

~~G.O.L. 11~~ Judgment 36, 1955

No. 12 of 1955.

In the Privy Council.

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**ON APPEAL**  
*FROM THE SUPREME COURT OF CANADA.*

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BETWEEN

THE MINISTER OF NATIONAL REVENUE - - - *Appellant*

AND

ANACONDA AMERICAN BRASS LIMITED - - - *Respondents.*

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**Record of Proceedings**

VOLUME I

Pages 1 - 204

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CHARLES RUSSELL & CO.,  
37 Norfolk Street,  
Strand, W.C.2,  
*Appellant's Solicitors.*

BEAUMONT & SON,  
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Old Broad Street, E.C.2,  
*Respondents' Solicitors.*

# In the Supreme Court of Canada

IN THE MATTER OF THE EXCESS PROFITS TAX ACT, 1940

BETWEEN:

THE MINISTER OF NATIONAL REVENUE

*(Respondent)* APPELLANT;

AND

ANACONDA AMERICAN BRASS LIMITED

*(Appellant)* RESPONDENT.

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Affix postage to communications and stamps to cheques.



**T2-1947**  
Income and Excess Profits  
For use by Corporations

Key No. \_\_\_\_\_  
Carried by \_\_\_\_\_

DOMINION OF CANADA  
**INCOME AND EXCESS PROFITS TAX**

DATE  
REC'D BY  
DISTRICT  
OFFICE

RETURN OF INCOME FOR THE FISCAL YEAR ENDED December 31st 1947  
(Form prescribed and authorized by the Minister of National Revenue)  
This return is to be prepared in triplicate. One copy is to be retained by the taxpayer and two copies together with two copies of Form T2 Questionnaire must be delivered, or mailed postpaid, in every case within six months from the close of the 1947 fiscal year of the Company, to the District Income Tax Office.

- Name of Corporation ANACONDA AMERICAN BRASS LIMITED  
(Name and Address in block letters)
- Nature of Business: Describe predominant business activity stating the general nature of the main products sold or services rendered. Manufacturers of Brass and Copper Materials  
(State whether you manufacture, mine, construct, trade (wholesale or retail), render service, etc.)
- (a) Address of Main Office in Canada Eighth & Birmingham Sts., New Toronto, Ontario, York  
(Street and Number) (City or Town) (Province) (If Ontario or Quebec please give county)  
(b) Address to which it is desired mail be sent as above
- Attach statement showing names and addresses of Parent, Subsidiary and Affiliated Companies (if any) stating the relationship of each to the above-named company.
- Note: Did you receive income from sources within the United States for or on account of—(a) the company NO (Yes or no)  
(b) any other person resident in Canada? NO (Yes or no) (c) any person not resident in Canada? NO (Yes or no)  
If (a) answered "Yes", was the gross income from sources within the United States more than 50% of the gross income of the Company? NO (Yes or no)  
If (c) answered "Yes", then file Canadian Form UST-1 and United States Form 1042 (obtainable in District Office) on or before June 15th, 1948

6. ESTIMATE OF INCOME TAX PAYABLE

	FOR TAXPAYER'S USE	FOR DEPARTMENTAL USE
A. INCOME OF YEAR SUBJECT TO TAX <small>(from Item 44, Page 3)</small>	\$ 1,594,301.71	\$
B. Less: Losses in prior years deductible—attach details	\$ -	\$
C. INCOME SUBJECT TO TAX	\$ 1,594,301.71	\$
D. Apportionment of Income (Item 6C) on a pro rata daily basis:		
(1) Period to December 31st, 1946 (..... days)	\$ Nil	\$
(2) Period subsequent to December 31st, 1946 (365 days)	\$ 1,594,301.71	\$
E. (1) TAX at 18% on Item 6D (1) <small>Increase each rate by 2% in case of consolidated return of more than one Corporation</small>	\$ Nil	\$
(2) TAX at 30% on Item 6D (2)	\$ 478,290.51	\$
(3) Total of Items E (1) and E (2)	\$	\$
Less applicable portion of British and Foreign Taxes paid.	\$ Nil	\$
F. Penalty of 5% for late filing of this return—see Item 10 (a)	\$ 478,290.51	\$
G. Total Income Tax Payable	\$ 478,290.51	\$
Deduct instalments paid on account of 1947 liability	\$ 450,000.00	\$
H. Balance payable (as to interest—see Item 7)	\$ 28,290.51	\$

7. PAYMENT herewith by cheque payable to the Receiver General of Canada as follows:—  
(a) INCOME TAX (Item 6H) \$28,290.51 (b) EXCESS PROFITS TAX (Item 5C) \$4,292.51 Total \$32,583.02  
The tax must be paid by instalments payable on or before the last day of each month during the twelve-month period ending six months after the close of the Company's fiscal year as follows:—  
A. During each of the first six months an amount equal to one-twelfth of the tax estimated by the company on its income for the year last preceding the taxation year or on its estimated income for the taxation year at the rate for the taxation year.  
B. During each of the last six months an amount equal to one-sixth of the remainder of the tax payable as estimated by the company on its actual income for the taxation year at the rate for the taxation year.  
Any underpayment of tax based on the estimated instalments will be subject to interest at the rate of 4% per annum upon such deficiency from the due date until the date of payment or until the date six months after the close of the fiscal period whichever is earlier.  
If the instalments paid are less than the tax payable, interest will be payable on the unpaid balance at the rate of 4% per annum from the day six months after the end of the taxation year until one month from the date of mailing of the assessment notice, and thereafter interest will be payable at 7% per annum until the date of payment.

8. I, ARTHUR R. MCGINN (Name in block letters) on behalf of the above-named Company DO HEREBY CERTIFY that this return in compliance with the requirements of the Income War Tax Act and the Excess Profits Tax Act and the statements and schedules attached, contain a full and complete disclosure of the total income of the said Company from all sources, that the information given herein is true in every respect, that the expenditures claimed were actually incurred on account of the business of the Company, and that the trading, operating and profit and loss accounts and statements of assets and liabilities and other statements submitted or furnished herewith truly reflect the affairs of the said Company, and that there are not any omissions, undisclosed reserves or discounts, of any kind or nature, by way of valuation or otherwise pertaining to the inventories, receivables, investments, capital assets or other assets which are not set out or referred to in the said information and statements submitted herewith and that all liabilities disclosed are actual liabilities except such estimated or contingent liabilities as are specifically set forth or referred to in the said information and statements submitted herewith.  
IT IS FURTHER CERTIFIED that the taxes exigible or deductible under Section 9B(2) or 9B(1) of the Income War Tax Act re dividends, interest (payable solely in Canadian funds), or copyright payments; or under Section 27 re rents, royalties, or similar payments; or under Section 25 (2) re salaries, fees, commissions, or other remuneration, payable to any non-resident of Canada; or under Sec. 92 re salaries and wages, have been withheld and remitted to the Receiver General of Canada.  
(Sgd) A.R. McGinn  
Signature of an authorized Officer of the Company

Date 23rd June 1948 Telephone No. LY. 7541 Comptroller  
Position or Rank of Officer

9. INSTRUCTIONS:—See foot of page 4
10. PENALTIES:—(a) For failure to file return within six months from the close of the Company's fiscal year—Five per centum of the tax unpaid at the date when the return was due (minimum penalty \$5—maximum penalty \$500).  
(b) For False Return—Upon summary conviction a minimum fine of \$100 or not more than two years' imprisonment or both fine and imprisonment.  
(c) For Destruction, Alteration or Mutilation of Records or making False Entries therein to evade payment of tax—Upon summary conviction a fine of not less than \$100 and not more than \$1,000 and a further fine of double the amount of tax sought to be evaded—and in default of payment of the said fines, from three months' to two years' imprisonment.  
(d) For Failure to Comply with Section 92, Tax Deduction at the Source—In addition to penalties under Sec. 92 (15) and (16), upon summary conviction a fine not exceeding \$10,000 or six months' imprisonment or both fine and imprisonment.  
(e) If any person omits to declare any dividends, rentals, interest, royalties or other like income such person may be assessed as if double the income so omitted had been received. This is in addition to all other penalties.  
(f) There are penalties for incomplete completion of this Form.

The following questions are to be carefully answered and supplementary statements attached where necessary

11. Did you make a return on Form T 2 for 1946? Yes (Yes or no) If "yes", where? Toronto "no", why not? .....
12. Was an audit of the company's books made for 1947? No (Yes or no) If so, see Item 9 (b).
13. (a) Have any capital or personal items been charged to merchandise, manufacturing, revenue or expense accounts? No (Yes or no) if so, give particulars.  
 (b) State separately amounts paid to any non-resident controlling company on account of  
 Administration \$ nil Management \$ nil Patents, etc., \$ nil Rents \$ nil  
 (c) Were any salaries paid of \$14,000 or over to non-residents? No If so, attach particulars.
14. Are the financial statements submitted herewith in accordance with the books of the company? Yes (Yes or no) If not, detailed statements reconciling the differences are to be attached hereto.
15. On what basis were inventories taken at the end of the 1947 fiscal period?  
 (a) Cost ..... (b) Lower of Cost or Market ..... (c) Other See schedule attached  
 (d) Have inventories taken at cost, or lower of cost or market, or other basis been otherwise reduced in arriving at values shown in financial statements? No (Yes or no) If so, give details. (Note Item 18.)
16. Does the inventory basis of 1947 differ from that previously used by the company? No (Yes or no) If so, explain and state when change effected See schedule attached (Yes or no)
17. Explain in detail (with attached explanation if space inadequate) method of determination of inventory values and any adjustment in quantities relating to:  
 (a) raw materials .....  
 (b) goods in process .....  
 (c) finished products See schedule attached  
 (d) supplies .....  
 (e) other inventory .....
18. Has the company any reserves relating to tangible, intangible, real, personal, capital or current assets, or taken any discounts, which have not been disclosed in this return or attached statements? No (Yes or no) If so, give details. (Note Item 15 (d).)
19. Were any reserves or discounts taken in the past three years which were not disclosed in the appropriate prior Income Tax Returns? No (Yes or no) If so, give details.
20. Have any liabilities as shown been enhanced to include provision for any contingent or future probable liabilities (reserve for bad debts and depreciation excepted)? Yes (Yes or no) If so, explain retroactive wage accrual

