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THE METAL CULVERT INDUSTRY, ONTARIO AND QUEBEC

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Canada RESTRICTIVE TRADE PRACTICES COMMISSION

**THE METAL CULVERT INDUSTRY
ONTARIO AND QUEBEC**

**Report in the Matter of an Inquiry Relating to
the Production, Manufacture, Sale and
Supply of Corrugated Metal Pipe
and Related Products**

**RTPC No. 52
(Series 1959)**

**Ottawa
1970**

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RESTRICTIVE TRADE PRACTICES COMMISSION

L.-A. Couture, Q.C. Acting Chairman

A.S. Whiteley Member

RESTRICTIVE TRADE PRACTICES COMMISSION

OTTAWA

July 6, 1970.

The Honourable Ron Basford, P.C., M.P.,
Minister of Consumer and Corporate Affairs,
Ottawa, Ontario.

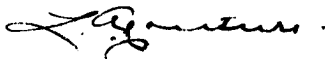
Sir:

I have the honour to transmit to you the French and English texts of a report by the Restrictive Trade Practices Commission entitled "The Metal Culvert Industry - Ontario and Quebec".

This report follows from an inquiry carried out under the Combines Investigation Act relating to the production, manufacture, sale and supply of corrugated metal pipe and related products.

The hearings before the Commission were chaired by Mr. Robert S. MacLellan, Q.C., who resigned effective June 1, 1970. Mr. MacLellan did, however, participate in the drafting of the report and I am authorized to say that he agrees with all the conclusions and recommendations contained in the report.

Yours very truly,



L.-A. Couture, Q.C.
Acting Chairman

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CHAPTER I

THE METAL CULVERT INDUSTRY

1. The Industry and Its Customers

Culverts or drainage pipes may be made from various materials but this inquiry is concerned with those made from galvanized copper-bearing steel. Corrugated metal pipe may be made in a relatively simple manner by riveting sheet steel with corrugations running the length of the pipe. A more mechanized type of production is the machine-made helically formed pipe with corrugations running helically or spirally around the pipe. The machines to produce helically formed pipe require a considerable investment and so far only a few producers have installed such machines. Up to the present riveted pipe has been available in a wider range of gauges and diameters than is the case for helically formed pipe.

Culverts, usually in diameters of 60 to 180 inches, may be made from bolted or structural steel plate. These are pre-formed in the plant and assembled at the construction site.

Metal culverts may be coated with protective materials, such as asphalt or asbestos, to lengthen their useful life.

As corrugated metal pipe is a bulky product to ship (although some nesting of pipes can be made when several sizes are included in the same shipment), transportation charges form a significant part of the final cost to the user. Customers, therefore, look to local sources of supply and imported metal culverts have supplied an insignificant part of the total Canadian demand for corrugated metal pipe.

The demand for metal culverts is a reflection of the level of construction, particularly of highways. Less frequently recurring undertakings, such as railways, airports, exhibition sites, etc., may give rise to substantial demands for metal culverts. The production of corrugated metal pipe may show substantial variations from

one period to another. The following table shows the tonnage and selling value of sheet metal culvert pipe produced in Canada in the period 1956-1967.

Quantity and Selling Value of Sheet
Metal Culvert Pipe Produced
in Canada
1956-1967 (inclusive)

<u>Year</u>	<u>Quantity (tons)</u>	<u>Selling Value at Plant \$'000</u>
1956	57,800	19,188
1957	56,100	18,876
1958	59,600	19,634
1959	66,300	21,296
1960	54,720	17,314
1961	64,130	20,026
1962	66,317	20,490
1963	63,432	19,332
1964	68,804	22,570
1965	93,544	27,770
1966	88,676	27,430
1967	84,901	25,753

Source: D.B.S. Annual Reports - Metal Stamping,
Pressing and Coating Industry, 1965 and 1967.

As already implied, customers for metal culverts consist mainly of public authorities responsible for highway drainage which include the federal and provincial governments, townships and municipalities, and special boards and agencies. The demands by railway companies, builders or operators of airports, construction firms and private individuals make up a significant part of the market.

2. Previous Investigation and Report

This is the second inquiry relating to the metal culvert industry which has been brought before the Commission. The earlier inquiry involved business practices

throughout Canada whereas the present inquiry relates to practices in the Provinces of Ontario and Quebec. A Report Concerning the Manufacture, Distribution and Sale of Metal Culverts and Related Products was submitted by the Commission to the Minister of Justice in July, 1957.

3. Allegations of the Director in
the Present Inquiry

In the Statement of Evidence of the Director in the present inquiry the following allegations are made:

"It is alleged that, between November 1962 and August 1967 both inclusive, the companies and individuals named hereunder were parties to an agreement to prevent, or lessen, unduly, competition in the production, manufacture, sale or supply in the Provinces of Ontario and Quebec of corrugated metal pipe and related products, used for highway drainage purposes, contrary to section 32 of the Combines Investigation Act:

Armco Drainage & Metal Products of
Canada Ltd.,
15 Campbell Road,
Guelph, Ontario.

Canada Culvert Co. Limited,
Box 8, Station "B",
London, Ontario.

Carleton Culvert Company Limited,
Bells Corners,
Ontario.

Corrugated Pipe Company Limited,
182 Perth Street,
Stratford, Ontario.

Fawcett Metal Products Limited,
446 Albert Street,
Waterloo, Ontario.

E.S. Hubbell & Sons Limited,
P.O. Box 118,
Thamesville, Ontario.

Lakehead Culvert Limited,
493 16th Avenue,
Port Arthur, Ontario.

Ontario Culvert and Metal Products
Limited,
180 Columbia Street, West,
Waterloo, Ontario.

The Pedlar People, Limited,
Simcoe Street South,
Oshawa, Ontario.

Quebec Culvert Co. Limited -
La Compagnie de Ponceaux du Quebec
Limitée,
300 Canal Bank Road,
Ville St. Pierre, Quebec.

Robertsteel (Canada) Limited,
411 Parkdale Avenue North,
Hamilton, Ontario.

Rosco Metal Products Ltd.,)
Westeel Products Limited) continuing as
Westeel-Rosco
Limited -
Westeel-Rosco
Limitée,
9th Floor,
Hamilton Building,
Winnipeg, Manitoba.

Westeel-Rosco Limited - Westeel-Rosco
Limitée,
9th Floor, Hamilton Building,
Winnipeg, Manitoba.

Mr. E.L. Campbell, formerly of Armco
Drainage & Metal Products of
Canada Ltd.

Messrs. J.W. Soden and D.L.G. Turvey,
both of Armco Drainage & Metal
Products of Canada Ltd.

Mr. M.A. Buell of Rosco Metal
Products Ltd., continuing as
Westeel-Rosco Limited -
Westeel-Rosco Limitée

Mr. P.F. Fowle of Westeel Products Limited,
continuing as Westeel-Rosco Limited -
Westeel-Rosco Limitée

Mr. A.J. Turney of Robertsteel (Canada)
Limited

Mr. A.D. Curran, formerly of Robertsteel
(Canada) Limited

Mr. J.S. Cameron of The Pedlar People, Limited

Mr. J.E. Baier of Ontario Culvert and
Metal Products Limited

It is further alleged that Mr. R.R. Craig
of Dominion Foundries and Steel, Limited, Hamilton
and Mr. J.D. Allan of The Steel Company of Canada,
Limited, Hamilton, by reason of their participa-
tion in the activities described [in the Statement]
were also parties to the said agreement."

4. Description of Companies Named in Allegations

In the following brief descriptions of the
companies named in the allegations of the Director the
abbreviated name by which the company may be referred to
in this report is shown in brackets after the name of the
company.

Armco Drainage & Metal Products of Canada Ltd.
(Armco), 15 Campbell Road, Guelph, Ontario was incorporated
in 1928 under the laws of the Dominion of Canada. This
company was formerly Canada Ingot Iron Culvert Company
Limited and since 1931 has been a wholly-owned subsidiary
of Armco Steel Corporation, Middletown, Ohio, U.S.A.
Armco is, and has been for a number of years, the largest
manufacturer in Canada of metal culverts and related
products. In addition to the head office and plant in
Guelph, Ontario, the company also has manufacturing plants
in Vancouver, British Columbia; Edmonton, Alberta; Regina,
Saskatchewan; Winnipeg, Manitoba; Charny, Quebec; Sackville,
New Brunswick; and Bishop's Falls, Newfoundland. In
October 1963 Armco acquired 50 per cent ownership in Gulf
Steel Limited in Sydney Mines, Cape Breton, Nova Scotia.
Charlottetown Metal Products Ltd. holds the remaining 50
per cent of the stock in Gulf Steel Limited.

Canada Culvert Co. Limited (Canada Culvert), Box 8, Station "B", London, Ontario was incorporated under the laws of Ontario in 1950. Ownership of the company was acquired by Rosco Metal Products Ltd. on April 29, 1964. Control of Rosco Metal Products Ltd. was acquired by Westeel Products Limited on December 31, 1964, and following the amalgamation of Westeel Products Limited and Rosco Metal Products Ltd., direct control of Canada Culvert Co. Limited was accomplished at the close of business on December 31, 1965, by Westeel-Rosco Limited. Canada Culvert manufactures only standard corrugated metal pipe and pipe arch at its plant in London, Ontario.

Carleton Culvert Company Limited (Carleton Culvert), Bells Corners, Ontario. This company was incorporated under the Ontario Companies Act in October 1960 and commenced operations in December of that year. The major shareholder is the President, Mr. J.E. Baier, who is also President of Ontario Culvert and Metal Products Limited and Treasurer of Quebec Culvert Co. Limited. Carleton Culvert serves the eastern portion of Ontario and the area surrounding Hull, Quebec.

Corrugated Pipe Company Limited (Corrugated Pipe), 182 Perth Street, Stratford, Ontario was incorporated in the Province of Ontario. On January 3, 1956, this company purchased the assets of Corrugated Pipe Company, a private company controlled by Mr. F.C.M. Forster, which had been engaged in the metal culvert business since November 30, 1955. Corrugated Pipe serves all of Ontario from its plant in Stratford, Ontario.

Fawcett Metal Products Limited (Fawcett), 446 Albert Street, Waterloo, Ontario. This company was incorporated December 5, 1962, as a private company under the Corporations Act of Ontario and on February 1, 1963, it succeeded to the business of Fawcett Metal Products, a partnership which had commenced operations on April 18, 1962. Fawcett services southern and mid-northern Ontario from its plant in Waterloo, Ontario.

E.S. Hubbell & Sons Limited (Hubbell), P.O. Box 118, Thamesville, Ontario. This is a small, long-established company which was incorporated in 1952 under the laws of Ontario. It opened a branch office in North Bay, Ontario in 1958 but manufactures culverts only at Thamesville.

Lakehead Culvert Limited (Lakehead Culvert), 493 16th Avenue, Port Arthur (Thunder Bay), Ontario. This company was incorporated on May 21, 1959, under letters patent, Province of Ontario, as a new company by M.F. Mills Supply Limited and H.H. Robertson Company Limited. On October 1, 1963, when Great Lakes Steel Products Limited purchased the assets of M.F. Mills Supply Limited, the shares of Lakehead Culvert Limited were part of these assets. The company's plant is located at the above address and the area serviced is bounded by Kenora to the west and approximately 200 miles east of Port Arthur (Thunder Bay). All sales are made in Ontario. As of February 9, 1967, three of its directors also were officials of Robertsteel (Canada) Limited.

Ontario Culvert and Metal Products Limited (Ontario Culvert), 180 Columbia Street West, Waterloo, Ontario. The company was incorporated on July 7, 1958, by letters patent, Ontario Companies Act. It manufactures and sells a full range of metal culverts from its plant in Waterloo from which it services the whole of Ontario with occasional sales in other parts of Canada. Sales are also made to Carleton Culvert and Quebec Culvert. The President of the company, Mr. J.E. Baier, is also President and major shareholder of Carleton Culvert and Treasurer and major shareholder of Quebec Culvert. In oral evidence Mr. Baier stated that he also was President of Alberta Culvert Company Limited of Edmonton, Alberta, in which he and Ontario Culvert had a financial interest.

