

FEDERAL TRADE COMMISSION DECISIONS.

FINDINGS AND ORDERS JULY 21, 1924. TO MARCH 22, 1925.

IN THE MATTER OF

UNITED STATES STEEL CORPORATION ET AL.

COMPLAINT, FINDINGS AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SECTION 2 OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914, AND OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 2^d 1914.

Docket 760—July 21, 1924.

SYLLABUS.

Where a corporation and its subsidiaries, which (1) were engaged in the production, manufacture, and sale of steel, and various products made therefrom, (2) together owned and operated iron ore mines and limestone quarries, and railroad and steamship lines serving some or all of their 125 plants located in 15 different states, and (3) produced about 50 per cent of the total rolled steel production in the United States, and did an annual business aggregating approximately one and one-half billion dollars;

- (a) Adopted as a basis for price fixing activities and for the purpose of arriving at uniform delivered prices at any given point, a plan or system of selling their products universally at delivered prices and subject to their routing and making the basis of such prices for their rolled steel products, in the case of mills located at points other than Pittsburgh, the price of such a product at Pittsburgh plus an amount equivalent to what the freight on the product would be if actually shipped from Pittsburgh to customer's destination;

With the result that—

There was discrimination between customers of the same mill outside of Pittsburgh, and between customers purchasing from a mill in Pittsburgh, and one not there located; and customer steel users against whom the aforesaid system discriminated, were prevented from competing on an equality, or from competing at all, with their competitors in favor of whom such discriminations operated, and the competition of concerns who were customers of said corporation and subsidiaries in the purchase of steel, and competitors in the manufacture and sale of products therefrom, was substantially lessened;

The markets of eastern and northern steel users were artificially and abnormally extended and those of their western and southern competitors were similarly restricted, and extinguished; western and southern steel users were generally unable to sell their products in the territory of their aforesaid eastern and northern competitors, or even in parts of their own natural territory, in which in numerous cases said eastern competitors established warehouses and sales offices and competed on an equality with said western competitors, prevented by the aforesaid system of prices from competing in the territory of the former, as well as in large portions

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of what would be their natural territory were said system eliminated; the business of western manufacturers could not grow to the extent of the business of eastern competitors, their costs of production were unfavorably affected, and they were severely handicapped in operating and maintaining their businesses; and competition of steel users located at a great number of points was substantially lessened, imperiled, and at times destroyed;

Competition among producers of steel as well as among users thereof, was substantially lessened, in that the system of delivered prices, arrived at as above set forth, and used by said corporation and subsidiaries, in conjunction with the employment by them and their competitors of uniform contract provisions, uniform extras and differentials, etc., was followed by competitors generally with their encouragement, leadership, and cooperation; with resulting restraint and elimination of price competition; in that under said system western mills with large surplus production and lower costs were forced to dispose of surplus material by either curtailing production or "dumping" said material in eastern territory or abroad at lower prices while keeping up prices in their own immediate or natural markets, instead of first lowering costs therein in order to hold and expand the same; and in that under said system said western mills were obliged to share their aforesaid markets with their eastern competitors;

The steel producing development and steel consumption of sections of the United States, excluding Pittsburgh, was retarded, and development of Pittsburgh mills was abnormally increased; millions of dollars were added each year to prices paid to steel users or consumers outside of Pittsburgh; steel consumption at such points was restrained due to the fact that prices at western and southern points with lower producing costs than those at Pittsburgh, and a great surplus production, nevertheless were higher; the public was eventually required to pay the higher prices yielded by such practices (amounting to the excess payment, for the imaginary freight upon which the system was based, in the case of private and public construction work and farm implements alone, of many millions of dollars) and to suffer the economic disadvantages involved in said system's artificial and abnormal restriction of, and effect on production and consumption; and said system of delivered prices, making imaginary freight from Pittsburgh to customer's destination determining, concealing discriminations, and permitting no free operation of the law of supply and demand, in and of itself restrained competition;

- (b) Made the Pittsburgh price plus a differential of five dollars a ton, their price on certain products at southern mills; with the result that customers were very seriously handicapped, and their markets were artificially restricted; the modernizing of steel producing plants by competitors was retarded, and steel costs thereby kept at higher figures; competition of steel users and competition of customer competitors, was substantially lessened; and in general results were brought about similar to those above set forth:

Held, That such a system, substantially as described, constituted discrimination in price in violation of Section 2 of the Act of Congress approved October 15, 1914, and an unfair method of competition in violation of Section 5 of the Act of Congress approved September 26, 1914.

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Mr. K. E. Steinhauer, in collaboration with *Mr. Eugene W. Burr* and *Mr. Baldwin B. Bane*, who, respectively, participated during the major portion and during a portion of the preparation and trial of the case, and also in collaboration with *Mr. Hugh E. White*, industrial traffic manager and traffic counsel, for the Commission.

Mr. Richard V. Lindabury, *Mr. Cordenio A. Severance*, *Mr. William W. Corlett*, *Mr. J. Edward Ashmead*, and *Mr. Arthur L. Mulling*, for United States Steel Corporation et al.

Mr. Charles P. Craig and *Mr. George H. Spear*, for joint committee of civic organizations of Duluth, Minn., *amicus curiae*.

Mr. H. G. Pickering, for States of Illinois, Iowa, Minnesota, and Wisconsin, *amici curiae*.

COMPLAINT.¹

The Federal Trade Commission having reason to believe from a preliminary examination made by it, that the United States Steel Corporation, American Bridge Company, American Sheet & Tin Plate Company, Carnegie Steel Company, National Tube Company, American Steel & Wire Company, Illinois Steel Company, Minnesota Steel Company, Clairton Steel Company, Union Steel Company, The Lorain Steel Company and the Tennessee Coal, Iron & Railroad Company, all of which are hereinafter referred to as the respondents, have been and are discriminating in price while engaged in interstate commerce, between the purchasers of its commodities, as hereinafter more particularly set forth, in violation of the provisions of Section 2 of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints, and monopolies, and for other purposes"; and that said respondents have been and are using unfair methods of competition in interstate commerce, as hereinafter more particularly set forth, in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes"; and it having appeared to the Commission that a proceeding by it in respect thereof would be to the interest of the public, issues this amended complaint, stating its charges in that respect on information and belief as follows:

Charge I.

PARAGRAPH 1. That the respondent, United States Steel Corporation, is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its principal offices in the City of New York, State of New York; that said corporation

¹As amended March 4, 1922, and, by stipulation, July 18, 1924.

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acts as and is the holding corporation of and owns all, or substantially all, of the capital stock of numerous other corporations engaged in the business of producing, manufacturing and selling steel and various products made therefrom, including the following named and described respondent corporations hereinafter referred to as its subsidiaries, to wit:

American Bridge Company—a New Jersey corporation engaged directly and through controlled corporations in the manufacture and sale of rolled and fabricated steel for, and in the erection and construction of bridges, buildings and like structures;

American Sheet & Tin Plate Company—a New Jersey corporation engaged directly and through controlled corporations and leased plants in the manufacture and sale of rolled steel and steel sheets and plates and products made therefrom;

Carnegie Steel Company—a New Jersey corporation engaged directly and through controlled corporations and leased plants in the production, manufacture and sale of rolled steel and products made therefrom;

National Tube Company—a New Jersey corporation engaged directly and through controlled corporations in the manufacture and sale of rolled steel and steel pipes, tubes and products made therefrom;

American Steel & Wire Company—a New Jersey corporation engaged directly and through controlled corporations and leased plants in the manufacture and sale of rolled steel and steel wire rods, and products made therefrom;

Illinois Steel Company—an Illinois corporation engaged directly and through controlled corporations in the manufacture and sale of rolled steel and products made therefrom, including fabricated steel for bridges, buildings and like structures;

Minnesota Steel Company—a Minnesota corporation engaged directly and through controlled corporations in the production, manufacture and sale of rolled steel and products made therefrom;

Clairton Steel Company—a Pennsylvania corporation engaged through the said Carnegie Steel Company, its lessor, in the production, manufacture and sale of rolled steel and products made therefrom;

Union Steel Company—a Pennsylvania corporation engaged through the said Carnegie Steel Company, American Sheet & Tin Plate Company and American Steel & Wire Company, its lessors, in the production, manufacture and sale of rolled steel and products made therefrom;

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The Lorain Steel Company—a Pennsylvania corporation engaged directly and through controlled corporations in the production, manufacture and sale of rolled steel and products made therefrom;

Tennessee Coal, Iron & Railroad Company—a Tennessee corporation engaged directly and through controlled corporations in the production, manufacture and sale of rolled steel and products made therefrom, including fabricated steel for bridges, buildings and like structures.

That said respondents own and control the iron ore mines and limestone quarries, which supply all of their ore and limestone requirements, and the railroad and steamship lines which transport the same from the mines to numerous of their plants, and the coal mines which supply the major portion of their coal requirements, and 125 plants for the manufacture of their steel and steel products, located in 15 States of the United States; that said respondents produce from 40 per cent to 60 per cent of the total production of each rolled steel product produced in the United States and do an annual business aggregating approximately one and one-half billion dollars; that the book value of the capital stock of said respondent, United States Steel Corporation, aggregates over one and one-half billion dollars, and said respondents' undivided surplus aggregates over one-half billion dollars.

PAR. 2. That the United States Steel Corporation, by virtue of its said ownership and control of all, or substantially all, of the capital stock of the foregoing mentioned respondent subsidiaries, exercises general control, supervision, direction and guidance over the policies of and business conducted by its said respondent and subsidiaries.

PAR. 3. That in the course of the said business conducted by said respondent subsidiaries and by said respondent, United States Steel Corporation, through its said respondent subsidiaries, as aforesaid, they transport the materials which they use in the manufacture of steel and the products made therefrom, from the States from which the same are taken, through and into other States in which said steel and the products made therefrom are manufactured, and they continually sell and transport from time to time their said steel and the products made therefrom, from the several States of the United States to the purchasers thereof in other States and in the Territories of the United States and in the District of Columbia, and in foreign countries, in direct competition with persons, partnerships and other corporations similarly engaged; that said purchasers, hereinafter sometimes referred to as "consumers," in the course

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of their business in using, consuming and reselling said steel, continually sell and transport the same or the products which they make therefrom, from the several States of the United States to their customers in other States and in the Territories of the United States and in the District of Columbia, in direct competition with persons, partnerships and corporations similarly engaged.

PAR. 4. That the respondents in the course of their business in interstate commerce, as aforesaid, have been for more than seven years last past, and still are (a) discriminating in price between different purchasers or consumers of their billets, a rolled steel product manufactured by said respondents, which they sell to such purchasers for use, consumption and resale within the United States and the Territories thereof and the District of Columbia, and (b) using unfair methods of competition; all of which is more particularly hereinafter set forth. Said rolled steel product is hereinafter referred to as "said steel" or "said rolled steel."

PAR. 5. (a) That for said rolled steel which any of said respondents manufacture in the city of Pittsburgh, Pa., they charge the purchasers or consumers thereof a price f. o. b. Pittsburgh, which is hereinafter referred to as the "Pittsburgh base" price or "Pittsburgh" price.

(b) That for said rolled steel which any of said respondents manufacture *outside* of the city of Pittsburgh (except where the same is manufactured in or near the city limits of Birmingham, Ala., as hereinafter mentioned), and which they sell to consumers outside of said city of Pittsburgh, they charge such consumers a different price than the said Pittsburgh base price; namely, a sum equivalent to said Pittsburgh base price *plus* the railroad rate of freight on said steel from Pittsburgh to the destination thereof, which different price is hereinafter referred to as the "Pittsburgh Plus" price; that said freight charges from Pittsburgh on said steel is purely a fictitious one for said steel is not shipped from Pittsburgh and no such charge is incurred; respondents pay only the freight charge incurred, *if any*, on said steel from the plant of its actual manufacture to its destination but collect from said consumers the fictitious freight charge from Pittsburgh. With respondents' Pittsburgh base price on said steel in Pittsburgh at \$30 per ton, their price at Duluth, Minn., for said steel *manufactured and delivered* in Duluth is their Pittsburgh plus price of \$43.20, the added \$13.20 being the fictitious freight charge extorted by respondents over and above their Pittsburgh price. They pay no freight charge whatsoever in such case. With respondents' Pittsburgh price at \$30 per ton, their Pittsburgh

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plus price for said steel manufactured in Chicago and delivered to LaPorte, Ind., is \$7.10 per ton additional—the fictitious Pittsburgh to LaPorte freight charge—while the only freight charge incurred by them is in transporting said steel from Chicago to LaPorte, or \$3.80 per ton; the difference of \$3.30 per ton is the amount extorted by respondents over and above their Pittsburgh price. *Every consumer outside of Pittsburgh is subjected to said discrimination, and the further away his consuming plant is from Pittsburgh, the greater is the discrimination against him.*

(c) That for said steel which said respondents, manufacture in or near the city limits of Birmingham, Ala., they charge the purchasers thereof a different price than either the said Pittsburgh base price of the said Pittsburgh plus price, namely, a sum equivalent to said Pittsburgh base price *plus* an arbitrary, so-called differential of \$5 per ton, which price is their price f. o. b. Birmingham, and is hereinafter referred to as the “Birmingham price”; that prior to the late general increase in railroad freight rates, the said differential was \$3 per ton, which was advanced to said \$5 per ton simultaneously with and because of said increase in freight rates, notwithstanding the fact that said differential has no connection whatever with freight charges incurred or paid by said respondents.

PAR. 6. That the said discriminations in price made and being made by said respondents between purchasers of their said steel in the course of their interstate business, as aforesaid, were not and are not made on account of any difference in the grade, quality or quantity of the product so sold, nor were or are said discriminations such as make only due allowance for differences in the cost of selling or transportation of said steel, nor were or are such discriminations in price in the same or different communities made in good faith to meet competition.

PAR. 7. That the effects, among others, of said discriminations in price by respondents among the different purchasers of their said steel in the course of their interstate business as aforesaid, may be and are as follows:

(a) To substantially lessen competition of western and southern consumers generally of the United States, with the eastern consumers of said steel generally and Pittsburgh consumers thereof particularly, for the reason that said western and southern consumers, in attempting to compete in the East and North, respectively, are handicapped and frequently eliminated because of the discriminatory prices which they must pay for the said steel; when the Pittsburgh base price is \$30 per ton, the Duluth consumer selling

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his manufactured article in Pittsburgh, must pay for the said steel therein as follows:

	Per ton.
Pittsburgh base price.....	\$30.00
Fictitious Pittsburgh to Duluth freight charge on said rolled steel....	13.20
Actual freight charge on said steel in his manufactured article, Duluth to Pittsburgh.....	13.80

Total cost to Duluth consumers selling in Pittsburgh.....	56.50
And the Pittsburgh consumer selling his manufactured article in Pittsburgh, pays only.....	30.00

Disadvantage of Duluth consumer selling in Pittsburgh.....	26.50
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On the other hand, when the said eastern consumers compete with their western competitors in the west, the disadvantage of their eastern location because of freight charges incurred in shipping west is *entirely eliminated*. When the Pittsburgh consumer selling his manufactured article in Duluth, pays for said steel therein, the following:

	Per ton.
Pittsburgh base price.....	\$30.00
Actual freight charge on the steel in his manufactured article, Pittsburgh to Duluth.....	13.20

Total cost to Pittsburgh consumer selling in Duluth.....	43.20
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And the Duluth consumer selling in Duluth pays:

Pittsburgh base price.....	30.00
Fictitious Pittsburgh to Duluth freight charge.....	13.20

Total cost to Duluth consumer selling in Duluth.....	43.20
Disadvantage of Pittsburgh consumer selling in Duluth.....	None.

When the Pittsburgh base price is \$30 per ton, the Chicago consumer selling his manufactured article at a halfway point between Chicago and Pittsburgh, must pay for the said steel therein, the following:

	Per ton.
Pittsburgh base price.....	\$30.00
Fictitious freight charge.....	7.60
Actual freight charge, Chicago to said halfway point.....	6.00

Total cost to Chicago consumer.....	43.60
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And the Pittsburgh consumer pays:

Pittsburgh base price.....	\$30.00
Actual freight charge Pittsburgh to said halfway point....	6.00
	36.00

Disadvantage of Chicago consumer in competing with Pittsburgh consumer at <i>halfway point between said cities</i>	7.60
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The said competition of the western and southern consumers with said eastern consumers generally, and said Pittsburgh consumers particularly, is further lessened each time the railroad freight rate on said steel is increased, for in such case respondents' said discriminatory prices are likewise increased, while their Pittsburgh price remains unchanged; the discrimination against said western and southern consumers is thereby increased. On the other hand, the competition of the said eastern consumers generally, and said Pittsburgh consumers particularly, with said western consumers in the West and said southern consumers in the South, is not affected in the slightest degree by such increase in railroad freight rates. In 1918 the Pittsburgh to Duluth freight rate on said steel was only \$6.58 per ton, so that the respondents' extorted from the Duluth consumer at that time only \$6.58 per ton over their Pittsburgh price. To-day the said freight rate is \$13.20 per ton, and respondents' said extortion now amounts to, and the Duluth consumers' disadvantage now is, \$13.20 per ton, or over 100 per cent greater than in 1918.

(b) To substantially lessen competition with such *respondents* as are competitors of said consumers of said steel product and which are charged only the Pittsburgh base price therefor, while said consumers are compelled to pay the said higher and discriminatory prices therefor.

(c) To substantially lessen competition with the *respondent*, *United States Steel Corporation*, through both its said respondent subsidiaries, which are manufacturers of said steel and its said respondent subsidiaries, which are competitors of said consumers, as against all said consumers who are forced to pay respondents' said higher and discriminatory prices for said steel.

(d) To substantially lessen competition among all the producers of the said steel in the United States in the sale thereof. All producers of rolled steel in the United States charge the said Pittsburgh base price for their said steel, manufactured in the city of Pittsburgh, and they charge the said Pittsburgh plus price for their said steel manufactured outside of Pittsburgh (except in or near Birmingham), and they charge the said Birmingham price for said steel manufactured in or near Birmingham. Without the maintenance by respondents of the said Pittsburgh plus price and the said Birmingham price, the other producers of said rolled steel in the United States would be unable to maintain said prices.

PAR. 8. That the extra prices extorted by said respondents through said discriminatory price system, as aforesaid, on all public work of the United States and of the respective States, Territories, and

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municipalities thereof requiring said steel, aggregate a very large sum annually which the general public must pay through taxation; that the extra prices likewise extorted from all other consumers in the United States aggregate a very large sum annually, which the general public of said country must likewise pay eventually.

PAR. 9. That by reason of the facts hereinabove stated, the respondents—

(1) Have been and are discriminating in price between the different purchasers of their said product in violation of the provisions of Section 2 of an Act of Congress entitled "An Act To supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914; and

(2) Have been and are using unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

Charge II.

PARAGRAPHS 1, 2, and 3. Paragraphs 1, 2, and 3 of Charge I are hereby incorporated herein and made paragraphs 1, 2, and 3 hereof as though the same were repeated herein.

PAR. 4. That the respondents in the course of their business in interstate commerce, as aforesaid, have been for more than seven years last past, and still are (a) discriminating in price between different purchasers or consumers of their merchant bars and rods, rolled steel products manufactured by said respondents, which they sell to such purchasers for use, consumption and resale within the United States and the Territories thereof and the District of Columbia, and (b) using unfair methods of competition; all of which is more particularly hereinafter set forth. Said rolled steel products are hereinafter referred to as "said steel" or "said rolled steel."

PARS. 5, 6, 7, 8, and 9. Paragraphs 5 to 9, both inclusive,^{1a} of Charge I are hereby incorporated herein and made paragraphs 5, 6, 7, 8, and 9 hereof as though the same were repeated herein.

^{1a}As amended by order of the Commission dated July 18, 1924 (pursuant to stipulation providing for the amendment of the complaint in various respects, to conform to evidence introduced in the proceedings), as follows:

That paragraph 5 (b) of Charges II, IV, V, VI, VII, and VIII be amended to include the words "quote and" before the word "charge" so that the first lines of the paragraph will read as follows:

"(b) That for said rolled steel which any of said respondents manufacture outside of the city of Pittsburgh (except where the same is manufactured in or near the city limits of Birmingham, Ala., as hereinafter mentioned), and which they sell to consumers outside of said city of Pittsburgh, they quote and charge such consumers," etc.

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Charge III.