21. DESCRIPTION OF ALL RESERVE ACCOUNTS (Including depreciation and depletion)	Reserve at end of fiscal year 1946		Amount added reserve during fiscal year 1947		Amount charged reserve during fiscal year 1947		Balance reserve at end of fiscal year 1947	
	\$	c.	\$	c.	\$	c.	\$	c.
<u>See schedules attached</u>								

INFORMATION AS TO SOME ITEMS OF INCOME REFLECTED IN PROFIT AND LOSS ACCOUNT

All questions are to be answered either by giving the information applicable or by the word "NIL"

22. RENTS OR ROYALTIES:-  
 Rents received from See schedule attached \$ 8,407.50  
(Furnish name and address in full)  
 Royalties received from ..... \$ nil  
(Furnish name and address in full)
23. INTEREST FROM BONDS Dominion of Canada \$ 49,720.89  
 Less carrying charges (if any) \$ ..... \$ 49,720.89
24. DIVIDENDS (including Stock Dividends)—(a) CANADIAN  
 \$ .....  
 \$ .....  
Westeel Products Limited \$ 171.00  
 \$ .....  
 \$ .....  
 \$ .....  
 \$ .....  
 \$ 171.00  
 Less carrying charges (if any) \$ ..... \$ 171.00
- (b) NON CANADIAN  
 \$ .....  
 \$ .....  
 \$ .....  
 \$ .....  
 \$ .....  
 \$ .....  
 Less carrying charges (if any) \$ ..... \$ nil

Where space provided is not sufficient, supplementary sheets properly identified containing full information must be attached.



INFORMATION AS TO SOME ITEMS OF DEDUCTIONS CHARGED IN PROFIT AND LOSS ACCOUNT

All questions to be answered either by giving the information applicable or by the word "NIL"

25. INTEREST - COPYRIGHTS
- INTEREST PAID ON--
- (a) Registered Bonds \$ nil
  - (b) Bearer Bonds \$ nil
  - (c) Mortgages, paid to \$ nil
  - Address
  - (d) Other obligations, paid to \$ nil
  - Address
  - (e) COPYRIGHTS, paid to \$ nil
  - Address
- 25(A) RENTS, ROYALTIES or SIMILAR PAYMENTS
- (f) Rents on Real Estate, paid to \$ 2,633.12
  - Address Schedule attached
  - (g) Rents on Movable Property, paid to \$ 11,127.30
  - Address Schedule attached
  - (h) Royalties or Similar Payments, paid to \$ 16,480.82
  - Address Schedule attached

Form 509 must be filed as to payments to residents in (a) and Form 603 for 15% tax deduction in case of non-residents in (a), (c), (d) and (e). The payments under (f), (g) and (h) should reconcile with amounts reported on Forms 700 and 701 respectively where paid to non-residents.

Write or Call the District Income Tax Office for Required Forms

26. INCOME, EXCESS PROFITS OR CORPORATION PROFIT TAXES AND INTEREST THEREON Attach details. Dominion \$ 513,208.70 Provincial \$ 106,972.82 Municipal \$ Total \$ 620,181.52
27. CHARITABLE DONATIONS paid in 1947 fiscal year as per list herewith in duplicate and receipts attached. List attached \$ 28,320.41
28. Have you eliminated all depreciable assets that are not actively being used in the operation of your business from the assets in respect of which you claim depreciation? YES If not, why not?
29. Has any reserve for depreciation been transferred to a reserve of another nature or applied to a purpose other than that for which it was created? NO If so, give particulars

30. DEPRECIATION	Nature of Asset and date acquired (do not include land). If machinery, give description and date of purchase.	Year acquired	COST OF THE DEPRECIABLE ASSETS (not including land)				Rate % p.a.	DEPRECIATION CHARGED AS REFLECTED BY THE BOOKS OF ACCOUNT	
			Cost at residual balance at end of fiscal year 1946	Added during fiscal year 1947	Deducted during fiscal year 1947	Balance at end of fiscal year 1947		Net accumulated to 1946 inclusive	Amount charged fiscal year 1947
NOTE ATTENTION IS DRAWN PARTICULARLY TO ITEM 28									
See schedules attached									

NOTE—On separate sheet state nature of all debits and credits to fixed asset accounts.

NOTE: Do not include Depreciation on Stock in Trade, Land or Securities or other Assets not subject to exhaustion through wear and tear.

INCOME FOR FISCAL YEAR 1947

31. NET INCOME for fiscal year ended 1947 per (a) Financial statements attached or (b) Item 2 of Form T2—Supplemental
32. Section 6 of the Income War Tax Act provides that—In computing the amount of profits to be assessed a deduction shall not be allowed in respect of (1) disbursements or expenses not wholly, exclusively and necessarily laid out or expended for the purpose of earning the income; (2) any outlay, loss, replacement or payment on account of capital; (3) amounts transferred or credited to a reserve, contingent account or sinking fund, except limited reserves for bad debts and depreciations; (4) carrying charges of property the income from which is exempt except to the extent that such carrying charges exceed the exempt income; (5) carrying charges of unproductive property not acquired for the purpose of the business; (6) amounts paid to non-resident controlling companies except limited payments for actual services; (7) expenses incurred to earn non-taxable income; (8) Provincial or Municipal Corporation tax as defined under Section 6(1)(D).
- If any of the following items, or like items, were charged or an expense or deducted from gross income, in arriving at "net income" (Item 31) they must be added to the said net income as indicated below. If no such charge has been made insert the word "NIL."
- ADD
- 33. Income, Excess Profits or Corporation profit taxes and interest thereon
  - 34. Entertainment expenses and social club fees
  - 35. Life Insurance Premiums
  - 36. Loss on capital assets
  - 37. Any charge on account of goodwill or trade marks or other intangible assets
  - 38. Expenses of incorporation, reorganization or cost of supp. letters patent.
  - 39. Bond discount or expenses of Bond issues or Redemption
  - 40. Reserves other than for depreciation, depletion and bad debts
  - 41. Taxes deducted at the source by British or foreign countries (give details)
  - 42. Any other outlay or expenditure within the meaning of Item 32 (specify)
- Total of additions
- DEDUCT
- 43. Net dividends received from corporations taxable under provisions of the Income War Tax Act (Item 24 (a)).
- Total of deductions
44. INCOME OF YEAR SUBJECT TO TAX to be transferred to Items 6A and 45 1,594,301.71

If a loss is shown in Item 44, state amount reported as income subject to tax for fiscal year 1946 \$

Where space provided is not sufficient, supplementary sheets properly identified containing full information, must be attached.

NOTE: Failure to deduct and remit 15% tax and the debitors referred to in Items 23 and 25(A) renders the debtor personally liable for the amount which should have been withheld and remitted. (See Section 94 of the Income War Tax Act.)

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FOR USE IN RESPECT OF THE EXCESS PROFITS TAX ACT, 1946

**T2-1947**

NOTE: If the profits (Item 45C) amount to less than \$5,000, and fiscal period commenced prior to January 1st, 1947, attach a supplementary statement showing the amount of remuneration in any form (salary, wages, commission, bonus, interest, etc.) paid to shareholders.

ESTIMATE OF EXCESS PROFITS TAX PAYABLE		For Taxpayer's Use	For Departmental Use
45. A. INCOME OF YEAR SUBJECT TO TAX (from Item 44, page 3)		\$ 1,594,301.71	\$
B. LESS: Losses in prior years deductible — attach details		\$ nil	\$
C. INCOME SUBJECT TO TAX		\$ 1,594,301.71	\$
Apportionment of Income (Item 45C) on a pro rata daily basis:—			
D. Period to December 31st, 1946	days	\$ nil	\$
E. Period subsequent to December 31st, 1946	365 days	\$ 1,594,301.71	\$
<b>46. FIRST PART</b>			
If profits (Item 45C) plus payments to shareholders are \$5,000 or less:			
A. Tax at 12% on Item 45D		\$ nil	\$
If profits (Item 45C) plus payments to shareholders are more than \$5,000:			
B. Tax at 22% on Item 45D		\$ nil	\$
<b>47. SECOND PART</b>			
Apportionment of Standard Profits* on a pro rata daily basis:—			
A. Period to December 31st, 1946	days	\$ nil	\$
B. Period subsequent to December 31st, 1946	365 days	\$ 999,158.58	\$
C. Total Standard Profits (*If under \$25,000, see Sec. 5B of Act)		\$ 999,158.58	\$
48. A. INCOME TO DECEMBER 31st 1946 as per Item 45D		\$ nil	\$
B. LESS: Standard Profits as per Item 47A	\$ nil	\$ nil	\$
C. One-sixth of Standard Profits	\$	\$	\$
D. EXCESS PROFITS		\$ nil	\$
E. Tax at 20% on Item 48D		\$ nil	\$
49. A. INCOME SUBSEQUENT TO DECEMBER 31st, 1946, as per Item 45E		\$ 1,594,301.71	\$
B. LESS: Standard Profits as per Item 47B	\$ 999,158.58		
C. One-sixth of Standard Profits	\$ 166,526.25	\$ 1,165,685.01	\$
D. EXCESS PROFITS		\$ 428,616.70	\$
E. TAX at 15% on Item 49D		\$ 64,292.51	\$
<b>50. AMOUNT OF EXCESS PROFITS TAX PAYABLE:</b>			
A. Insert Item 46A or Item 46B (whichever is applicable in respect of periods commencing prior to January 1st, 1947)		\$ nil	\$
B. Insert Item 48E (where applicable)		\$ nil	\$
C. Insert Item 49E		\$ 64,292.51	\$
D. Total of Items 50A, 50B and 50C		\$ 64,292.51	\$
51. 5% Penalty for late filing — see Item 10(e)		\$ -	\$
52. A. Total Excess Profits Tax Payable		\$ 64,292.51	\$
B. Deduct instalments paid on account of 1947 liability		\$ 60,000.00	\$
C. Balance payable (as to interest see Item 7)		\$ 4,292.51	\$

9. INSTRUCTIONS:—(a) The information requested must be furnished.

(b) Every company, as well as completing this form, must attach a copy of auditor's complete unabridged report with certified financial statements in duplicate including Assets and Liabilities, Trading or Operating and Profit and Loss Statements for the accounting period covered by this return or attach completed T 2 Supplemental Forms (which are short financial statements) in duplicate. The latter may be obtained from the District Income Tax Office.