The Pedlar People, Limited (Pedlar), Simcoe Street South, Oshawa, Ontario. The company was incorporated in 1911 under the laws of the Province of Ontario and was converted into a private company on July 5, 1949. There have been no mergers or important changes in control since 1956. Pedlar manufactures metal culverts at Oshawa, Ontario; Montreal, Quebec; Winnipeg, Manitoba; Edmonton, Alberta; and Vancouver, British Columbia.

Quebec Culvert Co. Limited - La Compagnie de Ponceaux du Québec Limitée (Quebec Culvert), 300 Canal Bank Road, Ville St. Pierre, Province of Quebec. Mr. J.E. Baier, trading as Quebec Culvert Co. (a sole proprietorship), commenced operations in July 1963 and on March 4, 1964 the company was incorporated under the Quebec Companies Act as Quebec Culvert Co. Limited - La Compagnie de Ponceaux du Québec Limitée. Quebec Culvert sells pipe anywhere in the Province of Quebec and occasionally in other provinces. Mr.

Baier, who is also President of Ontario Culvert and Carleton Culvert, has served as a Director and as Treasurer of the company since March 1964.

Robertsteel (Canada) Limited (Robertsteel), 411 Parkdale Avenue North, Hamilton, Ontario. This company was incorporated January 22, 1949 under the Companies Act (Ontario) under the name of Central Metals Limited and the name was changed to Robertsteel (Canada) Limited by letters patent, April 30, 1951. On January 1, 1957 Robertsteel took over from Robertson-Irwin Limited (an affiliated company) the sale of steel culverts and related products which in the main still were manufactured in Hamilton for Robertsteel by Robertson-Irwin Limited. The manufacture and distribution of highway drainage products started in Edmonton, Alberta under the name of Robertson-Irwin Limited in 1953 and these operations were transferred to Robertsteel (Canada) Limited in 1962. The manufacture and distribution of highway drainage products in Montreal, Quebec, and in Kingston, Ontario, were commenced in 1959. Robertsteel and Robertson-Irwin Limited are wholly-owned subsidiaries of H.H. Robertson Co. Limited, a holding company. When this inquiry started, H.H. Robertson Co. Limited had an interest in Lakehead Culvert Limited, Port Arthur (Thunder Bay), Ontario, which is engaged in the manufacture and sale of corrugated metal pipe. Also, in its Return of Information to the Director, Robertsteel stated that H.H. Robertson Co. Limited owned a 50 per cent interest in C.B.S. Culvert Company Limited, Brandon, Manitoba, and Jefferies Industries Ltd., Lethbridge, Alberta, during the period April 1, 1959 to December 31, 1962. In May 1968 Robertsteel indicated that it "has elected to terminate its activities in the metal culvert industry."

Rosco Metal Products Ltd. (Rosco), 840 Dupont Street, Toronto, Ontario. The name of the company was changed from Rosco Metal and Roofing Products Ltd. by supplementary letters patent dated November 24, 1960. Various provincial companies were owned by Rosco Metal and Roofing Products Ltd. All issued and outstanding shares of Rosco Metal Products Ltd. were acquired by Westeel Products Limited on December 31, 1964.

Westeel Products Limited (Westeel), head office - Winnipeg, Manitoba; executive offices - 1 Atlantic Avenue, Toronto, Ontario. The company was incorporated by letters patent in 1928. It acquired P. Graham Bell Associates Limited on September 11, 1959, Columbia Metal Rolling Mills Limited on May 30, 1960, and Rosco Metal

Products Ltd. on December 31, 1964. In October 1965 the company entered into an agreement with Rosco Metal Products Ltd. for amalgamation and continuation as one company under Section 128A of the Canada Corporations Act, effective December 31, 1965.

Westeel-Rosco Limited - Westeel-Rosco Limitée (Westeel-Rosco), 9th Floor, Hamilton Building, Winnipeg, Manitoba. This company was formed by an amalgamation agreement between Westeel and Rosco, under the Canada Corporations Act, effective December 31, 1965. Its executive offices are located at 1 Atlantic Avenue, Toronto, Ontario. Westeel-Rosco maintains plant, office, branch office and warehouse locations, handling corrugated metal pipe and related products, throughout Canada, from Halifax, Nova Scotia to Vancouver, B.C. The company acquired Prairie Metal Products Ltd. of Regina, Saskatchewan on February 27, 1966.

The evidence establishes that during the period of time named in the Director's allegations the foregoing companies supplied practically the entire market for metal culverts in the Provinces of Ontario and Quebec.

CHAPTER II

STUDIES OF AN INDUSTRY PRICING POLICY

1. The Corrugated Metal Pipe Institute

The Corrugated Metal Pipe Institute secured a charter under letters patent granted by the Secretary of State of Canada on November 10, 1961. By supplementary letters patent the name was changed to Corrugated Steel Pipe Institute on July 8, 1968. As this inquiry relates to the period between November 1962 and August 1967 the name of the Institute at incorporation will be used in this report or the abbreviation C.M.P.I. The stated purposes and objects of C.M.P.I. were as follows:

- "(a) to promote the general use of corrugated metal pipe and drainage structures through product and market research, engineering promotion, advertising and good public relations;
- (b) to provide the corrugated metal pipe industry and the public with authentic data regarding the comparative merits of corrugated metal pipe and drainage structures over other competitive products."

Membership in C.M.P.I. consists of active members who are metal culvert producers and associate members, such as steel and copper producers who are direct or indirect suppliers to the industry. By late 1962 the following companies among those named in the Director's allegations were active members of C.M.P.I. - Armco, Canada Culvert, Fawcett, Lakehead Culvert, Ontario Culvert, Robertsteel, Rosco, Pedlar and Westeel. One metal culvert producer in Western Canada was also an active member. There were three associate members in 1962 - The Steel Company of Canada, Limited, Dominion Foundries and Steel, Limited, and the Algoma Steel Corporation Limited. In subsequent years other producers of metal culverts in Ontario and Quebec and in other provinces became active members of C.M.P.I. and the number of associate members also increased.

The operations of C.M.P.I. were directed by a Board of Directors which met about once a month. Day-to-day operations of C.M.P.I. were placed in the hands of an Engineer-Manager who also had the function of promoting the acceptance and use of corrugated metal pipe. The preparation of a technical manual was undertaken by C.M.P.I. as well as an extensive market study. A wide variety of technical problems have been studied and symposia conducted.

The Director made no allegation against C.M.P.I. and references to it in the present inquiry arise from the fact that the development of an "Open Price Policy" for the sale of metal culverts in Ontario and Quebec appears to have its origin in C.M.P.I.

2. Attention Given to an Open Price Policy in C.M.P.I.

Production of corrugated metal pipe in Canada declined sharply in 1960 from the peak reached in 1959. Production picked up in 1961 and reached the 1959 level in 1962. After a set-back in 1963 production went beyond the 1959 level in 1964 and much beyond in 1965. According to a letter written by Mr. E.L. Campbell, then President of C.M.P.I., on March 22, 1963, the industry was suffering from over-expansion of production facilities. Mr. Campbell quoted D.B.S. figures showing 15 producers with 37 plants in 1957 and 22 producers with 49 plants in 1962. In Mr. Campbell's opinion the result had been pressure on prices and a profit squeeze which had been accentuated by purchasing practices of customers and cut-price quotations by some producers.

Soon after the formation of C.M.P.I., Mr. A.J. Turney of Robertsteel and a Director of C.M.P.I., took an active part in assembling and circulating information about an "Open Price Policy" and recommending its study by a committee of C.M.P.I. In November 1961 Mr. Turney distributed an article on the promotion of an Open Price Policy for the Canadian Steel Warehouse Association. Robertsteel was engaged in the steel warehousing business as well as producing metal culverts.

On December 5, 1962 Mr. Turney wrote to the President of C.M.P.I. and referred to the meeting of the Directors in the previous month when it had been suggested that Mr. Turney prepare background material on an Open Price Policy and distribute it to other Directors. Included

in Mr. Turney's letter are the following paragraphs:

". . .

In the Highway Drainage Industry today, there is no market price. The present indications are pointing to price warfare, without regard to costs or profits, and each producer fighting the other for a supply or volume position, which may result in contraventions of Section 33A.

These are management decisions and, ultimately, management must bear the responsibility for deterioration and losses instead of profits.

Through an Open Price Policy, a Plan has been worked out to enable us, as individual producers and as an industry, to attain a position of legality - a Plan cleared through some of the best legal channels in Canada, with the full knowledge of the Director of Combines' Investigation.

It is my recommendation that, within a reasonable time after having received this letter and attachments, copies of which have been forwarded to each Director, a special meeting be called to discuss it.

". . ."

Mr. J.E. Baier of Ontario Culvert responded to Mr. Turney's letter of December 5, 1962 and accompanying material by writing to the President of C.M.P.I. on February 7, 1963. His letter included the following:

". . .

It is our opinion that, before any problems can be solved or results achieved, the following basic conditions must be established.

Interpretation:

There should be a clear definition, full understanding and mutual agreement as to the ultimate results which can be achieved by an 'Open Price Policy'.

- Intention: There should exist a real individual and collective desire for these clearly defined, understood and agreed results in preference to misconceived, negative, isolationist assumptions of special rights by any company to certain markets or products.
- Integrity: This desire should be accompanied by determination for responsible, honest, effective individual control over temptation to acts of expediency, retaliation or discrimination.
- Initiative: There should be immediate action taken to establish a competent body to begin the difficult process of study, recommendation and execution.

. . ."

A copy of Mr. Baier's letter was sent to each Director of C.M.P.I.

On February 18, 1963 Mr. A.D. Russel, President of Hugh Russel & Sons Limited, a steel warehousing firm, spoke to the annual dinner meeting of C.M.P.I. members. Following the dinner the Directors of C.M.P.I. reconvened a meeting which had been first held earlier in the day and discussed an Open Price Policy. The record of the Directors' meeting contains the following:

"Mention was made of the very interesting address to the members of the Institute by Mr. A.D. Russell [sic] on the subject of the open pricing policy. There was considerable discussion on this subject and it was moved by Mr. P.F. Fowle and seconded by Mr. R.R. Craig, that Mr. A.J. Turney be appointed to form a committee to further explore the application of the open price policy as applied to this industry, seeking whatever legal advice he deemed necessary, and to bring back a report to the Board of Directors of the Institute."

A committee was formed by Mr. Turney but the study and subsequent report are shown in the evidence to have been primarily the work of Mr. Turney alone.

Mr. Turney and the President of C.M.P.I. had a discussion with legal counsel, Mr. P.B.C. Pepper, Q.C., on March 19, 1963. The latter subsequently interviewed the Director of Investigation and Research, Mr. D.H.W. Henry, Q.C., regarding an Open Price Policy in the metal culvert industry, and in a letter dated April 8, 1963 to the President of the Institute reported on his meeting with Mr. Henry. In a report which Mr. Turney subsequently made and which is described below, the following excerpts from Mr. Pepper's letter were included:

- "(1) Mr. Henry, due to his participation in the C.S.W.A. matter, is well acquainted with the 'Open Price Policy'.
- (2) Mr. Henry did not think there was anything wrong whatsoever about members of an Industry individually publishing their prices.
- (3) If the published prices were identical and that result had been arrived at by agreement, either expressed or implied, then the members of the Industry would be guilty of an offence under the Act.
- (4) Mr. Henry stands behind the remarks which are quoted in the introduction of the attached C.S.W.A. pamphlet.
- (5) Mr. Henry makes no comment about the desirability of the 'Open Price Policy'.
- (6) Mr. Henry told Mr. Pepper that he had had recent discussions with Mr. A.D. Russel concerning the Open Price Policy and that a letter from the Director was being formulated setting out the Director's additional views. Mr. Henry advised Mr. Pepper that with the permission of Mr. Russel we might obtain a copy of it. Such permission was kindly granted and the subsequent letter of April 26th is the one enclosed."

