
1956 on an investment of £50,000? That would depend on the
nature of the investment. What would be the maximum return -
30 you as treasurer of Europa would expect from an investment of
that sort of money? At that time - perhaps I should make it
clear I was not treasurer and not a director at that time.
However, for Europa to invest such a sum it would require
good security and I would say between 5% and 7%. Is that

before or after tax? Before. Is the position so far as the payment of the additional tax assessed is concerned that by arrangement with the Commissioner nothing has yet been paid?
Yes.

TO BENCH: Is the Commissioner waiving penalties if it finally has to be paid? I don't know - well not yet.

TO COUNSEL: In his evidence Mr Todd at page 126 lines 15 said this - "Pan Eastern had an office in the Bahamas and that it had directors and a secretary" - was the office care of a firm of lawyers in the Bahamas? Yes. Was there one
10 director who was a member of that law firm? Yes. Am I right that no rent was ever paid for the use of the lawyer's office by Pan Eastern? I cannot say. According to the balance sheets of Pan Eastern did it ever at any stage hold any stocks of oil? No.

COURT ADJOURNED 4 p.m.

XVI: H.K. SMITH (continued) (25/2/69)

Just before the recess yesterday I had asked you a question - according to balance sheet of Pan Eastern, did it
20 ever at any stage hold stocks of oil and you said No. Is there any indication in the Pan Eastern records that it ever during any year held any stocks of oil? No. Under the processing contract was crude delivered to the refinery at the sole risk of Gulf? Yes. Under the processing contract was the crude processed at the sole risk of Gulf? Yes. Were all products taken by Gulf at the refinery? Yes.

TO BENCH: That is Gulf Iran? Gulf Iran for gasoline and Propet for the heavier oils.

TO COUNSEL: Is there any indication in Pan Eastern records that
30 at any time Pan Eastern owned any tangible assets? No. Did Pan Eastern incur any normal commercial liabilities other than to Gulf? No - other than for expenses in the Bahamas. Is a fair measure of those expenses the \$85 recorded for the 1961 year? That is a very small amount - and

in each year the amounts have been small but may range to at least double that - which is still a very small amount.

Where necessary in the administration of Pan Eastern did Gulf finance dividend payments? I understand from the accounts that when Pan Eastern required moneys to make dividend payments the moneys were made available to Pan Eastern by Pan Eastern's debtor Propet Company. And this reduced the amount owing by Propet under accounts receivable. Is the position that Propet injected money into Pan Eastern when Pan Eastern needed
10 cash to pay dividends? Yes. Would it be a fair summary of the Pan Eastern administration to say that the Bahamas was simply a letter box with the significant paper work being done by Gulf in the United States? I don't think so, no. The statutory records of the company and the directors and shareholders' meetings were held in the Bahamas. The accounting records were prepared and kept by Gulf. In terms of the paper work involved was it virtually all done in the United States? For accounting, yes.

Now some questions about machinery provisions in
20 1956 and 1964 contracts as far as Pan Eastern was concerned. Exhibits to Case Stated - Processing Contract 1956. Under the 1956 processing contract was the type of crude to be supplied by Gulf to Pan Eastern specified? Yes. Look at clause 2.01 (A7). In the light of clause 2.01, what do you say? Clause 2.01 does not specify a particular type of crude. Could the crude come from any source chosen by Gulf? Yes. Whatever the type or source of the crude, was it paid for at posted prices Iranian crude oil ex Bandar Mashur? Yes initially. Later there was a credit given for a voluntary
30 crude discount. (Clause 4.01). Was crude to be processed at a specified refinery? No. Was that left completely to Gulf? Yes. Is there any record in the Pan Eastern documentation to show what type of crude was appropriated to the processing contract? No. Is there any record in the Pan Eastern

documentation to show where the crude was processed? Not in the documentation that I have seen. Were Pan Eastern's crudes and products ever physically identified to your knowledge? Not to my knowledge. Referring to these details I have asked about, was the reason they were not recorded that they were in fact irrelevant? If I take your question correctly you say the crude oil used and products produced were irrelevant. No - you said type of crude was never identified in records, the source never identified, the refinery nationally used was never identified - and the crude and products themselves never identified - I suggest to you that all these details were irrelevant? No, I don't think that is correct. Is it fair to say that all Pan Eastern needed to do was to apply the formula in the processing contract to a specified quantity of crude? It would do that in order to determine the amount of refinery earnings. And from that did it deduct the cost of a specified quantity of crude? No it does not work quite that way. Perhaps you could explain if the details I have asked about and which are not recorded in Pan Eastern - if they are relevant they are they not in records? The records which I have seen are not complete records. They are the end result accounting records. I have no knowledge that this is so, but in order to make those entries in accounting records which I have seen there must be vouchers consignment notes and the like to support them. Could the specified quantity of crude to be processed be arrived at by multiplying by four the number of barrels of gasoline supplied to Europe? Yes. So that gives you the quantity of crude? Yes. Is the price of that crude simply determined by applying clause 4.01 subject to any voluntary discount? Yes. Was the processing fee static at $47\frac{1}{2}$ cents per barrel of crude? Yes. Was that not all the information that was needed to apply the formula profit? That is all that is needed to calculate the formula profit, yes.

How could Pan Eastern be in the refinery business when it never knew what crude it had bought or where it was refined? I don't know that it did not know what crude was bought or where it was refined. These details are not disclosed in the records which I have seen.

TO BENCH: Well who was there to know? The person who had access to vouchers and other base records in Gulf organisation. That would be a Gulf officer.