## ANACONDA AMERICAN BRASS LIMITED

## FORM T-2 - 1947

*Item 4*

Names and addresses of parent, subsidiary and affiliated companies:

1. The American Brass Company, Waterbury, Connecticut, U.S.A.  
—Parent Company.

*Items 15, 16 and 17*

Raw Materials—

Copper, zinc, lead and tin—at laid-down cost on a last-in, first-out basis.

Other Metals—at average cost.

Metals in process and finished—on above basis for metal content, plus the relative differentials to point of process.

Scrap Metals—on above basis for metal content less a deduction of .25c. per pound and in the case of turnings a deduction of 1c per pound.

Purchased goods and supplies—at average cost.

NOTE: In previous years the inventory values of lead and tin were calculated on a first-in, first-out basis.

*Item 21*

Reserve for taxes on income—

Balance January 1, 1947—Dominion..... \$140,000.00

Add: Provision for year 1947

Dominion..... \$513,208.70

Provincial..... 106,972.82

620,181.52

New Zealand Tax Refund..... 9,470.40

\$769,651.92

Deduct payments as follows:

Balance of 1946 Dominion Income Tax..... \$14,014.65

On account of 1947 income and excess profits tax:

Dominion..... 360,000.00

Provincial..... 58,000.00

432,637.27

\$337,637.27

Deduct adjustment of refundable portion of taxes for the years 1941-5.. 637.27

Balance at December 31, 1947..... \$337,000.00*Item 22*

Rents received from

Mr. W. H. Stewart, 78 Westminster Ave., Toronto, Ontario..... \$ 600.00

Mr. L. R. Richardson, 6 Lake Crescent, Mimico, Ontario..... 600.00

War Assets Corporation, Toronto, Ontario..... 4,207.50

Metal Stampings, Limited, 3600 Danforth St., Toronto..... 3,000.00

\$8,407.50

*Item 25 (f)*

Rents on Real Estate (Montreal Office) paid to: D. W. Ogilvie & Co., Inc., Dominion Square Bldg., Montreal, Quebec.....	\$2,633.12
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*Item 25 (g)*

Rents on moveable property paid to: International Business Machines Co., Limited, 36-38 King St. E., Toronto, Ontario.....	10,398.00
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Telautograph Corporation, 16 West 61st St., New York. Canadian Address: 284 King St. W., Toronto, Ont.	\$517.90
Amount remitted.....	91.40
Tax withheld.....	609.30

Pitney-Bowes of Canada, Limited, 181 King St. W., Toronto, Ont.....	120.00
	\$11,127.30
	\$11,127.30

*Item 25 (h)*

Royalties paid to: Prest-O-Lite Co. of Canada, Limited, 159 Bay St., Toronto, Ontario.....	\$16,480.82
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## ANACONDA AMERICAN BRASS LIMITED

YEAR 1947

## COMPUTATION OF TAXABLE INCOME

Net Profit as per Auditor's statement.....		\$1,550,399.29
LESS: Profit on sale of fixed assets.....	\$21,594.13	
Deduct: Profit on sale of autos.....	\$1,799.00	
Portion of Profit on sale of breakdown mill originally charged to repairs in 1945....	9,508.16	
	<u>11,307.16</u>	
		\$10,286.97
Profit on sale of securities.....	2,250.00	
	<u>2,250.00</u>	
Profit on sale of capital assets.....	\$12,536.97	
Adjustment of profit on sale of automobiles shown on records as 100% depreciated but on tax records as 85% depreciated.....	729 22	
Dividends from Corporations.....	171.00	
	<u>13,437.19</u>	
		\$1,536,962.10
ADD: Retroactive Wage Accrual Estimate.....	\$56,004.89	
LESS: Actual (determined April, 1948).....	9,481.58	
	<u>\$46,523.31</u>	
Labor-management Production Committee cash awards.\$	353.96	
Provincial Capital and Office Tax.....	3,250.00	
Depreciation on automobiles and trucks in excess of 85% of original cost.....	2,720.95	
Depreciation on roadway paving and sewers in excess of 5 and 10% allowable yearly rates.....	4,491.39	
	<u>57,339.61</u>	
Income subject to tax.....		\$1,594,301.71

## ANACONDA AMERICAN BRASS LIMITED

FORM T-2 - 1947

*Item 27—Charitable Donations*

The Canadian Red Cross Society.....	\$3,430.53
The Salvation Army.....	1,200.00
Community Chest of Greater Toronto.....	8,004.63
Canadian National Institute for the Blind.....	600.00
Canadian Aid to China.....	50.00
The Boy Scouts Association (Toronto).....	25.00
Lake Shore Branch of the Boy Scouts Association (Orangeville Camp)....	50.00
The St. John Ambulance Appeal.....	25.00
Federation of French Charities (Montreal).....	50.00
British Sailors' Society.....	50.00
Mr. "Al Pat" Joseph (Books for Military Hospitals).....	12.50
Mission to Sailors (Upper Canada Tract & Book Society).....	12.50
Hospital for Sick Children (London, Eng.).....	37.50
Veteran's Camp Fund.....	25.00
The Canadian Relief to Greece Appeal.....	25.00
The Scott Mission.....	25.00
Quebec Tuberculous Veterans Section.....	25.00
War Amputations of Canada.....	25.00
Hadassah Organization of Toronto.....	12.50
Welfare Federation of Montreal.....	50.00
Federation of Catholic Charities.....	25.00
Navy League of Canada.....	25.00
Canadian Merchant Navy Veterans.....	12.50
Poppy Fund of Toronto Incorporated.....	25.00
United Polish Relief Fund of Canada.....	75.00
Winston Spencer Churchill Branch No. 3—Poppy Fund.....	25.00
Canadian Mothercraft Society.....	25.00
National Sanitarium Association.....	37.50
The Gideons.....	12.50
Canadian Institute of Plumbing & Heating—Food for Britain Fund.....	37.50
Hospital for Sick Children.....	50.00
Ontario Society for Crippled Children.....	50.00
Mimico-New Toronto Rotary Club.....	1,300.00
The Boy Scouts Association.....	650.00
Toronto Industrial Commission.....	100.00
Canadian Manufacturers Association (Scholarship Fund).....	25.00
Dominion Association of Fire Chiefs.....	50.00
Toronto Y.W.C.A. and Y.M.C.A.....	6,500.00
Technical Service Council.....	50.00
Macdonald College.....	200.00
Department of Industrial Relations, Queen's University.....	150.00
Canadian Tax Foundation.....	2,500.00
Canadian Legion (Toronto) War Memorial Fund.....	1,000.00
Anaconda Athletic Association.....	1,500.00
Macdonald College (Metals).....	160.25
Total Donations.....	<u>\$28,320.41</u>

# ANACONDA AMERICAN BRASS LIMITED

(Incorporated under the Dominion Companies Act)

BALANCE SHEET—31st DECEMBER, 1947

67108—8

ASSETS	LIABILITIES
<p><b>CURRENT:</b></p> <p>Cash on hand and in bank.....\$ 1,360,729.45</p> <p>Investment in marketable securities at cost..... 2,549,376.00</p> <p>(Market value at 31 December, 1947, \$2,570,679)</p> <p>Accounts receivable—trade..... 1,035,133.89</p> <p>Refundable portion of taxes on income due 31 March, 1948..... 242,168.59</p> <p>Inventories as determined and certified by the management and valued as follows:</p> <p>Metals—raw, scrap, finished and in process at cost which with minor exceptions is computed on a "last-in first-out" basis.....\$ 1,848,497.89</p> <p>Supplies—at average cost..... 203,326.80</p> <p style="text-align: right;"><u>2,051,824.69</u></p>	<p><b>CURRENT:</b></p> <p>Accounts payable and accrued charges..... \$ 527,007.84</p> <p>The American Brass Company..... 6,744.44</p> <p>Accrued wages..... 172,389.99</p> <p>Sales taxes payable..... 15,970.40</p> <p>Reserve for taxes on income..... 337,000.00</p> <p>Reserve for contingencies..... 850,000.00</p> <p style="text-align: right;"><u>\$1,909,112.67</u></p>
<p><b>FIXED:</b></p> <p>Land.....\$ 142,930.90</p> <p>Buildings..... 1,610,012.90</p> <p>Machinery and Equipment..... 4,975,837.36</p> <p>Railway siding..... 20,770.08</p> <p>Roadway paving and sewers..... 94,821.15</p> <p>Furniture and fixtures..... 100,601.49</p> <p>Automotive equipment..... 148,098.07</p> <p style="text-align: right;"><u>\$7,093,071.95</u></p>	<p><b>CAPITAL AND EARNED SURPLUS:</b></p> <p>Capital authorized and issued..... \$2,000,000.00</p> <p>(20,000 shares of \$100 each)</p> <p>Earned surplus..... 6,778,453.59</p> <p style="text-align: right;"><u>8,778,453.59</u></p>

On behalf of the Board,  
(Sgd.) A. H. QUIGLEY, Director.  
(Sgd.) W. H. STEWART, Director.