Counsel for the C.M.P.I. was present at a meeting of the Board of Directors held on May 2, 1963 when there were discussions on an Open Price Policy. At this meeting when representatives of Canada Culvert, Ontario Culvert and Pedlar were present on invitation the following resolution was adopted unanimously on motion made by Mr. Turney and seconded by Mr. M.A. Buell of Rosco:

"That potential benefits could be derived by individual members of the industry from the adoption of an Open Price Policy."

Mr. Turney was requested to prepare his report on an Open Price Policy for distribution after review by the Board of Directors.

On May 14, 1963 Mr. Turney wrote to the President of C.M.P.I. enclosing a draft report covering the Open Price Policy in relation to the Highway Drainage Industry. Mr. Turney stated in his letter that the draft report had been circulated to all the Directors and to Mr. A.S. Reed of Pedlar and Mr. G. Longo of Ontario Culvert.

On May 23, 1963 Mr. M.A. Buell of Rosco wrote to Mr. Turney. His letter contained the following:

"This is a belated reply to your letter of May 14th requesting comments on your draft letter on the subject of the 'Open Pricing Policy'.

Frankly speaking, developments of that week suggested to me that perhaps your time had been wasted. You will recall that the matter was discussed on May 16th.

A subsequent telephone call from the President of the Institute, and a discussion of some recommended changes to your copy - with which I agreed - did raise a glimmer of hope, and I was pleased to have delivered to me today the President's letter, along with a slightly revised copy of your report and a copy of Mr. Henry's letter to A.D. Russel. I note that Mr. Campbell's letter is addressed to All Members and Prospective Members of Corrugated Metal Pipe Institute.

May I say that you are to be congratulated for the thorough manner in which you have attacked the subject although, at times, I am sure, you may well have been discouraged."

The President of C.M.P.I. sent a copy of Mr. Turney's report, which had been slightly revised after discussion with the Board of Directors, to all members and prospective members of C.M.P.I. under cover of a letter dated May 21, 1963.

In the report Mr. Turney reviewed the development of an Open Price Policy in the Steel Warehouse Industry and statements made in correspondence and speeches of the Director of Investigation and Research about an Open Price Policy in relation to the Combines Investigation Act. Reference was also made in the report to the opinions of counsel on the development of an Open Price Policy in the Metal Culvert Industry. On the question of universality in the Metal Culvert Industry, Mr. Turney's report stated:

"In his report, Mr. Pepper expressed concern as to whether the policy is workable short of every member voluntarily and independently adopting it.

It is my view that it will only achieve its intended purpose if every producer adopts it. It will take courage on the part of those who do, because, at the outset, they would be unmercifully exposed to those who do not."

The following definition of an Open Price Policy is given in the opening portion of Mr. Turney's "Report of Investigation into an Open Price Policy for the Highway Drainage Industry":

"Although most of us know that some companies of the Steel Warehouse Industry adopted an 'Open Price Policy' in 1962, we are not all familiar with the policy or its intended purpose.

For your interest, an 'Open Price Policy' is a policy whereby:-

- (a) A firm openly proclaims its pricing policy in written or printed form;

- (b) The price list contains every provision for completing a transaction, including discounts, terms of credit, f.o.b. point, and delivery costs, etc.;
- (c) The price list is without guise or guile, is a true indication of every consideration and equitable to all customers;
- (d) The price list in printed or written form is made public - to the Public, Press, all levels of Government, and competitors."

Witnesses in the inquiry were asked to define an Open Price Policy from the viewpoint of their own company. The following illustrate some of the definitions which were given. Mr. G. Longo of Ontario Culvert said:

"A. My idea was and still is that a company would compile and publish a price list for all its products for all sections of their market, that this price list would be widely distributed and made known to the general public, to its customers, to government agencies and to competitors, and that others would have the free and independent choice as to whether they would price their products identically or less or more depending upon their own particular situation."

Mr. J.S. Cameron of Pedlar defined an Open Price Policy as:

"A. That you publish the prices, the company publishes the prices at which it is prepared to sell its product. It publishes them freely and it adheres to those prices."

Mr. E.L. Campbell of Armco and President of C.M.P.I. at the time of Mr. Turney's report testified:

"A. Well, as the open price policy was suggested to the Institute initially it was my understanding that the principal feature of an open price policy was the

advertising of published lists and the publishing of price lists by a company taking the position of a leader with a published statement of that company's intention to adhere positively and unequivocally to those prices until such time as that company announced a new change in price lists with a new effective date."

Mr. Campbell gave testimony that he was skeptical about the results of an Open Price Policy from the time he first read the articles about it. Mr. Campbell's attitude was indicated in handwritten notes, found at Robertsteel, which Mr. Campbell identified as his handwriting and as notes of views which he had expressed at an Institute meeting. Mr. Campbell felt his remarks had fallen on deaf ears. Mr. Campbell's notes included the following; the portion in brackets had been struck out by Mr. Campbell:

"... it can hardly be expected to result in industry price stability at profit margins better than 'price-war' conditions, unless all producers independently and voluntarily adopt and follow the basic principles of the policy -- [a rather ideal condition to expect, without persuasion or coercion [sic] from others.]".

Mr. E.L. Campbell of Armco wrote a memorandum on June 18, 1963 to Sales Supervisors of the company about the Open Price Policy. His memorandum included the following:

"In order that you may be completely informed, I enclose copy of the Steel Warehouse Association pamphlet; copy of Mr. Turney's report of investigation; copy of the letter from Mr. Henry, Combines Director; and my covering letter to all members and prospective members of the C.M.P.I. bringing them up-to-date on this subject.

I particularly call your attention to Mr. Henry's letter, and suggest that you read it carefully, particularly the last paragraph on page one, and the second paragraph on page two."

The paragraphs in the letter of the Director of Investigation and Research, referred to in Mr. Campbell's memorandum, are as follows:

"This is perhaps an opportune time to remind you that, in the letter that I wrote you concerning the pamphlet entitled 'Permissible Trade Practice in Conformity with the Combines Investigation Act', the text of which letter is printed in the pamphlet, I made it clear that the comments in my letter were directed to the contents of the pamphlet which I said, subject to certain other comments, does not on its face appear to be in conflict with the Combines Investigation Act. I also made it clear that while the preparation and publication of price lists arrived at by independent decision on the part of each of the suppliers concerned would be unobjectionable, any use of such price lists or other disclosures as part of an express or tacit agreement or understanding among competitors to limit competition would inevitably be cause for an inquiry under the Combines Investigation Act, and I also said that if the industry adopts the principles as stated in the pamphlet, very great caution should be exercised in the way they are administered. The pamphlet itself goes on to caution against use of the price lists as a means for arriving at an agreement or understanding to limit competition in a way prohibited by the Combines Act.

. . . .

The pamphlet that was the subject of our original discussions proceeds on the footing that an open price policy is desirable 'to establish the practice of issuing to the public accurate information as to the prices at which they are prepared to sell.' The accurate and rapid dissemination of factual information contributes to the efficient working of a competitive market place and is unobjectionable. Also unobjectionable is the announced purpose to inform members about the law concerning price discrimination. But it appears to me that the points made in your speech concerning the adoption of a policy of price leadership or conscious parallelism goes far beyond what is contemplated by the pamphlet. It is one thing for such oligopoly characteristics to develop of themselves without collusion; it is quite another matter for members of an industry to make a conscious effort collectively to bring them about."

3. Craig-Allan Survey of the
Metal Culvert Industry

In the description of C.M.P.I., reference was made to the fact that The Steel Company of Canada, Limited (Stelco) and Dominion Foundries and Steel, Limited (Dofasco) have been associate members of the Institute. From November 21, 1962 to December 17, 1965 Mr. J.D. Allan of Stelco was a Director of C.M.P.I. and Mr. R.R. Craig of Dofasco was a Director from May 29, 1962 to February 1, 1965.

In 1963, Mr. Allan was Assistant General Sales Manager of Rolling Mill Products for Stelco and Mr. Craig was Vice-President, Marketing, of Dofasco.

During mid-1963, probably between the latter part of May and the end of July, Messrs. Craig and Allan, either jointly or individually, had discussions with the management of five or six of the leading producers of metal culverts in Ontario. The discussions were usually held during visits by Mr. Craig or Mr. Allan to the producers' offices but it is possible that in the case of one or more metal culvert companies the discussion took place elsewhere.

It is clear that the suggestion for the round of visits was made at a meeting of the Board of Directors of C.M.P.I. Mr. Craig gave the following evidence:

- "Q. You mentioned that you do recall the open price policy being discussed from time to time at Institute meetings?
- A. Yes. When it was initially thought that we should explore it, it was discussed. Then when we had advice from Mr. Pepper it was discussed a couple of times after that.
- Q. What came about as a result of those discussions, if anything?
- A. I think a committee was formed to explore the open price policy, as to how it would work in the drainage industry.
- Q. Did anything happen after that?
- A. Yes, and I am trying to get clear in my mind as to how this worked, but during one

of the meetings it was suggested that someone should visit some of the major manufacturers of drainage products and have a chat with them regarding industry problems, and I think this is how it came about that Mr. Allan of Stelco and myself visited some of --- basically, some of our major customers.

Q. Who was it who made this suggestion?

A. I am not sure whether it would be Mr. Allan and myself, or whether it would be someone else. It would be rather difficult for one manufacturer to go and call on his competitors. I think this would be rather a difficult situation and I think as we were rather outsiders, that it was suggested that we should make the calls.

Q. My question was directed as to who made the suggestion that you should call.

A. I am not sure whether it was Mr. Allan and myself, or someone else.

Q. What was the purpose of those visits?

A. To see what could be done about improving the industry so that it would be more effective.

Q. What was wrong with the industry at this time that needed improving? You are speaking now of the corrugated metal pipe industry?

A. Basically they were doing very little, if any, promotional work, and we were losing out, as I mentioned before, to concrete and aluminum, and other products."

Mr. J.D. Allan of Stelco said in his testimony that the suggestion for himself and Mr. Craig to make an analysis of the problems of the metal culvert industry developed from C.M.P.I.'s difficulty in promoting the use of metal culverts and the question of the industry's ability to foster a long-term promotional program.

In their testimony Messrs. Craig and Allan stated that the principal problems which they discussed in their interviews with the officials of metal culvert manufacturers were the sale of the industry's products at unprofitable prices which made resources unavailable for long-term promotion of metal culvert, the instability of prices, the large amount of excess productive capacity and the alternative manufacturing processes of riveted and spirally produced pipe.

All witnesses who testified about the visits of Messrs. Craig and Allan, including R.R. Craig and J.D. Allan, testified that during the visit to one manufacturer no information was given about what had transpired in the course of the visit to any other manufacturer.

All witnesses also said that the matter of an Open Price Policy, as such, was not discussed during the Craig-Allan visits but the evidence shows that the problem of securing price stability in the industry was the subject of discussion. Mr. Craig's testimony includes the following:

- "Q. . . . I think you indicated earlier that there was some price instability at this time in the corrugated metal pipe industry?
- A. Yes, definitely, and published pricing goes along with price leadership. Someone has to lead in a published price.
- Q. Was there some discussion about [how] price stability could be achieved through price leadership?
- A. With published prices, yes.
- Q. Was this discussion with any particular manufacturer, or was this something that was discussed with all of them?
- A. It was discussed with all of them, yes."

Following their discussions with metal culvert producers Messrs. Craig and Allan prepared a report for C.M.P.I. giving their conclusions and recommendations. The report was unsigned and undated but the evidence indicates that it was distributed to members of C.M.P.I. after September 2, 1963.

Copies of the Craig-Allan report in evidence have an attached notice reading as follows:

"Copies of this report have been sent to each member of the Corrugated Metal Pipe Institute.

It is a review by an impartial source of the market problems presently confronting the producers of corrugated metal pipe in Canada, and it also introduces some recommendations."