TO COUNSEL: It is the claim of Europa that Pan Eastern was in refining business - in the light of the information of Pan Eastern records available to Europa, how can you say that Pan Eastern was in the refining business? When Europa never knew what crude Pan Eastern had bought? Or where it was refined? I think perhaps if feasible I could answer that by giving a background to my understanding of these refinery processes. I am familiar with the New Zealand refinery accounting system. Mr Todd has said in evidence that this is a continuous stream process. And that there is no identification of each of the participating companies crude oil or feed stocks. The Abadan refinery which processes I understand this Iranian crude, referred to in these contracts, has a capacity of something in excess of 400,000 barrels a day and has 15 participants and processes a number of different types of crude. The only way in which I would be able to set up Pan Eastern's accounts if I had that responsibility would be at the time gasoline was processed for Pan Eastern, or for sale by Pan Eastern, would be then to determine the amount of Iranian crude required, the yield of products in accordance with clause 5.01 of this contract, the processing fee payable, and I would then make simultaneous purchase and sale and processing fee entries. I think that procedure can be reconciled with what happens in the New Zealand refinery.

TO BENCH: That means this - that you know the number of barrels of gasoline that Europa gets, multiply that by four

and take that notional amount of crude oil? Yes. And that is charged at formula in the accounts? Well the crude is charged - Gulf charge for that amount of crude on that formula. And the processing fee is also charged at the contract rate? Yes. Multiplying the number of barrels of gasoline by four? Yes. To get the crude process? Yes.

TO COUNSEL: Under the contracts themselves, did Pan Eastern pay for the transportation of crude from the port of loading to wherever it was refined? There is no such charge. Was this cost met by Gulf? If there was such a cost, yes. Would the effect be to reduce the sale price of crude to Pan Eastern below posted prices? No.

TO BENCH: Are posted prices on an f.o.b. basis? Yes. Well if Gulf were delivering crude to the refinery, it really equated f.o.b. rates to c.i.f. rates? Yes. My understanding however is that - I have no real knowledge - is that Abadan refinery would be processing this crude oil for Pan Eastern. It is unidentifiable crude oil, isn't it? Yes. It is not identifiable but the point is that if I am right there would probably be no transport costs. Well, transport costs somewhere? May be a pipe line from field to refinery - I am not sure on this.

TO COUNSEL: Clause 3.01 - "Quantities of crude oil sold to PAN-EASTERN hereunder shall be delivered by GULF at GULF's sole risk and expense"? Yes. Does the contract therefore envisage that Gulf would incur costs in getting this crude which it sells at posted prices to a refinery? Yes. Gulf are obligated to do this.

TO BENCH: Even if it goes by pipe line, isn't there a charge for each crude oil company using that pipe line for refinery? I can't answer but I think analogy is that if instead of going to a refinery it went to a ship there would also be a pipe line charge to a ship but posted price is f.o.b. at end of the pipe line - from field to ship loading jetty or wharf.

TO COUNSEL: Did Gulf have power to delegate the refining of

Pan Eastern's crude? Clause 5.01? Yes. So far as records show, did it ever delegate? I don't know. The records do not show.

Turning to the volume discounts (EXHIBIT A9 of Case Stated) does it provide a volume discount for 1958 of 20 cents per barrel? Yes. Does A10 provide a similar discount of 9 cents for 1959? Yes. And turning to A11 does it provide a similar discount of 13 cents for 1960?

10 Yes. Did these volume discounts bear any relation at all with actual discounts on crude granted over that period in the market? I have no knowledge of what actual discounts may have been granted in the market. Is the position that these discounts were such as was required to achieve the agreed goal of 2.5 cents per gallon on Europa's gasoline supplies?

Yes. Would you please turn to the 1964 feed stocks supply contract (EXHIBIT B). There seem to be two gas oils provided for in the contract - one in Clause 3.05 page 3, and the other clause 4.01 page 5 - Yes. Is the first a feed stock?

20 Yes. And is that a raw gas oil? It is perhaps more correct to refer to it as middle distillate. And is the gas oil referred to in clause 4.01 a refined product? Yes. Is there a considerable difference in quality and usability between the two gas oils? Yes. First gas oil in clause 3.01 requires further refining before it is suitable for consumption or utilisation in the market. Is there accordingly a significant difference between the current posted price of a refined gas oil and the value of the feed stock gas oil in 3.01? There is a difference I believe.

30 I don't know whether it is substantial.

TO BENCH: If 3.01 had to be through another process it would be substantial? I am not sure.

TO COUNSEL: Would you look at clause 7.01 paragraph (d), page 8. That provides for the purchase price by Europa of

feed stock gas oil? 3.01? Yes. Is the gas oil referred to in 7.01(d) namely 53/57 D.I. Gas Oil, a refined gas oil? I don't know. My information is that it is a refined gas oil, and if we accept that for the moment, reference in (d) "for gas oil, irrespective of gravity or the port of loading, the lowest posted price for 53/57 D.I. Gas Oil, f.o.b. Abadan, Iran, as reported in Platt's Oilgram under the heading "Caribbean, Middle East and Far East Refined Products Prices", expressed on a per barrel basis, which is in effect on the

10 date the tanker commences to load;"? Yes. Why would Europa refining pay for its feed stock gas oil at posted prices for refined gas oil? I was not involved in any negotiations to do with the contracts. I cannot answer that. Would you now turn to the Processing Contract (Exhibit B5 Case Stated) Clause 5.01. Clause 5.01 we know applies the resale price of crude from Pan Eastern to Gulf to the supply price from Gulfex to Europa Refining. Is it ordinary business practice to have a company's sale prices subject to variation by two outside parties? I find the question difficult - in

20 ordinary business transactions probably not - but this is a refining operation. In this operation I do not really see anything unusual in it. We have heard a lot about refiner's squeeze: why should Pan Eastern profit be liable to be squeezed in this manner? I think Mr Todd in evidence described how the various contracts came to be signed at posted prices with the understanding that later discounts would be arranged. I think what he said is the answer to your question. So these contracts must at all times be read subject to the later letter variations? Yes.

30 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 Europe then effectively through Pan Eastern get the full 15%? Actually no. Because of the letter variation? Correct. Following the letter variation, did Europe get that exact 15% partly through a direct discount? And the balance through Pan Eastern? That is the net effect on Europe's cash flow.