## AUDITORS' REPORT TO THE SHAREHOLDERS

We have examined the balance sheet of Anaconda American Brass Limited as at 31st December, 1947, and the statements of profit and loss and earned surplus for the fiscal year then ended, have reviewed the systems of internal control and the accounting procedures of the company, and, without making a detailed audit of the transactions, have examined or tested accounting records of the company and other supporting evidence by methods and to the extent we deemed appropriate. Our examination was made in accordance with generally accepted auditing standards applicable in the circumstances and included all procedures which we considered necessary.

In our opinion the accompanying balance sheet and related statements of profit and loss earned surplus present fairly the position of Anaconda American Brass Limited at 31st December, 1947, and the results of its operations for the fiscal year then ended in conformity with generally accepted principles of accounting applied on a basis consistent with that of the preceding year, according to the best of our information and the explanations given us and as shown by the books.

(Sgd.) CLARKSON, GORDON & CO.,  
*Chartered Accountants.*

<p><b>OTHER:</b></p> <p>Refundable portion of taxes on income due 1949 to 1951.....\$981,545.45</p> <p>Sundry claims and deposits receivable, etc..... 13,370.00</p> <p>Real estate at cost less amounts written off..... 20,175.00</p> <p style="text-align: right;"><u>1,015,090.45</u></p>	<p style="text-align: right;"><u>\$2,433,238.19</u></p> <p style="text-align: right;"><u>\$10,687,566.26</u></p>
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TORONTO, CANADA,  
March 4, 1948.

ANACONDA AMERICAN BRASS LIMITED  
NEW TORONTO, ONTARIO

STATEMENT OF PROFIT AND LOSS FOR YEAR ENDED  
31 DECEMBER, 1947

Sales—less returns.....	\$21,214,178.81	
Inter-department sales (net).....	24,132.34	
	<u>21,238,311.15</u>	\$21,238,311.15
Inventories, 1 January, 1947 (other than supplies).....	\$ 1,955,325.84	
Purchases.....	13,574,338.93	
	<u>15,529,664.77</u>	
Less Inventories 31 December, 1947.....	1,848,497.89	
	<u>13,681,166.88</u>	
		<u>\$7,557,144.27</u>
<i>Less:</i>		
Wages.....	\$2,481,247.40	
Operating expenses.....	1,251,172.66	
Maintenance and repairs.....	332,928.16	
Transportation.....	396,214.47	
General expenses.....	950,645.68	
Selling expenses.....	296,035.87	
	<u>5,708,244.24</u>	
		<u>\$1,848,900.03</u>
<i>Less:</i>		
Cash discounts allowed.....	\$ 154,733.85	
Loss on foreign exchange.....	787.70	
Bad debt expense.....	24.60	
	<u>155,546.15</u>	
		<u>\$1,693,353.88</u>
<i>Add:</i>		
Cash discounts earned.....	\$ 20,458.67	
Interest and dividends received.....	49,891.89	
Profit on sale of securities.....	2,250.00	
Profit on sale of fixed assets.....	21,594.13	
Other interest received.....	249.16	
	<u>102,109.76</u>	
Excess of rental revenue over expenditure on real estate (including \$387.50 depreciation).....	\$ 7,665.91	
	<u>109,775.67</u>	
Profit before providing for depreciation and taxes on income.....		<u>\$ 1,795,463.64</u>

## Deduct provision for depreciation:

Buildings.....	\$ 44,873.94	
Machinery and equipment.....	180,993.53	
Railway siding.....	1,264.76	
Roadway paving and sewers.....	11,672.32	
Furniture and fixtures.....	6,259.80	
		<u>245,064.35</u>
		\$ 1,550,399.29
Provision for taxes on income.....	\$ 620,181.52	
Provision for contingencies.....	850,000.00	
		<u>1,470,181.52</u>
Net profit.....	\$ 80,217.77	<u><u></u></u>

## STATEMENT OF EARNED SURPLUS

Balance 31 December, 1946.....	\$ 7,698,235.82
Net profit for year.....	80,217.77
	<u>\$ 7,778,453.39</u>
Deduct dividend paid.....	1,000,000.00
	<u>\$ 6,778,453.59</u>
Balance 31 December, 1947.....	<u><u>\$ 6,778,453.59</u></u>

## ANACONDA AMERICAN BRASS LIMITED

## GENERAL EXPENSES FOR YEAR ENDING 31 DECEMBER, 1947

General labour.....	\$ 195,283.88
Workmen's compensation.....	34,306.34
Unemployment insurance.....	16,097.78
Insurance.....	8,552.19
Group insurance.....	19,668.88
Hospital expense.....	19,365.07
Canteen expense.....	11,078.80
Vacation with pay.....	72,253.65
Telephone and telegraph.....	12,052.45
Stationery and postage.....	37,512.47
Excise stamps.....	556.95
Salaries—executive.....	34,225.00
Salaries—other.....	164,483.17
Pensions.....	9,579.60
Other expenses including donations.....	242,966.83
Rental of office equipment.....	11,127.30
Legal.....	2,354.04
Property taxes.....	48,417.11
Provincial capital and office taxes.....	3,250.00
Service trucks and cars.....	7,514.17
	<hr/>
	\$ 950,645.68
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## SELLING EXPENSES FOR YEAR ENDED 31 DECEMBER, 1947

Advertising.....	\$ 83,105.48
Travelling.....	16,978.76
Telephone and telegraph.....	2,711.80
Salaries.....	89,284.39
Commissions.....	53,744.82
Montreal office expense.....	50,210.62
	<hr/>
	\$ 296,035.87
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ANACONDA AMERICAN BRASS LIMITED  
SCHEDULE OF DEPRECIATION  
YEAR ENDING DECEMBER 31, 1947

	Year Acquired	Assets Balance at Dec. 31, 1947	Rate Depreciated to Date	Reserve for Depreciation Dec. 31, 1947	Reserve for Depreciation Dec. 31, 1946	1947 Depreciation	
						Amount	Rate
REAL ESTATE INVESTMENT—							
Buildings.....		15,500.00	15	2,325.00	1,937.50	387.50	2½
BUILDINGS—COMMERCIAL—							
	1928	165,000.00	43½	72,187.50	68,062.50	.....	2½
	1929	180,547.23	43½	78,989.41	74,475.73	.....	2½
	1930	270,629.01	41½	111,634.47	104,868.74	.....	2½
	1931	150,383.43	40	60,153.37	56,393.79	.....	2½
	1932	24,368.80	38½	9,442.91	8,833.69	.....	2½
	1933	33.96	37½	12.74	11.89	.....	2½
	1934	68,981.40	35	24,143.50	22,418.96	.....	2½
	1937	78,332.35	27½	21,541.40	19,583.09	.....	2½
	1938	451.86	25	112.97	101.67	.....	2½
	1939	33.30	22½	7.49	6.66	.....	2½
	1940	26,631.60	20	5,326.32	4,660.53	.....	2½
	1941	4,233.55	17½	740.87	635.03	.....	2½
	1942	28,578.28	15	4,286.74	3,572.29	.....	2½
	1943	22,416.47	12½	2,802.06	2,241.65	.....	2½
	1944	22,612.43	10	2,261.24	1,695.93	.....	2½
Frame-Double.....	1946	172,936.58	15	25,940.49	8,646.83	.....	10
Sold in 1947.....	1946	156.52	15	23.47	7.82	.....	10
Frame-Double.....	1947	2,237.43	2½	55.94	.....	.....	2½
Frame-Double.....	1947	1,712.79	10	171.28	.....	.....	10
		1,219,963.95		419,787.23	376,201.16	43,586.07	

ANACONDA AMERICAN BRASS LIMITED  
NEW TORONTO, ONTARIO

SCHEDULE OF DEPRECIATION  
YEAR ENDING DECEMBER 31, 1947 — Continued

	Year Acquired	Assets Balance at Dec. 31, 1947	Rate Depreciated to Date	Reserve for Depreciation Dec. 31, 1947	Reserve for Depreciation Dec. 31, 1946	1947 Depreciation	
						Amount	Rate
<b>MACHINERY AND EQUIPMENT—</b>							
COMMERCIAL.....		2,515,012.52					
Sales in 1947.....		68,938.74					
		2,446,073.78	100	2,446,073.78	2,446,073.78		
	1941	105,516.88	95	100,241.03	89,689.35		10
	1942	220,363.65	80	176,290.92	154,254.56		10
	1943	44,305.00	65	28,793.25	24,367.75		10
	1944	66,811.18	50	33,405.59	26,724.47		10
	1945	56,527.78	35	19,784.73	14,131.95		10
	1946	46,802.66	20	9,360.54	4,680.27		10
Double.....	1946	259,137.44	30	77,741.23	25,913.74		20
Double.....	1946	36,984.53	20	7,396.91			20
Double.....	1947	68,575.70	10	6,857.57			10
Double.....	1947	499,078.19	9½	47,232.53			20
		3,850,176.79		2,953,183.08	2,785,835.87	167,347.21	
<b>FURNITURE AND FIXTURES—</b>							
COMMERCIAL.....		29,178.96					
Sales in 1947.....		1,751.40					
		27,427.56		27,427.56	27,427.56		
	1938	3,317.82	100	3,317.82	2,986.04		
	1939	1,139.70	90	1,025.73	911.76		