PARAGRAPHS 1, 2, and 3. Paragraphs 1, 2, and 3 of Charge I are hereby incorporated herein and made paragraphs 1, 2, and 3 hereof as though the same were repeated herein.

PAR. 4. That the respondents in the course of their business in interstate commerce, as aforesaid, have been for more than seven years last past, and still are (a) discriminating in price between different purchasers or consumers of their concrete bars, a rolled-steel product manufactured by said respondents, which they sell to such purchasers for use, consumption and resale within the United States and the Territories thereof and the District of Columbia, and (b) using unfair methods of competition; all of which is more particularly hereinafter set forth. Said rolled-steel product is herein after referred to as "said steel" or "said rolled steel."

PARS. 5, 6, 7, 8, and 9. Paragraphs 5 to 9, both inclusive, of Charge I are hereby incorporated herein² and made paragraphs 5, 6, 7, 8, and 9 hereof as though the same were repeated herein.

Charge IV.

PARAGRAPHS 1, 2, and 3. Paragraphs 1, 2, and 3 of Charge I are hereby incorporated herein and made paragraphs 1, 2, and 3 hereof as though the same were repeated herein.

PAR. 4. That the respondents in the course of their business in interstate commerce, as aforesaid have been for more than seven years last past, and still are (a) discriminating in price between different purchasers or consumers of their structural shapes, a rolled-steel product manufactured by said respondents which they sell to such purchasers for use, consumption and resale within the

That paragraph 5 (b) of Charges II, IV, V, VI, VII, and VIII be amended by adding to said paragraph the following, to wit:

"The consumer's plant whose freight rate from Pittsburgh is greater than his competitor's freight rate from Pittsburgh is always subjected by respondents through said Pittsburgh Plus prices to a discrimination which is against him and in favor of said competitor."

That paragraph 7 (b) of Charges II, IV, V, VI, VII, and VIII be amended by substituting the following paragraph in lieu of said paragraph 7 (b), to wit:

"To substantially lessen competition of said consumers with such respondents as are competitors of said consumers of said steel product, by reason of the unfair advantage which the respondents herein derive in competition with the said consumers through the Pittsburgh Plus prices charged said consumers by the respondents."

That paragraph 7 (c) of Charges II, IV, V, VI, VII, and VIII be amended by substituting the following paragraph in lieu of said paragraph 7 (c), to wit:

"To substantially lessen competition of said consumers with the respondent, United States Steel Corporation, through both its said respondent subsidiaries which are manufacturers of said steel, and its said respondent subsidiaries which are competitors of said consumers, by reason of the unfair advantage which the respondents herein derive in competition with the said consumers through the Pittsburgh Plus prices charged said consumers by the respondents."

² See footnote 1a, on p. 10.

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United States, the Territories thereof, and the District of Columbia, and (b) using unfair methods of competition; all of which is more particularly hereinafter set forth. The said rolled-steel product is hereinafter referred to as "said steel" or "said rolled steel."

PARS. 5, 6, 7, 8, and 9. Paragraphs 5 to 9, both inclusive, of Charge I are hereby incorporated herein² and made paragraphs 5, 6, 7, 8, and 9 hereof as though the same were repeated herein.

Charge V.

PARAGRAPHS 1, 2, and 3. Paragraphs 1, 2, and 3 of Charge I are hereby incorporated herein and made paragraphs 1, 2, and 3 hereof as though the same were repeated herein.

PAR. 4. That the respondents in the course of their business in interstate commerce, as aforesaid, have been for more than seven years last past, and still are (a) discriminating in price between different purchasers or consumers of their plates, a rolled-steel product manufactured by said respondents, which they sell to such purchasers for use, consumption and resale within the United States and the Territories thereof and the District of Columbia, and (b) using unfair methods of competition; all of which is more particularly hereinafter set forth. Said rolled-steel product is hereinafter referred to as "said steel" or "said rolled steel."

PARS. 5, 6, 7, 8, and 9. Paragraphs 5 to 9, both inclusive, of Charge I are hereby incorporated herein² and made paragraphs 5, 6, 7, 8, and 9 hereof as though the same were repeated herein.

Charge VI.

PARAGRAPHS 1, 2, and 3. Paragraphs 1, 2, and 3 of Charge I are hereby incorporated herein and made paragraphs 1, 2, and 3 hereof as though the same were repeated herein.

PAR. 4. That the respondents in the course of their business in interstate commerce, as aforesaid, have been for more than seven years last past, and still are (a) discriminating in price between different purchasers or consumers of their sheets, including tin andterne plate, which are rolled steel products manufactured by said respondents and which they sell to such purchasers for use, consumption and resale within the United States, the Territories thereof, and the District of Columbia, and (b) using unfair methods of competition; all of which is more particularly hereinafter set forth. Said rolled steel products are hereinafter referred to as "said steel" or "said rolled steel."

² See footnote 1a on p. 10.

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PARS. 5, 6, 7, 8, and 9. Paragraphs 5 to 9, both inclusive, of Charge I are hereby incorporated herein^a and made paragraphs 5, 6, 7, 8, and 9 hereof as though the same were repeated herein.

Charge VII.

PARAGRAPHS 1, 2, and 3. Paragraphs 1, 2, and 3 of Charge I are hereby incorporated herein and made paragraphs 1, 2, and 3 hereof as though the same were repeated herein.

PAR. 4. That the respondents in the course of their business in interstate commerce, as aforesaid have been for more than seven years last past, and still are (a) discriminating in price between different purchasers or consumers of their wire rods and products made therefrom, being rolled steel products manufactured by said respondents, which they sell to such purchasers for use, consumption and resale within the United States and the Territories thereof and the District of Columbia, and (b) using unfair methods of competition all of which is more particularly hereinafter set forth. Said rolled steel products are hereinafter referred to as "said steel" or "said rolled steel."

PAR. 5. (a) That for said rolled steel which any of said respondents manufacture in the city of Pittsburgh, Pa., they charge the purchasers or consumers thereof a price f. o. b. Pittsburgh, which is hereinafter referred to as the "Pittsburgh base" price or "Pittsburgh" price.

(b) That for said rolled steel which any of said respondents manufacture *outside* of the city of Pittsburgh (including the city of Birmingham) and which they sell to consumers outside of said city of Pittsburgh, they quote and charge such consumers a different price than the said Pittsburgh base price, namely a sum equivalent to said Pittsburgh base price *plus* the railroad rate of freight on the said steel from Pittsburgh to the destination thereof, which different price is hereinafter referred to as the "Pittsburgh Plus" price; that said freight charge from Pittsburgh on said steel is purely a fictitious one for it is not shipped from Pittsburgh and no such charge

^a As amended by order of the Commission dated July 18, 1924 (pursuant to stipulation providing for the amendment of the complaint in various respects, to conform to evidence introduced in the proceedings), as follows:

That paragraph 5 (b) of Charge VI be amended by striking from the first lines thereof of the words in the parentheses reading as follows: "(except where the same is manufactured in or near the city limits of Birmingham, Alabama, as hereinafter mentioned)."

That paragraph 5 (c) of Charge VI be stricken from the second amended complaint.

That paragraph 7 (d) of Charges VI and VII be amended by striking from said paragraph the words: "(except in or near Birmingham), and they charge the said Birmingham price for said steel manufactured in or near Birmingham"; and also the words, "and the said Birmingham price" in the sentence reading as follows: "Without the maintenance by respondents of the said Pittsburgh plus price and the said Birmingham price," etc.

See also footnote 1a on p. 10.

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is incurred; respondents pay only the freight charge incurred, *if any*, on said steel from the plant of its actual manufacture to its destination, but collect from said consumers the fictitious freight charge from Pittsburgh. With the respondents' Pittsburgh base price on said steel in Pittsburgh at \$30 per ton, their price at Duluth, Minn., for said steel *manufactured and delivered in Duluth* is their Pittsburgh plus price of \$43.20, the added \$13.20 being the fictitious freight charge extorted by respondents over and above their Pittsburgh price. They pay no freight charge whatsoever in such case. With respondents' Pittsburgh price at \$30 per ton, their Pittsburgh plus price for said steel manufactured in Chicago and delivered to LaPorte, Ind., is \$7.10 per ton additional, while the only freight charge incurred by them in transporting said steel from Chicago to LaPorte is \$3.80 per ton; the difference of \$3.30 per ton is the amount extorted by respondents over and above their Pittsburgh price. *Every consumer outside of Pittsburgh is subjected to said discrimination, and the further away his consuming plant is from Pittsburgh, the greater is the discrimination against him.* The consumer's plant whose freight rate from Pittsburgh is greater than his competitor's freight rate from Pittsburgh, is always subjected by respondents through said Pittsburgh Plus prices to a discrimination which is against him and in favor of said competitor.

PARS. 6, 7, 8, and 9. Paragraphs 6 to 9, both inclusive, of Charge I, are hereby incorporated herein ⁴ and made paragraphs 6, 7, 8, and 9 hereof as though the same were repeated herein.

Charge VIII.

PARAGRAPHS 1, 2, and 3. Paragraphs 1, 2, and 3 of Charge I are hereby incorporated herein and made paragraphs 1, 2, and 3 hereof as though the same were repeated herein.

PAR. 4. That the respondents in the course of their business in interstate commerce, as aforesaid have been for more than seven years last past, and still are (a) discriminating in price between different purchasers of their sheetbars, tubular products, angle bars and other rail joints, tie plates, car wheels, spikes, bolts, nuts, and rivets, hoops, bands and cotton ties, forgings, armor plate, steel piling and all other forms of rolled steel products, except rails, not heretofore mentioned in paragraph 4 of Charges I to VII, both inclusive, of this amended complaint, which said rolled steel products are manufactured by said respondents and sold to such purchasers for use, consumption and resale within the United States and the Territories thereof and the District of Columbia, and (b)

⁴ See footnote 1a on page 10 and footnote 3 on page 13.

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using unfair methods of competition; all of which is more particularly hereinafter set forth. The said rolled steel products are hereinafter referred to as "said steel" or "said rolled steel."

PARS. 5, 6, 7, 8, and 9. Paragraphs 5, 6, 7, 8, and 9 of Charge VII are hereby incorporated herein^{*} and made paragraphs 5, 6, 7, 8, and 9 hereof as though the same were repeated herein.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," and an Act of Congress approved October 15, 1914, entitled "An Act To supplement existing laws against unlawful restraints and monopolies, and for other purposes," the Federal Trade Commission issued and served its second amended complaint upon the respondents above named, charging them and each of them with violations of said acts, which second amended complaint was, by stipulation with counsel for respondents, subsequently amended to conform to the evidence introduced herein.

The respondents filed their amended answer to the first amended complaint herein and later adopted said amended answer as their answer to said second amended complaint, through their attorneys, whereupon hearings were had before an examiner of the Federal Trade Commission. During the course of such hearings, evidence was introduced herein by the attorneys for the Commission and respondents, respectively. Such evidence was duly certified and forwarded to the Commission. Briefs have been filed herein by the attorneys for the Commission and the respondents, respectively.

A brief *amici curiae* has also been submitted and an oral argument made herein by counsel for the States of Illinois, Iowa, Minnesota, and Wisconsin under special legislative authority of each State, these States acting on behalf of themselves and the other 28 States of the United States making up the membership of "The Associated States Opposing Pittsburgh Plus," namely, Alabama, Arizona, Colorado, Delaware, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Utah, and Wyoming.

A brief *amici curiae* on behalf of the Joint Committee of the Civic Organizations of Duluth, Minn., likewise opposing Pittsburgh Plus, has also been submitted herein by counsel for that committee.

^{*} See footnote 1a on p. 10.

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is incurred; respondents pay only the freight charge incurred, if any, on said steel from the plant of its actual manufacture to its destination, but collect from said consumers the fictitious freight charge from Pittsburgh. With the respondents' Pittsburgh base price on said steel in Pittsburgh at \$30 per ton, their price at Duluth, Minn., for said steel *manufactured and delivered in Duluth* is their Pittsburgh plus price of \$43.20, the added \$13.20 being the fictitious freight charge extorted by respondents over and above their Pittsburgh price. They pay no freight charge whatsoever in such case. With respondents' Pittsburgh price at \$30 per ton, their Pittsburgh plus price for said steel manufactured in Chicago and delivered to LaPorte, Ind., is \$7.10 per ton additional, while the only freight charge incurred by them in transporting said steel from Chicago to LaPorte is \$3.80 per ton; the difference of \$3.30 per ton is the amount extorted by respondents over and above their Pittsburgh price. *Every consumer outside of Pittsburgh is subjected to said discrimination, and the further away his consuming plant is from Pittsburgh, the greater is the discrimination against him.* The consumer's plant whose freight rate from Pittsburgh is greater than his competitor's freight rate from Pittsburgh, is always subjected by respondents through said Pittsburgh Plus prices to a discrimination which is against him and in favor of said competitor.

PARS. 6, 7, 8, and 9. Paragraphs 6 to 9, both inclusive, of Charge I, are hereby incorporated herein⁴ and made paragraphs 6, 7, 8, and 9 hereof as though the same were repeated herein.

Charge VIII.

PARAGRAPHS 1, 2, and 3. Paragraphs 1, 2, and 3 of Charge I are hereby incorporated herein and made paragraphs 1, 2, and 3 hereof as though the same were repeated herein.

PAR. 4. That the respondents in the course of their business in interstate commerce, as aforesaid have been for more than seven years last past, and still are (a) discriminating in price between different purchasers of their sheetbars, tubular products, angle bars and other rail joints, tie plates, car wheels, spikes, bolts, nuts, and rivets, hoops, bands and cotton ties, forgings, armor plate, steel piling and all other forms of rolled steel products, except rails, not heretofore mentioned in paragraph 4 of Charges I to VII, both inclusive, of this amended complaint, which said rolled steel products are manufactured by said respondents and sold to such purchasers for use, consumption and resale within the United States and the Territories thereof and the District of Columbia, and (b)

⁴ See footnote 1a on page 10 and footnote 3 on page 13.

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using unfair methods of competition; all of which is more particularly hereinafter set forth. The said rolled steel products are hereinafter referred to as "said steel" or "said rolled steel."

PARS. 5, 6, 7, 8, and 9. Paragraphs 5, 6, 7, 8, and 9 of Charge VII are hereby incorporated herein^{*} and made paragraphs 5, 6, 7, 8, and 9 hereof as though the same were repeated herein.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

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A brief *amici curiae* has also been submitted and an oral argument made herein by counsel for the States of Illinois, Iowa, Minnesota, and Wisconsin under special legislative authority of each State, these States acting on behalf of themselves and the other 28 States of the United States making up the membership of "The Associated States Opposing Pittsburgh Plus," namely, Alabama, Arizona, Colorado, Delaware, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Utah, and Wyoming.

A brief *amici curiae* on behalf of the Joint Committee of the Civic Organizations of Duluth, Minn., likewise opposing Pittsburgh Plus, has also been submitted herein by counsel for that committee.

^{*} See footnote 1a on p. 10.

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This matter came on for final hearing before the Commission and the Commission having heard arguments of counsel and having duly considered the briefs filed herein and the evidence introduced herein, and being now fully advised in the premises, finds as follows:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. *The respondents.*—(a) The respondent, United States Steel Corporation, is a New Jersey corporation, with its principal office in the City of New York. The said corporation acts as, and is, the holding corporation of, and owns all or substantially all of the capital stock of numerous other corporations engaged in the business of producing, manufacturing, and selling steel and various products made therefrom, including the following named and described respondent corporations hereinafter referred to as its "subsidiaries," to wit:

(b) Respondent, American Bridge Company, a New Jersey corporation, engaged in the manufacture and sale of rolled and fabricated steel for, and in the erection and construction of bridges, buildings, and similar structures, at its plants at Minneapolis, Minn.; St. Louis, Mo.; Chicago, Ill.; Gary, Ind.; Detroit, Mich.; Toledo and Canton, Ohio; Ambridge, Pittsburgh, and Pencoyd, Pa.; Edgemoor, Del.; Trenton, N. J.; and Elmira Heights, N. Y.

(c) Respondent, American Sheet and Tin Plate Company, a New Jersey corporation, engaged directly and through controlled corporations and leased plants in the manufacture and sale of rolled steel including particularly sheets and tin plate, and products made therefrom, at its plants at Gary and Elwood, Ind.; Cambridge, Cleveland, New Philadelphia, Canal Dover, Canton, Wellsville, Bridgeport, and Martin's Ferry, Ohio; Wheeling, Chester, and Morgantown, W. Va.; New Castle, McKeesport, New Kensington, Monessen, Scottdale, Vandergrift, Hyde Park, Leechburg and Farrell, Pa.

(d) Respondent, Carnegie Steel Company, a New Jersey corporation, engaged directly and through controlled corporations and leased plants in the production, manufacture and sale of rolled steel and products made therefrom, at its plants at Clairton, Pittsburgh, Duquesne, Braddock, Munhall, Monessen, Farrell, New Castle, Greenville, and Hyde Park, Pa.; Blaine, Mingo Junction, Youngstown, McDonald, and Columbus, Ohio.

(e) Respondent, American Steel and Wire Company, a New Jersey corporation, engaged directly and through controlled corporations and leased plants in the manufacture of rolled steel, including particularly wire rods, wire and products made therefrom, at its plants located at Waukegan, De Kalb, Joliet, and Rockdale, Ill.;

Anderson, Ind.; Tecumseh, Mich.; San Francisco, Calif.; Cleveland and Salem, Ohio; Pittsburgh, Rankin, Braddock, Decorum, Farrell, and Allentown, Pa.; Worcester, Mass.; New Haven, Conn.; Trenton, N. J.; and Fairfield, Ala.

(f) Respondent, Illinois Steel Company, an Illinois corporation, engaged directly and through controlled corporations and leased plants, in the manufacture and sale of rolled steel, including particularly plates, shapes, and bars, at its plants located at Gary, Ind.; Joilet and South Chicago, Ill.; and Milwaukee, Wis.

(g) Respondent, Minnesota Steel Company, a Minnesota corporation, engaged in the production, manufacture and sale of rolled steel, including particularly bars, wire and wire products, at its plant located at Duluth, Minn.

(h) Respondent, Tennessee Coal, Iron and Railroad Company, a Tennessee corporation, engaged in the production, manufacture and sale of rolled steel, including particularly plates, bars and shapes, at its plants located at Ensley and Fairfield (near Birmingham), Ala.

PAR. 2. *Respondents are engaged in interstate commerce.*—(a) In the course of the business conducted by said respondent subsidiaries and by said respondent, United States Steel Corporation, through said subsidiaries, as hereinafter more particularly set forth, they transport the materials which they use in the manufacture of steel and the products made therefrom, from the States from which the same are taken, through and into other States in which said steel and the products made therefrom are manufactured, and they continually sell and transport from time to time their said steel and the products made therefrom, from the several States of the United States to the purchasers thereof in other States and in the Territories of the United States and in the District of Columbia, and in foreign countries, in direct competition with persons, partnerships and other corporations also engaged in the manufacture, sale and transportation of said products.

(b) *Respondents' customers (steel consumers) are engaged in interstate commerce.*—In the course of the business conducted by the steel users or consumers who purchase their steel requirements from said respondents, for the purpose of reselling the same or manufacturing products therefrom as hereinafter more particularly set forth, they continually sell and transport the steel which they buy and the products which they make therefrom, from the several States of the United States to their customers in other States and in the Territories of the United States and in the District of Columbia, in direct competition with persons, partnerships and

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corporations also engaged in the manufacture, sale and transportation of steel and the products made therefrom.

PAR. 3. *Steel products defined.*—The basic commodities in steel making are iron ore, limestone, and coal. From these basic materials pig iron is produced and this pig iron is converted into Bessemer steel, open-hearth steel or electric steel, depending upon which type of converter or furnace is used in converting the iron into steel. In the case of open-hearth steel, one-half pig iron and one-half scrap steel are generally used. In making Bessemer steel, scrap steel is not used.

(a) The molten steel is poured into ingot molds. The ingots, while still hot, are rolled into blooms, billets, sheet bars and slabs. The blooms are further rolled into structural shapes and rails. The billets are rolled into merchant bars of various kinds and into wire rods from which wire products are made. The sheet bars are rolled into black sheets out of which are made sheets and tin plate. The slabs are rolled into plates.

(b) Structural shapes are known as rolled steel products and are mainly used in the construction of bridges and buildings and are in the form of beams and the larger angles, tees, zeos, channels, etc.