Considerable oral evidence about the Craig-Allan report was given by the authors and by the persons they interviewed during their visits. The report is clearly written.

One of the opening paragraphs of the Craig-Allan report reads as follows:

"It must be said at the outset that from all indications, senior management of the main corrugated metal pipe producers are serious about correcting the industry's ills, and only with such an understanding will this analysis and advice mean anything."

In a section of the report entitled "General" the authors point to the degree of over-capacity in the metal culvert industry and stress that price reductions made to secure more business result in the loss of profits and stability and that the remedy lies in published prices which are adhered to:

"General:

(1) There is no doubt that the industry is and will be working for some time at a low percentage of capacity. Best estimates indicate that on the average (discounting peaks) the industry is only operating about 30% of capacity.

(2) The statement made in (1) is the most important factor of this analysis for it must indicate to the managements of each of the corrugated metal pipe companies (hereafter called managements) that price reductions to achieve a greater share of the market are short-lived with the consequence that the overall

industry suffers in profitability and stability. Therefore managements must be dedicated, if they are serious about creating and keeping a sound industry, to achieving their place in the market by means other than the price method (service, quality, etc.)

(3) It is significant, however, that the industry, if it is to stay healthy and keep its capacity from being further inflated, must achieve price stability at levels that will:

- provide adequate profits to share-holders.
- provide adequate profits for product promotion and development.
- provide adequate profits for industry work (CMPI).
- allow the corrugated metal pipe product to compete favourably with similar products made from other materials.
- allow the present capacity of industry to be more fully occupied.

(4) Price stability is synonymous with published pricing, and the latter must be adopted and cherished by this industry. It is the only legal way of communication among members of the industry providing it is done without collusion. Managements must immediately initiate within their own sales organizations the practice of **adhering** to their published prices. Managements must then give urgent consideration and study to their published prices. It should be possible with a series of changes in published prices and appropriate leadership by certain managements relative thereto that proper price levels commensurate with factors outlined in (1) [Clearly intended to be (3).] can be achieved within two to three months."

The Craig-Allan report then goes on to discuss what are regarded as weaknesses in published pricing as currently existing which involved different scales of prices and different classes of customers. The following is contained in this section of the report:

"(5) . . . Base pricing, extras, and discounts should apply across the board. Delivered pricing by area is more stabilizing in this industry than f.o.b. plant pricing. Delivered pricing will bring on individual pressures, but providing there is no proof of collusion in the published delivered prices by the industry, such pressures can be contained. . . ."

The problem of pricing riveted and spiral pipe is mentioned in the following section of the Craig-Allan report:

"(6) New methods of manufacture have recently been reflected into certain published price schedules. Certainly technological changes in culvert producing equipment and culvert design must be fostered by the industry; however, the reflecting of resultant lower costs in the published pricing structure again must be commensurate with the factors outlined in (3)."

A section of the Craig-Allan report deals with the situation in Western Canada and then the following analysis is given of the situation in Ontario which precedes the conclusion:

"Eastern Situation -

The following factors created the present marketing chaos in Ontario:

- (1) Prices to DHO were high enough to attract new capacity.
- (2) Contractor and railway pricing was variable and subject to discrimination charges if challenged by municipalities and DHO.
- (3) Erosion took place in municipality prices to below DHO prices, brought about by desire for a larger share of the market via the price method.
- (4) DHO reaction to the fact they were not buying at lowest price brought about tender calls on all their business.

- (5) Lack of trust and lack of industry thinking made the price lists published over the last year ineffective.

Certainly there seems to be a much better attitude among managements to take corrective action. Ontario Department of Highways seems to be waiting for an industry solution in that the individual tender calls are costly to administer. If the basic philosophy outlined under 'General' can be put into practice there is no doubt the timing is right.

The Quebec and Maritime situation was not covered in the analysis, but no doubt the national policies will govern in these areas. Market promotion by the industry in Quebec is most important.

Conclusion -

The analysis presented above is not new to the managements of corrugated metal pipe companies and may seem a rewriting of what is already known. This may be true, however, the above outline is intended to present terms of reference which must be common to all managements as they conduct their individual company efforts in marketing corrugated metal pipe."

In summary, the Craig-Allan report presented the following conclusions and recommendations:

1. Senior managements of the main metal culvert producers were serious about correcting the industry's ills which were caused by over-capacity and price cutting.
2. The industry's ills could be remedied if each manufacturer immediately initiated within its organization the practice of adhering to published prices.
3. Appropriate leadership by certain companies in making changes in published prices should lead to proper price levels being achieved within two to three months.

4. Different scales of prices to different classes of customers should be replaced by base prices, extras and discounts applying across the board.
5. Delivered pricing by area is more stabilizing in the industry than f.o.b. plant pricing.
6. Lower costs arising from different methods of manufacture should be reflected in published prices in a manner commensurate with overall profitability and use of present capacity in the industry.
7. The "timing is right" for the introduction of an industry solution to the problem of competitive tenders in Ontario.

CHAPTER III

ACCEPTANCE OF AN OPEN PRICE POLICY

1. Practice of Published Prices

The practice of individual metal culvert manufacturers issuing price lists of their products which were distributed to customers is one of long standing. Some of the smaller manufacturers may confine their price lists to the territories in which they do the bulk of their business. Summarizing the situation up to about 1956 the Commission wrote in its earlier report:

"Over the years the manufacturers with which this inquiry is concerned have published price lists which, with very minor exceptions in the case of one manufacturer, contained identical prices for the same type and size of culvert to the same class of customer in the same price area. In the great majority of cases sales have been made at list prices by all companies and departures from list prices have been very much the exception. Some competitive pricing has appeared in the last two or three years prior to the inquiry, particularly in 1955, in submitting bids on calls for tenders. It is not possible from the evidence to determine the amount of the trade in metal culverts which has been affected by this development but it is clear that up to the time of the inquiry the general practice of selling at uniform prices had not been affected to any substantial extent."⁽¹⁾

From the evidence obtained in the present inquiry it appears that after 1956 the practice of publishing price lists was continued in Ontario and Quebec but from time to time changes were made in the sales zones in the two provinces and at one time or another discounts were offered

(1) Report Concerning the Manufacture, Distribution and Sale of Metal Culverts and Related Products. Ottawa, 1957.

to particular classes of customers or for quantity purchases. As has already been indicated for the years 1962 and 1963, published prices were not being fully adhered to so, as Craig and Allan reported, there was considerable instability in prices in Ontario and, perhaps, also in Quebec although the Craig-Allan survey did not include Quebec.

In the period after 1956 some culvert manufacturers provided a discount from list prices in some sales zones for f.o.b. plant pick-ups. The discount was a flat percentage off list prices which did not have a direct relationship to actual transportation costs to any particular destination.

2. Development of an Open Price Policy through Price Leadership

From the evidence which has been reviewed it is apparent that active steps were taken through C.M.P.I. to secure the acceptance of an Open Price Policy on the part of members of C.M.P.I. An Open Price Policy would involve not only the publishing of prices but the adherence by each manufacturer to the prices in its published price list.

It will be recalled that Mr. A.J. Turney who advanced from Executive Vice-President to President of Robertsteel in 1963, was a consistent proponent of an Open Price Policy for the metal culvert industry and prepared studies and reports showing the benefits to the industry if every producer adopted an Open Price Policy.

No single metal culvert manufacturer could implement an Open Price Policy of the nature being discussed in the industry without the immediate adoption of the same policy and the same prices by its competitors. It must, therefore, be considered that Robertsteel was making a trial when it published the price list dated June 3, 1963 which was taken by some other producers as indicating that Robertsteel was prepared to implement an Open Price Policy and it must have been assumed that this was contingent upon parallel action by other manufacturers.

Although figures are not available to show the market position of each producer of metal culverts in the Provinces of Ontario and Quebec the relative positions of firms having their head offices in Ontario in the Canadian market were, as follows, in 1963:

Armco	42.3%
Rosco	14.2
Westeel	12.5
Robertsteel	7.5
Pedlar	7.1
Ontario Culvert	3.5
Hubbell	1.5
Carleton Culvert	1.4
Canada Culvert	1.2
Corrugated Pipe	1.2
Fawcett	.9
Lakehead Culvert	.8

It will be seen from the above tabulation that Robertsteel had 7.5 per cent of the Canadian market in which Armco was by far the largest producer with 42.3 per cent. Robertsteel, therefore, could not expect to exercise leadership in the industry by reason of market position. Whether its action in publishing its prices to be accepted as constituting an Open Price Policy would succeed was dependent upon mutual acceptance by other manufacturers and particularly by Armco.

The June 3, 1963 price list of Robertsteel was not regarded by Armco as an entirely acceptable standard particularly as it appeared to Armco that Robertsteel was not applying an Open Price Policy to all orders over \$10,000. It also appears that Armco wanted to have a flexible policy with respect to some classes of tender business and sales made after negotiation. These and other points were set out in a memorandum dated June 19, 1963 from Mr. D.L.G. Turvey in Guelph to Mr. J.E. Wilson of Armco's Toronto office. The following extracts from Mr. Turvey's memorandum do not include a paragraph dealing with spiral pipe, which will be discussed later:

"Further to our conversations regarding pricing policy in Ontario, and more particularly, to your telex which stated the intended policy line you felt should be taken, I would like to clarify and indicate corrections to our understanding.

I am not averse to the use of the Robertsteel price list as an accepted standard, since there is insufficient variation from our own price list to warrant establishment of any new publication. I feel, however, that their own acceptance of a so-called 'open price policy' is not complete

in that they are virtually stating that they have no price list over \$10,000. In principle, a list price should cover all conditions, and it cannot reasonably be accepted that all volume over \$10,000 will of necessity be tender business.

. . . .

Insofar as D.H.O. [Ontario Department of Highways] tenders are concerned, we should make some effort to secure the larger volume business but support existing list price levels as much as possible by holding as closely as possible to these list prices for smaller volume items. The procedure is one of timing and outguessing competition, if possible, but an across-the-board establishment of a new lower price level is in my view completely undesirable. It will be quickly met I am sure and only serve to further deteriorate published list levels.

Insofar as the municipal and contractor business is concerned, we will have to apply price activity as conditions direct, but I feel it necessary to maintain existing list level and hold it wherever possible. In the municipal market, you imply that the big tender business is now over. This should tend to contribute toward some degree of stabilization since municipal purchasing conceivably will be in relatively small quantities for particular construction projects. The contractor market may continue to be more volatile but since this type of business is one of quotations followed by negotiation, this easily can be kept under some degree of control.

As regards orders over \$10,000, policy-wise our list price is still applicable, although on tender requirements in this range you will have to meet the existing competitive conditions. I do not believe policy-wise, we should give any indication that we agree with this part of Robertson-Irwin's current list."

Ontario Culvert issued a price list dated June 28, 1963 containing the same prices and discounts as in the

Robertsteel list of June 3 but adding a discount of 4 per cent for orders over \$10,000. In a letter dated June 5, 1963 Mr. G. Longo of Ontario Culvert instructed Carleton Culvert that "The enclosed Robertsteel price lists will be used, effective immediately until further notice."

Ontario Culvert apparently followed a policy of notifying competitors when it was not making sales on the basis of its published price lists. A telegram dated July 12, 1963 sent from Ontario Culvert to Canada Culvert read as follows:

"Effectively [sic] Immediately All Our Price Lists
Are Withdrawn and Rescinded"

It was argued by counsel for Ontario Culvert that the telegram might be construed as notice to a customer rather than to a competitor. However, Mr. Longo's testimony makes clear that the notice went to competitors whether it also went to customers or not:

"A. I don't recall, but I would think if I sent a telegram the reason would be that I was going to quote a job at prices different from our latest published price lists.

. . .

A. . . . I would notify all the customers and make it general knowledge that we weren't operating from price lists.

Q. Was that your general practice when you weren't operating from your price lists to notify your competitors that you were not going to do so?