ANACONDA AMERICAN BRASS LIMITED  
NEW TORONTO, ONTARIO

SCHEDULE OF DEPRECIATION  
YEAR ENDING DECEMBER 31, 1947 — Continued

Year Acquired	Assets Balance at Dec. 31, 1947	Rate Depreciated to Date	Reserve for Depreciation Dec. 31, 1947	Reserve for Depreciation Dec. 31, 1946	1947 Depreciation	
					Amount	Rate
1940	5,148.77	80	4,119.02	3,604.14		
1941	21,117.40	70	14,782.18	12,670.44		
1942	7,317.38	60	4,390.43	3,658.69		
1943	3,277.54	50	1,638.77	1,311.02		
1944	2,451.21	40	980.48	735.36		
1945	2,414.23	30	724.27	482.85		
1946	2,283.16	20	456.64	228.32		
1947	11,486.77	10	1,148.68	.....		
	87,381.54		60,011.58	54,016.18	5,995.40	10
RAILWAY SIDINGS—						
1929	8,900.13	87½	7,787.61	7,342.61		5
1930	3,060.86	82½	2,525.21	2,372.17		5
1931	434.50	80	347.61	325.88		5
1932	592.33	77½	459.06	429.44		5
1939	12.15	45	5.47	4.86		5
1940	1,040.11	40	416.05	364.04		5
1941	2,204.92	35	771.72	661.48		5
1946	4,525.08	15	678.76	226.25		10
Double.....	20,770.08		12,991.49	11,726.73	1,264.76	

ANACONDA AMERICAN BRASS LIMITED

SCHEDULE OF DEPRECIATION

YEAR ENDING DECEMBER 31, 1947—Continued

	Year Acquired	Assets Balance at Dec. 31, 1947	Rate Depreciated to Date	Reserve for Depreciation Dec. 31, 1947	Reserve for Depreciation Dec. 31, 1946	1947 Depreciation	
						Amount	Rate
<b>BUILDINGS—GENERAL PURPOSE</b>							
WAR EXPENDITURE.....		310,951.63	100	310,951.63	310,951.63		
20% of Residual Value.....	1939	1,280.18	20	256.03	224.03		
20% of Residual Value.....	1940	40,980.26	20	8,196.06	7,171.55		
20% of Residual Value.....	1941	9,254.16	17½	1,619.48	1,388.12		
		362,466.23		321,023.20	219,735.33	1,287.87	2½
<b>MACHINERY AND EQUIPMENT—GENERAL PURPOSE WAR EXPENDITURE.....</b>							
	1939	506,508.84	100	506,508.84	506,508.84		
	1940	74,113.05	80	432.93	378.81		
	1940	16,467.44	80	59,290.44	51,879.14		
	1941	35,430.40	70	11,527.20	9,880.46		
		633,060.89		24,811.28	21,258.24		
				602,570.69	589,905.49	12,665.20	10
<b>MACHINERY AND EQUIPMENT—SPECIAL PURPOSE WAR EXPENDITURE.....</b>							
	1940	88,300.39	100	88,300.39	88,300.39		
10% of Residual Value.....	1940	9,672.08	80	7,737.67	6,770.46		
10% of Residual Value.....	1940	3.18	70	2.25	1.91		
10% of Residual Value.....	1941	135.88	70	95.12	81.53		
		98,111.54		96,135.41	95,154.29	981.12	10

ANACONDA AMERICAN BRASS LIMITED

SCHEDULE OF DEPRECIATION

YEAR ENDING DECEMBER 31, 1947—Continued

	Year Acquired	Assets Balance at Dec. 31, 1947	Rate Depreciated to Date	Reserve for Depreciation Dec. 31, 1947	Reserve for Depreciation Dec. 31, 1946	1947 Depreciation	
						Amount	Rate
FURNITURE AND FIXTURES—							
GENERAL PURPOSE WAR EXPENDITURE.....		10,575.95	100	10,575.95	10,575.95		
20% of Residual Value.....	1940	2,644.00	80	2,115.20	1,850.80		
		13,219.95		12,691.15	12,426.75	264.40	10
ROADWAY PAVING—							
		17,676.72	100	17,676.72	17,676.72		
	1943	2,233.71	100	2,233.71	1,786.97		
	1944	11,214.83	80	8,971.87	6,728.90		
		31,125.26		28,882.30	26,192.59	2,689.71	20
ROADWAY PAVING AND SEWERS—							
Double.....	1946	18,724.86	10	1,872.49	936.24		
	1946	31,970.64	20	6,394.13	2,197.06		
	1947	7,157.99	5	357.90	.....		
		57,853.49		8,624.52	4,133.30	4,491.22	
Add: Adjustments to be made in 1948 to agree with Tax Records.....				5,427.64	936.25	4,491.39	
As per Our Records, December 31, 1947.....				14,052.16	6,069.55	8,982.61	

## ANACONDA AMERICAN BRASS LIMITED

## SCHEDULE OF DEPRECIATION

YEAR ENDING DECEMBER 31, 1947—Concluded

	Year Acquired	Assets Balance at Dec. 31, 1947	Rate Depreciated to Date	Reserve for Depreciation Dec. 31, 1947	Reserve for Depreciation Dec. 31, 1946	1947 Depreciation	
						Amount	Rate
WAR RISK PREVENTION EQUIPMENT.....		8,016.56	100	8,016.56	8,016.56		
AUTOMOBILES AND TRUCKS—							
	1941	69,841.46	100	69,841.46	69,841.46		
Sales in 1947.....	1941	24,767.93	85	22,645.89	22,645.89		
	1942	2,484.00	85	2,111.40	2,111.40		
	1942	34,962.85	85	29,718.42	29,718.42		
Sales in 1947.....	1943	2,377.46	85	2,020.84	2,020.84		
	1944	2,526.55	85	2,147.57	1,804.37		
	1944	3,530.00		2,235.74	1,529.78		
	1945	70.00		576.00	384.00		
	1946	2,428.06		526.34	40.70		
	1947	14,943.16		1,125.80			
		148,098.07		124,684.98	121,832.38	2,852.60	
<i>Add: Adjustments to be made in 1948 to agree with tax records.....</i>				5,803.93	3,082.98	2,720.95	
As per Our Records, December 31, 1947.....				130,488.91	124,915.36	5,573.55	

ANACONDA AMERICAN BRASS LIMITED  
NEW TORONTO, ONTARIO

SCHEDULE OF DEPRECIATION YEAR ENDING DECEMBER 31, 1947

Summary	Assets Balance at Dec. 31, 1947	Reserve for Depreciation Dec. 31, 1947	Reserve for Depreciation Dec. 31, 1946	1947 Deprecia- tion
Buildings—Commercial.....	1,219,963.95	419,787.23	376,201.16	43,586.07
Machinery and Equipment—Commercial.....	3,850,176.79	2,953,183.08	2,785,835.87	167,347.21
Furniture and Fixtures—Commercial.....	87,381.54	60,011.58	54,016.18	5,995.40
Railway Sidings.....	20,770.08	12,991.49	11,726.73	1,264.76
Buildings—General Purpose War Expenditure.....	362,466.23	321,023.20	319,735.33	1,287.87
Machinery and Equipment—General Purpose War Expenditure.....	633,060.89	602,570.69	589,905.49	12,665.20
Machinery and Equipment—Special Purpose War Expenditure.....	98,111.54	96,135.41	95,154.29	981.12
Furniture and Fixtures—General Purpose War Expenditure.....	13,219.95	12,691.15	12,426.75	264.40
Roadway Paving.....	31,125.26	28,882.30	26,192.59	2,689.71
Roadway Paving and Sewers.....	57,853.49	14,052.16	5,069.55	8,982.61
War Risk Prevention Equipment.....	8,016.56	8,016.56	8,016.56	.....
Real Estate Investment—Buildings.....	6,382,146.28	4,529,344.85	4,284,280.50	245,064.35
Automobiles and Trucks.....	15,500.00	2,325.00	1,937.50	387.50
Construction in Progress.....	148,098.07	130,488.91	124,915.36	5,573.55
	419,896.70	.....	.....	.....
	6,965,641.05	4,662,158.76	4,411,133.36	251,025.40

Affix postage to communications and stamps to cheques.



**T.2-Questionnaire**  
Income and Excess Profits For use by Corporations  
Rev. Oct. 1944

DATE  
REC'D  
BY  
INSP.

DOMINION OF CANADA

**INCOME AND EXCESS PROFITS TAX**

(Form prescribed and authorized by the Minister of National Revenue)

- 1. Name of Corporation ANACONDA AMERICAN BRASS LIMITED
- 2. Address Eighth & Birmingham Sts., New Toronto, Ontario.
- 3. Fiscal period ended 31 December 1947

**INSTRUCTIONS**

- (a) This Return must be filed in duplicate with the Inspector of Income Tax within six months from the close of the fiscal year by all companies in respect of fiscal periods ending on or after the 31st December, 1942.
- (b) Items 6 to 17 both inclusive must be completed in full and certified in Item 18 by two responsible officials of the Company, one of whom must be the chief accounting official.
- (c) The report required by Item 19 must be completed and signed by the Auditor of the Company appointed by the Shareholders of the Company for the fiscal period covered by this return, and must accompany this Form.
- (d) Certain enquiries similar to those on the T.2 Return are again submitted herein in order that the Auditor may report on the answers given.
- (e) Where particulars are required and space is insufficient, attach schedules. Reference should be made thereon to the item number of the Questionnaire.