(c) Merchant bars are known as rolled steel products and are in the form of round bars, square bars, flat bars, hexagonal bars, etc. They are used in the manufacture of a great variety of commodities including farm implements, automobiles, machinery, etc. The square bars run from three-fourths to $7\frac{1}{4}$ inches square.

(d) Plates are known as rolled steel products and run from about 6 to 130 inches wide and are one-fourth inch thick and less. They are used in the manufacture of tanks, boilers, barrels, drums, etc.

(e) Sheets are known as rolled steel products and are used in the manufacture of roofing, kitchen utensils, sheets metal ware of all kinds, automobile bodies, etc.

(f) Tin plates are known as rolled steel products and are sheets coated with tin. Tin plates are used in the manufacture of cans of all kinds, kitchen utensils, roofing, etc.

PAR. 4. *Respondent, United States Steel Corporation, controls its subsidiaries.*—Respondent, United States Steel Corporation, by virtue of its ownership and control of all or substantially all of the capital stock of said respondent subsidiaries, exercises general control, supervision, direction and guidance over the policies and the business conducted by its said respondent subsidiaries and dictates and controls the prices at which the said respondent subsidiaries sell the products which they manufacture.

PAR. 5. *The respondents' position in the steel industry.*—Respondents own their own iron ore mines and limestone quarries, which

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supply all of their ore and limestone requirements and also own railroad and steamship lines which serve some or all of the 125 plants belonging to them located in 15 States. They produce about 50 per cent of the total rolled steel production in the United States and do an annual business aggregating approximately one and a half billion dollars. The book value of the capital stock of the respondent, United States Steel Corporation, aggregates over one and a half billion dollars and its undivided surplus aggregates over a half billion dollars.

PAR. 6. *Respondents discriminate in their prices.*—(a) In the course of the interstate business done by respondents as aforesaid, they generally quote and sell their plates, shapes, bars, sheets, tin plate and wire and wire products, manufactured at and sold from their plants in the city of Pittsburgh, Pa., at prices f. o. b. Pittsburgh, which are hereinafter referred to as “Pittsburg base prices” or “Pittsburgh prices,” to which they add the actual freight charges to the customers’ destination, to arrive at their delivered prices.

(b) In the course of the interstate business done by respondents as aforesaid, they generally quote, contract for the sale of, sell and invoice their rolled steel products manufactured at and shipped from their plants outside of the city of Pittsburgh at the said Pittsburgh base price plus an amount *equivalent* to what the railroad freight charge on said products would be from Pittsburgh to the customer’s destination if such products were actually shipped from Pittsburgh. These last-named prices are known as “Pittsburgh Plus” prices.

(c) The system under which respondents make their Pittsburgh base and Pittsburgh plus prices is hereinafter referred to as the Pittsburgh Plus system.

(d) In the case of respondents’ Pittsburgh Plus prices, respondents pay the actual freight charges on the said products from their mills to the customers’ destinations, but the customers pay the Pittsburgh Plus prices as above defined.

(e) Respondents’ price at Chicago, for instance, which is a Pittsburgh Plus price, is made up as follows: They take their price at which they sell their products at Pittsburgh, say \$30 per ton. They add to that price an amount which is equivalent to what the freight charge on such steel products from Pittsburgh to Chicago would be if they were actually shipped from Pittsburgh, or \$7.60 per ton, making a total of \$37.60 per ton. The Chicago steel user, therefore, who buys his steel from respondents’ mill at Chicago must pay \$7.60 per ton more than his Pittsburgh competitor pays. In similar fashion, the Duluth steel user must pay \$43.20 per ton for the steel he buys from respondents’ Duluth mill, while his Pittsburgh com-

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petitor pays only \$30 per ton, because the imaginary freight charge from Pittsburgh to Duluth is \$18.20 per ton. This freight charge is referred to as "imaginary" because there is no freight charge incurred in such case. No matter where, outside of Pittsburgh, the steel is manufactured by respondents, they charge the said Pittsburgh Plus prices. At Milwaukee, a customer backs up his truck to respondents' Milwaukee mill, hauls away the steel himself, but is obliged to pay the imaginary freight charge from Pittsburgh to Milwaukee.

(f) One of the exceptions in the case of these Pittsburgh Plus prices was made by respondents in the sale of their plates, bars and shapes from their Alabama mills in 1908, since which time they have been selling said products partially f. o. b. Birmingham and partially on the Pittsburgh Plus system as will be hereinafter more particularly described. Since the latter part of the year 1921, respondent, Illinois Steel Company, has been selling plates, shapes and bars from its mills in the Chicago district f. o. b. Chicago, as will be hereinafter more particularly set forth.

(g) Respondents universally sell their said products at delivered prices and have controlled the routing of such products from the points of shipment to points of delivery.

(h) The respondents, in selling their said respective steel products from their mills outside of Pittsburgh at Pittsburgh Plus prices discriminate among the customers of the *same mill*. In the case of two steel users buying steel from the same mill outside of Pittsburgh, that steel user whose plant has a less freight rate from Pittsburgh secured a less price from the respondent than his competitor whose freight rate from Pittsburgh is greater. In other words, the actual freight rates from the producing mill to the customers' plants do not determine the difference between the delivered prices paid by customers buying steel from the same mill.

(i) The respondents, in selling their said respective steel products manufactured in Pittsburgh at the Pittsburgh base price, and in selling said steel products sold from their plants outside of Pittsburgh at the Pittsburgh Plus prices, discriminate also in the prices charged their various customers buying steel from *different mills*. Such discrimination, for instance in favor of the Pittsburgh purchasers from respondent, Carnegie Steel Company, and against the Chicago purchasers from respondent, Illinois Steel Company, between November 6, 1903, and June 1, 1907, amounted to \$3.30 per ton; between June 1, 1907, and October 26, 1914, \$3.60 per ton; between October 26, 1914, and September 20, 1917, \$3.78 per ton; between September 20, 1917, and June 25, 1918, \$4.30 per ton; between

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June 25, 1918, and August 26, 1920, \$5.40 per ton; between August 26, 1920, and July 1, 1922, \$7.60 per ton. In other words, the said discriminations increased from \$3.30 per ton in 1907 to \$7.60 per ton in 1920 merely because the freight rate from Pittsburgh to Chicago increased from \$3.30 per ton to \$7.60 per ton during that period.

(j) The discrimination against the Duluth steel user and in favor of the Pittsburgh steel user increased from \$6.58 per ton in 1918 to \$13.20 in 1920.

(k) The discrimination against the Birmingham steel user of wire and in favor of the Pittsburgh steel user of wire in 1920 amounted to \$15.30 per ton.

(l) The amount of the respondents' prices under the Pittsburgh Plus system varies with the variations in the railroad freight rates from Pittsburgh to the customers' different destinations.

PAR. 7. *Respondents' discriminatory or Pittsburgh Plus prices substantially lessen competition among the steel users.*—As a result of the discriminatory prices charged by respondents under the Pittsburgh Plus system, their customers against whom the discriminations operate are very seriously handicapped. Chicago fabricators of steel buildings and bridges are unable to compete east of Chicago against the Pittsburgh fabricators on straight, competitive structural steel work. Pittsburgh fabricators, on the other hand, compete on an equality in Chicago with the Chicago fabricator, because the freight paid by the Pittsburgh fabricator on his finished product from Pittsburgh to Chicago is offset by the higher price paid by the Chicago fabricator for his steel bought in Chicago. The freight rate on the fabricator's finished product from Pittsburgh to Chicago is the same as the extra price over the Pittsburgh price paid by the Chicago fabricator for his steel.

(a) References in these findings to the advantages and disadvantages of the different steel users always refer to the advantages and disadvantages of such steel users as to the cost of their steel and freight at given points under the Pittsburgh Plus system.

(b) Nowhere in the United States does the Chicago fabricator have an advantage over the Pittsburgh fabricator. In only a very limited territory can he compete on an equality. That territory is shown on Commission's Exhibit 6893. The city of Chicago is the principal portion of this territory, as the balance of the area is only a small consuming territory. This very limited territory is the area where the through freight rate from Pittsburgh to any point in the area is the same as the combined freight rates from Pittsburgh to Chicago and Chicago to any such point. Where the through rate from Pittsburgh to a customer's destination is less than the com-

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bined rates from Pittsburgh to Chicago and Chicago to destination, the Pittsburgh fabricator has an advantage, for he has only to pay the Pittsburgh price on his steel and the actual through freight rate on the finished product from Pittsburgh to the customer's destination. The Chicago fabricator, however, has to pay the Pittsburgh price plus the imaginary freight from Pittsburgh to Chicago on his steel, and then he has to pay the actual freight on his finished product to the customer's destination. With Pittsburgh Plus eliminated the Chicago fabricator's territory would extend half way to Pittsburgh as will be hereafter more particularly shown.

(c) At Chicago, the Pittsburgh fabricator, under the Pittsburgh Plus system, competes on an equality with the Chicago fabricator. If, as the record shows, the Chicago mills had a base price the same as the base price at Pittsburgh, the Chicago fabricator would have an advantage of \$7.60 per ton over the Pittsburgh fabricator in Chicago. In other words, he would have the same advantage in Chicago which the Pittsburgh fabricator would have in Pittsburgh. The importance of this is seen in the fact that the profit on a structural steel job ranges from \$2 to \$10 per ton. In the largest jobs, \$2 per ton is considered a good profit; the average profit is about \$5 per ton.

(d) At Pittsburgh, the Pittsburgh fabricator, under the Pittsburgh Plus system, has an advantage over the Chicago fabricator to the extent of \$15.20 per ton, while the average profit on a structural job is only \$5 per ton. The effects of the Plus system are thus seen distinctly when it is remembered that the Pittsburgh fabricator is at no disadvantage when competing in Chicago.

(e) When the Chicago and Pittsburgh fabricators compete in Detroit, where the freight rate to Chicago is less than to Pittsburgh, the Pittsburgh fabricator has an advantage of \$7.30 per ton under the Plus system. The effect of this advantage obviously eliminates the Chicago fabricator from Detroit, for the average profit on a structural job is only \$5 per ton. Again the effect of the system is best shown by the contrast resulting if the imaginary freight charge from Pittsburgh were eliminated. In such case, the Chicago fabricator would have an actual advantage over the Pittsburgh fabricator in Detroit to the extent of 30 cents per ton as against a disadvantage of \$7.30 per ton under the Pittsburgh Plus system.

(f) At South Bend, Ind., which is only 86 miles from Chicago, and 400 miles from Pittsburgh, the Pittsburgh fabricator has an advantage over the Chicago fabricator of \$4.60 per ton, while the profit on a fabricating job averages only \$5 per ton. On large jobs it is only about \$2 per ton. With the imaginary freight charge

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from Pittsburgh eliminated, the Chicago fabricator would have an advantage of \$3 per ton.

(g) When these findings speak of the plus or imaginary freight charge as being eliminated, the assumption is that respondents' Chicago mills will charge a base price at Chicago which is the same as their base price at Pittsburgh. In such case the steel user would only have to pay actual freight instead of imaginary freight. If the Chicago base price were lower than the Pittsburgh base price, of course, the advantage of the western fabricators would increase accordingly over the figures above set out. The cost of producing steel at respondents' Chicago mills is much lower than at their Pittsburgh mills.

(h) In the case of the manufacturers of heavy drop forgings and screw machine products, and other products where there is a heavy steel waste entailed in the manufacturing process, the Pittsburgh manufacturer has a very substantial advantage over the Chicago manufacturer right in the city of Chicago. This advantage, right in Chicago, as shown by the evidence, amounts to 8.2 per cent of the selling price of the product. With a Chicago base price at Chicago the same as the Pittsburgh base price, the Chicago forging manufacturer would have an advantage of 7.6 per cent of the selling price of his product over his Pittsburgh competitor in Chicago, as against the disadvantage mentioned of 8.2 per cent under the Pittsburgh Plus system.

(i) In Detroit, where the freight rate to Chicago is less than to Pittsburgh, the Pittsburgh forging manufacturer has an advantage of 10.5 per cent of the selling price of his product, whereas, if the imaginary freight charge from Pittsburgh were eliminated, he would be at a disadvantage of 0.3 per cent.

(j) As James A. Farrell, president of the respondent, United States Steel Corporation, testified in 1913, in the case of the United States against these same respondents wherein a dissolution of the Steel Corporation was sought, where a steel user at Buffalo had to pay \$2.20 per ton as Pittsburgh Plus, that steel user (in that case a bolt and nut manufacturer) would be confined to the city of Buffalo when he attempted to market his product.

(k) This admission of the president of the respondent, Steel Corporation, that a Pittsburgh Plus of \$2.20 per ton restricts a steel user's territory to his own home town illustrates the insurmountable difficulties of the Birmingham wire user who pays \$15.30 per ton as Pittsburgh Plus; the Duluth steel user who pays \$13.20 per ton, and the Chicago steel user who pays \$7.60 per ton as Pittsburgh Plus.

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(l) As Judge E. H. Gary, chairman of the board of directors of the respondent, United States Steel Corporation, and others, testified in this proceeding, freight rates ordinarily determine a steel user's market. But as the evidence shows, the Pittsburgh Plus system necessarily greatly restricts and frequently extinguishes the market which freight rates would ordinarily determine. With the imaginary freight charge from Pittsburgh eliminated, the Chicago drop forging manufacturer would have an advantage as against his Pittsburgh competitor in territory extending to a line running a little east of Detroit and through Toledo. But with Pittsburgh Plus prices, there is no market where the Chicago forging manufacturer has an advantage or can even compete upon an equality with his Pittsburgh competitor. To the freight rates on his finished product from Chicago to Detroit, Pittsburgh Plus adds 169 per cent; when he goes to Indianapolis, Pittsburgh Plus adds 170 per cent; when he goes to Rockford, Ill., Pittsburgh Plus adds 209 per cent.

(m) Another very important factor operating to the great disadvantage of the Chicago manufacturer, or the Duluth manufacturer, or any manufacturer who is subjected to a discrimination under respondents' Pittsburgh Plus prices as against a favored competitor, is the increase in his overhead charge per unit of product caused by the extra prices charged him for his rolled steel. As already shown, the discrimination restricts the Chicago steel user's marketing territory very materially; this restriction in turn restricts his volume of sales and this in turn increased his overhead per unit of product manufactured. The increase in overhead per unit of product increases the Chicago manufacturer's costs and forces him either to cut his profit or add to his selling price. Either method materially handicaps him. When he adds to his selling price, his volume of sales is again restricted, his overhead per unit again increased, and the original handicap makes itself felt in an endless circle of increased overhead charges per unit of product manufactured. A Chicago drop forging manufacturer was only able to operate his shop at 25 per cent capacity because of Pittsburgh Plus. As he testified, an increase of capacity of 60 per cent would not increase his overhead at all, and with an increase of his capacity to 100 per cent, his overhead would not increase more than 10 per cent. A large majority of the 147 witnesses called by the Commission's attorneys testified that the increase in their overhead caused by respondents' Pittsburgh Plus prices and Birmingham Differential prices proved a very serious handicap in and by itself.

(n) One witness company having a plant near Pittsburgh and one at Chicago, manufactures 40 per cent of the metal lath produced in the United States. This company actually supplies its carload cus-

tomers in Chicago from its Pittsburgh plant because of the fact that, due to the Pittsburgh Plus system, the volume of business done from the Pittsburgh plant is so much greater that it reduces the overhead cost very much below that at the Chicago plant, and therefore the carload business for Chicago can be supplied to better advantage and at greater profit from the Pittsburgh plant, although the company's main office is in Chicago.

(o) The effect of Pittsburgh Plus prices are greatly aggravated in depressed business periods when manufacturers need additional business the most. In such periods the Pittsburgh and other eastern manufacturers of steel products go into the Chicago territory and take business at a very small profit, sometimes below profit, in order to keep their plants going and to spread their overhead charges over a large production. During such times, the Chicago manufacturers likewise need business to keep their plants going and to keep down their overhead charges. But their needs are subservient to the needs of their eastern competitors. These eastern competitors divide and take away much of the needed western business, while the western manufacturers are left helpless without a reciprocal power to invade the East, because of respondents' Pittsburgh Plus prices.

(p) A number of steel users found that when using cast iron or cast steel or bronze or brass in their manufactured products, where Pittsburgh Plus prices are not charged they could sell these products sometimes as far east as the Atlantic Coast, while the same manufacturers using steel in the manufacture of the same products were unable to sell such products east of their plants, because of respondents' Pittsburgh Plus prices on steel.

(q) A number of steel consumers in the West have either been obliged to put up or contemplate putting up plants in the Pittsburgh district because of the Pittsburgh Plus prices on steel; others cannot afford to do so.

(r) The fabricators generally in the West have shown that their plants have not expanded materially for a number of years. Each time the freight rates increase, the Pittsburgh Plus discriminations likewise increase. In other words, every time the freight rates increase, the steel users in the West, buying from western steel mills, must pay more for their steel, while the Pittsburgh steel users do not have to pay more.

(s) While under the Pittsburgh Plus system, the western and southern steel users generally are unable to sell their products in the territory of their eastern and northern competitors, or even in parts of their own natural territory, yet these eastern competitors in numerous cases establish warehouses and sales offices in the western and southern territories and employ salesmen who compete actively

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for business in those territories. They are at no disadvantage whatever in doing so.

(*t*) The extent to which the western and southern steel users are affected by the Pittsburgh Plus discriminatory prices, varies with the product which they manufacture. Where the steel cost in a finished product represents the major portion of the total cost of that product, the handicap suffered by reason of the Pittsburgh Plus system is very much greater than in the case of products where labor and other elements are the main cost factors and where the steel cost is but a comparatively small or negligible factor.

(*u*) In the case of a very large number of western manufacturers who produce a great variety of products the Pittsburgh Plus prices permit their eastern competitors to compete on an equality in their own western territory, and at the same time prevent them from competing in the territory of those same eastern competitors and in large portions of what would be their natural territory if the Plus were eliminated. Among the products manufactured by these manufacturers, as shown by the record, are agricultural implements, automobile parts, automobile truck bodies and equipment, railway axles and accessories, ships, boats and barges, barn equipment, barrels, drums, tanks, boilers, beds, bolts, bridges and buildings, builders' hardware, filing cabinets, horseshoes, cans, railway and industrial cars of various kinds, metal ceilings, chains, road machinery, conductor pipe and eaves troughs, conduit fittings, drop forgings of many kinds, conveying machinery, corrugated sheets, traveling cranes, culverts and culvert pipe, derricks, metal doors and windows, electrical apparatus, screw machine products of all kinds, wire fence, farm gates, cut gears, household utensils, metal lath, logging and other kinds of machinery, ornamental steel work, picks, mattocks, plumbing material, pole line hardware, pumps, metal screens, sheet metal ware, smoke stacks, springs, metal stampings, sugar handling machinery, tools, towers, windmills, trunk hardware, trucks, wheelbarrows, wheels and a variety of other miscellaneous products.

(*v*) The steel users when competing with competitors who buy steel from the same mill, are seriously handicapped as well as when competing with competitors who buy steel from different mills. For instance, as heretofore shown, the Chicago fabricator buying steel from the Illinois Steel Company at Chicago can not compete in Detroit with the Detroit fabricator buying steel from the same mill. The Detroit and Pittsburgh fabricators, however, can do business in Chicago to the same advantage as in their home cities of Detroit and Pittsburgh, respectively. An Indianapolis steel user has a decided advantage over the Milwaukee steel user, though the Indianap-

olis steel user must buy his steel from Chicago, 184 miles away, while the Milwaukee customer buys his steel from the Milwaukee mill.

(w) The discriminatory Pittsburgh Plus prices are found to have very substantially lessened and at times to have destroyed the competition of steel users located at a great number of points, including dozens of cities in the States of Illinois, Wisconsin, and Minnesota. A large number of steel users in the States of Iowa, Nebraska, Missouri, and Indiana, and in such Southern States as Alabama, Georgia, and Tennessee, were very seriously hampered because of the Pittsburgh Plus system.

(x) A number of steel users have been forced to discontinue the manufacture of a variety of products made of steel because of the Pittsburgh Plus prices which they were forced to pay. They were unable to compete with their competitors in favor of whom such discriminations operated. In addition to this total destruction of competition caused in a great many cases by the increasing Pittsburgh Plus discriminations, a destruction of further industries is threatened with the continuance of Pittsburgh Plus prices. As a large number of manufacturers testified, they will be ultimately driven out of business if Pittsburgh Plus prices continue.