10 Turn to clause 4.02 of B5 - does that show that the naphtha and gas oil prices are irrespective of gravity or the refinery loading port? Yes. Does it follow that the price paid bears no relation to the quality or source of those feed stocks? Correct. Under the feed stocks supply contract are there very exact standards laid down by Europa Refining for its feed stocks? EXHIBIT B clause 3.01 and schedules? I am not over familiar with specifications - you asked about exact specifications. These specifications in the contract are typical and I understand that what is received is in accordance with the typical specifications.

20 It may not be exact. For example, the API gravity of naphtha is set out in the schedule to the contracts as 65.3 whereas I think shipments received have gone up to about 67. Are there many grades of naphthas and gas oils apart from those specified in the schedule? I understand there are. Can you say why no specification of such standards in the processing contract? No, I can't say. Would you agree that the processing contract was concerned with the end return to Pan Eastern desired by the parties? Only as one aspect. To the extent that no standards were specified was it not the

30 sole aspect? No. Would you please explain your views on this? Processing contract provides for the purchase by Pan Eastern and processing of crude and feed stocks. The result of this operation is a profit to Pan Eastern - that is what I mean.

Look again at clause 4.02 B5, paragraph (a) at foot of page 5 - under that provision was the crude required for processing into one barrel of naphtha together with processing and other charges to cost Pan Eastern \$1.46 with an adjustment escalating with the posted price changes? Yes. In its records did Pan Eastern assume that one hundred barrels of crude produced 16 barrels of naphtha? Yes. Something like 6 of crude for 1 of naphtha? Yes. Have you ever been able to buy 6 barrels of any crude and have it refined into naphtha for \$1.46? Perhaps I can answer this way - when processed 6 barrels of crude make 1 barrel of naphtha and other products. So far as cost to Pan Eastern was concerned did it not pay \$1.46 for those 6 barrels plus processing into naphtha? No. It paid for the cost of six barrels of crude, at the price for the particular crude. Not specified in so many words in the contract. The resulting products from processing crude are sold by Pan Eastern to Gulf and this operation results in a profit to Pan Eastern.

20 TO BENCH: But what does it pay for the 6 barrels of crude? It pays in this case posted price of \$1.59 less the discount of 15%. Per barrel? Yes, per barrel.

TO COUNSEL: If you look carefully at the provisions of clause 4 again - is there any reference to the payment by Pan Eastern of posted prices for the crude involved? Yes. Clause 4.01. Is clause 4.01 concerned solely with crude that is sold by Gulf to Pan Eastern then resold by Pan Eastern to Gulf equivalent in quantity to the crude supplied to Europa? No, I do not read it that way. Would you look at the last two lines on page 4? Yes. Does that say "Payment for crude oils purchased hereunder but not manufactured into petroleum products"? Yes. That would refer to finished products and not feed stocks. Would you look now at clause 4.02? Yes. "The amount per barrel, f.o.b. refinery loading

port, (including the cost of the crude oil, the processing thereof and all other outgoings)"? Yes. And does that not include in the cost of crude 6 barrels where one barrel of naphtha is supplied? No, I do not read it that way.

In the Pan Eastern records has a charge under clause 4.02(d) ever been made by Gulf to Pan Eastern? As part of the total charges made by Gulf to Pan Eastern, yes. Is the position this, that when there was a supply of crude processing into naphtha under clause 4.02, that Pan Eastern
10 was charged at the posted price for barrels of crude involved, assuming 100 barrels of crude would produce 16 barrels of naphtha, was there then a processing fee charged? Yes. And was that the cost debited to Pan Eastern? Yes. So am I right that under Pan Eastern records there was no attempt to charge in relation to naphtha a base price of \$1.46 per barrel adjusted as provided in clause 4.02? Naphtha was not charged to Pan Eastern as such but it was included at the cost of \$1.46 per barrel in the cost of crude and the processing paid by Pan Eastern. Perhaps I could
20 comment: cost of crude required to produce the naphtha and the processing fee on that quantity of crude added together give a total cost of production ex stocks. The amount of naphtha produced and the amount of gas oil produced is valued at a cost of production of \$1.46 per barrel and \$2 per barrel respectively. The value of the naphtha and gas oil is added together and compared with the total cost of crude and processing fee. Difference is the cost of producing the additional middle and heavy products from this crude. The naphtha and gas oil which cost Pan Eastern to produce \$1.46 and \$2
30 respectively is then sold by Pan Eastern at the price provided in the contract. The additional products produced are sold by Pan Eastern to produce a profit equivalent to that received on the sale of naphtha and gas oil. Was there any authority under the contract for charging a processing fee of 20 cents

per barrel? I think it is implicit in the contract. The base cost of crude oil after allowing for 15 per cent. is \$1.35. A processing fee of 20 cents was charged. This makes the cost of producing from each barrel of crude \$1.55. The cost of production of naphtha is \$1.46 and the cost of production of gas oil is \$2.00. I was not present at negotiations but I have been told that Gulf were reluctant to supply gas oil. In the negotiations it was agreed that there should be accepted instead of a quantitative limitation on gas oil that there could be an economic penalty imposed on gas oil. I understand this was struck on basis that processing fee would be weighted disproportionately against the gas oil in the proportion of the expected requirements of Europa of gas oil and naphtha. These proportions were expected to be one barrel of gas oil to 4 barrels of naphtha. The cost of producing one/fifth of a barrel of middle distillate dividing the 12 by five, is 40 cents. The cost of producing 4/5ths of naphtha the cost of which is \$1.46 is approximately \$1.16. 40 cents and \$1.16 add to \$1.56 which is approximately the cost of the crude oil and the processing fee.

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 10 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 20 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.

SHORT ADJOURNMENT

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 30 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? 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
10 get through Pan Eastern an amount equal to the difference between the two sets of prices? Yes, that is the effect.