**THE TAXPAYER IS SUBJECT TO THE FOLLOWING PENALTIES**

- (a) For failure to file this Return within six months from the close of the Company's fiscal year - 1% of the tax payable with a maximum of \$100. Minimum penalty whether taxable or not \$25.
- (b) For False Return - Upon summary conviction a fine not exceeding \$10,000 or 6 months' imprisonment or both fine and imprisonment.
- (c) For incomplete completion of this Return - 1% of the tax payable with a maximum of \$100 - Minimum penalty whether taxable or not \$25.

**INVESTMENTS**

- (a) State whether dividends (cash or otherwise) have been included in the income of the period on a received basis or on an accrued basis. **Received basis**
- (b) Is this accounting treatment consistent with that in the preceding fiscal period? **yes**
- (c) State whether interest (cash or otherwise) has been included in the income of the period on a received basis or on an accrued basis. **Received basis**
- (d) Is this accounting treatment consistent with that in the preceding fiscal period? **yes**
- (e) Have profits or losses on disposal or revaluation of investments been:
  - (1) Included in arriving at taxable income? **no**
  - (2) Excluded in arriving at taxable income? **yes**
- (f) Have amounts resulting from the amortization of premiums and discounts on investments been:
  - (1) Included in arriving at taxable income? **none**
  - (2) Excluded in arriving at taxable income? **none**
- (g) Give details, in respect of investments, of any amounts received (cash or otherwise) by way of reduction of capital, payments out of depletion or depreciation reserves, arising from reorganizations or compromises, or otherwise, which have not been included in the income of the period as reported on Form T.2. **None**

**ACCOUNTS AND BILLS RECEIVABLE**

- (a) State basis on which the bad debt provision for the fiscal period has been calculated. **No bad debt provision**
- (b) If a reserve for bad debts is maintained complete the following summary:
 

Balance at beginning of fiscal period	\$
Provision charged against the profits of this fiscal period	\$
Amounts recovered or reinstated in respect of accounts previously written off	\$
Other Credits	\$
<b>No reserve maintained</b>	\$
LESS accounts written off:	
Trade	\$
Other, as per list attached	\$
Balance at close of fiscal period	\$
Total of outstanding accounts and bills receivable and bills receivable under discount, excluding amounts owing by the Dominion Government and Crown Companies	\$
Percentage of reserve to outstandings	%
- (c) If no reserve for bad debts is maintained, state:
  - (1) Gross amount of bad debts written off. **24.60**
  - (2) Amounts recovered or reinstated in respect of accounts previously written off. **nil**
- (d) Do all amounts charged as or reserved for bad debts represent losses or provision for losses arising from the Company's regular operations? **yes** If not, give particulars.
- (e) Give details of amounts written off or provided for any losses in respect of loans or advances to employees, shareholders, parent, subsidiary and associated companies. **none**

**DEFERRED CHARGES**

- (a) Do the Deferred Charges include any items other than the usual prepaid expenses? **no** If so, give particulars.
- (b) Has any class of charges deferred at the end of the preceding fiscal period been excluded? **no** If so, give particulars.

Checked by A. H. H. H.  
Date 31. March 1947



PAGE 2

**INVENTORIES**

9. (a) Explain in detail method of arriving at inventory quantities at close of fiscal period (Stock records? Test physical count? Total physical count? Other?) **As per book records which had been adjusted to total physical count at July 1, 1947. Stock Records test checked during year. From suppliers' invoices**
- (1) Raw Materials **none**
- (2) Goods in process **none**
- (3) Finished Products **See attached schedule**
- (4) Supplies **none**
- (5) In Transit **none**
- (6) Other Inventories **none**
- (d) Were the elements of cost or basis of value used at close of fiscal period the same in every material respect as at the close of the preceding fiscal period? **See attached schedule**
- (e) Was any subsidy received or receivable in respect of any merchandise? **no** If so, give particulars and state in respect of such merchandise on hand at the close of the fiscal period how the subsidy was treated in arriving at the inventory value.
- (b) Was there any merchandise, raw material or partly or wholly manufactured goods, regardless of condition, on hand at the end of the fiscal period which was not valued in the inventory? **no** If so, give full particulars.
- (c) Explain in detail the basis of pricing inventories at close of fiscal period. If a basis such as "cost", "market", or "cost or market whichever is lower" is given, there shall also be given a general description of the method of determining the "cost" or "market".
- (1) Raw Materials **See attached schedule**
- (2) Goods in process **See attached schedule**
- (3) Finished Products **See attached schedule**
- (4) Supplies **none**
- (5) In Transit **none**
- (6) Other Inventories **none**
- (f) State amount of any reserves against inventories other than that claimed under The Excess Profits Tax Act showing balances at beginning of period, changes therein, and balances at end of period.

**FIXED ASSETS**

10. (a) The Schedule of fixed assets and depreciation reserves (Item 20) must be completed.
- (b) State accounting treatment of profit or loss during the fiscal period on disposal of fixed assets other than automotive and delivery equipment (including horses). **Asset and Reserve accounts including automotive equipment are adjusted on disposal and profits or losses are shown separately in profit and loss account. none**
- (c) Give full details of the calculation of depletion if not already shown on supporting schedules attached to T.2 Return.

**CURRENT LIABILITIES**

- (a) Has the full amount been set up on the books in respect of all liabilities due and/or accrued at the end of the fiscal period? **yes** If not, give particulars.
- (b) Do all accrued charges represent expenditures which are a proper charge to this fiscal period? **no** If not, give particulars. **Includes portion of retroactive wage accrual not required amounting to \$46,523.31 which has been added back to taxable income.**
- (c) Do the current liabilities contain any of the following, other than as clearly disclosed on the Balance Sheet:—
- (1) Provision for any contingent liability? **no**
- (2) Reserve for Guarantees? **no**
- (3) Items of income deferred? **no**
- (4) Provisions or reserves in respect of which the obligation of the company has not been determined? **See not under 11 (5)**
- (5) Any items in respect of which the company had no liability at the end of the fiscal period? **no**
- (6) Reserves for Exchange? **no**
- If so, give particulars.

**BONDS, FUNDED DEBT OR DEBENTURES**

12. (a) Give summary of any changes in these liabilities during the fiscal period.
- (b) If there has been a new issue or an increase during the fiscal period state consideration received therefor.
- (c) Has the rate of interest payable been changed during the fiscal period? If so, give particulars.
- (d) Is the interest charged against the operations of the fiscal period equivalent to the interest actually accrued during the period? If not, give particulars.
- (e) State amount of any interest paid or accrued on Income Bonds during the fiscal period. \$

**FOREIGN EXCHANGE**

13. (a) State the basis on which the assets and liabilities originating in foreign currencies have been treated in the accounts. **Included at rates of exchange set by F.E.C.B.**
- (b) Is such basis the same as that employed in the preceding fiscal period? **yes**

**SURPLUS**

14. Have details of all changes in Surplus Account during the year been clearly disclosed on the Financial Statements? **yes** If not, give particulars.

**CAPITAL STOCK**

Give summary (showing dates) of any changes in the outstanding Capital Stock during the fiscal period.

**None**

(b) If there has been an increase state consideration received therefor.

(c) State amount of any premiums paid on redemption of shares during the fiscal period. \$

**16. PROFIT AND LOSS FOR FISCAL PERIOD**

(a) 1. Do charges for repairs represent the full cost thereof, including labour, materials and supplies expended and overhead where applicable? **yes** If not, give particulars.

2. Are the charges computed on a basis consistent with that employed in the preceding fiscal period? **yes** If not, give particulars.

3. State total charges for repairs, replacements or alterations in the—

(a) fiscal period under review	1947	\$ 330,908.15
(b) first preceding fiscal period	1946	\$ 182,198.71
(c) second preceding fiscal period	1945	\$ 394,434.25
(d) third preceding fiscal period	1944	\$ 546,567.02

**The above figures also include maintenance as no separate record of repairs, replacements or alterations is kept.**

4. Do the charges to operations for the fiscal period include the cost of any additions to buildings or additional machinery and equipment? **no** If so, specify giving costs thereof.

5. Attach statement showing details of all hire purchase agreements (if any).

(b) Attach statement showing details of all increases during the year in the rate of remuneration to persons in the employ of the Company—

- (1) Receiving \$3,000.00 per annum or more (unless subject to the Wartime Wages Control Order)
- (2) Being officers of the Company receiving between \$2,100.00 and \$3,000.00 per annum.

The statement should show in each case the former rate of remuneration, the amount of the increase, effective date thereof and date of authorization by Salaries Controller.

(c) Are all persons (other than those on leave of absence for war services) who are receiving remuneration actually performing services for the Company? **See below** If not, specify.

**Pensions totalling \$9,579.60 paid to old living employees who have been retired in past few years.**

(d) Have any expenditures made for the account of any shareholder, director or executive officer, which do not form part of his authorized remuneration, been charged to other than his personal account? **no** If so, give particulars.

(e) List any allowance or payments to shareholders, directors and executives for expenses, including travelling and entertainment, in respect of which the payee is not required to submit an accounting.

**none**

(f) State amounts paid to any non-resident Company which is a parent, subsidiary, or affiliated company on account of services, including—

Management and Administration	\$ nil	Patents	\$ nil
Selling and Advertising	\$ nil	Rents	\$ nil
Interest	\$ nil	Royalties	\$ nil
Engineering and Research	\$ nil	Other Services	\$ nil

Give names and addresses of recipient Companies: **negligible.**

(g) Give particulars (including names and addresses of recipients) of any salaries of \$14,000.00 or over to non-residents during the fiscal period.