(y) The effects of the Pittsburgh Plus prices on the business of the western steel users has been found, and there will now be shown more fully than has been shown heretofore what the situation would be if the Pittsburgh Plus system were eliminated, and if such steel users were able to purchase their steel at Chicago at the same price as is charged at Pittsburgh. (The cost of producing steel at Chicago, as above stated, is very much less than it is at Pittsburgh.) In such cases, with the imaginary freight charge from Pittsburgh eliminated, and without even assuming a lower price at Chicago than at Pittsburgh, the territory generally where the western steel users could compete on an equality or have an advantage as against their Pittsburgh competitors, would be very greatly increased, as shown by the evidence. At the same time, eastern competitors would be at the same disadvantage in the western territory as the western manufacturers would be when competing in the East. In other words, taking the Chicago fabricator as an illustration, whose territory under the Pittsburgh Plus system, where he can compete on an equality with the Pittsburgh fabricator, is only in the city of Chicago and a small amount of territory in the West, it is found that with the Pittsburgh Plus system eliminated, as indicated, his territory where he could compete on an equality or at an actual advantage as against the Pittsburgh fabricator would be extended to a north and south line drawn substantially half way between Chicago and Pitts-

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burgh. This line would run through Detroit and Toledo, east of Columbus and very greatly east of Cincinnati. In all of the territory west of this line, the Chicago fabricator would have an advantage over the Pittsburgh fabricator, and in all territory east of this line the Pittsburgh fabricator would have an advantage. Under the Pittsburgh Plus system, however, the Chicago fabricator has no advantage anywhere in the United States, and is at an actual disadvantage everywhere except in Chicago and in very restricted, small amounts of territory in the West as heretofore mentioned.

(2) In the case of the drop forging manufacturer, the contrast is even more striking. Under the Pittsburgh Plus system, the Chicago drop forging manufacturer is at a heavy disadvantage in his home town of Chicago, while with the Pittsburgh Plus prices eliminated as above indicated, he would have the same advantage in the city of Chicago as the Pittsburgh forging manufacturer would have in the city of Pittsburgh, and he could compete on an equality with the Pittsburgh fabricator halfway to Pittsburgh.

(2-1) The business of the western manufacturers generally can not grow to the extent of the business of their eastern competitors because of respondents' Pittsburgh Plus prices. The reason is apparent: The market for the Pittsburgh fabricators is the whole United States, while the market for the Chicago fabricators is but a very small part of the United States which it must share with the Pittsburgh fabricators. The capacity of the plants of the Pittsburgh fabricators generally is much greater than that of the Chicago fabricators. The advantage of the Pittsburgh fabricator is repeated in the case of other fabricators west of Pittsburgh and east of Chicago when competing with Chicago fabricators.

(2-2) We have used to a great extent the cases of the Chicago and Pittsburgh fabricators, respectively, as illustrations in the foregoing findings. Western manufacturers in general, however, are handicapped by their more easterly competitors even though such competitors purchase steel from the same mill. These handicaps vary from a few cents per hundred pounds to an amount sufficient to seriously affect and substantially lessen and oftentimes to destroy the competition of the manufacturer against whom the discrimination operates.

(2-3) Testimony of some 125 witnesses showing a substantial lessening or destruction of their competition in interstate commerce due to Pittsburgh Plus prices, remains undisputed in the record.

PAR. 8. *Respondents' practice of quoting and charging Pittsburgh Plus prices constitutes an unfair method of competition.*—The quoting and charging by respondents of their system of Pittsburgh Plus prices prevents their customers against whom the discriminations

resulting therefrom operate, from competing on an equality, or from competing at all, with their competitors in favor of whom such discriminations operate, and such practice constitutes an unfair method of competition.

PAR. 9. *Pittsburgh Plus prices defined.*—By a system of Pittsburgh Plus prices, as used in these findings, is meant respondents' system of prices for its said products manufactured at and shipped from points outside of Pittsburgh, which are their f. o. b. Pittsburgh prices plus amounts equivalent to what the railroad freight charges on such products would be from Pittsburgh to each different destination if such products were actually shipped from Pittsburgh.

PAR. 10. *Respondents' discriminatory or Pittsburgh Plus prices substantially lessen competition of their steel customers with respondents.*—The evidence shows that the respondent, United States Steel Corporation, through its subsidiary, the respondent, American Bridge Company, which does over 40 per cent of the steel structural building and bridge business of the whole United States, has a very decided advantage over the Bridge Company's western competitors by reason of the Pittsburgh Plus prices charged such competitors by the steel producing subsidiaries of the respondent, United States Steel Corporation. The Chicago fabricator of buildings or bridges who buys his steel from respondents' Chicago mills, is obliged to pay \$7.60 per ton more than the Pittsburgh price. (All references to Pittsburgh Plus in these findings relate to the freight rates in effect during the period when most of the testimony was taken in this proceeding.) When the American Bridge Company bids on a job, it can get that job and does get it when it really wants it. That company can bid on a job at cost, and yet the respondent, United States Steel Corporation, through its subsidiary, the Illinois Steel Company, will make a double profit on the steel used in the job—the ordinary profit derived from the manufacture of steel and the extra profit due to the Plus system. As \$7.60 per ton is added to the Pittsburgh price in the case of steel sold at Chicago, the respondent, American Bridge Company, has a great leeway in bidding against its western competitors because the average profit on a structural job is only \$5 per ton. It and respondent steel producing companies have greatly benefited by the Pittsburgh Plus system. The Chicago district plants of respondent, American Bridge Company, are twenty times as large as the plant of its nearest local competitor, and thirty or more times larger than most of its local competitors who have been in business for many years, some of them for a much longer period of time than the respondent, United States Steel Corporation.

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(a) Respondents' customers who manufacture boats and barges find the same difficulty as the fabricators of bridges and buildings in competition with respondent, American Bridge Company, which also manufactures boats and barges.

(b) The same thing holds true with reference to the disadvantage suffered by respondents' customers who compete with respondent, American Steel & Wire Company. For instance, in the case of a patented clip manufactured by one of respondents' Minneapolis customers, the respondent, American Steel & Wire Company was originally made the selling agent for this clip. Upon the expiration of the patent, the respondent company refused to act as agent for the clip, but started to manufacture the clip itself. Now the Minneapolis manufacturer pays \$18,000 annually as Pittsburgh Plus in the manufacture of this clip while competing against the respondent, American Steel & Wire Company, which gets its steel from other respondents as does the respondent, American Bridge Company. Among respondents' customers who compete with the respondent, Wire Company, are those who manufacture farm gates, wire fence, wire products, etc.

(c) In Birmingham, Ala., where respondents' Pittsburgh Plus price on wire and wire products is \$15.30 per ton higher than respondents' Pittsburgh price, it would be impossible for any steel user buying steel from respondent's Birmingham plant to compete with respondent in cases where respondents wanted the business.

(d) The respondent, American Sheet & Tin Plate Company, competes with the customers of respondent, Illinois Steel Company, in the manufacture and sale of corrugated roofing, and of course has the same advantage under the Pittsburgh Plus system as has been shown in the cases of the respondents, American Bridge Company and American Steel & Wire Company.

PAR. 11. *Respondents' practice of quoting and charging their customer-competitors Pittsburgh Plus prices constitutes an unfair method of competition.*—The quoting and charging by certain respondents of a system of Pittsburgh Plus prices to their customers with whom they or certain other respondents compete, as hereinabove set out, is unfair to such customer-competitors, and gives the respondents an unconscionable advantage over such customer-competitors, and constitutes an unfair method of competition as against such customer-competitors.

PAR. 12. *Respondents' discriminatory or Pittsburgh Plus prices substantially lessen competition among the steel producers.*—Pittsburgh Plus prices substantially lessen the competition among steel users, as hereinbefore described. Pittsburgh Plus prices also substantially lessen price competition among the steel producers.

(a) Any difference generally in prices of plates, shapes, and bars existing among the steel producers under the Pittsburgh Plus system at any point and at any time would be due to a difference in delivery.

(b) The respondent, American Sheet & Tin Plate Company actively cooperates with the National Association of Sheet & Tin Plate Manufacturers in price fixing activities. As many of respondents' own witnesses among the sheet and tin plate manufacturers admitted, their prices on the Pittsburgh Plus system were the same or "on a parity" with those of their competitors, and as many of them testified, where differences in prices existed, such differences were due to the fact that some steel was sold for immediate delivery and some for future delivery and that the prices of the different deliveries were not the same.

(c) As respondents' own witness, a sales manager of respondent American Steel & Wire Company, testified, there is no price competition among the wire manufacturers, save in exceptional instances where two or three small mills sometimes sell their products *f. o. b. their mills* and force their competitors to meet those prices in the immediate vicinity of those mills. All wire mills with these occasional exceptions charge the same Pittsburgh Plus prices at any given point.

(d) Analyses of 3,502 contracts introduced in evidence by the Commission's attorneys through their witnesses, who selected them generally at random, covering the sale of plates, shapes, and bars over many years, from 1902 to 1922, made by various steel producers including respondents, showed that 70.7 per cent of the contract sale prices in such contracts were based upon the identical Pittsburgh prices quoted in the Iron Age, a steel trade publication, and 19.4 per cent within 5 cents per hundredweight thereof, or a total of 90.1 per cent either identical or within 5 cents per hundredweight thereof. Substantially the same percentages of uniformity resulted from a comparison of these contract prices with the contract prices of respondent, Carnegie Steel Company.

(e) Analyses of 3,700 contract sales prices of plates, shapes, and bars taken from contracts of the respondent, Illinois Steel Company, over a number of years and introduced in evidence by respondents, showed that 71.8 per cent of such contract prices were based upon the identical Pittsburgh prices quoted in the Iron Age, and 20.6 per cent within 5 cents per hundredweight thereof, or a total of 92.4 per cent, either identical or within 5 cents per hundredweight thereof. Similar comparisons made with the respondent, Carnegie Steel Company's Pittsburgh price showed substantially the same percentages of equality as in the case of the Iron Age prices. Many similar comparisons for specific years are contained in the record of the case.

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(f) Five cents differences in contract prices are frequently found when there is a change of 5 cents made in the price of steel by a leading producer at Pittsburgh. In such case, several days or more may elapse before all of the steel producers change their prices accordingly, and contracts made during the interim will reflect this 5 cents difference. The prices of respondent, Illinois Steel Company, oftentimes do not follow the change of the respondent, Carnegie Steel Company, on the same day; such changes sometimes do not follow for several days.

(g) Price competition, therefore, was entirely eliminated to the extent of the uniformity shown above. No price fixing device functions 100 per cent as a general rule, even though penalties may be inflicted upon those who cut the prices agreed upon. As a means of restraining and eliminating price competition, the Pittsburgh Plus practice is and has been very effective.

(h) While uniformity of prices among the steel producers might indicate the presence of price competition if such prices were uniform, f. o. b. the producing mills of the different producers in each different section, yet such character of uniformity is not the uniformity found in the Pittsburgh Plus prices. The Pittsburgh Plus uniformity is a uniformity of delivered prices at every delivery point in the country from every mill in the country. Pittsburgh Plus prices are not uniform f. o. b. the several producing mills; on the contrary they are greatly variant. They are greatly variant when figured f. o. b. the mill to even the customers of the same mill. As will be shown later, uniform Pittsburgh Plus prices can be produced only by a restraint of price competition. Each time price competition occurred to a substantial extent in the steel industry, Pittsburgh Plus prices disappeared. Each time the Pittsburgh Plus prices reappeared, price competition had accordingly ceased.

(i) If respondents abandoned their Pittsburgh Plus prices, their competitors would have to do likewise. Respondents' prices are generally followed by their competitors. If respondents quoted and sold their products f. o. b. the mill, their competitors could not sell their products according to the Pittsburgh Plus practice.

(j) Respondents' discriminatory or Pittsburgh Plus prices substantially lessen competition among the steel producers in the interstate sale of rolled steel products.

(k) In addition to the foregoing, it is found that the steel producing respondents and their competitors employ uniform contract provisions, uniform extras, and differentials, and that the sheet manufacturers particularly, including respondents' sheet manufacturing subsidiary, use the same freight rate books, the same tolerances, the same sheet bar weight books, and use the Pittsburgh Plus system

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in their price fixing activities, all of which will be hereafter more fully referred to. The continuous use of any one or all of these adjuncts in price fixing is entirely consistent with the uniform delivered prices which are sought to be and are actually attained thereby. It is necessary to use these adjuncts to reach absolutely uniform Pittsburgh Plus prices by all of the steel producers, and in using them the desired results are obtained; it would be futile to use them if such results were not obtained. Indeed, the Pittsburgh Plus system was adopted by the producers for the purpose of reaching absolutely uniform prices at any given point, or in the words of Judge Gary, "it was deemed necessary for the orderly conduct of the business to have *one basing price*, * * * so that every user of steel all over the country bought and used his steel on a certain basis, knowing in advance that everyone else who bought steel had to pay *exactly* as he did, *with the addition of the increased freight depending upon where he wanted to use the steel.*"

The evidence in the record fully proves that the wish to provide an absolutely uniform price at any given point by all the producers was and is met by the Pittsburgh Plus system. The Pittsburgh base prices of the respondents are followed generally by all other steel producers in arriving at their delivered prices.

(l) Respondents introduced a number of exhibits in an attempt to prove nonuniformity of Pittsburgh Plus prices. The findings shall treat of these. The respondents make a large number of specialties for agricultural implement manufacturers. There is no agreement or understanding with reference to the prices of these specialties among the steel producers; there is no uniformity in their prices for these specialties. The steel used in making these specialties is of a different character than that used in making the ordinary bars, plates and shapes, and the two are not comparable as to character, nor as to the prices charged for them. The nonuniformity in the prices of these specialties among the steel producers does not tend to prove nonuniformity in the Pittsburgh Plus prices of plates, shapes and bars among the steel producers. Respondents' comparisons in their said exhibits of the prices of these specialties with the prices quoted by a steel trade paper on plates, shapes and bars did not tend to establish a nonuniformity of Pittsburgh Plus prices.

(m) At times the agricultural implement manufacturers were granted concessions in prices by the steel producers, and at other times they were charged Pittsburgh Plus prices. Comparisons by respondents in their said exhibits of such concessions made generally by the steel producers, with the standard prices quoted in a steel

trade paper did not tend to establish a nonuniformity of Pittsburgh Plus prices.

(n) In their said exhibits, respondents also compared prices made by them on a Chicago base with Pittsburgh base prices quoted in a steel trade paper, in an endeavor to show that Pittsburgh Plus prices are not uniform. Such comparisons did not tend to establish a non-uniformity of Pittsburgh Plus prices; they did prove that Chicago base prices were not the same as Pittsburgh Plus prices.

(o) Many other objections appearing from an examination of respondents' said exhibits need not be considered here in view of the foregoing.

PAR. 13. *Respondents' discriminatory or Pittsburgh Plus prices adversely affect the public interest.*—The cost of producing steel at respondents' Chicago and Birmingham plants is approximately 20 per cent less than at their Pittsburgh plants. The cost at Birmingham is slightly less than at Chicago. As shall be shown later, there is a great surplus production in both the Chicago and Birmingham districts. Yet the prices at which respondents sell their steel at Chicago and Birmingham is very much greater than at Pittsburgh. This is best illustrated by Commission's Exhibit 6853, which shows that the spread between the cost of producing and selling price of steel bars at respondents' Pittsburgh mills at a given time was \$2.10, while at Chicago it was \$13.80; at Duluth, \$8. Consequently the public at Chicago pays \$11.70 more per ton over the cost of producing steel bars than the public at Pittsburgh pays; the public at Birmingham and Duluth pays \$8 more per ton over the cost of producing steel bars than the public at Pittsburgh pays. In one Chicago building alone, the Federal Reserve Bank Building, the imaginary freight on the steel amounted to over \$76,000, which went to respondent, Illinois Steel Company. In five years the Manitowoc Shipbuilding Company paid respondent, Illinois Steel Company, \$140,000 as imaginary freight which the United States Shipping Board had to pay. Deere & Company, farm implement manufacturers, pay \$488,400 annually as imaginary freight, while the farmers who purchase their implements must pay over double this amount, or over \$1,000,000 annually, as extra prices for Deere & Company's implements, because of this imaginary-freight item. In other words, for every dollar which the farm implement companies pay as Pittsburgh Plus, the farmers must pay more than double every such dollar, because to the actual Pittsburgh Plus paid by the farm implement manufacturer must be added the various percentages of overhead, selling expenses and profits which are borne in the ordinary course of business. The figures are undisputed in the record. As the president of the American Farm Bureau Federation, representing more than a million and a quarter

farmers, testified, the double Pittsburgh Plus imaginary freight thus paid by the farmers in only eleven middle western States amounted to around \$30,000,000 annually. The farmers in the other States would use even more steel than those in the 11 States figured in the calculations. The Emerson-Brantingham Company, a farm implement manufacturing company pays around \$100,000 annually as Pittsburgh Plus imaginary freight, which means that its customers must pay around \$200,000 annually more than they would have to pay if the Chicago district mills eliminated Pittsburgh Plus as hereinabove mentioned. The Litchfield Manufacturing Company, a farm implement manufacturing company, pays \$68,000 annually as imaginary freight, and its customers pay twice that amount. Pittsburgh Plus resulted in an addition to the list prices of J. I. Case Threshing Machine Company, an agricultural implement manufacturing company, in the year 1920, of \$509,033, which amount the farmers would have been saved if Pittsburgh Plus had not been charged. A Minneapolis manufacturer pays \$84,000 annually as Pittsburgh Plus, and so on.

(a) On all the public work of the United States, as well as on all the work done for private concerns, the public must eventually pay the extra prices which the Pittsburgh Plus practice yields to the steel producers.

(b) Pittsburgh Plus adds millions of dollars each year to the price paid by steel users outside of Pittsburgh, which of course must eventually be paid by the public.

(c) As testified to by three eminent economists called by attorneys for the Commission, the Pittsburgh Plus system inevitably raises prices to the public, as we shall show more specifically later. This testimony was fully borne out by many actual experiences in the steel industry. In every case where the steel producers charged f. o. b. mill prices instead of Pittsburgh Plus prices, the latter were higher than the former. In the earlier days, when the Pittsburgh Plus discriminations were not so great, there was not, of course, so great a difference as in later years when the discriminations constantly increased. In portions of 1922 and 1923, when the Chicago base price was the same as the Pittsburgh base price, it was \$7.60 per ton less than the Pittsburgh Plus price would have been. When the Chicago base price was lower than the Pittsburgh base price, as it was during a portion of that time, the difference was even greater. With steel selling at \$30 or \$40 per ton, it is apparent that the difference is very substantial.

(d) As likewise testified to by these three economists, and as likewise borne out by actual experience of the steel industry, the Pittsburgh Plus system retards the steel producing development and steel consumption of every section of the United States except Pittsburgh.

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It abnormally increased the development of the Pittsburgh mills and accordingly restrains the development of the mills outside of Pittsburgh.

(e) The development of the steel producing mills at Pittsburgh is abnormally increased because, under the Pittsburgh Plus system, the market of the Pittsburgh mills is the entire United States. The development of the steel producing mills outside of Pittsburgh is restrained because they are obliged to share their markets with the Pittsburgh mills and can not without lowering their prices, invade other markets.

(f) Steel consumption at points outside of Pittsburgh is restrained by the Pittsburgh Plus system because of the handicaps suffered by the steel users at such points as hereinabove indicated. In other words, they must share their markets with their Pittsburgh competitors, while they do not have the reciprocal privilege of sharing the Pittsburgh market, or, indeed, of markets which would be their own markets if Pittsburgh Plus were eliminated. Furthermore, the added cost of steel to the steel users outside of Pittsburgh lessens the extent to which steel is used generally.

(g) If free competition existed in the steel industry, the prices in the Chicago and Birmingham districts would fall to a level consonant with the lower cost of production at those points, which they have failed to do under the Pittsburgh Plus system.

(h) The influence of the Pittsburgh Plus system has already been felt beyond the steel industry. The Interstate Commerce Commission has refused the application of a railroad company to increase its freight rates, in a decision in which the Commission stated that to do so would automatically increase the price of steel, because every time the railroad freight rates are increased from Pittsburgh, the steel producers increase their steel prices accordingly. (I. C. C. Docket No. 1837, decided September 29, 1923.)