Looking at EXHIBIT X (box of Pan Eastern accounts) is there in respect of the month of November 1964 a voucher 11/1 dated November 19th, 1964? Does voucher 11/1 for November 1964 at page 3 record in respect of date 19th November 1964 a sale of Kuwait crude between Pan Eastern and Gulfex at \$1.59 per barrel? Yes. Does voucher 12/3 for December 1964 at page 6 record a sale of crude from Pan East to Propet at \$1.43 per barrel? Yes. And is that shown as a revised
20 voucher? Yes. Comparing the two, does there seem to be a revision of the first voucher referred to? Yes. Is the second voucher stated to have been registered in December 1964? Yes. Each voucher has two dates, formal registration in central Gulf records I presume is the second date? I do not know. Is the difference in price between those two vouchers 16 cents per barrel? Yes. Does then this second voucher record a discount of 10 per cent. on the crude which was equivalent to the direct discount obtained from Europa Refining from Gulfex? Yes.

30 Mr Todd said in cross-examination (page 147 line 24) - "When was it decided that the discount should be 10%? I think from memory that was decided at that 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." The voucher you have seen refers to discount of 10% as having been recorded as of November 19th and registered in December 1964? Yes. Do you agree that Mr Todd must have been wrong when he
10 stated the discount was fixed in March 1965? No. I think the voucher that we just looked at is a pre-printed form and it has on it pre-printed the words "Registered in". The discount of 16 cents was agreed to in a letter dated 16th March 1965. (EXHIBIT B1). "With effect from April 1, 1964 ..."
(second sentence, paragraph 2). I would take from the voucher we have examined, in spite of the fact that it shows registered December 1964, that voucher is retrospectively giving effect to this letter.

TO BENCH: That is that although it has this date on it it
20 was not made out till subsequent to March 16th, 1965? Yes it seems Bancast's books may have been kept open over that period.

TO COUNSEL: You say we cannot rely on dates recorded in EXHIBIT X? In general I think we could rely on them but it seems to me that this is self evident that this was made out retrospectively.

TO BENCH: In the light of B1 the vouchers which show registration in December 1964 must have been made out subsequent to March 1965? Yes. Or during March 1965.

30 TO COUNSEL: Is the other possibility that between first voucher of November 1964 and the second registered in December 1964 the discount was agreed upon? Not in the light of my knowledge; I cannot say whether that is right or wrong. It is a possibility but not in the light of my knowledge.

In each quarterly statement by Pan Eastern is there a factor adjustment? In respect of prices? Yes. For example, in voucher 1/2 for January 1964 relating to last quarter of 1963 is there at page 4 a column headed "adjusted price" and then in brackets 1.016340? Yes. How was this adjusting factor in Pan Eastern vouchers arrived at each quarter? I think the matter is explained in the paper which was produced yesterday covering the December 1963 accounts but briefly on a month by month basis the Pan Eastern accounts
10 record purchases of crude and processing fee and sales of products. Those transactions from the three months of any one quarter will show a profit to Pan Eastern. That profit is then compared with the formula profit. And an adjustment is made to the selling price of kerosene residual and distillate, to Propet so that the quarterly profit in Pan Eastern accounts is equal to the formula profit. This is provided in the contract. And was the ratio of first set of selling prices to prices needed to get the formula profit, the adjusting factor in the voucher? Yes in this case 101% -
20 an addition of 1% in other words. This adjusting factor that appears quarterly was simply to produce a designed result and had no business reality? It produces the formula result.

Turning next to volume discounts: in each year the discount is a round number of cents or half cents per barrel of crude? Yes. How was that figure arrived at? I can only say how I checked the figure. The formula profits disclosed in Pan Eastern accounts were compared with a calculation of profits equivalent to 2½ cents per gallon of gasoline. The difference if such calculation produced a greater profit was
30 then divided by the number of barrels of crude processed during that year, and the result is so many cents discount. In that calculation would you have ended with a number, a large number, of decimals instead of an exact number of cents per barrel? Yes. And did Pan Eastern and Gulf simply stick

to cents and half cents knowing that what was under one year would be over the next and would balance out? It appears to me that that is so.

You told us how this volume discount was arrived at: was it necessary to have the complex figuring recorded in EXHIBIT X to produce a pre-arranged profit? I cannot agree with the term "pre-arranged profit". Till the actual results were known it was not possible to determine whether the crude discount is required or not. Would it not be possible simply to arrive at a profit for Pan Eastern of 2.5 cents per gallon on Europa's gasoline and then double it? No, because Pan Eastern profits arise from very briefly purchases of crude and sales of products. It is necessary then to have accounts recording those transactions and processing fees. And if it were possible to simply multiply quantities of gasoline by $2\frac{1}{2}$ cents that exercise does not produce profits. Does it produce the same amount of profit as the arithmetic followed by Pan Eastern? Yes.

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.

In its recording did Pan East strictly follow the 1956 processing contract? As far as I know it did, yes. Look at EXHIBIT A7, Processing Contract, Clause 6.04, page 5: does it record that the price to be paid by Gulf for kerosene distillate and residual is the lowest posted Caribbean and

Far East refined products prices? Yes. Turning to clause 6.08 - for pricing purposes is the quality of the products as set out there? Yes. Did Pan Eastern in fact adopt Caribbean posted prices for those products? If I understand the question correctly it relates to products sold by Pan Eastern to Gulf under 6.04 and were they the products as set out in clause 6.08. From memory from Pan Eastern accounts, the accounts show kerosene distillate and residual but do not recall them showing the specifications set out in clause 6.08.

10 My information is that instead of the distillate quality in 6.08 Pan Eastern used No. 2 fuel? Instead of distillate 43/47 D.I. gas oil? I cannot comment on that. My information too is that the price base adopted by Pan Eastern was Abadan not the Caribbean? I comment ... Do you know if that is right? I do not know. The price in accordance with clause 6.04 to be paid by Gulf is subject to adjustment upwards or downwards so the price recorded in the accounts I would think would not be either Caribbean or Abadan or in fact any quoted source reference. Is your answer that whatever

20 the price they adopted it did not affect the position because the returns were then adjusted by the formula? Yes.

In its recording under 1964 contracts, did Pan Eastern assume a one per cent. processing loss in the refining of crude? Yes, I think that is right.

Do you know from your examination of Pan Eastern records what Propet did with the remaining products? No.