**NIL**

(h) Have the pension funds for which contributions have been claimed as deductions from taxable income been approved by the Minister of National Revenue? **none**

If any deduction from income has been claimed for contributions to a pension fund or funds give the following information:

- (a) With respect to current services:
  - (1) Total amount claimed \$
  - (2) Does this include more than \$300.00 per annum with respect to any one participant in the fund? If so, give aggregate of such excesses.

(i) Total compensation paid to all such participants during the fiscal period (after deducting the excess over \$6,000.00 paid to any one of them) \$

- (b) With respect to past services:
  - (1) Amount paid during fiscal period \$
  - (2) Amount claimed as a deduction \$

(j) State aggregate amount of charitable donations unless shown separately on financial statements \$

(k) State total charges for advertising and publicity **28,320.41**

- (a) fiscal period 1936-1939 (average) \$
- (b) fiscal period under review \$ **32,578.31**
- (c) first preceding fiscal period \$ **83,105.48**
- (d) second preceding fiscal period \$ **44,699.55**
- (e) third preceding fiscal period \$ **52,374.80**

(l) Where the Company is one of a group of affiliated subsidiary companies, including non-resident subsidiaries, following information is required (except where all companies of the group file a consolidated Income Tax Return)—

- (1) Describe the price basis of purchases or sales of merchandise, materials or equipment between companies.

(2) State whether there has been any change from the preceding fiscal period in the price basis of such transactions. **See schedule** If so, give particulars. **none**

(3) State amount of any inter company charges to operations for services, excluding any amounts reported in 16(f) above in respect of the following:

Management and Administration	\$ NONE	Patents	\$
Selling and Advertising	\$	Rents	\$
Interest	\$	Royalties	\$
Engineering and Research	\$	Other Services	\$

Give names and addresses of recipient companies:

(l) Were any assets purchased from, or sold to, shareholders or officers of the Company during the fiscal period, other than in the ordinary course of business? **no** If so, give details showing how value of assets was determined.

**17. EXTRAORDINARY EXPENSES**

Give particulars of any expenses (other than those reported heretofore) of consequential amount charged to the operations of the fiscal period for—

- (a) Cost of any litigation.
- (b) Fire losses.
- (c) Expenses arising from corporate reorganization or acquisition of investments and capital assets.
- (d) Settlement of damage and other claims.
- (e) Other exceptional expenses.

NIL

18. WE HEREBY CERTIFY that the information given in this Form T.2-Questionnaire and the schedules attached is true in every respect.

(Sgd.) D.B. Crawley  
Signature of chief accounting official of the company.

(Sgd.) A.W. McGinn  
Signature of an authorized officer of the company.

Comptroller  
Position or rank of officer.

Date 19

**INSTRUCTIONS TO THE AUDITOR**

19. The Auditor is required—

- (a) to retain in his files a complete copy of this questionnaire properly signed by the designated officials of the company;
- (b) to state in his report if he is conducting a professional practice as a public accountant and auditor and, if not, his principal occupation and the name of his employer;
- (c) to state clearly the scope of his examination and submit comments in respect to:
  - (1) The verification of the assets and liabilities shown in the Balance Sheet with particular reference to items 6 to 15 of Form T.2-Questionnaire of the Company.
  - (2) The verification of the operating and trading transactions with particular reference to items 16 and 17 of Form T.2-Questionnaire of the Company.

- (d) to conclude his report as follows:
 

In addition to the examination outlined above, we have reviewed the answers to the questions in Form T.2-Questionnaire of the Company and subject to the limitations in the scope of our examination herein referred to, we report that to the best of our knowledge and belief the questions therein are properly answered, except in the case of the items listed below, the treatment of which for tax purposes is open to review by the Taxation Division of the Department of National Revenue.
- (e) to sign here for purposes of identification:

(Sgd.) Clarkson, Gordon & Co.  
Auditor.

**20. SCHEDULE OF FIXED ASSETS AND DEPRECIATION RESERVES**

SCHEDULES IN ACCORDANCE WITH THE SPECIMEN GIVEN BELOW MUST BE COMPLETED AND ATTACHED TO THIS QUESTIONNAIRE

FISCAL PERIOD ENDED	COST		DEPRECIATION RESERVE	
	Per Company Books (1)	Per Taxation Division (2)	Per Company Books (3)	Per Taxation Division (4)
Balance end of preceding fiscal period	\$	\$	\$	\$
ADD Additions during this fiscal period	\$	\$	\$	\$
DEDUCT Disposals or retirements during this period	\$	\$	\$	\$
Balance end of this fiscal period	\$	\$	\$	\$

See schedule attached.

- (1) Separate schedules must be supplied for each class of asset, classified according to the rate of depreciation applying thereto.
- (2) Columns (1) and (3) must be completed by the Company in all cases. If the Company has not the necessary information to complete columns (2) and (4) such columns should be left blank.
- (3) "Additions" in column (1) must be the cost, according to the Company's books of account, of assets purchased during the fiscal period.
- (4) "Additions" in Depreciation Reserve column (3) must be the amount of depreciation charged by the Company. "Additions" in column (4) must be the amount of depreciation claimed for taxation purposes, including accumulation where less than half usual rate charged has been taken by the Company.
- (5) "DISPOSALS AND RETIREMENTS"
  - (a) In column (1) show all deductions from the assets according to the Company's books of account during the fiscal period.
  - (b) In column (2) show cost as admitted for taxation purposes of assets which have been sold, scrapped or permanently abandoned or discarded for any reason during the fiscal period.
- (6) In column (3) show depreciation adjustments in the Company's books of account in respect of assets which have been sold, scrapped or permanently abandoned or discarded for any reason during the fiscal period.
- (7) In column (4) show amount of depreciation as determined by the Taxation Division applying to assets which have been sold, scrapped or permanently abandoned or discarded for any reason during the fiscal period.
- (8) Where accelerated depreciation is claimed an affidavit must be furnished in the form prescribed, and full details of basis of claim supplied.
- (9) Where the 80 per cent depreciation ruling has been applied in any prior taxation period in respect of any class of asset, a separate schedule, similar in form to the specimen, must be furnished, showing the residual value of the asset as established for taxation purposes and continuity of the depreciation accumulated thereon for tax purposes.
- (10) Where the Company follows the practice of depreciating assets separately according to year of purchase a schedule similar in form to the specimen must be furnished in respect of each class of asset classified according to the rate of depreciation applying thereto. Continuity of the depreciation allowed or accumulated in respect of each year's purchases must be shown separately. Particulars of disposals and retirements with relative depreciation reserve adjustments according to year of purchase must also be supplied.

ANACONDA AMERICAN BRASS LIMITED  
T-2 QUESTIONNAIRE  
YEAR 1947

*Item 9(c)*

Raw Materials—

Copper, zinc, lead and tin—at laid-down cost on a last-in, first-out basis.

Other Metals—at average cost.

Metals in process and finished—on above basis for metal content, plus the relative differentials to point of process.

Scrap Metals—on above basis for metal content, less a deduction of 25 cents per pound and in the case of turnings a deduction of 1 cent per pound.

Purchased goods and supplies—at average cost.

*Item 9(d)*

In previous years the inventory values of lead and tin were calculated on a first-in, first-out basis.

*Item 16(k)*

Purchases from the parent and associated companies in U.S.A. are relatively small and generally are priced—

Raw Materials and Merchandise—at fair market value as sold for home consumption at date of purchase.

Equipment—at cost plus a percentage for profit.

## ANACONDA AMERICAN BRASS LIMITED

## T-2 QUESTIONNAIRE

## SCHEDULE OF FIXED ASSETS AND DEPRECIATION RESERVE

	Cost		Depreciation	
	Per Company Books	Per Tax Department	Per Company Books	Per Tax Department
	\$ cts.	\$ cts.	\$ cts.	\$ cts.
<i>Item 20</i>				
Buildings—General Purpose				
War Expenditures:				
Balance December 31, 1946..	362,466.23		319,735.33	
Additions.....			1,287.87	
Balance December 31, 1947..	362,466.23		321,023.20	
Buildings—Commercial:				
Balance December 31, 1946..	1,216,170.25		376,208.98	
Additions.....	3,950.22		43,586.07	
	1,220,120.47		419,795.05	
Deductions.....	156.52		7.82	
Balance December 31, 1947..	1,219,963.95		419,787.23	
Machinery and Equipment—				
General War Expenditure:				
Balance December 31, 1946..	633,060.89		589,905.49	
Additions.....			12,665.20	
Balance December 31, 1947..	633,060.89		602,570.69	
Machinery and Equipment—				
Special War Expenditure:				
Balance December 31, 1946..	98,111.54		95,154.29	
Additions.....			981.12	
Balance December 31, 1947..	98,111.54		96,135.41	
Machinery and Equipment—				
Commercial:				
Balance, December 31, 1946..	3,351,461.64		2,854,774.61	
Additions.....	567,653.89		167,347.21	
	3,919,115.53		3,022,121.82	
Deductions.....	68,938.74		68,938.74	
Balance December 31, 1947..	3,850,176.79		2,953,183.08	
Furniture and Fixtures—Gen-				
eral War Expenditure:				
Balance December 31, 1946..	13,219.95		12,426.75	
Additions.....			264.40	
Balance December 31, 1947..	13,219.95		12,691.15	