PAR. 14. *Respondents' discriminatory or Pittsburgh Plus prices are not made in good faith to meet competition.*—Pittsburgh Plus prices are not made in good faith to meet competition. They were originally adopted by the steel producers generally as the basis for their price-fixing activities, and are still used for the same purpose. It was, and still is, only necessary for the steel producers to use the same Pittsburgh price as the basis for their prices covering their various rolled steel products in order to maintain uniform Pittsburgh Plus discriminatory prices. The price at every locality in the United States automatically becomes the Pittsburgh price, plus an amount which would equal the freight on the steel from Pittsburgh to destination, if the steel were actually shipped from Pittsburgh. The system has worked very effectively. While the Pitts-

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burgh Plus system was used as the basis for the agreed prices fixed by the original pools, trade meetings and Gary dinners, it was found later that such price system obviated the necessity of such pools, price-fixing trade meetings and Gary dinners; so it finally succeeded these three plans, and as such successor it still continues.

(a) No systematic Pittsburgh Plus system has been adopted by the steel producers at the time of Pittsburgh's greatest predominance in the steel industry or until after 1900. From 1873 or earlier, to 1903, steel producers attempted, generally, with some success, to fix prices for steel products through pools, price-fixing trade meetings and, later on, through what are known as the Gary dinners. From 1903 to 1909 the Pittsburgh Plus system of quoting and selling said steel products was used in connection with and as a basis for the price-fixing activities of the steel producers. From 1909 to the present time, with minor interruptions the Pittsburgh Plus system has been used by the steel producers independently of such pools, price-fixing trade meetings and Gary dinners for the purpose and with the effect of reaching uniform delivered prices. In 1921 with the advent of price competition on plates, shapes and bars, the Pittsburgh Plus system was discontinued by the Chicago district mills in their sales of those products, but not in their sales of sheets and tin plate and wire and wire products, as to which articles in that district and everywhere else Pittsburgh Plus prices still prevail.

(b) The bar manufacturers, including the respondents, Illinois Steel Company and Carnegie Steel Company, met in 1902, and agreed upon the Pittsburgh Plus system as a basis for fixing and maintaining uniform delivered prices. Such action was wholly inconsistent with making prices in good faith to meet competition.

(c) The plate manufacturers and structural shape manufacturers, respectively, including the said last-named respondents, met in December, 1903, and agreed upon the Pittsburgh Plus system as a basis for fixing and maintaining uniform delivered prices on plates and shapes, respectively. Such action was likewise wholly inconsistent with making prices in good faith to meet competition.

(d) The wire nail producers, including the respondent, American Steel & Wire Company, agreed on zone prices in 1898; in 1904 the large wire producers agreed to maintain uniform prices by means of the Pittsburgh Plus system. Such action was wholly inconsistent with making prices in good faith to meet competition.

(e) The Pittsburgh Plus system was adopted in 1900 in the selling of tubes by the respondent, National Tube Company, because Pittsburgh was regarded as the point of lowest cost of production. Notwithstanding the relative changes in the cost of production in the

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It abnormally increased the development of the Pittsburgh mills and accordingly restrains the development of the mills outside of Pittsburgh.

(e) The development of the steel producing mills at Pittsburgh is abnormally increased because, under the Pittsburgh Plus system, the market of the Pittsburgh mills is the entire United States. The development of the steel producing mills outside of Pittsburgh is restrained because they are obliged to share their markets with the Pittsburgh mills and can not without lowering their prices, invade other markets.

(f) Steel consumption at points outside of Pittsburgh is restrained by the Pittsburgh Plus system because of the handicaps suffered by the steel users at such points as hereinabove indicated. In other words, they must share their markets with their Pittsburgh competitors, while they do not have the reciprocal privilege of sharing the Pittsburgh market, or, indeed, of markets which would be their own markets if Pittsburgh Plus were eliminated. Furthermore, the added cost of steel to the steel users outside of Pittsburgh lessens the extent to which steel is used generally.

(g) If free competition existed in the steel industry, the prices in the Chicago and Birmingham districts would fall to a level consonant with the lower cost of production at those points, which they have failed to do under the Pittsburgh Plus system.

(h) The influence of the Pittsburgh Plus system has already been felt beyond the steel industry. The Interstate Commerce Commission has refused the application of a railroad company to increase its freight rates, in a decision in which the Commission stated that to do so would automatically increase the price of steel, because every time the railroad freight rates are increased from Pittsburgh, the steel producers increase their steel prices accordingly. (I. C. C. Docket No. 1837, decided September 29, 1923.)

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(b) The bar manufacturers, including the respondents, Illinois Steel Company and Carnegie Steel Company, met in 1902, and agreed upon the Pittsburgh Plus system as a basis for fixing and maintaining uniform delivered prices. Such action was wholly inconsistent with making prices in good faith to meet competition.

(c) The plate manufacturers and structural shape manufacturers, respectively, including the said last-named respondents, met in December, 1903, and agreed upon the Pittsburgh Plus system as a basis for fixing and maintaining uniform delivered prices on plates and shapes, respectively. Such action was likewise wholly inconsistent with making prices in good faith to meet competition.

(d) The wire nail producers, including the respondent, American Steel & Wire Company, agreed on zone prices in 1898; in 1904 the large wire producers agreed to maintain uniform prices by means of the Pittsburgh Plus system. Such action was wholly inconsistent with making prices in good faith to meet competition.

(e) The Pittsburgh Plus system was adopted in 1900 in the selling of tubes by the respondent, National Tube Company, because Pittsburgh was regarded as the point of lowest cost of production. Notwithstanding the relative changes in the cost of production in the

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(e) The development of the steel producing mills at Pittsburgh is abnormally increased because, under the Pittsburgh Plus system, the market of the Pittsburgh mills is the entire United States. The development of the steel producing mills outside of Pittsburgh is restrained because they are obliged to share their markets with the Pittsburgh mills and can not without lowering their prices, invade other markets.

(f) Steel consumption at points outside of Pittsburgh is restrained by the Pittsburgh Plus system because of the handicaps suffered by the steel users at such points as hereinabove indicated. In other words, they must share their markets with their Pittsburgh competitors, while they do not have the reciprocal privilege of sharing the Pittsburgh market, or, indeed, of markets which would be their own markets if Pittsburgh Plus were eliminated. Furthermore, the added cost of steel to the steel users outside of Pittsburgh lessens the extent to which steel is used generally.

(g) If free competition existed in the steel industry, the prices in the Chicago and Birmingham districts would fall to a level consonant with the lower cost of production at those points, which they have failed to do under the Pittsburgh Plus system.

(h) The influence of the Pittsburgh Plus system has already been felt beyond the steel industry. The Interstate Commerce Commission has refused the application of a railroad company to increase its freight rates, in a decision in which the Commission stated that to do so would automatically increase the price of steel, because every time the railroad freight rates are increased from Pittsburgh, the steel producers increase their steel prices accordingly. (I. C. C. Docket No. 1837, decided September 29, 1923.)

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(b) The bar manufacturers, including the respondents, Illinois Steel Company and Carnegie Steel Company, met in 1902, and agreed upon the Pittsburgh Plus system as a basis for fixing and maintaining uniform delivered prices. Such action was wholly inconsistent with making prices in good faith to meet competition.

(c) The plate manufacturers and structural shape manufacturers, respectively, including the said last-named respondents, met in December, 1903, and agreed upon the Pittsburgh Plus system as a basis for fixing and maintaining uniform delivered prices on plates and shapes, respectively. Such action was likewise wholly inconsistent with making prices in good faith to meet competition.

(d) The wire nail producers, including the respondent, American Steel & Wire Company, agreed on zone prices in 1898; in 1904 the large wire producers agreed to maintain uniform prices by means of the Pittsburgh Plus system. Such action was wholly inconsistent with making prices in good faith to meet competition.

(e) The Pittsburgh Plus system was adopted in 1900 in the selling of tubes by the respondent, National Tube Company, because Pittsburgh was regarded as the point of lowest cost of production. Notwithstanding the relative changes in the cost of production in the

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It abnormally increased the development of the Pittsburgh mills and accordingly restrains the development of the mills outside of Pittsburgh.

(e) The development of the steel producing mills at Pittsburgh is abnormally increased because, under the Pittsburgh Plus system, the market of the Pittsburgh mills is the entire United States. The development of the steel producing mills outside of Pittsburgh is restrained because they are obliged to share their markets with the Pittsburgh mills and can not without lowering their prices, invade other markets.

(f) Steel consumption at points outside of Pittsburgh is restrained by the Pittsburgh Plus system because of the handicaps suffered by the steel users at such points as hereinabove indicated. In other words, they must share their markets with their Pittsburgh competitors, while they do not have the reciprocal privilege of sharing the Pittsburgh market, or, indeed, of markets which would be their own markets if Pittsburgh Plus were eliminated. Furthermore, the added cost of steel to the steel users outside of Pittsburgh lessens the extent to which steel is used generally.

(g) If free competition existed in the steel industry, the prices in the Chicago and Birmingham districts would fall to a level consonant with the lower cost of production at those points, which they have failed to do under the Pittsburgh Plus system.

(h) The influence of the Pittsburgh Plus system has already been felt beyond the steel industry. The Interstate Commerce Commission has refused the application of a railroad company to increase its freight rates, in a decision in which the Commission stated that to do so would automatically increase the price of steel, because every time the railroad freight rates are increased from Pittsburgh, the steel producers increase their steel prices accordingly. (I. C. C. Docket No. 1837, decided September 29, 1923.)

PAR. 14. *Respondents' discriminatory or Pittsburgh Plus prices are not made in good faith to meet competition.*—Pittsburgh Plus prices are not made in good faith to meet competition. They were originally adopted by the steel producers generally as the basis for their price-fixing activities, and are still used for the same purpose. It was, and still is, only necessary for the steel producers to use the same Pittsburgh price as the basis for their prices covering their various rolled steel products in order to maintain uniform Pittsburgh Plus discriminatory prices. The price at every locality in the United States automatically becomes the Pittsburgh price, plus an amount which would equal the freight on the steel from Pittsburgh to destination, if the steel were actually shipped from Pittsburgh. The system has worked very effectively. While the Pitts-

burgh Plus system was used as the basis for the agreed prices fixed by the original pools, trade meetings and Gary dinners, it was found later that such price system obviated the necessity of such pools, price-fixing trade meetings and Gary dinners; so it finally succeeded these three plans, and as such successor it still continues.

(a) No systematic Pittsburgh Plus system has been adopted by the steel producers at the time of Pittsburgh's greatest predominance in the steel industry or until after 1900. From 1873 or earlier, to 1903, steel producers attempted, generally, with some success, to fix prices for steel products through pools, price-fixing trade meetings and, later on, through what are known as the Gary dinners. From 1903 to 1909 the Pittsburgh Plus system of quoting and selling said steel products was used in connection with and as a basis for the price-fixing activities of the steel producers. From 1909 to the present time, with minor interruptions the Pittsburgh Plus system has been used by the steel producers independently of such pools, price-fixing trade meetings and Gary dinners for the purpose and with the effect of reaching uniform delivered prices. In 1921 with the advent of price competition on plates, shapes and bars, the Pittsburgh Plus system was discontinued by the Chicago district mills in their sales of those products, but not in their sales of sheets and tin plate and wire and wire products, as to which articles in that district and everywhere else Pittsburgh Plus prices still prevail.

(b) The bar manufacturers, including the respondents, Illinois Steel Company and Carnegie Steel Company, met in 1902, and agreed upon the Pittsburgh Plus system as a basis for fixing and maintaining uniform delivered prices. Such action was wholly inconsistent with making prices in good faith to meet competition.

(c) The plate manufacturers and structural shape manufacturers, respectively, including the said last-named respondents, met in December, 1903, and agreed upon the Pittsburgh Plus system as a basis for fixing and maintaining uniform delivered prices on plates and shapes, respectively. Such action was likewise wholly inconsistent with making prices in good faith to meet competition.

(d) The wire nail producers, including the respondent, American Steel & Wire Company, agreed on zone prices in 1898; in 1904 the large wire producers agreed to maintain uniform prices by means of the Pittsburgh Plus system. Such action was wholly inconsistent with making prices in good faith to meet competition.

(e) The Pittsburgh Plus system was adopted in 1900 in the selling of tubes by the respondent, National Tube Company, because Pittsburgh was regarded as the point of lowest cost of production. Notwithstanding the relative changes in the cost of production in the

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It abnormally increased the development of the Pittsburgh mills and accordingly restrains the development of the mills outside of Pittsburgh.

(e) The development of the steel producing mills at Pittsburgh is abnormally increased because, under the Pittsburgh Plus system, the market of the Pittsburgh mills is the entire United States. The development of the steel producing mills outside of Pittsburgh is restrained because they are obliged to share their markets with the Pittsburgh mills and can not without lowering their prices, invade other markets.

(f) Steel consumption at points outside of Pittsburgh is restrained by the Pittsburgh Plus system because of the handicaps suffered by the steel users at such points as hereinabove indicated. In other words, they must share their markets with their Pittsburgh competitors, while they do not have the reciprocal privilege of sharing the Pittsburgh market, or, indeed, of markets which would be their own markets if Pittsburgh Plus were eliminated. Furthermore, the added cost of steel to the steel users outside of Pittsburgh lessens the extent to which steel is used generally.

(g) If free competition existed in the steel industry, the prices in the Chicago and Birmingham districts would fall to a level consonant with the lower cost of production at those points, which they have failed to do under the Pittsburgh Plus system.

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various districts as hereinabove indicated, the respondent tube companies and all tube companies still sell their pipe and other products on the Pittsburgh Plus system. The prices thus made were not and are not in good faith to meet competition.

(f) The Pittsburgh Plus system was adopted by the billet manufacturers in 1900 as the basis for their agreed prices.

(g) The bolt, nut and rivet manufacturers adopted the Pittsburgh Plus system in 1918 by agreement.

(h) Prior to the year 1900, sheet steel was not sold on the Pittsburgh Plus system, and even after the absorption of a large number of sheet mills by the American Sheet Steel Company (which was later taken over by the respondent, American Sheet & Tin Plate Company), that company sold its sheets in the Chicago district f. o. b. its mills in that district. In the fall of 1900 however, that company inaugurated the Pittsburgh Plus system in selling its sheets, and the respondent, American Sheet & Tin Plate Company has followed the system ever since, practically without exception.

(i) Prior to 1900 to 1903, the tin mills sold their product generally f. o. b. the mill, but after the absorption of many tin mills by the American Tin Plate Company (which was shortly afterward taken over by the respondent, American Sheet & Tin Plate Company), that company inaugurated the Pittsburgh Plus system in selling its tin plate from its various mills. In 1903, it announced as to its Indiana mills, that tin plate would no longer be sold f. o. b. the Indiana mills, but would be sold thereafter on the Pittsburgh Plus system because of the higher cost of production at the Indiana mills. The respondent, American Sheet & Tin Plate Company has continued the Pittsburgh Plus system ever since on tin plate. Such prices were not and are not made in good faith to meet competition.

(j) Uniform Pittsburgh Plus prices on sheets have been effectually maintained by the sheet steel producers, notwithstanding the fact that there are many small sheet mills. It has proved difficult for the steel producers to hold a number of small mills to price agreements or understandings during periods of business depression. But the sheet producers of the United States are members of an organization known as the National Association of Sheet & Tin Plate Manufacturers. Nearly every independent sheet producer is a member. The respondent, American Sheet & Tin Plate Company, is not a member, but actively cooperates with the association in its price-fixing activities, which constitute an important part of the association's work. The prices of the said last named respondent company are furnished to the association and by the association wired to all of its members generally before they are announced to the public. The members generally adopt the new prices as their

own. Without the leadership of respondent company, in announcing its prices, the association finds it difficult to maintain uniform Pittsburgh Plus prices among its members.

(k) The said respondent company and its competitors exchange letters regarding prices charged and to be charged by them. If a producer is found to be cutting prices, the matter is diligently pursued by both respondent and its competitors with a view of discouraging such price cutting.

(l) All of the foregoing mentioned price-fixing activities are wholly inconsistent with making prices in good faith to meet competition.

(m) The respondent steel-producing subsidiaries and their competitors use the same extras and differentials, and the respondent, American Sheet & Tin Plate Company has helped the said association distribute the booklets containing the uniform extras among the members of the association. All the steel producers use uniform extras and differentials in order to arrive at uniform delivered prices. They could not reach such uniform delivered prices without maintaining uniform extras and differentials. The use of these uniform extras and differentials is wholly inconsistent with making prices in good faith to meet competition.

(n) The respondent, American Sheet & Tin Plate Company, at great expense to itself, prepares a compilation of freight rates on sheets from Pittsburgh to practically every consuming point in the United States. It furnishes copies of this freight rate book, and all subsequent changes made from time to time, to its competitors. At first it gave these books to its competitors, but now it charges a nominal price for them. The respondent company expects the recipients of these books to use them. The use of them by all steel producers is necessary if all such producers are to arrive at exactly the same Pittsburgh Plus price at each given point. The freight tariffs are complicated and oftentimes there are two or more different freight rates between two points given in the different tariffs. The freight traffic expert's duty under the Pittsburgh Plus system is to find the lowest rate existing from Pittsburgh to every consuming point. Different traffic experts might not arrive at the same results, and therefore a uniform freight rate book is absolutely necessary in order that the steel producers may reach absolutely uniform Pittsburgh Plus prices. The use of this common freight rate book prepared at respondents' expense is wholly inconsistent with making prices in good faith to meet competition.

(o) The respondent company, as above indicated, supplies this necessary link in the making of ultimate uniform discriminatory prices by all steel producers.

(p) The respondent and its competitors likewise use the same table of tolerances and the same sheet bar weight book, each of which has a bearing on the ultimate prices charged for their products and each of which permits them to reach absolutely uniform delivered prices at all points in conjunction with a due observance of a uniform base price, uniform freight rates and uniform extras and differentials, as above mentioned. The use of all these adjuncts for the purpose of reaching uniform Pittsburgh Plus prices is wholly inconsistent with making prices in good faith to meet competition.

(q) All of the steel producers have the substantially, identical provision in their contracts, which provide that if the freight rate on steel from Pittsburgh to any given point is increased during the life of the contracts, the price of the steel in such contracts shall be automatically increased accordingly. This provision, of course, applies to all of the said rolled steel products, regardless of where they are manufactured and regardless of the point from which they are shipped. If the price of steel is increased during the life of such contract, the steel customer is protected against such increase, but if the freight rate from Pittsburgh to Chicago, for instance, is increased during the life of such contract, the Chicago steel customer must pay a correspondingly increased contract price for his steel, even though in such case he incurs no freight charge whatever. This contract provision has a very important bearing in the ultimate uniform delivered prices to be reached by the steel producers. The use of this uniform contract provision is wholly inconsistent with making prices in good faith to meet competition.

(r) The independent steel producers, generally, use the same Pittsburgh base price in making up their Pittsburgh Plus prices as that quoted by respondents on each of the said rolled steel products.

(s) *The Pittsburgh Plus system itself is evidence that free competition does not exist.*—As the three economists hereinabove referred to testified and as other evidence in the record clearly shows, price competition among the steel producers brings about f. o. b. mill prices. *A priori*, the lack of competition is evidenced when Pittsburgh Plus prices are in effect. Price competition is evidenced by uniform f. o. b. mill base prices, uniform to all the customers of the same mill, and uniform among the different producers in the same market. Such prices, however, are not respondents' Pittsburgh Plus prices. Pittsburgh Plus prices are not f. o. b. mill prices; they are prices made f. o. b. Pittsburgh. They are not uniform prices from the producing mill; they are discriminatory from the mills. They vary according to what the freight rate is from Pittsburgh to each of their customers' plants. The customer at Chicago pays the Chicago mill a higher price than the customer 50 miles

east of Chicago because the imaginary freight rate to Chicago is higher than it is to a point 50 miles east of Chicago. The customer 100 miles east of Chicago pays less than the customer 50 miles east of Chicago, and so on. In other words, Pittsburgh Plus prices are terraced prices. From the Chicago mills, for instance, they terrace downward from Chicago, for Chicago is the top terrace where the Chicago mill gets its highest price for steel under the system. The next highest terrace of prices is in that territory of the next highest freight rate from Pittsburgh, and so on, until Pittsburgh is reached. At Pittsburgh the Chicago mill nets \$15.20 less than its Pittsburgh Plus price at Chicago and \$7.60 less than the Pittsburgh Base price. Pittsburgh then becomes the lowest terrace of net returns for the Chicago mills. And so in the case of the steel buyer as he moves west from Pittsburgh, he climbs the price terraces. With each terrace he mounts, he finds the price he pays the Chicago mills is higher, though he gets nearer Chicago all the time. At Pittsburgh he pays the Chicago mills, say, \$30 per ton. At Detroit he pays them considerably more. When he arrives right at the Chicago mills, he is forced to pay them the highest prices they charge, namely, \$37.60 per ton. Customers in the same terrace are charged the same delivered prices by all the steel producers all over the country under the Pittsburgh Plus system. Customers in different terraces are charged different prices. Customers at the mill door are obliged to pay a sufficiently high price to reimburse the steel producer for the lesser profit or loss of profit he suffers when dumping his surplus steel at lower prices nearer Pittsburgh, as will be hereafter more fully explained.