I show you voucher 1/2 for January 1963 relating to last quarter of 1962 (EXHIBIT X). At page 3 does it show sales of middle and heavy products from Pan Eastern to Propet

30 totalling one million nine hundred and forty four thousand five hundred and fifty two dollars? Yes. At page 5 does it show sales of the products in question by Propet to Gulf Iran for \$1,774,962? Yes. If that is correct, if my

arithmetic is right, on that transaction Propet lost \$169,590?

Correct. My information from records is that Propet's share of the Pan Eastern profit for that quarter of 1962 was \$169,590? I cannot agree on that. If that information is correct, does it show that in that quarter Propet lost on the resale of remaining products the exact amount it gained for that quarter through its shareholding in Pan Eastern? If your calculation is correct, it would appear to show that.

TO BENCH: If that is correct, does that mean that it in
10 effect gave its profits from Pan Eastern to Gulf by a reduction in the price Gulf was paying for the products?
Yes. Gulf Iran.

TO COUNSEL: Does your answer depend on value of those remaining products at that time? No, I do not think so. If figures shown me are correct, they record what actually happened at those values.

TO BENCH: Propet sell to Gulf at an artificial price irrespective of true value? I don't know if I can answer that. The difficulty is that I do not know what true values
20 are. First a sale by Pan Eastern to Propet which appears from the voucher to be slightly in excess of the posted price at that date. And then there is a sale by Propet to Gulf Iran at a lesser price. I am not sure which price could be questioned. But it appears in any case that Propet pays Pan Eastern a certain price and then in reselling to Gulf Iran it discounts that price by the amount of Propet profits for the period? That appears to be so.

TO COUNSEL: According to my information the records of Pan Eastern in respect of 1964 show no less than five different
30 prices having been recorded for crude under the Pan Eastern arrangement? Would that surprise you? It would, yes. Rather than take up time, I would like to check during the luncheon adjournment. I don't think we have a copy of

the accounts to check.

Now about the interviews you were involved in with Mr Tyler in 1963: did Mr Tyler compare his notes of one interview with you to see how they corresponded with yours? It is familiar, but I cannot really recall. At the interviews themselves we have it from Mr Todd on page 91 of the Notes that Mr Tyler may have made jottings but he did not sit at a desk, would you agree with that? Yes. Would you look at EXHIBIT BB, at page 2, fourth paragraph. You refer to 10 having summarised various points of view; do you still have the original notes of that interview of 21st February? No. It was my practice to dictate notes as soon as possible and not keep original then. I took a note at the time and then dictated this summary to my typist from the original notes and then destroyed the original notes. In your evidence yesterday (page 162 line 5) referring to EXHIBIT BB - "I produce this typescript note I prepared on 25th February 1963 which summarises discussions with Mr Tyler from his first visit on 13th February to the last phone call with him 20 on 22nd February 1963" - is it fair to say that those memoranda (EXHIBIT BB) was prepared from your recollection as at 25th February of the various interviews you had had with Mr Tyler up to that time? No. The interviews which I had with Mr Todd present I took notes of at the time. Interviews with Mr Tyler and myself alone I made notes after the interview. Why did you need to prepare a summary if you already held notes of those earlier interviews? For the information of Mr Todd primarily because my handwritten notes were indecipherable to anyone else. Were copies of the Pan 30 Eastern accounts supplied to the Commissioner by Associated Motorists in March 1967? Yes, from memory. I think that is right; they were supplied. These two documents under cover of separate letters from A.M.P. Co. Limited to the Commissioner

dated 2nd March 1967 and 29th March 1967 (EXHIBITS 10 and 11):
are they Pan Eastern accounts for 1961 to 1965 and for 1959
and 1960? Yes. Would you look at EXHIBIT AA - are cover
note and auditor's report missing from set supplied to
Commissioner in March 1967? Yes. Look at balance sheet in
two sets; does the note that appears on Balance Sheet in
EXHIBIT AA appear in the other balance sheets? No. Can you
explain why Commissioner should see part only of the accounts
with the note omitted? Omission from what was supplied to
10 the Commissioner is Price Waterhouse audit certificate and note
to the financial statement and in the typed copy of the
Balance Sheet supplied to the Commissioner there has been
omitted a note which reads: "The note to the financial
statements is an integral part of the statements and should be
read in conjunction therewith." That note was also omitted
from the copies sent to the Commissioner. As to why this
was done I cannot really answer. I assume it did not seem
important at the time.

QUESTION: But must have been done deliberately? Not
20 necessarily. Copies of Balance Sheets would have been given
to a typist who was simply asked to copy them in the same
form, but possibly she was told because it did not seem
important not to copy the audit note. Someone must have told
the typist? That would be me, but I can't recall it.
Further this 1961 year is the only year in which the accounts
were audited. None of the other years were audited.
EXHIBIT AA - the 1961 audit.

LUNCHEON ADJOURNMENT.

During the adjournment have you examined the
30 prices for crude recorded in Pan Eastern records in 1964?
Yes. And do you confirm that five different prices are
recorded? I confirm there are five different prices relating
to two different crudes, and two different contracts. I

show you a document included in EXHIBIT X and identified as Pan Eastern Refinery Co. Limited financial statement December 31st, 1963. Does this document contain balance sheet, profit and loss summary and operating revenue and purchases schedule for Pan Eastern for the 1963 year? Yes. Would you look at the revenue accounts. Is there any reference to volume discounts in those accounts? No identifiable reference to volume discounts.

10 You have in mind EXHIBIT AA accounts of Pan Eastern for 1961? Yes. Do you agree that a cursory examination of those accounts by anyone investigating the possibility of discount would invite question as to the volume discounts there referred to? I should think that anyone inevestigating discounts would be almost certain to enquire about the discounts disclosed in the accounts, and referred to in the note to the accounts, Price Waterhouse's notes. Is there any reference in the notes (EXHIBIT BB) of the later interviews between Mr Tyler and Mr Todd and yourself of volume discounts? No.