A. I think up to this point that we tried as best we could to operate from a price list.

Q. And when you found you couldn't operate from a price list was it your practice to notify your competitors that you were going to depart from it?

A. Well, it hadn't happened before.

Q. Well, when it did happen was that what you did?

A. That is what we did, yes."

The visits of Messrs. Craig and Allan to metal culvert producers were made in the summer of 1963 and their report was distributed to members of C.M.P.I. in September 1963. The Craig-Allan report stated that metal culvert producers "must" adopt and cherish the practice of published pricing and "must immediately initiate within their own sales organizations the practice of adhering to their published prices." The Craig-Allan report also expressed the opinion that with appropriate leadership and a series of changes in published prices "proper price levels" could be achieved within two to three months.

By November 1963 Robertsteel was prepared to publish prices to which it would adhere and hoped that competitors would publish prices on the same basis. Mr. A.D. Curran, Vice-President and General Manager of Robertsteel, developed the basis for a new price structure for metal culverts. He described the basis in a memorandum to his staff, dated November 15, 1963. In this memorandum Mr. Curran outlined the various factors, such as manufacturing costs, transportation costs included in delivered prices, markup to cover overhead and profit which were applied in arriving at selling prices. The concluding paragraphs of Mr. Curran's memorandum were as follows:

"You will note that I have referred to competitive prices in this memo as though our competitors were quoting prices for their products from a price list known to us. This, of course, is not so. However, I sincerely hope that the bitter price-fighting and resultant lack of profit which has prevailed in our industry will result in all producing firms deciding to pursue open price policies as described by the C.M.P.I. If they do, we will indeed have knowledge of our competitors' prices. Meanwhile, we have endeavoured to anticipate our competitive problems and have developed our prices on a basis which I consider to be logical and, above all, fair to the buyers as well as ourselves.

Our new price lists will become effective December 2, 1963 and will be made available for distribution before that date.

Please note that on and after December 2, 1963, you are not to deviate from the prices and terms of these lists without my prior approval."

On November 27, 1963 Mr. Curran wrote a letter to C.M.P.I. in which he said:

"It has been suggested that adoption of open price policies by members of our industry will have beneficial results. It is my personal opinion that this is not necessarily so. I personally believe that any benefits which may be forthcoming from individual manufacturer's open price policies will only result if selling prices established by each publisher reflect constructive conclusions reached after careful examination of the circumstances which have created the prevalent chaotic conditions.

Just recently, I recorded some thoughts resulting from my own examination and it has occurred to me that my views may be of interest to other members of our Institute. For this reason, I am taking the liberty of attaching, for your perusal, a copy of a paper recording my recent views.

If you feel this may be of interest to the general membership, please feel free to circulate as you may wish."

The attachment referred to by Mr. Curran was entitled "Personal Views of A.D. Curran re Profitability of C.M.P. Industry in Canada". On December 17, 1963 Mr. Curran's views were circulated by C.M.P.I. as a Newsletter. The document, consisting of four pages, outlines Mr. Curran's views as to the factors which should be taken into account in arriving at the selling prices of metal culverts and he described a series of ten steps which he felt should be followed. The document concludes:

"It occurs to me that the missing link in returning orderly marketing to our industry

through the process of individual companies pursuing open price policies is a sound method of determining selling prices which will be satisfactory to the company establishing the price. It also occurs to me that the method I have outlined could provide the missing link. As I see it, if we and all our competitors established our selling prices by this method, we and others would be assured that the lowest price would indeed reflect real value of goods, services and capital invested in our industry. Admittedly the real value may not be pleasing to all but I am confident all would benefit from the knowledge."

The Robertsteel price list of December 2, 1963 differed in a number of ways from the price list the company had issued in June. A few prices remained the same, substantial reductions had been made in some and slight reductions in others. Also, some prices were slightly higher and some had been increased substantially. Quantity discounts were eliminated. Provision was made for buyers wishing to pick up purchases at the manufacturing plant by granting a percentage discount from the published prices for f.o.b. plant sales.

The leadership taken by Robertsteel in issuing its price list of December 2, 1963 and informing other members of C.M.P.I. of the basis on which its prices had been established was accepted by other producers of metal culverts in Ontario and Quebec. From this time on price lists of all companies tended to be uniform in major respects and adherence to published prices, particularly with respect to quotations on tenders, became the common policy of all producers.

Mr. P.F. Fowle of Westeel testified that he thought there was some improvement in obtaining list prices on sales after 1963. His testimony continued:

"Q. Can you give us any reason why there was an improvement after 1963?

A. I would say that the general level of prices had improved, that there was less price cutting.

Q. Is there any particular factor that in your view was responsible for that?

- A. I would say that the industry appeared to be adopting an open price policy. Appeared to be."

Mr. Curran of Robertsteel gave the following testimony about the change which took place in the operations of Robertsteel after the adoption of an Open Price Policy:

- "Q. In what way, then, Mr. Curran, was the open price policy that you initiated in your Company different from what had been done prior to that time?

- A. Well, it was different.

- Q. Or if it was different, was it different?

- A. It was different to this extent, that while price lists existed prior to that time, the going price on the market place bore little resemblance to the prices that were listed. It was very difficult to tell what prices were. It was described frequently as being a 'chaotic situation', and I think that was a good description.

- Q. And did your open pricing policy change that situation?

- A. With regard to our Company after instituting our policy, we did not depart from the prices we published, except in cases where we wished to meet specific and spot competition."

Armco issued a price list dated January 21, 1964 which followed the Robertsteel list of December 2, 1963. Mr. E.L. Campbell of Armco testified that he and Mr. Turvey of Armco felt at the time that Armco should not immediately follow the lead of Robertsteel and the final decision was not made until shortly before the date of January 21, 1964 on the price list. However, on December 12, 1963 Armco quoted the same price as in the Robertsteel list on a D.H.O. supply contract for 18-inch corrugated metal pipe.

Mr. E.L. Campbell of Armco gave the following evidence in regard to Armco's adoption of the Robertsteel price list of December 2, 1963:

"Q. . . . Why did you decide to follow the Robertsteel list due to the fact that you previously, as you indicated, occupied a position of leadership that others looked to you as the leader in the industry?

A. Well, here was someone else assuming what we will call price leadership, and whether that was a very effective measure in reducing or minimizing what was referred to as the chaotic conditions in the Ontario market at that time, would depend on the degree of followership they got from other companies."

A note under date of June 30, 1964, apparently made by Mr. Campbell after a conversation with the counsel of the parent company in the United States, reads as follows:

"June 30, 64.

I explained to W.R.B. [W.R. Bailey, Counsel, Armco Steel Corporation, Middletown, Ohio] that mailing price lists to competitors is not unlawful here, and that we have not entered into any agreement to exchange price lists. Also explained that we decided to follow Robertsteel price lead last November, rather than change [chance] the possibility of being the only one who didn't and thus prevent a needed improvement in the price war situation."

In a memorandum of December 31, 1963 to Mr. M.A. Buell, Mr. F. Kieran of Rosco recommended the adoption of the Robertsteel list. His memorandum reads, in part, as follows:

"Having read your memo re: CSP pricing, I recommend subject to Paul Davidson's concurrence and my following remarks that we adopt the price list issued by Robertsteel (Canada) Ltd. for the time being.

As you know from seeing some of the work sheets, our analysis based on 1964 standard costs is not yet complete. Sufficient information is available however, so that it is my intention to issue this list internally at the present time.

My analysis suggests this list is not ideal but probably as good as we can get at this time. The necessity of encouraging price stability in a commodity product such as CSP is self-evident and for this reason I am submitting this recommendation."

Statistics compiled by D.H.O. on tenders for supply contracts for corrugated metal pipe show that, except for a very few instances, metal culvert producers bidding on such contracts submitted their list prices from December 1963 to August 1967.

A change in prices for asphalt coated pipe was made in the Province of Quebec in a price list dated January 1, 1965 issued by Armco which was generally followed by other producers supplying that market.

Changes in the prices of asphalt coated pipe in Ontario were made by Rosco in a price list dated February 1, 1965. Rosco also took the lead in increasing prices generally in Ontario by issuing a price list with higher prices on April 5, 1965 following an increase in the price of sheet steel.

In regard to the increase in the price of asphalt coated pipe Mr. F. Kieran of Rosco wrote to Mr. Buell of the same company on January 22, 1965:

"You will recall about one year ago after many months of chaotic pricing which almost eliminated profits, Robertsteel Canada Limited issued a price list for CSP which was, in general, followed by the industry in Ontario.

This price list of Robertsteel left much to be desired but, in the interests of orderly marketing in the province and the influences of Ontario's selling pattern on the rest of Canada, we decided to issue price lists similar to the open price lists published by Robertsteel.

One area in particular of our 1964 prices does not return a sufficient earning. This is Asphalt Coated CSP.

Based on our Standard Costs for 1965 for this product, we have re-assessed our selling price.

Our average freight cost in Zone 1 has been assessed at 6% of selling for 42" and smaller diameters and 14% for 48" and larger.

Our new selling price for AC pipe then is based upon this freight cost added to a selling price which should return us 22 1/2% earning. Our previously estimated earnings for AC pipe were, in general, 16 or 17%.

In keeping with the open pricing policy of this Company, which was established by you last year, we are publishing these prices and will distribute them throughout the province.

Anticipating your approval of this action, the printing of these new price lists is currently underway."

In December 1965 Pedlar issued a new price list for southern Ontario which increased prices by 5 per cent. Although this price list was dated December 20, 1965 it was available to the industry well in advance of that date as is shown by the following Rosco memorandum of December 2, 1965 from Mr. F. Kieran to Mr. M.A. Buell:

"The Pedlar People Limited have issued a new Southern Ontario price list for corrugated steel pipe and pipe arches. This price list, to be effective December 20, 1965, represents a 5% increase in selling prices over those shown on our current price list CS-1(1).

In view of the organizational changes planned for the Road Products Department in Central Region beginning January 1, 1966 with a resultant increase in direct selling costs, I would naturally welcome a better level of gross profit return, but this must be tempered with the knowledge that Pedlar's marketing methods do not parallel ours and an increase in price would give them greater margins with which to allow their dealers larger discounts, and ultimately off-list prices to their customers.

My recommendation is that no action be taken at the present time, or at least until 1966 standard costs have become available and then

only after a complete analysis of product, shipping, and selling costs has been made. I hope you will concur."

By March 1, 1966 other producers of metal culverts in Ontario had issued price lists containing, almost without exception, the same prices as those in the Pedlar list.

Corrugated metal pipe made by different producers is a homogeneous product so that apart from service and delivery the purchaser of metal culverts is usually indifferent about the source of supply. This situation means that with respect to an actual purchase the price offered by different suppliers must be the same if the prospective supplier has any hope of getting the business. Another factor is that metal culverts are used in connection with highway construction so that during the winter season there is very little demand. This factor appears to account for the publication of price lists over a period of weeks by different manufacturers during the slack construction season. At the same time manufacturers could quote more advantageous prices on contract tenders in advance of issuing a new price list.

3. Meetings of Competitors in the Province of Quebec

There is no evidence in the inquiry relating to meetings among competitors in Ontario for the purpose of price discussions apart from discussions on an Open Price Policy. There is evidence in the inquiry of meetings of competitors in the Province of Quebec. The evidence is contained largely in the oral testimony of various witnesses and thus reflects the recollections of the individual persons. The meetings were usually held at a club in Montreal but there is evidence of one meeting at the home of one of the participants and of another which was held in Quebec City in April 1965. The following manufacturers were represented at meetings - Armco, Robertsteel, Rosco and Quebec Culvert, although with respect to two meetings there is no evidence that Armco was represented.

The first meeting among competitors in the Province of Quebec, of which there is evidence, took place in late 1963 or early 1964 as part of Robertsteel's adoption of an Open Price Policy. Mr. R.J. Barry, Robertsteel's

Montreal District Manager at the time of the meeting, testified that he had called the meeting to announce that Robertsteel was adopting an Open Price Policy. Mr. Barry said that he did not think that he would have called the meeting unless he had been asked to do so. In addition to Robertsteel, Armco, Rosco and Quebec Culvert were represented at the meeting.