(t) No such system of terraced prices—that is, a system of varying net returns to the steel producers—occurs when there is price competition among such producers. From the time the Pittsburgh Plus practice was adopted by the steel industry to the present time, Pittsburgh Plus prices disappeared whenever substantial price competition occurred in the Chicago district; prices of steel producers in such cases were made f. o. b. their respective producing mills. When the Pittsburgh Plus prices were resumed, price competition had ceased.

(u) When price competition forced the steel producers to charge f. o. b. mill base prices, there was no system of terraced prices from the mill. All customers from the same mill got the same f. o. b. mill price, and they paid the actual freight on their steel from the mill to their plants. Respondents' Pittsburgh prices are f. o. b. the mill and they are the same f. o. b. the mill to all customers.

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(q) All of the steel producers have the substantially, identical provision in their contracts, which provide that if the freight rate on steel from Pittsburgh to any given point is increased during the life of the contracts, the price of the steel in such contracts shall be automatically increased accordingly. This provision, of course, applies to all of the said rolled steel products, regardless of where they are manufactured and regardless of the point from which they are shipped. If the price of steel is increased during the life of such contract, the steel customer is protected against such increase, but if the freight rate from Pittsburgh to Chicago, for instance, is increased during the life of such contract, the Chicago steel customer must pay a correspondingly increased contract price for his steel, even though in such case he incurs no freight charge whatever. This contract provision has a very important bearing in the ultimate uniform delivered prices to be reached by the steel producers. The use of this uniform contract provision is wholly inconsistent with making prices in good faith to meet competition.

(r) The independent steel producers, generally, use the same Pittsburgh base price in making up their Pittsburgh Plus prices as that quoted by respondents on each of the said rolled steel products.

(s) *The Pittsburgh Plus system itself is evidence that free competition does not exist.*—As the three economists hereinabove referred to testified and as other evidence in the record clearly shows, price competition among the steel producers brings about f. o. b. mill prices. *A priori*, the lack of competition is evidenced when Pittsburgh Plus prices are in effect. Price competition is evidenced by uniform f. o. b. mill base prices, uniform to all the customers of the same mill, and uniform among the different producers in the same market. Such prices, however, are not respondents' Pittsburgh Plus prices. Pittsburgh Plus prices are not f. o. b. mill prices; they are prices made f. o. b. Pittsburgh. They are not uniform prices from the producing mill; they are discriminatory from the mills. They vary according to what the freight rate is from Pittsburgh to each of their customers' plants. The customer at Chicago pays the Chicago mill a higher price than the customer 50 miles

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east of Chicago because the imaginary freight rate to Chicago is higher than it is to a point 50 miles east of Chicago. The customer 100 miles east of Chicago pays less than the customer 50 miles east of Chicago, and so on. In other words, Pittsburgh Plus prices are terraced prices. From the Chicago mills, for instance, they terrace downward from Chicago, for Chicago is the top terrace where the Chicago mill gets its highest price for steel under the system. The next highest terrace of prices is in that territory of the next highest freight rate from Pittsburgh, and so on, until Pittsburgh is reached. At Pittsburgh the Chicago mill nets \$15.20 less than its Pittsburgh Plus price at Chicago and \$7.60 less than the Pittsburgh Base price. Pittsburgh then becomes the lowest terrace of net returns for the Chicago mills. And so in the case of the steel buyer as he moves west from Pittsburgh, he climbs the price terraces. With each terrace he mounts, he finds the price he pays the Chicago mills is higher, though he gets nearer Chicago all the time. At Pittsburgh he pays the Chicago mills, say, \$30 per ton. At Detroit he pays them considerably more. When he arrives right at the Chicago mills, he is forced to pay them the highest prices they charge, namely, \$37.60 per ton. Customers in the same terrace are charged the same delivered prices by all the steel producers all over the country under the Pittsburgh Plus system. Customers in different terraces are charged different prices. Customers at the mill door are obliged to pay a sufficiently high price to reimburse the steel producer for the lesser profit or loss of profit he suffers when dumping his surplus steel at lower prices nearer Pittsburgh, as will be hereafter more fully explained.

(t) No such system of terraced prices—that is, a system of varying net returns to the steel producers—occurs when there is price competition among such producers. From the time the Pittsburgh Plus practice was adopted by the steel industry to the present time, Pittsburgh Plus prices disappeared whenever substantial price competition occurred in the Chicago district; prices of steel producers in such cases were made f. o. b. their respective producing mills. When the Pittsburgh Plus prices were resumed, price competition had ceased.

(u) When price competition forced the steel producers to charge f. o. b. mill base prices, there was no system of terraced prices from the mill. All customers from the same mill got the same f. o. b. mill price, and they paid the actual freight on their steel from the mill to their plants. Respondents' Pittsburgh prices are f. o. b. the mill and they are the same f. o. b. the mill to all customers.

(v) *The delivered price restrains competition.*—Under the Pittsburgh Plus system, the steel producers sell their products at delivered

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prices and contract for the sale of and invoice said products at delivered prices. The customers do not know how much they are paying for steel and how much for freight. There can be no free competition among the buyers of steel until they know how much they and their competitors are charged for steel at the mill door. Under the Pittsburgh Plus system, they only know how much the delivered price is, but do not know what part of that delivered price is steel and what part is freight. Under the practice of quoting and selling f. o. b. the mill, all the customers of the mill know what their competitors are paying for steel at the mill and they would not permit discriminations such as exist under the Pittsburgh Plus system. Thus, have the economists testified, and thus, has steel history worked out as clearly shown by other evidence in the record. Each time respondents' mills have charged f. o. b. mill prices to their customers, those prices from each mill were the same to all the customers of each such mill.

(w) *Competition is restrained by the Pittsburgh Plus system.*—The economists have explained the principle of indifference which must operate when there is free competition. The principle of indifference so acts that the seller is perfectly indifferent to what buyer he sells his steel at a given price. Under the Pittsburgh Plus system the seller is not indifferent to what buyer he sells his steel. The principle of indifference is not operating; there can not therefore be free competition. The seller is not willing to sell to all who apply for his steel at a given price. He demands to know to what city the buyer expects to send his steel before he will name his price. His price varies according to the buyer's destination. The Chicago mill will not sell its steel f. o. b. the mill to a Chicago customer at the same price it sells that steel to a St. Louis customer. It names a price to the St. Louis customer which nets it less than the price it names to the Chicago customer who is located at its very door. Under the mill base system, the Chicago and St. Louis customers get exactly the same price, f. o. b. Chicago. Under the Pittsburgh Plus system, the St. Louis customer gets a price f. o. b. Pittsburgh plus imaginary freight to St. Louis, and the Chicago customer gets the same Pittsburgh price plus imaginary freight to Chicago. In neither case does the buyer know how much is charged for steel and how much for actual freight. The buyers are not allowed to deal in steel at the mill door. The discriminations among them are concealed. Under the mill base system such discriminations are immediately disclosed, and the buyers would not tolerate them and hence they could not exist. Such is the testimony of the economists and such is steel history as conclusively shown by other evidence in the case. In all instances

where respondents charge mill base prices, those prices are uniform to customers of the same mill.

(x) *Supply and demand.*—There is no free operation of the law of supply and demand under the Pittsburgh Plus system. Under the Pittsburgh Plus system, the natural territory of the Chicago district mills is a small restricted territory which includes the city of Chicago and portions of a few middle west and Rocky Mountain States, as shown on Commission's Exhibit 6893. The consumption of steel in this natural distributing territory, except in Chicago, is small. In this territory, the Chicago mills receive their highest net return under the Pittsburgh Plus system. They allow Pittsburgh and other eastern mills to share this territory with them, even though they produce much more than is necessary to supply the demand in it. They are consequently forced to, and they do, either curtail their production or "dump" their surplus material in territory where they do not get this highest net return. Respondent, Illinois Steel Company, dumps its surplus, amounting to approximately 50 per cent of its entire production of the said products in the terraced territory where it receives the terraced prices. This dumping is analogous to dumping into foreign countries by domestic concerns for the purpose of getting rid of a surplus at lower prices and thus keeping up the domestic prices. Thus the Chicago mills get rid of their surpluses at lower prices and thereby keep up their prices to their Chicago customers. When "dumping" occurs, it indicates there is a surplus. Other Chicago mills and other mills outside of Pittsburgh dump to a very large extent. Respondents' Chicago mills also dump a vast tonnage into foreign countries where as the evidence shows they generally receive substantially lower prices than in the United States. Such is the situation under the Pittsburgh Plus system. Indeed, as all the economists testified, it is apparent that the Pittsburgh Plus system could continue even though Pittsburgh producers ceased to produce steel. All the mills outside of Pittsburgh could continue dumping their surpluses (in the absence of price competition) as they are doing to-day, and thus hold up their Pittsburgh Plus prices at Chicago and everywhere else. The amount of dumping to be done by the mills outside of Pittsburgh and the amount of curtailment of operation depend of course on the price of steel; the higher the price, the more dumping and the less curtailment, and vice versa, as the record shows. The Pittsburgh Plus system causes a greater tonnage of steel products to be shipped by eastern mills into the West than by western mills into the East because of the fact that the market of the Pittsburgh mills is the entire country, including the West,

while the western mills can not go into the East without taking lower and lower prices the further east they go.

(y) By contrasting this situation to that which exists under a mill base system, where price competition prevails, will perhaps illustrate best the difference between a restraint of price competition under the Pittsburgh Plus system and free price competition under a mill base system.

(z) Under free competition, the Chicago mills would not share this high net return territory with the Pittsburgh and other eastern mills. They would keep this territory for themselves. As soon as they produced more than enough steel to satisfy the demands of that territory, they would lower their price to all their customers in order to keep distant mills out, and the more they lowered their price the more would they expand their territory. When they had lowered their price to the same level as the price of their competitors they would push their competitors to a line half way between their plants and their competitors' plants. (See Commission's Exhibit 6893, which shows the vastly increased territory of the Chicago mills with the complete elimination of Pittsburgh Plus.) As their cost of production became lower than that of their competitors, they would naturally extend their territory beyond the half way line and eventually, if their costs were sufficiently low, they would wipe their competitors off the map. All of their prices would be f. o. b. the mill and their prices would be the same, f. o. b. the mill, to all customers.

(z-1) Now to go back to the Pittsburgh Plus system: Instead of cutting their prices to shut their competitors out of their choicest Chicago territory, respondents allow their eastern competitors to share that territory, and they in turn dump their surpluses from their Chicago mills into their competitors' territory. They could not afford to do this unless they knew exactly what they were going to get for their steel in their competitors' territory, for they would not be able to determine whether the high prices in their Chicago territory and the lower prices in their competitors' territory would net them as much or more than if they sold all their steel f. o. b. the mill, and kept their competitors out of their territory. Under the Pittsburgh Plus system they are advised just what prices they will get in their competitors' territory because of the fact that their competitors all sell at the same Pittsburgh price plus the imaginary freight from Pittsburgh to destination. The moment, however, that their competitors do not carry out their part of the system by maintaining these Pittsburgh Plus prices, then the Chicago producers can no longer afford to share their choicest territory with their eastern competitors and at the same time to take cut prices for their

surpluses dumped into their competitors' territory. Therefore, when their eastern competitors do not maintain prices in the eastern territory, or in other words, when there is price competition, the Chicago mills protect themselves by putting on a mill base price at Chicago which is lower than the Pittsburgh Plus price, and thus effectively push their competitors out of their best territory. Thus have the economists testified, and thus has steel history borne them out as is clearly shown by other evidence in the case. In 1921, an eastern competitor of the Chicago mills in the sale of plates, bars and shapes started price competition. The western mills, as a result, put on Chicago base prices, and Chicago base prices still remain on those products. That competitor, however, did not manufacture sheets nor tin plate nor wire nor wire products, and price competition was not started on those articles and the Chicago base was not put on those products by the respondents nor their competitors, and the Pittsburgh Plus system still prevails in the Chicago district as well as everywhere else on those products. The Pittsburgh Plus system still prevails on plates, bars and shapes outside of the Chicago district, except to a limited extent in the Birmingham district, as will hereafter be developed.

(2-2) The Chicago mills produce much more than their territory under the Pittsburgh Plus system demands. There is no shortage in the Chicago territory which warrants Pittsburgh Plus prices in that section, nor are such Pittsburgh Plus prices determined by the free operation of the law of supply and demand.

(2-3) Through a period of years, a number of depressions in the steel industry forced the shutting down of the Chicago mills as well as the mills in other sections. This lack of demand and the consequent surplus of capacity did not affect the Pittsburgh Plus system, however, unless and until price competition happened to be started during any such depressed period. Periods when the mills outside of Pittsburgh were closed because of a lack of business did not cause the steel producers to abandon the Pittsburgh Plus practice. Price competition alone did that. The Pittsburgh Plus system prevailed alike in times of great demand and no demand at all, unless some mills started price cutting; if there was no price cutting, the Pittsburgh Plus system continued. Thus on sheets and tin plate and wire and wire products and plates, shapes and bars in 1919, when the year was a "terrible" one, as a witness for the respondents described it, Pittsburgh Plus continued throughout that period. In 1921, which was one of the worst years in steel history, Pittsburgh Plus prices prevailed on sheets, tin plate, wire and wire products throughout the country, though the surplus of sheets at one of the Chicago mills was so great that it sent large amounts to Japan at prices \$13

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per ton lower than it sold these same sheets to its customers in the United States. During such period all steel producers still maintained their Pittsburgh Plus prices in Chicago and elsewhere. Such prices were and are not determined by the free operation of supply and demand.

(2-4) Commission's Exhibit 6982 shows that during the years 1907 to 1921, the production of rolled steel products by the western mills fell and rose at the same times and in the same percentages with that of the eastern mills. In other words, when the Chicago mills were crowded for business, so were the Pittsburgh mills, and when the Pittsburgh mills slowed down because of a lack of business, so did the western mills. If the Chicago mills could not produce sufficient steel to care for western needs, their production would naturally not fall and rise substantially simultaneously with that of the eastern mills. This exhibit was prepared from figures furnished by respondents. Western mills are not more crowded at any time than the eastern mills as has been shown by the testimony of witnesses introduced both by the respondents and by the Commission. A shortage does not exist in the Chicago district, unless a similar shortage exists in the Pittsburgh district. The Chicago district is not dependent on the Pittsburgh district for any of said rolled steel products.

(2-5) The respondent, Carnegie Steel Company, does not sell in the territory of the respondent, Illinois Steel Company, except as to such products as are not manufactured by the western mills. If there existed a shortage in the Chicago territory and a surplus in the Pittsburgh district, it would naturally be expected that the respondent, Carnegie Steel Company, would assist in supplying that shortage, for it would receive just as much when selling its steel in the Chicago district as in Pittsburgh under the Pittsburgh Plus system. On the contrary, we find that the respondents, Illinois and Minnesota Steel companies, selling a very considerable portion of their products in foreign countries and in territory of their eastern competitors, where prices are lower than in their natural territory, which would naturally not be expected if there was a shortage in their own territories.

(2-6) Indeed, as respondents' own witness, a salesman who sold steel in the St. Louis district for both the respondents, Carnegie Steel Company and Illinois Steel Company, testified—in determining which of respondents was to fill an order he received—time of delivery was the thing which determined the placing of the order, and in the 12 years during which he served both companies in that district, there was not a single instance where the respondent, Carnegie Steel

Company had sold steel in that district because the respondent, Illinois Steel Company, had been unable to furnish it.

(2-7) No shortage exists at Chicago with a corresponding surplus at Pittsburgh.

(2-8) The respondent, Minnesota Steel Company, produces at Duluth a tonnage of steel bars that is overwhelmingly greater than the demand for those bars in that company's natural territory. Indeed, the mills of that company charged Pittsburgh Plus prices right up to the very day in February, 1921, when they had to close down because of no demand for their products. That company likewise disposes of its surplus product by dumping into territory where its net returns are very much less than its natural distributing territory under the Plus system.

(2-9) The capacity of the steel mills within a radius of 60 miles of Pittsburgh increased from 1908 to 1923, 6,000,000 tons, while the capacity of the steel mills within the same radius of Chicago increased only 3,000,000 tons. In other words, the mills in the Pittsburgh district increased their capacity twice as much as those in the Chicago district, notwithstanding the fact that the respondents' cost of production of steel in the Pittsburgh district is 20 per cent higher than in the Chicago district. As shown by these figures the shortage of steel production has been in the Pittsburgh district and the surplus, if any, has been in the Chicago district. Furthermore, the capacity of all the steel mills in the territory east of Chicago increased nearly 12,900,000 tons during the same period, while the capacity of all the steel mills in the territory west of, but including Chicago, increased but 4,607,000 tons. The capacity of the eastern mills, therefore, increased nearly three times as much as the western mills. As shown by these figures the shortage of steel production has been in the East, and the surplus, if any, has been in the West.

(2-10) Respondents introduced in evidence some figures comparing the percentages of increase in capacity of certain eastern mills with that of certain western mills from 1908 to 1923. Such figures are of little value inasmuch as the base figures from which the percentages are figured are greatly different.

(2-11) During the war Pittsburgh Plus was discontinued at Chicago on plates, shapes and bars, but just before the close of the war, it was put back at the suggestion of Judge Gary and one or two other steel producers, though at that time the Chicago mills were shipping practically 70 per cent of their products to the Atlantic coast. There was no question of a western shortage here. On the contrary, the western mills shipped most of their products East, yet Judge Gary and his associates were able to get the Pittsburgh Plus system rein-

per ton lower than it sold these same sheets to its customers in the United States. During such period all steel producers still maintained their Pittsburgh Plus prices in Chicago and elsewhere. Such prices were and are not determined by the free operation of supply and demand.

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(2-9) The capacity of the steel mills within a radius of 60 miles of Pittsburgh increased from 1908 to 1923, 6,000,000 tons, while the capacity of the steel mills within the same radius of Chicago increased only 3,000,000 tons. In other words, the mills in the Pittsburgh district increased their capacity twice as much as those in the Chicago district, notwithstanding the fact that the respondents' cost of production of steel in the Pittsburgh district is 20 per cent higher than in the Chicago district. As shown by these figures the shortage of steel production has been in the Pittsburgh district and the surplus, if any, has been in the Chicago district. Furthermore, the capacity of all the steel mills in the territory east of Chicago increased nearly 12,900,000 tons during the same period, while the capacity of all the steel mills in the territory west of, but including Chicago, increased but 4,607,000 tons. The capacity of the eastern mills, therefore, increased nearly three times as much as the western mills. As shown by these figures the shortage of steel production has been in the East, and the surplus, if any, has been in the West.

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stated in the Chicago district. (Immediately, all of the contract buyers of the said rolled steel products from respondents, Illinois Steel Company and Minnesota Steel Company had their contract prices automatically increased by the amount of Pittsburgh Plus.)

(2-12) The demand on the Chicago mills was never greater than in 1922 and 1923. As one of the respondents' witnesses, the vice-president of the Midvale Steel & Ordnance Company up to the time of the absorption of that company by the Bethlehem Steel Company, testified, 1922 was the only year when Chicago buyers had to go the Pittsburgh district to buy steel. Yet in this year, the Chicago mills did not charge Pittsburgh Plus prices on plates, bars and shapes, nor had they reinstated such prices on such products at the time the taking of testimony in this case had been completed.

(2-13) As one of respondents' own witnesses admitted, respondent's Gary mills are large surplus producers of blue annealed sheets. Such sheets are not made by respondents in the East in sufficient quantities to supply the Detroit and other eastern markets. These sheets produced at the Gary, Indiana, mills therefore are sent East to supply the shortage. Yet a Gary price plus actual freight is not charged on these sheets; Pittsburgh Plus is charged. Sheets are not even manufactured in the city of Pittsburgh. More sheets are manufactured in Ohio than Pennsylvania, yet prices are always Pittsburgh Plus.