20 You said Mr Tyler saw certain Pan Eastern accounts on the 20th February? Yes. Was it the following day that he had this long interview with Mr Todd, Doctor Lau and yourself? Yes. During that interview was he constantly pressing his discount argument? Yes. Had he known that volume discount had been granted to Pan Eastern, would you not have expected him to raise it at that interview? Mr Tyler was pressing discounts on products. The accounts disclosed volume discounts on crude. I would have expected him to raise the question of what the accounts disclosed.

30 Do you have a note of any request by Mr Tyler for details of sales purchases and refining fees of Pan Eastern for the 1957/1962 years? Requests being made late March 1963? I cannot recall any such request. I should probably

have to refer to my own file but I do not remember it.

Assuming he made such a request at that time, had he known of the existence of volume discounts, would you have expected him to ask about the volume discounts at that same time? I do not really know what to expect that Mr Tyler might have asked for.

Would you refer to EXHIBIT BB, look at page 2, second paragraph. Your note does not identify which year's accounts were given to Mr Tyler? That is correct. Nor does it identify which set of accounts for a particular year was given to him? That is correct. Or how much of a set of accounts was handed to him? No. Would you look at EXHIBIT 11, Pan Eastern accounts for years ended 31st December 1959, 1960. Accounts for 1959 consist only of a balance sheet? Yes. Is there any mention in that balance sheet of volume discounts? No. Mr Tyler will say that he considered it inconceivable in the circumstances in which he was working that he would have been given any document which included reference to discount without actively pursuing the question. Is it possible that you showed him a set of accounts or part only, such as a balance sheet, that had no reference to volume discounts? I consider that that is not possible. You are now relying on the recollection prompted by this note on page 2 of EXHIBIT BB? Partly, yes. Had you given him the 1959 accounts, he would not have known of volume discounts? No, he would not.

Would you look at page 3 of EXHIBIT BB, foot of page - "This matter outlines a discussion and on my way home in car with Mr Tyler". Where did you drive Mr Tyler? I did not drive him. Were you in the car? No. Am I correct that on the matter covered in paragraph 3 you are relying partly on secondhand information given to you? Yes, information given by Mr Todd. Am I going too far in suggesting

these notes are amalgamation of recollection of you and Mr Todd and Doctor Lau? Yes you are; they would not contain the errors that they do if they were the result of the three people you mention.

TO BEUCH: Were you present at all interviews except any discussion in the car? Yes. And you made note at some of those interviews on the spot and sometimes after interview had closed? Yes. Well then, is this summary constructed from your own notes in part? In all parts except the
10 bracketed paragraph referring to the car discussion. And that paragraph is a summary of what Mr Todd told you later? Yes, it was also at the discussions but discussed further in the car. The part about the car is what Mr Todd told me afterwards.

TO COUNSEL: Question of the accounts you showed Mr Tyler. In the light of the questions asked and answered in the last few minutes, do you agree you could be wrong in saying that he received the 1961 accounts? I am quite satisfied the file I gave to Mr Tyler included the 1961 accounts. Did you give
20 it to him to look at at the interview? I gave it to him in my office; he took it to another room allocated for his use and returned it later in the day.

In your evidence in chief (page 120) you were asked about enquiries made of you by Mr Tyler and Mr Phillips in March 1963 (line 26 page 164) - "Apart from that query some time after June 1963, with regard to the 1956 contract, did you get any other enquiry after say March 1963? No I don't recall any enquiries until a long time after March 1963. Until when? From memory towards the end of 1964 and in
30 early 1965.". Can you tell us more about that one query you there mentioned some time after June 1963? The query which I recall was a request by Mr Tyler to have another look at the 1956 Gulf contracts. He had told me on the phone before

calling on me that he wished to see that part of the contract which is called 'Memorandum of Agreement relative to New Zealand Refinery'. Can you recall whether in February 1964 Mr Tyler obtained from you details of purchases and earnings of Pan Eastern for years up to 31st December 1962? I am sorry, I can't recall. I know such figures were given but cannot really recall the dates. Can you recall whether in December 1963 Mr Tyler obtained from you some details as to geographical source of Europa supplies? I can say no more than that it has a familiar ring. Can you recall whether or not in 10 October 1963 Mr Tyler made some enquiry of you concerning tanker freights? I recall many such enquiries from Mr Tyler and from Mr Kencilly but cannot again recall the dates. Did you assume at the time that any such enquiries related to Europa's shipments? No I assumed they related to other companies shipments. Mr Todd told us he was not aware until after March 1965 that the investigation extended to other oil companies; when did you first know the enquiry extended beyond your company? It is difficult to put a date, but I 20 knew much earlier than March 1965. I might have known in 1963,

During 1963 and 1964 did you keep Mr Todd informed as to the progress of the investigations by the Inspector? Yes. Looking at EXHIBIT FF, is column 2 quite unrelated to the actual arrangements between Pan Eastern and Gulf? It is unrelated in the sense that the figures are derived from or calculated on different basis to that used in the contract. Keep that Exhibit and also look at EXHIBIT B14 to Case Stated, Appendix B to letter of 10th July 1958 - immediately below the graph - in your column 2 EXHIBIT FF - is that to the same 30 effect as column 2 on Appendix B? But using Gain per barrel crude in your column 2 as compared with Gain in cents per gallon gasoline in Appendix B? From headings that appears to be so. In EXHIBIT GG you have used factor of 335 days in

in the year for the refining operation; does this allow for a two months shut down of refinery every two years? No, 30 days per annum; 60 days for two years. On the calculation I have allowed 30 days per annum for shut down. I am not sure physically whether it shuts down once a year or once every two years.