Mr. Barry said that representatives of the other companies did not give any indication of whether the Robertsteel price list of December 2, 1963 would be followed but that there could have been discussions about the price list. Subsequently the other culvert companies issued price lists which closely followed that of Robertsteel.

The Robertsteel price list had set up a five zone system for the Province of Quebec which apparently created difficulties when the system was put into operation. Mr. J.C. Morin of Robertsteel (Montreal) recalled that the question of the five zone system was discussed with the representatives of other manufacturers.

Mr. J.W. Soden, now General Manager of Armco but formerly Manager for the Province of Quebec, recalled meeting with representatives of other manufacturers in Montreal toward the end of December 1964 or early in 1965 when he told the meeting that "I had made a new price list which I was going to distribute". Mr. Barry of Robertsteel said that he recalled a meeting at which Mr. Soden had announced a new price list and that some discussion about this price list could have taken place. It would appear that this meeting discussed the price list of Armco which was dated January 1, 1965. This price list had increases for asphalt coating and also changed the five zone system for deliveries as indicated in a memorandum of Mr. Soden dated January 7, 1965 which reads, in part, as follows:

"You will note that the Galvanized prices remain the same, Asphalt Coating and Paving have been increased to reflect their true costs. Extra freight to extremities of the province are shown as a percentage add-on for convenience.
. . ."

Mr. Barry of Robertsteel testified that his company "elected to publish prices similar to Armco" and, in fact, the Robertsteel price list bore the date January 1, 1965. Similar price lists were issued by Quebec Culvert on January 12, 1965 and by Rosco on January 25, 1965.

Mr. Barry of Robertsteel also gave the following testimony:

"Q. Can you tell us what the reason for the change of the zone system was?

A. To my recollection I believe it is because price lists were just too bulky and too much, and they wanted to condense it.

Q. Who wanted to condense it?

A. I assume, from this price list, that they wanted to condense it; and I haven't studied it to see if there was really that much of a change in it.

THE CHAIRMAN:

Who's 'they'? When you say 'they wanted to condense it', who do you mean by 'they'?

A. By this list of Armco, they have condensed it into one list, it is obvious that Armco wanted to change it down."

Two witnesses testified regarding a meeting of competitors in Quebec City in April 1965 during the convention of the Quebec Road Builders Association at the Chateau Frontenac. Mr. A.J. Halle of Quebec Culvert testified that Rosco, Robertsteel and Ontario Culvert were also represented at the meeting. Mr. P.W. King of Rosco recalled that he was at the meeting in Quebec City. His testimony included the following:

"Q. Would you remember anything of the discussion?

A. There was the usual of trying to get the prices more in line with what we felt was a normal mark-up!

Q. Yes?

A. And --

Q. Did you discuss these problems with your competitors at this meeting?

A. Yes."

Under date of August 13, 1965 Mr. A.J. Halle of Quebec Culvert wrote a memorandum entitled "Re: Meeting with Armco, Robertsteel & Rosco-Weststeel" addressed to Messrs. W.R. Enns and R.A. Cruise of Ontario Culvert. Three matters are referred to in Mr. Hallé's memorandum:

- (A) A suggestion that sales to the Province of Quebec be made at Quebec prices "(regardless)". Ontario manufacturers were known to be selling to the Province of Quebec at Ontario prices [which were lower].
- (B) A suggestion, which was seconded, that the Armco price list be accepted for bevelled end cuts and step bevels, etc.
- (C) Prices on shipments to Abitibi East and West now 10% above list should be increased to 15%.

Mr. J.C. Morin of Robertsteel testified regarding a meeting in July or August 1965 and recalled discussion "about accepting the price list of Armco with respect to prices on beveled end cuts and step bevels on structural pipe."

Mr. Halle of Quebec Culvert recalled attending another meeting with representatives of Westeel-Rosco, Robertsteel and Armco at the Naval Officers Club in Montreal in 1965 or early in 1966. He also testified that he attended a meeting at the home of Mr. Peter King of Westeel-Rosco in the spring of 1965 but Mr. King testified that the meeting at his home, which was not attended by an Armco representative, took place in late 1965 or early 1966. It appears that there were two meetings during the same period with much the same type of discussion at both meetings.

The clearer evidence is that the meetings were called to discuss an increase in the prices of metal culverts in the Province of Quebec. Mr. King said that at the meeting in his home he announced that Westeel-Rosco was increasing its prices by 5 per cent. He said he made the announcement in the hope that the other companies would follow.

Mr. Hallé of Quebec Culvert testified that he recalled attending a meeting at which an increase in prices was discussed. He said that the representative of Robertsteel volunteered to put out a new price list. The price list of Robertsteel for the Province of Quebec was issued under date of March 21, 1966 and that of Westeel-Rosco under date of March 28, 1966. Price lists of other companies were dated from April 1, 1966 to May 27, 1966.

The evidence in regard to the meetings of competitors in the Province of Quebec makes clear that in regard to the general acceptance of an Open Price Policy there were discussions among the representatives of at least four companies and that at other meetings there were discussions for the purpose of securing closer observance of the common prices which appeared in the price lists of the several companies. The evidence also shows that at the time of subsequent changes in prices, transportation charges and other matters, there were on several occasions meetings and discussions by the representatives of several companies directed toward securing common action and policy among the manufacturers.

4. Pricing of Riveted and Spiral Pipe

At the time of the earlier inquiry in 1956 Armco was the only manufacturer in Canada producing spiral pipe which was marketed under the trade name Hel-Cor and was described as a sub-drainage pipe available only in 6- and 8-inch diameters.

It appears that about 1963 Ontario Culvert began the production of spiral pipe and after 1966 additional companies commenced the production of metal culvert by this method.

By 1960 Armco was offering its Hel-Cor pipe for culvert use and by 1963 the D.H.O. had accepted spiral or helically formed pipe as equivalent to standard riveted pipe under D.H.O. specifications. By 1963 and perhaps for some years prior Armco was offering its Hel-Cor pipe for drainage purposes in sizes up to 24-inch diameter.

The production of riveted pipe is a relatively simple operation. Flat sheets of the proper gauge are corrugated; then the sheets are passed through forming rolls, set to produce the curvature required for a culvert of the intended diameter. Holes are then punched along the edges and the ends are riveted together to form a pipe. Spiral or helically formed pipe is produced on a machine from long rolls of galvanized strips which are formed into a pipe with helical corrugations. Depending on the amount of steel in a roll spiral pipe could be produced in any length required.

In May 1963 Armco took action to promote more actively the sale of its spiral pipe, Hel-Cor, for culvert purposes by offering Hel-Cor culvert pipe at a discount of 5 per cent on the price for riveted pipe. This offer was set out in a letter dated May 8, 1963 as follows:

"Attached is the new Armco price list for
Corrugated Steel Culvert Pipe, effective immediately

You will notice it incorporates two new features
which many of our customers have requested.

Firstly, and of prime importance, we are able
now to pass on savings realized in the production
of Hel-Cor Culvert Pipe, in sizes up to and
including 24" diameter, by the 5% shown.

Hel-Cor Culvert Pipe has many advantages over the
standard riveted pipe in these sizes. From
tests conducted in Ontario, by an independent
authority, this pipe was shown to have over 40%
greater structural strength than riveted pipe
in both buckling and ultimate load. It also has
greater beam strength. Better uniformity permits
easier, more accurate connections. The lock
seam makes it virtually watertight. We carry
large stocks of this material, and will be
pleased to provide immediate delivery of your
requirements.

Ontario Department of Highways has tested and approved Hel-Cor as equivalent to riveted pipe, and as such it is eligible for the same subsidy as riveted pipe.

Secondly, many of our customers have requested that we provide discounts for quantity purchases. This feature has been included."

By the following month, after the issuance of the Robertsteel price list dated June 3, 1963, Mr. Turvey of Armco indicated in a memorandum dated June 19, 1963 a change of policy with respect to the pricing of Hel-Cor culvert pipe. It will be recalled that the Robertsteel price list of June 3, 1963 was an attempt to establish an Open Price Policy in the industry. Mr. Turvey's memorandum of June 19, 1963, which was quoted previously in part, indicated that Armco did not accept the policy of Robertsteel of not announcing a scale of prices for orders exceeding \$10,000. In the same memorandum Mr. Turvey outlined the following policy for the pricing of Hel-Cor culvert pipe:

"Where Hel-Cor is applicable, it will be in our interest to apply a differential on tender business only, and this should be applied on a variable scale relative to the volume of business available. I do not agree with an arbitrary decision to establish another differential for small volume business, and for non-tender business, since this would only lead quite possibly to issuance of another price list to meet a newly established Hel-Cor level. In other words, I do not expect to establish an open policy regarding Hel-Cor. Our pricing application will be entirely dependent upon the volume available."

The significance of the production of spiral culvert pipe by an automated machine process was noted by Messrs. Craig and Allan in their survey of the metal culvert industry in Ontario in the summer of 1963. Their subsequent report made the following reference to the pricing of the machine-made product in paragraph (6), previously quoted:

"(6) New methods of manufacture have recently been reflected into certain published price schedules. Certainly technological changes in culvert producing equipment and culvert design

must be fostered by the industry; however, the reflecting of resultant lower costs in the published pricing structure again must be commensurate with the factors outlined in (3)."

Numbered paragraph (3) of the Craig-Allan report, also cited previously, reads:

"(3) It is significant, however, that the industry, if it is to stay healthy and keep its capacity from being further inflated, must achieve price stability at levels that will:

- provide adequate profits to shareholders.
- provide adequate profits for product promotion and development.
- provide adequate profits for industry work (CMPI).
- allow the corrugated metal pipe product to compete favourably with similar products made from other materials.
- allow the present capacity of industry to be more fully occupied."

As the oral evidence in the inquiry does not show just how the factors set out in paragraph (3) of the Craig-Allan report applied to the considerations in paragraph (6), it is necessary to take the meaning indicated by the wording of the two paragraphs. It appears to the Commission that the Craig-Allan report raised a question as to the policy in the metal culvert industry of reflecting the lower costs of production of spiral pipe in the form of lower prices. The Craig-Allan report rejected an automatic lowering of the prices of spiral pipe because of lower costs of production and recommended that prices be determined so as to provide for adequate profits and allow the present capacity of the industry to be more fully occupied. As the present capacity of the industry at the time of the Craig-Allan report consisted largely of capacity to produce riveted pipe, the recommendation in the Craig-Allan report regarding pricing policy would be understood by members of the industry as taking account of this fact.

In the price lists which Armco issued on January 21, 1964, after deciding to follow the leadership of Robertsteel's price list of December 2, 1963, no price

differential was made for Hel-Cor drainage pipe. According to Mr. Turvey, Armco's policy had been to price Hel-Cor drainage pipe at the same level as riveted pipe.

Among the material furnished in the inquiry by D.H.O. is a Price Guide 1966 which gives details of the price of Hel-Cor sub-drainage pipe and Hel-Cor culvert pipe. The price of 8-inch Hel-Cor perforated pipe which is used for sub-drainage purposes is shown as \$1.04 per lineal foot compared with a list price of \$1.28 per foot for Hel-Cor drainage pipe. The 8-inch Hel-Cor sub-drainage pipe was shown in the same document to be priced at \$1.02 per foot when non-perforated which would appear to be a product equivalent to the Hel-Cor drainage pipe for which the price was 26 cents per foot greater. This example indicates that for the sub-drainage market Armco priced Hel-Cor pipe more in relationship to the cost of producing the machine-made pipe, whereas in the drainage market Armco priced Hel-Cor pipe in relation to the price of riveted pipe.