(2-14) As Judge Gary testified, the law of supply and demand has not much influence on the establishing of the steel-basing price. Pittsburgh Plus prices are not determined by the free operation of supply and demand. This was borne out by Judge Gary in his testimony when he expressly stated that he had never claimed that the Pittsburgh Plus prices of the Chicago mills were due to the fact that those mills could not take care of the demand. On the contrary, as he repeatedly testified, the respondents' Pittsburgh Plus prices were charged because of the additional revenue they gave the respondents, and they would continue to be so charged until competition forced their elimination. As all of the economists likewise testified, the Pittsburgh Plus system could not coexist with price competition.

(2-15) The Pittsburgh Plus prices, as hereinabove shown, were enforced regardless of supply and demand conditions, as testified to by the vice president of respondent, American Steel & Wire Company. Price competition has been the only thing which has caused its temporary elimination during the brief intervals when it has been eliminated.

(2-16) Respondents introduced testimony purporting to show that practices similar to the Pittsburgh Plus system were used in other industries, but in none of them was the price system similar to that

of the Pittsburgh Plus system, where a product was sold on one basing point and the customers all over the country had to pay imaginary freight. As one of respondents' witnesses, a hay dealer, testified, he would have been put in jail had he attempted to charge his customers more than the actual freight on the hay he sold.

(2-17) There is nothing in the evidence which supports the contention that Pittsburgh Plus prices are made in good faith to meet competition, or are determined by the law of supply and demand. As all the economists have testified, the Pittsburgh Plus system of terraced prices is grotesque.

(2-18) Indeed, as Judge Gary has testified, the steel producers adopted the Pittsburgh basing point and the "one basing price" for "the 'orderly' conduct of the business," and as the former vice president of the respondent, Carnegie Steel Company, testified, the steel producers adopted the system to secure uniform prices among the steel producers, and to secure additional profits by way of the higher prices yielded under the Pittsburgh Plus system.

(2-19) As evidencing the arbitrary character of the Pittsburgh Plus prices, it is well to point out that pig iron, out of which steel is made, is not sold on the Pittsburgh Plus system, but is sold f. o. b. the various producing mills, though pig iron is produced in substantially the same percentages in the different states as steel. Judge Gary, as one of the steel advisers to the War Industries Board, suggested during the war that pig iron be put upon a single basing point as in the case of steel, but his suggestion was not adopted. Rails are sold by the steel mills on a strictly f. o. b. mill base. The Franklin Steel Company sells its concrete bars made of rerolled steel on a mill base and finds the plan works very satisfactorily.

(2-20) No interruption to business should be anticipated by the elimination of the Pittsburgh Plus system, for it was eliminated in the Chicago district in 1921 on plates, bars, and shapes. It was eliminated for a period of nine months during the war. It was eliminated in 1908 on plates, bars, and shapes at Birmingham. No interruption to business was noted in any of the cases where it was eliminated.

(2-21) Inasmuch as the Pittsburgh Plus system restrains price competition among the steel producers, as already shown, the figures of supply and demand introduced herein by respondents are valueless, for whatever results those figures show, they are due to the Pittsburgh Plus practice. In other words, as the economists all testified, the conditions of supply and demand are usually put forward as the justification for a certain action, when as a matter of fact they are the result of that action. And the respondents in this

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case have attempted to set up the results of the Pittsburgh Plus practice as a justification for the practice. There are a number of other fatal objections to the figures submitted by respondents, but for the reason just given it is not necessary to consider the other objections here.

PAR. 15. *Respondents' practice of quoting and selling said steel products at Pittsburgh Plus prices and delivered prices as hereinabove set forth constitutes an unfair method of competition.*—Respondents' practice of quoting and selling their said steel products at Pittsburgh Plus prices and at delivered prices without disclosing to their customers how much they are charging for steel and how much for actual freight, is unfair to such customers and constitutes an unfair method of competition.

PAR. 16. *Respondents' practice of quoting and selling said steel products upon a basing point other than that of the producing or shipping point, constitutes an unfair method of competition.*

Respondents' systematic practice of quoting and selling said rolled steel products upon a basing point other than that of the producing or shipping point, is unfair to their customers who are discriminated against by such practice, and such practice constitutes an unfair method of competition.

PAR. 17. *Respondents' discriminations made under the Pittsburgh Plus system are not made for any of the purposes permitted by the Clayton Act.*—The discriminations made by respondents under the Pittsburgh Plus system in their prices covering said rolled steel products among their various customers as hereinabove mentioned, were and are not made because of differences in the grade, quality, or quantity of said rolled steel products; neither were or are they such discriminations as make only due allowances for differences in the cost of selling or transportation. Respondents' answer admits all of the foregoing except that they aver that such discriminations are made in good faith on account of the quantities furnished or to meet competition in the different localities and communities. However, no evidence was introduced by them to show that their discriminations under the Pittsburgh Plus system were in any wise due to quantities furnished, and as the evidence shows, such was not the case. Their findings have already pointed out that their discriminatory prices were and are not made in good faith to meet competition in the different localities and communities.

PAR. 18. *The Birmingham differential.*—On plates, bars and shapes sold by the respondent, Tennessee Coal, Iron & Railroad Company, hereinafter referred to as the "Tennessee Company," from its plants in or near the city of Birmingham, Ala., respondents charge different prices than those charged by their other mills

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throughout the country. Except as hereinafter mentioned, they charge their customers \$5 per ton above the Pittsburgh base price, which price is made f. o. b. Birmingham. An exception to this differential price practice is made in cases where the delivered price under the Birmingham differential exceeds at any point the delivered price under the Pittsburgh Plus system. In such cases, respondents adopt the Pittsburgh Plus system in selling their said rolled steel products.

(a) Prior and for some time subsequent to the acquisition of the said Tennessee Company by respondent, United States Steel Corporation in 1907, the said Tennessee Company sold its said products under the Pittsburgh Plus system. The customers of that company rebelled at paying such prices, however, and many of them refused to buy their requirements from said company, but bought the same from northern mills and paid to the railroad companies for actual freight what they would have had to pay the Tennessee Company by way of imaginary freight. While they saved nothing in so doing, they forced consideration of their complaints by the officials of the respondent companies. The Tennessee Company's sales manager was very much in favor of the elimination of the Pittsburgh Plus system on the Tennessee Company's products, and unsuccessfully appealed to Judge Gary first and later to W. E. Corey, chairman and president, respectively, of the respondent, Steel Corporation, for the abandonment of the practice, saying the Tennessee Company could not hope to expand its business unless the Pittsburgh Plus price system was abandoned. Yielding to the pressure brought by the customers finally, the Tennessee Company was permitted by respondent, Steel Corporation, to disregard the Pittsburgh Plus system in the sale of its products in certain territory. In lieu of Pittsburgh Plus prices, the company in about the year 1908 made a price f. o. b. Birmingham which was \$3 per ton higher than respondents' Pittsburgh base price; this differential was increased in 1920 to \$5 per ton above the Pittsburgh price where it still remains. The increase was made contemporaneously with a general increase in freight rates made at the time. The Birmingham differential applies in a limited territory, and the Pittsburgh Plus prices prevail in the balance of said respondents' selling territory.

(b) The respondent, American Steel & Wire Company, likewise has plants in or near Birmingham for the manufacture of its wire and wire products. That company, however, still charges Pittsburgh Plus on its products. That means that consumers in Birmingham pay \$15.30 per ton more for such products than the consumers in Pittsburgh. The wire users in the South are very scarce, for as we have shown, it would be impossible for them to compete,

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except in a very restricted territory, with the respondent, American Steel & Wire Company, in the manufacture and sale of the finished products made by that company under such a handicap. No concerted action by the southern wire users therefore could have much effect, as their purchasing power would be very limited. The respondent, American Steel & Wire Company, through its vice president and general manager of sales, stated in 1908, that if that company put in wire mills at Birmingham, it was not his idea that they should sell on a Birmingham basis, as this might result in giving the southern manufacturers an advantage over northern manufacturers at some of the northern points, "which of course, would not be advisable." And the said respondent company, following this advice, put on Pittsburgh Plus prices on its products at the time it built its mills at Birmingham, and has adhered to its Pittsburgh Plus prices ever since. The above statement of the respondents' wire company representatives illustrates the arbitrary nature and reason for Pittsburgh Plus prices, even when such prices run \$15.30 per ton higher than their Pittsburgh prices. It must not be forgotten that the cost of producing steel in Birmingham, as shown by the evidence in the record, is much less than at Pittsburgh, yet the selling price of wire and wire products is amazingly more.

PAR. 19. *Respondents' Birmingham differential prices on plates, shapes, and bars substantially lessen competition among the steel users.*—As a result of the said discriminations against the customers of the respondent, Tennessee Company, such customers are very seriously handicapped. The effects of the discrimination are felt quite as severely as in the case of the western steel users for the reason that the consuming markets in the South are very limited, and were it not for the differential, these markets would be very greatly enlarged into large consuming territories. The freight rates are lower in the South than elsewhere. The abolition of the differential therefore would enable the southern steel users to use the amount of the differential in carrying their products under these cheaper freight rates to distant markets which they can not possibly reach after paying the differential in competition with their northern competitors who do not have to pay it. These distant markets in most cases are better markets than the market to which these southern steel users are confined because of the differential.

(a) As the president of respondent Steel Corporation testified in 1913, a discrimination of 11 cents per hundred weight, or \$2.20 per ton, against a manufacturer at Buffalo would confine that manufacturer to his home town; he could not distribute his products outside of that town as against the competition of his competitors in favor of whom the discrimination operated. The Birmingham ter-

ritory steel users who are discriminated against under the Birmingham differential to the extent of 25 cents per hundred pounds, or \$5 per ton, are manifestly very seriously hampered. Large numbers and tiers of States are taken away from the distributing territory of the southern steel users, who otherwise would be able to market their products in such territory if the differential were removed. This only assumes the removal of the differential. It does not even assume a lower base price at Birmingham than at Pittsburgh, which might be expected because the costs of production are so much lower at Birmingham than at Pittsburgh, as heretofore mentioned. If the base price at Birmingham were lower than the Pittsburgh base price by the extent of the lesser cost of production at Birmingham, the southern steel user's territory would be extended very much beyond the halfway point between Birmingham and Pittsburgh, whereas, now the line is drawn a few miles north of the plants of the southern steel users. With the differential eliminated, the capacity and production of the plants of the southern steel users would be very materially increased. The Birmingham differential amounts to from 4 per cent to 12 per cent of the selling price of the various products manufactured by the southern steel users. All of them complain because of their inability to grow under the handicap; all of them remonstrate because their northern competitors take away a very substantial part of what would be their natural territory if the differential were removed; all of them are bitter because of the restriction caused in their volume of business, the resulting higher overhead cost per unit of product, and the necessity of increasing the price of their products. As in the case of the western steel users, such higher prices cause a further restriction in the volume of business done by them, another resulting higher overhead, and so on, ad infinitum. To recite their troubles under the differential would be to repeat what the Pittsburgh Plus system has done and is doing to the steel users of the West and to the wire users of the South when competing against their competitors to the east and north of them, respectively. New Orleans' steel-using shops are stagnating, whereas, if they were permitted to buy steel without the differential, they would be able to materially increase their business. Chattanooga and Birmingham and other southern steel users want to do larger and more profitable work, but can not secure it as against their competitors favored by the differential system. Their competition in certain lines is destroyed by the differential.

(b) The testimony of a large number of southern witnesses showing a very substantial lessening of their competition in interstate commerce, due to the Birmingham differential prices, and the de-

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struction of their competition in certain products, remains undisputed in the record.

PAR. 20. *Respondents' practice of quoting and selling plates, shapes and bars at Birmingham differential and Pittsburgh Plus prices in the South constitutes an unfair method of competition.*—The system of quoting and selling plates, bars and shapes at Birmingham differential and Pittsburgh Plus prices by the respondent, Tennessee Coal, Iron & Railroad Company, or other respondents, is unfair to respondents' customers who are discriminated against by such practice and such system constitutes an unfair method of competition.

PAR. 21. *Respondents' discriminatory or Birmingham differential prices on plates, bars and shapes substantially lessen competition of their steel customers with respondents.*—As in the case of the Pittsburgh Plus system, the evidence shows that the respondent, United States Steel Corporation, through its subsidiary, the respondent, American Bridge Company, has the same decided advantage in the South when competing with the Bridge company's southern competitors on bridges, buildings, boats and barges that it has in the West. All of the southern competitors of the Bridge company who testified in this case were subjected to disadvantages similar to those under which the western steel users labored, so that it is unnecessary to repeat those disadvantages here. In the case of a Birmingham tank manufacturer, the differential amounted to 12 per cent of his selling price. He, too, found that when his competitor, the respondent, American Bridge Company, wanted a job, it got it. In the case of a \$75,000 job which had been promised this Birmingham competitor, the respondent, American Bridge Company got the job away from him because of an overnight change of specifications in the roofing material which made the job cost less, but which roofing material the Birmingham competitor was not able to purchase from any steel producer, including respondents, but which roofing material the respondent American Bridge Company was able to get.

The advantage which the respondent, American Steel & Wire Company, possesses because of the very high Pittsburgh Plus prices charged by its Birmingham plants to its wire customers, has already been mentioned.

PAR. 22. *Respondents' practice of quoting and selling their plates, bars and shapes at Birmingham differential prices to their customer-competitors constitutes an unfair method of competition.*—The practice of certain respondents of quoting and selling said steel products at Birmingham differential prices to their customers with whom they or other respondents compete, as hereinabove set

forth, is unfair to such customers and gives the respondents an unconscionable advantage over such customer-competitors, and constitutes an unfair method of competition against such customer-competitors.

PAR. 23. *Respondents' Birmingham differential and Pittsburgh Plus combination prices on plates, shapes and bars substantially lessen competition among the steel products.*—As has been shown, respondents' southern mills charge the Pittsburgh Plus prices on plates, shapes and bars in certain territory, and the Birmingham differential in territory nearer Birmingham, while they charge Pittsburgh Plus prices on sheets and wire and wire products throughout the southern territory. The findings have covered at great length the methods by which these Pittsburgh Plus prices are made and have shown that such prices inevitably destroy price competition among the steel producers.

PAR. 24. *Respondents' Birmingham differential and Pittsburgh Plus combination prices on plates, shapes and bars adversely affect the public interest.*—The adverse effect of the Pittsburgh Plus system on the public interest has been set forth at length. Similar adverse effect results from the use of the Birmingham differential. The cost of producing steel at Birmingham is approximately 21 per cent less than at Pittsburgh, yet the price at which respondents sell their products at Birmingham is much higher. Indeed, as shown by Commission's Exhibit 6853, the spread between the cost of producing bars and the selling price of bars is only \$2.10 at Pittsburgh, while at Birmingham it is \$8. Respondents impliedly threaten to return to the Pittsburgh Plus system in selling bars, plates and shapes in the Birmingham district by their answer herein which alleges that the Birmingham differential is but a "temporary" concession from the Pittsburgh Plus prices formerly charged. If they do return to the Pittsburgh Plus prices, the spread between the cost and selling prices of bars at Birmingham will be \$16.30 as against \$2.10 at Pittsburgh. Indeed, it must be assumed that this additional price of \$16.20 per ton which the Birmingham public must pay is charged on wire and wire products, for on these products Pittsburgh Plus prices are still charged. The great public interest in a matter where that public is charged a profit at Birmingham which exceeds the profit at Pittsburgh by \$16.20 per ton is manifest.

(a) As in the case of the Pittsburgh Plus prices, the steel producing and the steel consuming industries in the South are greatly hampered by the higher prices charged for steel there as against the prices charged in the North to the Pittsburgh and other eastern consumers. Respondents' answer herein avers that the Birmingham

differential prices on plates, shapes and bars were made in the South in order to furnish an additional market for the company's products by making it possible for the steel users to develop their industries. For the same reason, as the evidence shows, the elimination of this very serious discrimination of \$5 per ton would greatly increase the steel producing industry in the South; the steel-users' industries would increase extensively and intensively—extensively, by annexing much more territory as already shown, and intensively, through the greater use of steel by the lessening of its cost. Northern boiler manufacturers, for instance, get two-thirds of the boiler business in the South because of the Birmingham differential. This increases the demand for steel in the North very materially and to the same extent lessens such demand in the South. At the same time, the plants of the southern steel users are kept working at small capacity, while those of the North have a vast amount of business which would go to southern plants if the differential were removed.

(b) These matters have been brought out before in the case of the Pittsburgh Plus prices. The public, however, is as severely affected by the Birmingham differential prices as it is by the Pittsburgh Plus prices. The Birmingham differential and Pittsburgh Plus prices charged by respondents' southern mills delay and prevent the modernizing of the steel producing plants of respondents' principal competitor in the South and tend to perpetuate the antiquated steel plants of said competitor and resulting higher steel costs to the public.

PAR. 25. *Respondents' discriminatory Birmingham differential and Pittsburgh Plus combination prices on plates, shapes, and bars are not made in good faith to meet competition.*—There is no shortage of steel production of the said products in the South which can be and is supplied by surplus producing mills elsewhere. The steel production in the South is very much greater than the steel consumption in that territory. Respondents' southern mills dump approximately half of their production outside of their highest net return territory, which of itself indicates the tremendous surplus produced by respondents' mills alone in the South. The testimony of a southern competitor of respondents' Birmingham mills, and a witness for respondents, showed that the production of the southern mills was so great that the southern demand did not equal one-third of the production. As the president of the respondent, Tennessee Company, testified in 1913, in the steel dissolution suit already referred to, the greatest disadvantage of the southern mills is the limited consumption in their territory. As in the case of Duluth where the production of steel is overwhelmingly greater than the demand in

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that territory, so in the South is the production overwhelmingly greater than the demand in the natural territory of the southern mills under the Birmingham differential. Respondents arbitrarily limit their territory by the addition of \$5 to their prices over the Pittsburgh prices. They permit other mills to share a great amount of territory in which they would have the advantage if they charged at Birmingham no more than they charge at Pittsburgh. They do just as is done in the case of the Pittsburgh Plus prices. They permit their competitors to share their natural territory, and in so doing they dump their surplus production created by such action into other territory at lower prices, and the public at Birmingham must pay higher prices for its steel because respondents take lower prices in the dumping territory. In this dumping territory, there is the absence of price competition, for this dumping territory is where the Pittsburgh Plus prices prevail. If price competition existed between the southern and northern mills, the southern mills would do as the economists testified they would do and as is done by the western mills when competition appears. They would reduce their base price at Birmingham, making the same base price to all customers of their Birmingham mills. They would consequently enlarge their territory and keep their neighboring competitors out of such enlarged territory just as their neighboring competitors keep them out of the latter's territory. But under the system which prevails, there is an absence of price competition for the same reasons as in the case of the Pittsburgh Plus prices.

(a) The same condition holds true with reference to respondents' Pittsburgh Plus prices on wire and wire products in the South. The evidence shows conclusively a great surplus production of these products in the South. The prices on these products are not made in good faith to meet competition, but as in the case of all other Pittsburgh Plus prices, and as in the case of the Birmingham differential and Pittsburgh Plus combination prices on plates, shapes and bars they are made to restrain price competition and as has been shown, they destroy such competition.

PAR. 26. *Respondents' Birmingham differential and Pittsburgh Plus combination prices are not made for any of the purposes permitted by the Clayton Act.*—As in the case of respondents' Pittsburgh Plus prices, the Tennessee Company's Birmingham differential prices in certain territory and its Pittsburgh Plus prices in other territory in the South on plates, shapes and bars, were and are not made because of differences in the grade, quality or quantity of said rolled steel products; neither were nor are they such discriminations as make only due allowance for differences in the cost of selling or transportation. Respondents have not contended

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otherwise. And as the findings have shown, such prices are not made in good faith to meet competition. The same holds true with reference to the Pittsburgh Plus prices charged by respondents' Birmingham mills on wire and wire products, as hereinabove noted.

PAR. 27. No findings are made with respect to the charges contained in the complaint herein against the respondents National Tube Company, Clairton Steel Company, Union Steel Company and the Lovain Steel Company for the reason that the record does not contain sufficient evidence with reference to such charges to justify findings.

CONCLUSION.

The respondents, United States Steel Corporation, American Bridge Company, American Sheet & Tin Plate Company, Carnegie Steel Company, American Steel & Wire Company, Illinois Steel Company, Minnesota Steel Company, and Tennessee Coal, Iron & Railroad Company, by reason of the facts set out in the foregoing findings, have been and are—

1. Using unfair methods of competition in commerce, in violation of the provisions contained in Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914; and

2. Discriminating in price between the different purchasers of their plates, shapes, bars, sheets, tin plate, wire and wire products, all of which are rolled steel products, in violation of the provisions contained in Section 2 of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914.