During this hearing there has been considerable speculation about the objects of Gulf in this Pan Eastern arrangement. I produce to you a document from EXHIBIT X which is an internal Gulf memorandum dated 10 September 1959, from a Mr Pearson in Pittsburgh to a Mr Campbell at New York? Yes. EXHIBIT 12 - does paragraph 1 of this Memorandum read : "A review of Pan Eastern's financial situation indicates that the formula for determining Pan Eastern's earnings is not generating income equivalent to approximately 5 cents per gallon of gasoline purchased by Europa as was intended. Accordingly, Gulf has offered to augment Pan Eastern's earnings by granting a 20¢ per barrel volume discount on Pan Eastern's 1958 crude purchases of 4,402,260 barrels. This amounts to \$880,454."? That is what it reads, yes.

REXII: Mr Tyler will deny he saw the 1961 accounts apparently - were they as at February 1963 the latest Pan Eastern accounts? Yes. So that because the 1962 accounts would not be finalised till December? Yes. You said yesterday on this point (page 160) - "Mr Tyler's first two visits he discussed with you Pan Eastern? Yes true. And did you hand over to him on the 20th February 1963 the Pan Eastern contracts and associated contracts? Yes. Contracts in the Case Stated of 3rd April 1956 with Gulf? Yes. And Pan Eastern accounts were also handed over on the 20th February 1963. What you gave him were Pan Eastern accounts for year ended 31st December 1961? Yes. File would contain accounts for other years as well. And to the accounts for year ended 31st December 1961 were attached

auditors' statement by Price Waterhouse? Yes. Together
with a note attached - by Price Waterhouse? Yes." Now
you say other accounts were attached as well; what was the
file you gave him? Accounts were contained in a red manilla
file, handed to me by my predecessor when he left office.
Did it contain Pan Eastern accounts from 1956 onwards? I
cannot be sure of that. I have it in mind that there were
one or more of the earlier years missing. But this caused
no problem because the accounts are cumulative. I am sure
10 it contained the accounts for 1961. This is because from my
memory I made a comment to Mr Tyler that even a firm such as
Price Waterhouse makes mistakes in that the first note to
financial accounts which they prepared contained reference to
a processing agreement between Gulf and Europe instead of
between Gulf and Pan Eastern. Price Waterhouse later
corrected their note to the accounts. That was the note to
the 1961 accounts. When was it corrected? Some time in
1962. You mentioned this to Mr Tyler? Yes. At any rate
the ...

20 TO BENCH: Price Waterhouse have an office in New Zealand?

I do not know. This was done overseas.

TO COUNSEL: EXHIBIT D is your summary dated 25th February
1963; it refers to the points raised by Mr Tyler on page 2
of the summary - that the interview with Mr Todd and yourself -
second point he raised in your summary is large earnings
against capital. Third point is small dividend in relation
to earnings. Would you take it from that he had read the
accounts you had given him the day before? Yes. He must
have done so. You say he took these accounts away to a room,
30 and returned them later in the day? Yes.

Now did the Department ask for those accounts
again in 1963? I do not think they were asked for until
very much later; they asked for, I think verbally on the

phone, about details of the earnings, just the amounts of earnings of Pan Eastern. For what purpose did they make that enquiry? They did not tell me. When they made their amended assessment in 1965 they would have to know Pan Eastern earnings in order to describe them as 'Cost of purchases of Europa disallowed'? Yes. How did they find out the amounts? They asked per phone. This assessment is here? EXHIBIT E of Case Stated - proportion of costs disallowed commences in 1960.

10 TO BENCH: This figure in 1960 year, £424,027 - does that agree with the half of Pan Eastern profits for that year? It is hard to answer; initially the Department proposed to include a disallowance of purchases in the assessment of one half of Pan Eastern earnings for twelve months ended 31st December 1959, in the assessment for the year ending 31st March 1960. Subsequently the Department agreed to a calculation of Pan Eastern earnings for twelve months ended 31st March 1960. I am not sure whether the first assessment included amended Pan Eastern figure or the original - subject
20 to that qualification the amount included in amended assessments are half of Pan Eastern profits.

TO COUNSEL: They got first assessment in just before 31st March 1965 - then when a bit more leisure - and to get Pan Eastern earnings described as Cost of Purchases allowed, they rang you up? Yes. But at some point in time they did write and ask for the earnings. They did not seem to want the accounts to make the assessments in 1965? Yes.

With regard to Mr Tyler investigating other oil companies, you said you thought you knew in 1963: about what
30 time in 1963? I am just not sure. I do not know just now whether I got this information from Mr Tyler or from the other companies. Did he ever disclose to you that he was searching Europa's files for something to hang on other

companies? Not in so many words that I recall. But at times I did get that impression. You said multiple enquiries about tanker rates, Platt's Oilgram? Yes. And similar enquiries? Yes. And this was after the clearance letter of June 1963? Yes.

Doctor Richardson asked you about Mr Todd's evidence about his knowledge of other company enquiries; what Mr Todd said was "I think from memory I acquired that knowledge after the 31st March 1965". You think he would be wrong? I can't say he was wrong, but I knew and presumably he did.

You were asked this morning about sending Pan Eastern accounts to the Department in 1967 I think? Yes, 29th March 1967 and 2nd March 1967. And you said in answer to His Honour that you would have been the person to tell the typist not to type the audit certificate and the reference to it? Yes. What is the position when financial accounts are sent to Revenue Authority? Do they customarily contain audit certificates? I believe they do not customarily contain them unless they are actually typed onto the accounts.

You were asked questions about Pan Eastern yesterday - it was put to you that Pan Eastern did not have any tangible assets? It has debtors which are tangible assets.

Doctor Richardson made reference perhaps mistakenly to injecting money by Propet to Pan Eastern. What is the correct description? Pan Eastern obtained a cheque from Propet in settlement of part of amount owing by Propet sufficient to enable it to pay the dividend desired.

You were also asked about Pan Eastern not showing stocks of oil on hand. Assuming that a refinery was run on the basis that Pan Eastern could buy say 100,000 barrels of crude oil and have it stored in tanks somewhere for a few

months, and then eventually the oil is piped or transported to the refinery, refined and then assume that Pan Eastern then stored the products for another few months, if they worked like that would you then expect Pan Eastern to show stocks on hand of crude and products at the balance date? If it operated that way I would; but it doesn't.