CHAPTER IV

THE SYSTEM OF DELIVERED PRICES

In its 1957 report the Commission reviewed at some length evidence presented in that inquiry and at the hearings held by the Commission on the effect of delivered pricing in the metal culvert industry. The system of delivered pricing used in the industry at the time of the earlier inquiry involved the same delivered price for the same article throughout a wide territory, usually coterminous with provincial boundaries. After analysing considerable statistical and other evidence submitted by economists the Commission came to the conclusion that the delivered price system increased the total cost of transportation which had to be paid by purchasers of metal culvert and, further, that purchasers situated near to a metal culvert plant had to pay part of the cost of transport of shipments of metal culverts to more distant points.

Evidence in the present inquiry shows that in November 1957 Armco issued price lists which had three delivered price zones in Ontario in place of the single zone previously used. The system of three zones in Ontario, known as Southern Ontario, Mid-Northern Ontario and North-Western Ontario, was generally adopted by other culvert manufacturers in Ontario.

As has already been described, there was a period between December 1963 and January 1965 when culvert manufacturers used a five zone system in the Province of Quebec. Changes in this system were discussed at meetings among some competitors in the Province of Quebec and the system generally used became a delivered price in South Central Quebec with a percentage addition in price for delivery in each of five other marketing areas in the province.

In its 1957 report the Commission recommended that alternative methods of purchasing, including the offering of f.o.b. prices, should be introduced in the metal culvert industry.

Some metal culvert manufacturers have included in their published price lists reductions of 3 per cent in Ontario and 4 per cent in Quebec for sales made f.o.b. plant. However, these percentage reductions do not appear

to be related directly to the cost of transportation included in the delivered prices and thus for most shipments did not provide a strong incentive for purchasers to make their own transportation arrangements. Information secured in the inquiry indicates that less than 5 per cent of total sales, excluding sales to railways, were made on an f.o.b. plant basis.

The following conclusion was expressed by the Commission in its 1957 report as to the consistent use of delivered prices in the metal culvert industry:

"While there is no direct evidence on the point, the Commission believes the system was introduced and continued for so many years chiefly as a useful and probably essential device to secure adherence to uniform prices."

In the Craig-Allan report, described in an earlier section of this report, delivered pricing was viewed as a means of promoting price stability. The authors commented as follows:

"(5) . . . Delivered pricing by area is more stabilizing in this industry than f.o.b. plant pricing. Delivered pricing will bring on individual pressures, but providing there is no proof of collusion in the published delivered prices by the industry, such pressures can be contained. . . ."

The following highway districts in Ontario were included in the Southern Ontario zone within which deliveries were made from any metal culvert plant on a delivered price basis:

- | | |
|---------------|----------------|
| 1. Chatham | 8. Kingston |
| 2. London | 9. Ottawa |
| 3. Stratford | 10. Bancroft |
| 4. Hamilton | 11. Huntsville |
| 5. Owen Sound | 13. North Bay |
| 6. Toronto | 17. Sudbury |
| 7. Port Hope | |

In 1963, metal culverts were manufactured at the following locations in the Southern Ontario zone:

Hamilton (Robertsteel)
Toronto (Westeel-Rosco)
Guelph (Armco)
Kitchener-Waterloo (Fawcett, Ontario Culvert)
Oshawa (Pedlar)
London (Canada Culvert)

Stratford (Corrugated Pipe)
Thamesville (Hubbell)
Kingston (Robertsteel)
Ottawa-Bells Corners (Carleton)

The relative freight charges to transport sheet steel for culvert production from the steel mills in Hamilton to the culvert plants in the cities listed above were set out in a Rosco document as follows:

Freight per 100 lb.

Hamilton	Nil	Oshawa	.18
Toronto	.11	London	.19
Guelph	.12	Stratford	.20
Kitchener-		Kingston	.38
Waterloo	.12	Ottawa	.45

The freight charge to Thamesville was not shown but the distance from Hamilton is approximately the same as from Kingston.

Although culvert plants in the various locations in the Southern Ontario zone, in the majority of instances, had varying costs in securing the basic material for steel culverts, all had the same list prices which were delivered prices to any locality in the Southern Ontario zone regardless of the location of the delivery point in relation to the plant producing the culvert.

While the system of delivered prices followed by culvert manufacturers had been changed by the introduction of zones rather than the province-wide price basis which had generally existed at the time of the Commission's 1957 report, the discriminatory aspects of the practices remained essentially the same.

As the Commission pointed out in its 1957 report, one effect of the practice of delivered prices is that, on the one hand, one part of the purchasers of metal culvert pay more than the actual cost of transportation and, on the other hand, the other part of the purchasers pay somewhat less. Whether the proportions will be equal will depend on the tonnage distribution of shipments between those made within distances from the plant which carry less transportation costs than the amounts for transportation included in the delivered prices and those at distances involving actual transportation costs greater than the amounts for freight included in delivered prices.

If all shipments were made from the most advantageously situated plant the total transportation charges borne by purchasers would be no greater than

actual transportation costs but nearby customers would pay "phantom freight". However, the system provides no incentive for purchases to be made in this way as each culvert plant offers the same price regardless of its location in relation to the construction site. It is inevitable that total transportation costs will be increased under the delivered price system and as these costs are taken into account when prices are established, purchasers of metal culvert must pay for the excess costs which the practice of delivered prices leads to in this industry. These excess costs cannot be considered as other than wasteful transportation costs.

CHAPTER V

CONCLUSIONS

The formal allegations of the Director of Investigation and Research have been set out earlier in this report. During the argument before the Commission counsel for the Director described the basis of the allegations as follows:

" . . . the theory of the Director's case in this matter is that the arrangement which we say was entered into, was for the purpose of bringing about stable and non-competitive prices for corrugated metal pipe and it consisted of an agreement on the part of the producers of the pipe to adopt the so-called open pricing plan, that is to publish price lists and to adhere to them in order for the price changes to operate smoothly and successfully and to prevent the price stability which was the object of the scheme from being frustrated by unrestrained competitive enthusiasm it was also necessary to have a price leader, whose leadership would be recognized and accepted by the others.

It was not sufficient simply to discard the price cutting as a competitive tool, although this was regarded as being an important element in the view of the pricing plan. It was also necessary to bring about conditions under which changes in price lists of all producers could take place in such a way as to minimize or eliminate any differences in prices during the period of the readjustment. One such method, of course, is the well-known price agreement which some of the parties have been in and have had some experience.

Another is a scheme that was developed here under which there were actually tacit arrangements that the leadership of one firm or another would be accepted and its prices adopted and quoted. Such a scheme, in my submission, would not have been initiated successfully and achieved the results expected from the open pricing plan without some consultation or arrangement among the parties."

It was strenuously argued before the Commission by counsel for all parties against whom allegations had been made that the inquiry did not disclose any arrangement with respect to prices or conditions affecting prices. It was submitted that the decision to adhere to a policy of open prices was made independently by each manufacturer and was not the result of agreement.

It was generally admitted by all parties that the policy of open prices had been adopted by all manufacturers in Ontario and that the price lists published by the "price leader" were followed by all other manufacturers. It was also generally admitted that on public tenders the prices quoted by the different manufacturers were almost invariably the same. Extensive evidence was produced by Armco to show that a considerable number of its sales were made at prices which differed from those of the price leader, particularly in the case of sales not made to public bodies. The Commission is not able to derive the full meaning of the Armco statistics which were submitted because, in order to do so, it would be necessary to know the circumstances of each sale as well as the exact difference in price and whether the result was a price higher or lower than the company's own list price.

In considering pricing practices in the metal culvert industry in the period under review it is necessary to keep clearly in mind the distinction between "open prices" and "Open Price Policy". The practice of each manufacturer publishing a price list had been followed for many years in the metal culvert industry. The essential feature of the Open Price Policy as adopted by the metal culvert manufacturers involved in the present inquiry is that prices would be published and that the manufacturer would make clear his intention of adhering to the published prices as long as competitive conditions did not require different prices. The result when all manufacturers in the market area adopted the prices of the "price leader" and adhered to them was that price competition was removed from the market. The point at issue, therefore, is whether the non-competitive situation was brought about by the independent action of different manufacturers or whether it came about from an agreement, arrangement or understanding between the manufacturers. It is clearly not necessary that there be formal agreement in a co-operative effort to limit competition. Such a result may follow from a tacit understanding, or from a course of action based upon expectation confirmed by the recognized behaviour of a competitor which carries assurance of common conduct on the part of others.

In order to appraise the situation in the metal culvert industry as embraced in this inquiry it is necessary to consider the circumstances in which the Open Price Policy was adopted. It will be recalled that discussions

and studies of an Open Price Policy in the metal culvert industry were initiated in the Corrugated Metal Pipe Institute soon after the incorporation of the Institute toward the close of 1961. The evidence in the inquiry makes abundantly clear that the discussions and studies conducted under the aegis of the Institute pointed to the conclusion that the policy of adhering to published prices could only succeed if all manufacturers adopted the same list prices and if the managements of all companies directed that the list prices be observed. The studies and examination of an Open Price Policy by the managements of metal culvert manufacturers led to a common understanding as to what conditions had to be observed in the adoption of such a policy. Mr. J.E. Baier, of Ontario Culvert, expressed his understanding in his letter of February 7, 1963 to the President of the Institute, previously quoted, in which he said:

"There should be a clear definition, full understanding and mutual agreement as to the ultimate results which can be achieved by an 'Open Price Policy'."

and

"There should exist a real individual and collective desire for these clearly defined, understood and agreed results in preference to misconceived, negative, isolationist assumptions of special rights by any company to certain markets or products."

The Robertsteel price list of June 3, 1963 appears to have been regarded in the industry as a tentative approach to an Open Price Policy. An internal communication of Armco, dated June 19, 1963 interprets the action of Robertsteel as not a complete acceptance of an Open Price Policy because no price list was issued for sales of more than \$10,000. The memorandum concluded: "I do not believe policy-wise, we should give any indication that we agree with this part of Robertson-Irwin's current list." This Armco memorandum also stated that:

". . .it will be in our interest to apply a differential on tender business only, and this should be applied on a variable scale relative to the volume of business available. I do not agree with an arbitrary decision to establish another differential for small volume business, and for non-tender business, since this would only lead quite possibly to issuance of another price list to meet a newly established Hel-Cor level. In other words, I do not expect to establish an open policy regarding Hel-Cor. Our pricing application will be entirely dependent upon the volume available."

In view of Armco's position, with this manufacturer holding more than 40 per cent of the Canadian production of metal culverts, non-acceptance by the outstanding leader of an Open Price Policy precluded the establishment of the policy throughout the industry in Ontario and Quebec at this time.

During the summer of 1963 Messrs. Craig and Allan visited five or six of the leading manufacturers of metal culverts in Ontario. As previously described, the evidence of witnesses who testified concerning the visits of Messrs. Craig and Allan was to the effect that no information was passed on at one visit about what took place at another and that the matter of an Open Price Policy was not discussed. The report prepared by Messrs. Craig and Allan and sent to members of C.M.P.I. after September 2, 1963 contained matters which bore directly on the acceptance of an Open Price Policy. The Craig-Allan report pointed out that the analysis made by the authors was not new to the managements of the metal culvert companies. What, then, were the features of the report which were of sufficient significance to justify its preparation and distribution to members of C.M.P.I.?

From the examination which the Commission has made of the Craig-Allan report the following features appear to have a direct bearing upon the acceptance of an Open Price Policy as a common decision of metal culvert manufacturers supplying Ontario and Quebec:

1. There is a much better attitude among managements toward taking corrective action to secure stability of prices and "the timing is right" if the observance of price lists can be put into practice.
2. Senior managements of the main corrugated metal pipe producers are serious about correcting the industry's ills.
3. ". . . Managements must immediately initiate within their own sales organizations the practice of adhering to their published prices. Managements must then give urgent consideration and study to their published prices. It should be possible with a series of changes in published prices and appropriate leadership by certain managements relative thereto that proper price levels . . . can be achieved within two to three months."

The Craig-Allan report also recommended careful attention to the pricing of culvert products made by newer methods and the establishment of base pricing, extras and discounts on an across-the-board basis.