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the second amended complaint of the Commission, the amended answer of respondents, the testimony and documentary evidence offered and received and the arguments of counsel for the respective parties herein, and the Commission having made its findings as to the facts and its conclusions that the respondents have violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," and also the provisions of an Act of Congress approved October 15, 1914, entitled "An Act To supplement existing laws against unlawful restraints and monopolies, and for other purposes," therefore,

It is now ordered, That respondent, United States Steel Corporation—through its respondent subsidiaries, American Bridge Company, American Sheet & Tin Plate Company, Carnegie Steel Company, American Steel & Wire Company, Illinois Steel Company, Minnesota Steel Company and Tennessee Coal, Iron & Railroad Company—and said respondent subsidiaries, and each and all of said respondents, their officers, directors, agents, representatives, and employees, cease and desist—

1. From quoting for sale or selling in the course of interstate commerce their rolled steel products known as plates, bars, structural shapes, sheets, tin plate, wire and wire products at Pittsburgh Plus prices. (By quoting for sale or selling at Pittsburgh Plus prices is meant respondents' systematic practice of quoting and selling said products manufactured at and shipped from points outside of Pittsburgh at their f. o. b. Pittsburgh prices plus amounts equivalent to what the railroad freight charges on such products would be from Pittsburgh to each different destination if such products were actually shipped from Pittsburgh.)

2. From quoting for sale or selling in the course of interstate commerce their said rolled steel products upon any other basing point than that where the products are manufactured or from which they are shipped.

3. From selling or contracting for the sale of or invoicing such steel products in the course of interstate commerce without clearly and distinctly indicating in such sales, or upon such contracts or invoices, how much is charged for such steel products f. o. b. the producing or shipping point, and how much is charged for the actual transportation of said products, if any, from such producing or shipping point to destination.

4. From discriminating in the course of interstate commerce, either directly or indirectly, in price between different purchasers of their rolled steel products known as plates, bars, structural shapes, sheets, tin plate, wire and wire products sold for use, consumption or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, where the effect of such discrimination may be to substantially lessen competition in any line of interstate commerce, including competition among the steel producers, or steel users, or both; provided, however, that nothing herein contained shall prevent discrimination in price between purchasers of said products on account of differences in the grade, quality or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in

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otherwise. And as the findings have shown, such prices are not made in good faith to meet competition. The same holds true with reference to the Pittsburgh Plus prices charged by respondents' Birmingham mills on wire and wire products, as hereinabove noted.

PAR. 27. No findings are made with respect to the charges contained in the complaint herein against the respondents National Tube Company, Clairton Steel Company, Union Steel Company and the Lovain Steel Company for the reason that the record does not contain sufficient evidence with reference to such charges to justify findings.

CONCLUSION.

The respondents, United States Steel Corporation, American Bridge Company, American Sheet & Tin Plate Company, Carnegie Steel Company, American Steel & Wire Company, Illinois Steel Company, Minnesota Steel Company, and Tennessee Coal, Iron & Railroad Company, by reason of the facts set out in the foregoing findings, have been and are—

1. Using unfair methods of competition in commerce, in violation of the provisions contained in Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914; and

2. Discriminating in price between the different purchasers of their plates, shapes, bars, sheets, tin plate, wire and wire products, all of which are rolled steel products, in violation of the provisions contained in Section 2 of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914.

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This proceeding having been heard by the Federal Trade Commission upon the second amended complaint of the Commission, the amended answer of respondents, the testimony and documentary evidence offered and received and the arguments of counsel for the respective parties herein, and the Commission having made its findings as to the facts and its conclusions that the respondents have violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," and also the provisions of an Act of Congress approved October 15, 1914, entitled "An Act To supplement existing laws against unlawful restraints and monopolies, and for other purposes," therefore,

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Order.

It is now ordered, That respondent, United States Steel Corporation—through its respondent subsidiaries, American Bridge Company, American Sheet & Tin Plate Company, Carnegie Steel Company, American Steel & Wire Company, Illinois Steel Company, Minnesota Steel Company and Tennessee Coal, Iron & Railroad Company—and said respondent subsidiaries, and each and all of said respondents, their officers, directors, agents, representatives, and employees, cease and desist—

1. From quoting for sale or selling in the course of interstate commerce their rolled steel products known as plates, bars, structural shapes, sheets, tin plate, wire and wire products at Pittsburgh Plus prices. (By quoting for sale or selling at Pittsburgh Plus prices is meant respondents' systematic practice of quoting and selling said products manufactured at and shipped from points outside of Pittsburgh at their f. o. b. Pittsburgh prices plus amounts equivalent to what the railroad freight charges on such products would be from Pittsburgh to each different destination if such products were actually shipped from Pittsburgh.)

2. From quoting for sale or selling in the course of interstate commerce their said rolled steel products upon any other basing point than that where the products are manufactured or from which they are shipped.

3. From selling or contracting for the sale of or invoicing such steel products in the course of interstate commerce without clearly and distinctly indicating in such sales, or upon such contracts or invoices, how much is charged for such steel products f. o. b. the producing or shipping point, and how much is charged for the actual transportation of said products, if any, from such producing or shipping point to destination.

4. From discriminating in the course of interstate commerce, either directly or indirectly, in price between different purchasers of their rolled steel products known as plates, bars, structural shapes, sheets, tin plate, wire and wire products sold for use, consumption or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, where the effect of such discrimination may be to substantially lessen competition in any line of interstate commerce, including competition among the steel producers, or steel users, or both; provided, however, that nothing herein contained shall prevent discrimination in price between purchasers of said products on account of differences in the grade, quality or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in

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otherwise. And as the findings have shown, such prices are not made in good faith to meet competition. The same holds true with reference to the Pittsburgh Plus prices charged by respondents' Birmingham mills on wire and wire products, as hereinabove noted.

PAR. 27. No findings are made with respect to the charges contained in the complaint herein against the respondents National Tube Company, Clairton Steel Company, Union Steel Company and the Lovain Steel Company for the reason that the record does not contain sufficient evidence with reference to such charges to justify findings.

CONCLUSION.

The respondents, United States Steel Corporation, American Bridge Company, American Sheet & Tin Plate Company, Carnegie Steel Company, American Steel & Wire Company, Illinois Steel Company, Minnesota Steel Company, and Tennessee Coal, Iron & Railroad Company, by reason of the facts set out in the foregoing findings, have been and are—

1. Using unfair methods of competition in commerce, in violation of the provisions contained in Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914; and

2. Discriminating in price between the different purchasers of their plates, shapes, bars, sheets, tin plate, wire and wire products, all of which are rolled steel products, in violation of the provisions contained in Section 2 of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914.

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This proceeding having been heard by the Federal Trade Commission upon the second amended complaint of the Commission, the amended answer of respondents, the testimony and documentary evidence offered and received and the arguments of counsel for the respective parties herein, and the Commission having made its findings as to the facts and its conclusions that the respondents have violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," and also the provisions of an Act of Congress approved October 15, 1914, entitled "An Act To supplement existing laws against unlawful restraints and monopolies, and for other purposes," therefore,

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Order.

It is now ordered, That respondent, United States Steel Corporation—through its respondent subsidiaries, American Bridge Company, American Sheet & Tin Plate Company, Carnegie Steel Company, American Steel & Wire Company, Illinois Steel Company, Minnesota Steel Company and Tennessee Coal, Iron & Railroad Company—and said respondent subsidiaries, and each and all of said respondents, their officers, directors, agents, representatives, and employees, cease and desist—

1. From quoting for sale or selling in the course of interstate commerce their rolled steel products known as plates, bars, structural shapes, sheets, tin plate, wire and wire products at Pittsburgh Plus prices. (By quoting for sale or selling at Pittsburgh Plus prices is meant respondents' systematic practice of quoting and selling said products manufactured at and shipped from points outside of Pittsburgh at their f. o. b. Pittsburgh prices plus amounts equivalent to what the railroad freight charges on such products would be from Pittsburgh to each different destination if such products were actually shipped from Pittsburgh.)

2. From quoting for sale or selling in the course of interstate commerce their said rolled steel products upon any other basing point than that where the products are manufactured or from which they are shipped.

3. From selling or contracting for the sale of or invoicing such steel products in the course of interstate commerce without clearly and distinctly indicating in such sales, or upon such contracts or invoices, how much is charged for such steel products f. o. b. the producing or shipping point, and how much is charged for the actual transportation of said products, if any, from such producing or shipping point to destination.

4. From discriminating in the course of interstate commerce, either directly or indirectly, in price between different purchasers of their rolled steel products known as plates, bars, structural shapes, sheets, tin plate, wire and wire products sold for use, consumption or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, where the effect of such discrimination may be to substantially lessen competition in any line of interstate commerce, including competition among the steel producers, or steel users, or both; provided, however, that nothing herein contained shall prevent discrimination in price between purchasers of said products on account of differences in the grade, quality or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in

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good faith to meet competition. The use by respondents in the course of such interstate commerce of the system of Pittsburgh Plus prices for their said steel products, manufactured at and shipped from points outside of Pittsburgh—which prices are their f. o. b. Pittsburgh prices plus amounts equivalent to what the railroad freight charges on such products would be from Pittsburgh to each different destination if such products were actually shipped from Pittsburgh—shall be deemed to constitute a violation of this order. The use by respondents in the course of such interstate commerce of any system similar to that of the Pittsburgh Plus system shall likewise be deemed to constitute a violation of this order. The practice by respondents of selling or contracting for the sale of said products in the course of interstate commerce upon any other basing point than that where the products are manufactured or from which they are shipped, shall be deemed to constitute a violation of this order.

It is further ordered, That the said respondents, within sixty days from and after the date of the service upon them of this order, shall file with the Commission a report or reports in writing setting forth in detail the manner and form in which they are complying and have complied with the order to cease and desist hereinabove set forth.

It is further ordered, That the charges in the complaint herein as against the respondents, National Tube Company, Clairton Steel Company, Union Steel Company and The Lorain Steel Company, be, and the same are, hereby dismissed.

Commissioner Gaskill dissenting in attached memorandum.

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Dissent.

Dissent by Commissioner Gaskill.

I find myself unable to concur in the majority conclusion that the powers of the Commission include a remedy for the practices complained of. The significance of the Commission's decision is so important and the implications of the order are so extensive that a statement of the basis of my dissent seems to be justified.

The United States Steel Corporation is a legal entity. It owns a number of manufacturing plants located in various parts of the United States at which it produces, among other steel products, those which are the subjects of the present inquiry, viz, plates, shapes and bars. The policy of the Corporation is to sell plates, shapes and bars only on a delivered basis. These products irrespective of the place of manufacture, are valued as though they were at Pittsburgh, and this uniform valuation of the products of the separate plants constitutes the "Pittsburgh Base."

The corporation does not sell at the Pittsburgh base price. It quotes prices at Pittsburgh base plus freight to the point of consumption. This is "Pittsburgh Plus." The actual selling price, however, involves another element. The mill from which delivery is made invoices the customer at Pittsburgh Plus less the actual freight to the point of consumption. What is added to Pittsburgh base to make the selling price is not the actual transportation charge nor a theoretical freight charge from Pittsburgh to the place of consumption, but is the difference between them.

Plates, shapes and bars are the raw materials of a subsequent industry. With them the fabricator commences. Through its subsidiaries the Steel Corporation is engaged on this plane also. The transfer of raw materials to these units of its organization is not governed by the requirements of Pittsburgh Plus. These fabricating units start with the advantage over their rivals in the elimination of the freight rate from Pittsburgh to the point of fabrication in their favor. Their rivals accumulate an additional freight rate in any eastward movement of finished products, if the point of fabrication be west of Pittsburgh. The subsidiaries of the Steel Corporation have also the advantage in a western movement of finished products in that a single long-haul rate on the fabricated products is almost universally less than the sum of the two short-haul rates required of competitors in bringing in raw materials on Pittsburgh Plus and moving out finished products at the actual rate to the point of consumption.

The argument is made that there are manifestations both in the field of steel production and its fabrication, which indicate the op-

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eration of other than competitive forces and that the impelling cause or the protective agency through which that cause operates, is Pittsburgh Plus. It is contended that—

1. The United States Steel Corporation is the dominant factor in the steel industry of the United States and that through Pittsburgh Plus.

2. Its subsidiary companies enjoy controlling advantages over their competitors in the matter of prime cost of raw materials and delivered cost of finished products.

3. The normal development of the steel industry in respect of location has been retarded and that industry unduly concentrated.

4. The development of a properly disseminated fabricating industry has been very seriously obstructed if not reduced to a permissive basis.

5. The uneven development of the steel industry and that of its fabrication works a grave hardship to many sections of the country.

The evidentiary support of these propositions is not to be lightly disregarded and I am not to be understood as having decided adversely to them. But if we conclude that these propositions are well founded the question yet remains whether these manifestations qualify the forces of causation as unlawful and bring those causes within the scope of the Commission's corrective powers.

The law does not require absolute freedom of competition. Nor does the law enjoin the observance of sound economic principles. The Federal Trade Commission has not been given a mandate to establish any more the one than the other. It has to do solely with the legal concept of competitive requirements however short that may be of the true standard. And if the laws permit the use of unsound economic principles, it seems that this tolerance is the act of the body of citizens themselves and must continue until a clearer understanding is demonstrated in terms of a legislative declaration.

The existence of the Steel Corporation, the scope of its operations, the power which it exerts, its actual or potential influence, has received legal sanction. The necessary consequences of its being and the natural results of its operation, must be accepted also. It may without violation of any law of which I am aware, put the same price on all its products and base this price at one specific place if it so desires. In the sight of the law it is as though there was but one plant and its products. The Pittsburgh base then is the exercise of a privilege which naturally and necessarily follows from the grant of power to combine the ownership of several plants.

As has been pointed out, while the Steel Corporation quotes at Pittsburg plus freight to point of consumption, it does not sell at that price but deducts the actual freight charge involved in the movement. It is argued that this practice is unlawful because (a) a resulting price discrimination which substantially lessens competition in steel fabrication is necessarily involved, which is not justifiable as a difference in transportation cost, and (b) the refusal to sell f. o. b. the mill nearest the point of consumption with or without the actual freight charge results in a suppression of competition both in the production and fabrication of steel and tends to monopoly.

Freight rates unquestionably create an area of preference with relation to a point of production. While this area of preference is extended as several points of production are combined under one ownership, the resulting preference which is lawful in the one instance is not made unlawful by its greater extent in the second instance. What are preferences from one point of view are discriminations to the opposite observer. But it must be obvious that a preference or a discrimination to be unlawful must be something more than the natural and necessary implications of lawful advantage.

It is suggested that the evil lies in the suppression of knowledge of the actual selling price under cover of the Pittsburgh Plus quotation and that if this cover were removed, the discrimination would be apparent. That is to argue that the illegality of the practice arises only with the consciousness of its use. Whereas the practice must be continuously expressing its results even though those affected are ignorant of the cause. And these results speak for themselves.

There is no law of which I am aware which requires a manufacturer to sell f. o. b. if he prefers to sell c. i. f. that is, to sell at the place of manufacture instead of delivering at his customer's warehouse. Or to sell from or at any particular mill. I am unable to find in law a warrant for holding that a delivered price policy is made unlawful because of the method used to calculate the selling price. And the results of this policy seem to me to be such as naturally and necessarily attend the antecedent legalized status. This being so it simply means that these manifestations which are urged as indicative of unlawful action, are outside the law, not that the causes which produce them are unlawful.

That satisfaction of the legal requirements may be deemed to fall short of economic justification does not increase this Commission's powers nor enlarge its duties. Economists of established reputation believe that the selling policy presently under consideration is capable of producing in kind practically all of the effects which this

Dissent.

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eration of other than competitive forces and that the impelling cause or the protective agency through which that cause operates, is Pittsburgh Plus. It is contended that—

1. The United States Steel Corporation is the dominant factor in the steel industry of the United States and that through Pittsburgh Plus.

2. Its subsidiary companies enjoy controlling advantages over their competitors in the matter of prime cost of raw materials and delivered cost of finished products.

3. The normal development of the steel industry in respect of location has been retarded and that industry unduly concentrated.

4. The development of a properly disseminated fabricating industry has been very seriously obstructed if not reduced to a permissive basis.

5. The uneven development of the steel industry and that of its fabrication works a grave hardship to many sections of the country.

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record illustrates. In the present instance it seems these effects are magnified by the dominance and strategic position of the respondent in steel production, by the fact that the product of the steel industry is the raw material of a subsequent industry, and that the respondent is engaged in both phases. Given the necessary quantity values in causation, it seems to be the economist's view that such effects as are here presented are inherent in the economic policy which is being used.

If the applicants' contention is sound there is no effective remedy short of a mill base for each unit of the respondent's organization and either f. o. b. sales or delivered sales from the nearest mill at the f. o. b. price plus actual freight. And it would require the same rule to be applied to transfers of material to subsidiaries as govern sales to independents. Naturally such a rule would have equal application to every other industry in the United States now using the uniform price delivered sales plan in interstate commerce.

I do not believe that this Commission can require the abandonment of the delivered sale price on a single base for the products of several mills under a single ownership, any more than it could require the owner of a single plant to give over the uniform delivered price on its single product. Nor by parity of reasoning could it compel the respondent to treat its units as separate plants and sell f. o. b. each mill. The negative definition of the Commission's jurisdiction in the case of *Warren, Jones and Gratz v. Federal Trade Commission* 253 U. S. 421, seems to preclude such a possibility. This body must take the law as it is received from the hands of Congress and interpreted by the courts for whose supervision Congress made precise provision. The grant of power to this Commission however broad it may be in some aspects, does not extend to the correction of what in its discretion, the Commission may believe to be an economic mistake. If there is to be a remedy of effects whose cause is beyond the law, if there is to be so profound a change in the established business practices as is here contended for, that responsibility lies upon the Congress because it alone has the power so to mould the common concept of public policy.

The suggestion that if this view be applied grave abuses may arise from the mistakes or wrongful exertion by the legislative department of its authority, but intimates that if the legislative power be permitted its full sway within its constitutional sphere harm and wrong will follow and therefore it behooves the judiciary to apply a corrective by exceeding its own authority. But as was pointed out in *Cary v. Curtis* (3 How. 236) and as has been often since emphasized by this court (*McCray v. United States* 195 U. S. 27) the proposition but mistakenly assumes that the courts can alone be safely intrusted with power and that hence it is their duty to unlawfully exercise

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prerogatives which they have no right to exert, upon the assumption that wrong must be done to prevent wrong being accomplished. *Oceanic Navigation Company v. Stranahan*, 214 U. S. 320.

Moreover it seems to me that the effort to apply a remedy through the Federal Trade Commission act confuses the issue. If the economists are right, the requirements of the situation will be met only by a legislative recognition of the necessity for a more exact statement of the scientific relation between business and economics and the declaration of that relation in the form of a law of general application.

For these reasons I am unable to assent to the issue of the proposed order.

Complaint.

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IN THE MATTER OF
DAVID BERNSTEEN AND REPUBLIC PRODUCTS
COMPANY.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 1093—July 24, 1924.

SYLLABUS.

Where a concern acquired through a receiver's sale the right to the trade name or brand "Paramount Pennsylvania Auto Oil," under which there had theretofore been sold an extensively advertised, well and favorably known automobile lubricating oil, together with the business concerned and trade name and good will thereof; and thereafter the former owner of said business, acting in behalf of a corporation managed and controlled by him, used a list of names of former customers turned over to him by said receiver for his use during the period of the receivership, to send to such customers circulars captioned "To Our Old Customers Only," inviting them to purchase an automobile lubricating oil therein designated as "Paramount Pennsylvania Automobile Oil"; with the capacity and tendency to mislead and deceive customers of the old business in reference to the identity or source of the oil so advertised and offered to them, and with the effect of enabling said corporation to sell said Paramount Pennsylvania Automobile Oil as and for the Paramount Pennsylvania Auto Oil of said concern, which was practically forced to discontinue its efforts to sell the same:

Held. That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. O. R. Stites for the Commission.

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that David Bernstein and Republic Products Company, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent Bernstein for some time prior and up to the incorporation of respondent Republic Products Company, as hereinafter set out, was engaged in the business of selling lubricating oils and allied commodities under the trade name and style Great Lakes Refining Company, and was also further engaged in the sale