TO BENCH: Europa wanted so many barrels of gasoline at a certain date and placed an order. Gulf were asked to supply enough crude to make equivalent gasoline and Gulf phoned or
10 cabled a refinery to refine some crude oil? Yes. It was never in Pan Eastern's hands, either crude or products? No. Pan Eastern never held stocks either of crude or products.

TO COUNSEL: Any customers crude oil is never identifiable as such? No, this is in case of New Zealand Refinery. Are there occasions at the New Zealand Refinery where your company is entitled to products being manufactured when it does not have at that time crude oil actually going through the Refinery? Yes, it has happened on several occasions even
20 when apart from crude going through Europa would not have stocks in the Refinery in storage. You would be drawing on other companies' stocks? Yes, or vice versa. Some is deemed to be Europa's? Yes. But not one of the companies that participate would have an identifiable part of the crude going through the Refinery at any time? They would not.

You were asked about Gulf's liability to transport crude oil to the Refinery? Yes. Was that the understanding that - was it as a practical consideration in your mind ever thought that Gulf would be lifting crude from the production
30 and taking it to some distant refinery? No. But if the adjacent refinery were out of action then the contract provided that Gulf may have to do that. They had a continuing obligation to supply.

It was put to you by Doctor Richardson that the 1964 contract could or did require Europa refining to pay posted prices relating to refined gas oil in payment for feed stock gas oil, has that ever happened? Gas oil which is feed stock is of course an ex refinery product; it has been through a refinery; and as such it is a refined product. I understand that it may be marketable in that form in some countries but not in New Zealand.

The suggestion based on clause 5.02 of B5 - it was suggested that that was a question of simply doubling the earnings? I recall that. In effect is that 5.02 really a limitation on Pan Eastern earnings? Yes, it is a limitation as I read it in favour of Gulf. Europa was lifting the naphtha which was 16% of what comes out of the barrel of crude? Yes. And then what proportion of gas oil comes from barrel of crude? 27%. Fuel oil 56 or 56%. And is the loss on this sort of refining only about 1% as opposed to 6% in full refining? Yes this is so because this is what I think Mr Toda called a topping plant. Of those percentages Europa gets naphtha? Yes, all of it. But only about 3% of gas oil? Yes, probably slightly more, between 3 and 4. All the rest goes to Propet? Yes. Now the gas oil is a profitable item? Yes. Valued highly in its posted price. So if the whole of this operation went to Pan Eastern at market prices then earnings of A.M.P. would be higher? Yes, earnings of Pan Eastern would be much higher and consequently A.M.P.'s share. So that there is a limitation there which means that the price of Propet's offtake would not be market price but limited to equalling the profit generated on the part picked up by Europa? That is so. It is an equating provision? Yes, but limited also. And Gulf makes further profit on this subsequent disposal by Propet? Yes. That is so.

Conclusion of Evidence for Plaintiff.

AFFIDAVIT OF LOUIS J. McCORD (put in by consent)

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
10 this affidavit.

2. THAT exhibited hereto are:

(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
20 Third Schedule (Processing Contract between Gulf Oil Corporation and Pan-Eastern Refining Company Limited).
- 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.
- 30 A5 Petroleum Products Sales Contract dated the 3rd April 1956 between Gulf Iran Company and Europa Oil (N.Z.) Limited.

Supreme Court
No. 2
Objector's evidence
Affidavit of L.J. McCork
(continued)

- 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.
- 10 A9 Deed dated the 3rd April 1956 between Tod Investments 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 Corporation to Pan-Eastern Refining Company Limited advising temporary crude oil price reduction.
- 20 A13 Letter dated the 30th August 1960 from Gulf Oil Corporation to Pan-Eastern Refining Company Limited advising 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.
- A16 Letter dated the 8th February 1963 from Gulf Oil Corporation to Pan-Eastern Refining Company Limited advising temporary crude oil price reduction.
- 30 A17 Letter dated the 21st February 1964 from Gulf Oil Corporation to Pan-Eastern Refining Company Limited

Supreme Court
No. 2
Objector's evidence
Affidavit of L.J. McGord
(continued)

- 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.
- 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.
- 10
- 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 indemnifying of Pan-Eastern Refining Company Limited.
- 20
- 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 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.
- 30
- 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 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
10 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 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.
- 20 (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
30 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-
10 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.
- 20 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.
- 30 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

Supreme Court
No. 2
Objector's evidence
Affidavit of L.J. McCord
(continued)

- 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.
- 10
- 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 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.
- 20
- 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 Corporation and Todd Participants Limited recording consent to the reductions evidenced in the letters marked C20 and C21 above.
- 30 (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.

Supreme Court
No. 2
Objection's evidence
Affidavit of L.G. Jaber
(continued)

- D2 Letter dated September 22, 1960 from Associated Motorists
Petrol Co., Ltd. regarding voting and payment of dividends
from Pan-Eastern Refining Company, Limited.
- 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
10 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.
- D6 Letter Agreement dated October 4, 1963 between Gulf Oil
Corporation and Europa Oil (N.Z.) Limited regarding the
discharge of Gulf's obligation stipulated in paragraph 10
of the Pre-emptive Agreement.
- D7 Letter Agreement dated March 9, 1964 between Todd
20 Participants 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;
30 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
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
10 Agreement of April 3, 1956, and the
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.

20 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
terminating 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
30 files I 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

Supreme Court
No. 2
Objector's evidence
Affidavit of L.J. McCord
(continued)

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 me.

10 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.

20 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 E53 inclusive are true copies of the accounts relating to the trading operations of Pan-Eastern Refining Company, Limited for the year of 1963.

30 7. THAT copies of such trading accounts for the years 1957 through 1965 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.

Supreme Court
No. 2
Objector's evidence
Affidavit of L.J. McCord
(continued)

and no Commonwealth Representative is conveniently available
for the taking of this affidavit.

SWORN at Pittsburgh in

the United States of

America this 17th day

'Louis J. McCord'

of February, 1969

before me:-

'Woodrow W. Ely,

Notary Public.