Robertsteel issued a price list dated December 2, 1963 which made no provision for quantity discounts. The lack of a stated policy with respect to prices on quantities over \$10,000 was one of the features which Armco had noted in the June 3, 1963 price list of Robertsteel.

The Robertsteel price list dated December 2, 1963 was regarded in the industry as the expression of an Open Price Policy and became the accepted standard for the ensuing period until another change in prices took place. In view of what had preceded the development of this situation the Commission has come to the conclusion that the adoption of common prices in the manner described earlier in this report demonstrates a mutuality of action by the producers named in the Director's allegations which amounted to an arrangement within the meaning of the Combines Investigation Act. The effect of the arrangement was to establish uniform prices and conditions of sale for metal culverts by all producers named in the allegations.

Evidence of meetings between representatives of some of the companies supplying metal culverts in the Province of Quebec is considered by the Commission to give clear indication of the manner in which an Open Price Policy was carried out in that province. The Commission believes that such evidence establishes that changes in policy were the subject of agreement on the part of the company representatives attending such meetings.

The Commission does not base its conclusions with respect to mutuality of actions on the part of head office management in Ontario on the actions taken by any representatives in the Province of Quebec. What was done in Ontario by discussions of principles of an Open Price Policy, by the mutuality of expectations supported by behaviour and by tacit arrangements to secure common prices through the announcement of prices by one company which would be followed by all the others, was carried further in Quebec by direct meetings to discuss price changes or matters relating to prices.

Several manufacturers, not associated with larger companies, had market shares between 1 and 2 per cent of the total Canadian market. In addition to arguments that the maintenance of an Open Price Policy was the result of independent decision by each manufacturer and did not follow from an arrangement or understanding between

the parties, it was argued on behalf of the very small manufacturers that their positions in the industry were such that the economics of the situation without more would lead them to bring their pricing policies into conformity with the industry pattern. The Commission has carefully considered this argument in relation to the minor industry positions occupied by the smallest producers and has fully appreciated the force of the argument. When, however, such consideration is taken in conjunction with the behaviour of the smallest firms the Commission has found that every company participated in the arrangement which sustained the Open Price Policy.

It was argued that the smallest manufacturers generally issued their price lists after the industry price pattern was well established and were, therefore, merely following the trend in the industry. It is found, however, that the smallest manufacturers submitted bids at prices established by the price leader well in advance of a change in their own price lists and thus demonstrated ready conformance with the Open Price Policy. In one instance, a small manufacturer testified that his price was changed in advance of a change in his price list but in conformity with the price of the price leader for the reason "I would think we were likely giving support in this bid to the new price list and were quite uncertain whether it would hold or not." Several instances also appear in the evidence where small manufacturers have withdrawn bids when it was found that the quotations did not conform in every detail with that of the price leader. Sometimes such withdrawals of bids were made when the differences amounted to a very few dollars. Sometimes bids were withdrawn after meetings with competitors at tender openings when such deviations were noted and commented on.

The evidence as a whole leads the Commission to conclude that smaller manufacturers while acting in what they considered their own best interests in adopting prices announced by the price leader also brought their price policy into full conformity with the Open Price Policy and made clear to their larger competitors that they were giving active support to the maintenance of that policy. In this way they participated in the arrangement which sought to bring about uniformity of prices and conditions of sale on the part of all manufacturers.

The Commission finds that the arrangements among metal culvert firms supplying Ontario and Quebec during the period between November 1962 and August 1967 and named in the allegations of the Director did not relate only to one or more of the matters specified in subsection (2) of section 32 of the Combines Investigation Act.

In addition to limiting competition in price by the practice of all companies adopting an Open Price Policy and meticulously following the prices announced by the price leader, the common understanding on uniformity of prices resulted in detriment to the public in other ways. From the information obtained in the inquiry there is no way of determining the full significance of the discrimination that resulted from the delivered price system although a realistic inference can be derived from the minimal reduction in price to buyers making f.o.b. plant purchases. There were also the wasteful transportation costs to which reference has been made earlier. Where discrimination is the outcome of delivered prices practised independently by one or more sellers, competition is not necessarily lessened. Where, however, a delivered price system is incorporated in an open price policy for the purpose of securing and ensuring uniformity of prices, the resulting discrimination, though incidental to the competition-lessening arrangements, highlights the harmfulness of such arrangements. That is why the Commission must strongly recommend that steps be taken to prevent this discrimination and the first step would be to make sure that buyers making purchases on an f.o.b. plant basis should secure the full amount of transportation costs which would otherwise have been incurred by the manufacturer. Undoubtedly, the buyer would have to be informed of both the f.o.b. plant price and the delivered price.

Another significant restriction arising out of the arrangements among metal culvert manufacturers to secure uniformity of prices is that affecting quantity sales of metal culvert and, particularly, metal culvert manufactured by automatic or semi-automatic processes, such as spiral pipe. The evidence put before the Commission indicates that there are significant differences in cost in producing metal pipe by the newer processes and there are savings in transportation costs if a carload of pipe of various sizes (which can be nested together) is shipped. The buyer should be able to secure the advantages of such savings when his order makes them possible. The elimination of such price differences from the price lists of the manufacturers of metal culvert clearly had detrimental effects and the opportunity to secure valid cost savings should not be denied to purchasers of metal culverts.

The Commission concludes that the arrangements revealed in this inquiry had the effect of restricting competition unduly in the trade in metal culverts in Ontario and Quebec and consequently were against the public interest.



Acting Chairman



Member

Ottawa
July 6, 1970.

APPENDIX

WITNESSES EXAMINED IN THIS INQUIRY

The following list gives the names of witnesses examined in this inquiry and the current or former business affiliation of the witness relevant to the inquiry:

March 14-16, 1967 at Toronto, Ontario

A.D. Curran	)	Robertsteel (Canada) Limited
L.A. Nethery)	
M.A. Buell	)	Westeel-Rosco Limited -
P.F. Fowle	)	Westeel-Rosco Limitée
F. Kieran)	
D.L.G. Turvey	)	Armco Drainage & Metal
J.E. Wilson	)	Products of Canada Ltd.

March 28, 1967 at Montreal, Quebec

A.J. Hallé	)	Quebec Culvert Co. Limited -
	)	La Compagnie de Ponceaux
		du Québec Limitée
R.J. Barry	)	Robertsteel (Canada) Limited
J.C. Morin)	
E.S. Cowen	)	Westeel-Rosco Limited -
R.F.J. Charron	)	Westeel-Rosco Limitée

May 15-19, 1967 at Toronto, Ontario

A.J. Turney	)	Robertsteel (Canada) Limited
J.E. Baier	)	Ontario Culvert and Metal
	)	Products Limited,
	)	Carleton Culvert Company
	)	Limited,
	)	Quebec Culvert Co. Limited -
	)	La Compagnie du Ponceaux du
	)	Québec Limitée
C.H. Gagan	)	Canada Culvert Co. Limited
D. Mansfield	)	Corporation of the City of
	)	St. Catharines
R. Davies	)	Ontario Culvert and Metal
R.A. Cruise	)	Products Limited
W.R. Enns)	
G. Longo)	

E.L. Campbell	)	Armco Drainage & Metal
J.W. Soden	)	Products of Canada Ltd.
J.G. Green	)	Robertson-Irwin Limited,
	)	Robertsteel (Canada) Limited
G.A. Hubbell	)	E.S. Hubbell & Sons Limited
F.C.M. Forster	)	Corrugated Pipe Company Limited
R.J. Fawcett	)	Fawcett Metal Products
	)	Limited

June 13-15, 1967 at Toronto, Ontario

J.S. Cameron	)	The Pedlar People, Limited
A.S. Reed)	
H.B. McDonald)	
B.R. Laverty)	
D.M. MacLeod	)	Armco Drainage & Metal
	)	Products of Canada Ltd.
D.H. Haverson	)	Robertsteel (Canada) Limited

June 16, 1967 at Montreal, Quebec

A.J. Chabot	)	Armco Drainage & Metal
	)	Products of Canada Ltd.
A. Daigle	)	Quebec Culvert Co. Limited -
	)	La Compagnie de Ponceaux
	)	du Québec Limitée
P.W. King	)	Westeel-Rosco Limited -
	)	Westeel-Rosco Limitée

July 6, 1967 at Toronto, Ontario

E.L. Campbell	)	Armco Drainage & Metal
(recalled)	)	Products of Canada Ltd.
A.D. Curran	)	Robertsteel (Canada) Limited
(recalled))	

October 11-13, 1967 at Toronto, Ontario

W.Beattie	)	Department of Highways of
R. Rawlings	)	Ontario
J. Douglas)	
D.M. MacLeod	)	Armco Drainage & Metal
(recalled)	)	Products of Canada Ltd.

R.J. Fawcett (recalled)	)	Fawcett Metal Products Limited
G.A. Hubbell (recalled)	)	E.S. Hubbell & Sons Limited
L.A. Nethery (recalled)	)	Robertsteel (Canada) Limited
F.C.M. Forster (recalled)	)	Corrugated Pipe Company Limited
L.G. Chapman	)	The Pedlar People, Limited
T.W. Clark	)	Westeel Products Limited
R.J. Roots	)	Westeel-Rosco Limited - Westeel-Rosco Limitée
J.A. Boyce	)	Lakehead Culvert Limited

November 9, 1967 at Montreal, Quebec

R.J. Barry J.C. Morin (recalled)	)	Robertsteel (Canada) Limited
A.J. Chabot (recalled)	)	Armco Drainage & Metal Products of Canada Ltd.
R.F.J. Charron (recalled)	)	Westeel-Rosco Limited - Westeel-Rosco Limitée

May 22-23, 1968 at Toronto, Ontario

R.R. Craig	)	Dominion Foundries and Steel, Limited (former Director of C.M.P.I.)
J.D. Allan	)	The Steel Company of Canada, Limited (former Director of C.M.P.I.)
J.S. Cameron (recalled)	)	The Pedlar People, Limited
M.A. Buell (recalled)	)	Westeel-Rosco Limited - Westeel-Rosco Limitée
E.R. Pickering	)	Department of Highways of Ontario
J.E. Wilson (recalled)	)	Armco Drainage & Metal Products of Canada Ltd.

WITNESSES AND APPEARANCES AT THE
HEARING BEFORE THE COMMISSION

Toronto, Ontario, December 2-5 and 9-10, 1969

WITNESSES

B. Sheedy, C.A.
C.R. Meikle, C.A.
of the firm Deloitte,
Plender, Haskins and
Sells

APPEARANCES

<u>Counsel</u>	<u>Representing</u>
S.G.M. Grange, Q.C.	) Armco Drainage & Metal
T.A. Sweeney	) Products of Canada Ltd.
	) J.W. Soden
	) E.L. Campbell
	) D.L.G. Turvey
J.F. Howard, Q.C.	) Canada Culvert Co. Limited,
E.L. Donegan	) Westeel-Rosco Limited -
	) Westeel-Rosco Limitée
	) P.F. Fowle
	) M.A. Buell
A. McN. Austin	) Carleton Culvert Company
	) Limited,
	) Ontario Culvert and Metal
	) Products Limited
	) J.E. Baier
J.R. Anderson, Q.C.	) Corrugated Pipe Company
R.J. Anderson	) Limited
G.A. Hubbell	) E.S. Hubbell & Sons Limited
<u>/On his own behalf</u>	
J.H. Francis	) Robertsteel (Canada) Limited,
	) Lakehead Culvert Limited
	) A.D. Curran
	) A.J. Turney
P.S.A. Lamek	) The Pedlar People, Limited
J.L. McDougall	) J.S. Cameron
C.R. Thomson	) R.R. Craig
K.W. McCracken	
J.W. Garrow	) J.D. Allan
R.J. Fawcett	) Fawcett Metal Products Limited
<u>/On his own behalf</u>	

The Director of Investigation and Research was
represented by:

S.F. Sommerfeld, Q.C.
J.W. Thomson
A. Fradkin

INDUSTRY CANADA/INDUSTRIE CANADA



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