ANACONDA AMERICAN BRASS LIMITED  
T-2 QUESTIONNAIRE

SCHEDULE OF FIXED ASSETS AND DEPRECIATION RESERVE—*Concluded*

	Cost		Depreciation	
	Per Company Books	Per Tax Department	Per Company Books	Per Tax Department
	\$ cts.	\$ cts.	\$ cts.	\$ cts.
<i>Item 20—Continued</i>				
Furniture and Fixtures—Commercial:				
Balance December 31, 1946..	77,646.17	.....	55,767.58	
Additions.....	11,486.77	.....	5,995.40	
	89,132.34	.....	61,762.98	
Deductions.....	1,751.40	.....	1,751.40	
Balance December 31, 1947..	87,381.54	.....	60,011.58	
Railway Sidings:				
Balance December 31, 1946..	20,770.08	.....	11,726.73	
Additions.....	.....	.....	1,264.76	
Balance December 31, 1947..	20,770.08	.....	12,991.49	
Roadway Paving:				
Balance December 31, 1946..	31,125.26	.....	26,192.59	
Additions.....	.....	.....	2,689.71	
Balance December 31, 1947..	31,125.26	.....	28,882.30	
Roadway Paving and Sewers:				
Balance December 31, 1946..	50,695.50	.....	5,069.55	4,133.30
Additions.....	7,157.99	.....	8,982.61	4,491.22
Balance December 31, 1947..	57,853.49	.....	14,052.16	8,624.52
War Risk Prevention Equipment:				
Balance December 31, 1946..	8,016.56	.....	8,016.56	
Additions.....	.....	.....	.....	
Balance December 31, 1947..	8,016.56	.....	8,016.56	
Real Estate Investment:				
Balance December 31, 1946..	15,500.00	.....	1,937.50	
Additions.....	.....	.....	387.50	
Balance December 31, 1947..	15,500.00	.....	2,325.00	
Automobiles and Trucks:				
Balance December 31, 1946..	138,016.37	.....	129,776.82	125,964.62
Additions.....	14,943.16	.....	5,573.55	2,852.60
	152,959.53	.....	135,350.37	128,817.22
Deductions.....	4,861.46	.....	4,861.46	4,132.24
Balance December 31, 1947..	148,098.07	.....	130,488.91	124,684.98

22nd June, 1948.

REPORT OF THE AUDITOR  
 REQUIRED UNDER SECTION 19 OF THE T.2 QUESTIONNAIRE  
 RE ANACONDA AMERICAN BRASS LIMITED

1. We are the auditors of the above mentioned company.
  2. We are conducting a professional practice as public accountants and auditors under the name of Clarkson, Gordon & Co., Chartered Accountants, Toronto, Ontario.
  3. *Scope of examination*
- 10        Our report to the shareholders on the examination of the accounts as at 31st December 1947 and for the year then ended was submitted under date of 4th March 1948.

We comment on our examination as follows:

*Assets and liabilities (Items 6-15)*

- (6) Investments—Investments held at 31st December 1947 were verified by count. All disposals of investments during the year were audited by the examination of vouchers, contract notes or other evidence.
  - (7) Accounts and bills receivable—a circularization of the company's customers was made as at 30th August 1947 for the purpose of confirming the outstanding balances, and a further test circulation covering approximately 31% of the value of the outstanding accounts was made at 31st December 1947.
- 20        At 31st December 1947 we examined the accounts receivable, analyzed and aged the balances outstanding and discussed them, particularly the overdue items, with the management.
- (8) Deferred charges—The calculations of the deferred charges and pre-payments shown in the balance sheet were scrutinized.
  - (9) Inventories—We reviewed with the management the basis of taking and valuing the inventories at the close of the year and obtained a certificate from responsible officials as to the determination of quantities, the basis of pricing, etc.
- 30

Inventory quantities were verified as follows:

Metals—Quantities were determined by reference to book records which had been adjusted as at 30th June 1947 to agree with a



physical inventory at that date. We made substantial tests of quantities at 30th June 1947 by attendance at physical count and of the clerical accuracy of the book inventory at 31st December 1947.

Supplies—Quantities were determined from perpetual inventory records which were test-checked physically during the year.

We verified the pricing of the inventory as follows:

10 Copper, zinc, tin and lead (including content of such metals in goods finished and in process)—the company used the last-in, first-out method of pricing these metals. We reviewed the calculations of such prices and checked the actual cost prices by reference to suppliers' invoices.

Other metals—These inventories were priced at laid-down cost, and we checked the prices used by reference to suppliers' invoices.

Materials in process and finished—The metal content was verified as indicated above. Labour and overhead added to the raw material cost was checked from differentials supplied by The American Brass Company.

Scrap metals—We checked prices which were as stated by the company under item 9 (c) of Form T.2 Questionnaire.

20 Purchased goods and supplies—We test-checked prices by reference to suppliers' invoices.

(10) Fixed assets—All additions and disposals over \$200 were audited in detail and all changes in the depreciation reserves were checked.

(11) Current liabilities—Available creditors' statements were agreed or reconciled with the balances shown in the company's books, and the company's calculations of accrued liabilities were scrutinized. A certificate was obtained from certain officials of the company that all liabilities were reflected by the accounts and we took reasonable precautions to verify that such was the case.

(12) Bonds, funded debt, etc. The company had no such indebtedness.

30 (13) Foreign exchange—The foreign exchange computations in the conversion of assets and liabilities to Canadian funds were reviewed.

(14) Surplus—We comment below on our examination of the statement of profit and loss, the balance from which has been carried to surplus. Dividends declared were verified by reference to the directors' minutes.

(15) Capital stock—The outstanding capital at the year end was verified from the company's share records.



*Profit and Loss*

Our examination of the operating accounts consisted of a review of such accounts for the year supplemented by a test examination of accounting records covering the business of one month.

4. In addition to the examination above, we have reviewed the answers to the questions in Form T.2 Questionnaire of the company, which we have signed for identification purposes; subject to the limitations in the scope of our examination herein referred to, we report that to the best of our knowledge and belief the questions herein are properly answered.

CB  
ORIGINAL  
No. 228

T 7  
CORPORATIONS  
REV. FEB. 1948

DOMINION OF CANADA  
INCOME AND EXCESS PROFITS TAX  
NOTICE OF ASSESSMENT FOR 1947

ANACONDA AMERICAN BRASS LIMITED  
NEW TORONTO, ONTARIO.

D 11416

FILE 21  
ACCOUNT AN - 20-1

1. District Office, 120 Wellington St., West, Date mailed December 6, 1948.  
2. TAXABLE INCOME (see Item 5 for adjustments (if any) of the income as declared by the Taxpayer)..... \$3,214,881.98

	Income Tax	Excess Profits Tax
3. (1) Amount Levied.....	\$964,464.59	\$ 307,379.55
(2) Penalty for late filing.....	\$.....	\$.....
(3) Interest.....	\$ 9,892.20	\$ 5,061.56
(4) Totals.....	\$974,356.79	\$ 312,441.11
(5) Payments applied on this Assessment—Includes \$11,088.53 from 1946.....	\$489,379.04	\$ 64,292.51
(6) Balances due.....	\$484,977.75	\$ 248,148.60
4. AMOUNT PAYABLE AS AT January 6, 1949... ..		\$ 733,126.35

ADJUSTMENTS OF INCOME DECLARED

5. NET INCOME DECLARED.....	\$1,594,301.71
Inventory Adjustment.....	1,611,756.43
Profit on sale of Breakdown Mill.....	8,673.84
Disallowable Donations.....	150.00
Taxable Income Item 2.....	\$3,214,881.98

MJP: CJ

6. PREPAYMENT:

For each day that payment is made before date shown in Item 4—Deduct..... \$78.70

7. ADDITIONAL INTEREST:

One month after the date hereof any unpaid balance of tax bears interest at 7% per annum from that date until payment.

8. Remittance in favour of the Receiver General of Canada should be sent to the District Income Tax Office indicated in Item 1.

Issued in accordance with Section 54 R.S.C. 1927, Chap. 97 and amendments, and Section 12 of the Excess Profits Tax Act, 1940.

Deputy Minister of National  
Revenue for Taxation

T. 7W  
CORPORATIONS  
TAX  
CALCULATION  
1947

DOMINION OF CANADA  
DEPARTMENT OF NATIONAL REVENUE—TAXATION DIVISION  
EXCESS PROFITS TAX ACT 1940

Name of Corporation . . . . .	ANACONDA AMERICAN BRASS LIMITED . . . . .	
Address . . . . .	NEW TORONTO, ONTARIO . . . . .	
For fiscal period ended . . . . .	DECEMBER 31, . . . . .	1947
1. Taxable income (Item 2 of Assessment Notice) . . . . .		\$3,214,881.98
2. Apportionment of Income (Item 1) on a pro rata daily basis:—		
3. Period to December 31, 1946 . . . . . days . . . . .		\$ . . . . .
4. Period subsequent to December 31, 1946 . . . . . days . . . . .		\$3,214,881.98
<b>FIRST PART:</b>		
5. If profits (Item 1) plus payments to shareholders are \$5,000 or less:		
6. Tax at 12% on Item 3 . . . . .		\$ . . . . .
7. If profits (Item 1) plus payments to shareholders are more than \$5,000:		
8. Tax at 22% on Item 3 . . . . .		\$ . . . . .
<b>SECOND PART:</b>		
9. Apportionment of Standard Profits* on a pro rata daily basis:		
10. Period to December 31, 1946 . . . . . days . . . . .		\$ . . . . .
11. Period subsequent to December 31, 1946 . . . . . days . . . . .		\$ 999,158.58
12. Total Standard Profits (*if under \$25,000, see Sec. 5B of the Act) . . . . .		\$ 999,158.58
13. INCOME TO DECEMBER 31, 1946, AS PER ITEM 3 . . . . .		\$ . . . . .
14. Less: Standard Profits as per Item 10 . . . . .	\$ . . . . .	
15. One-sixth of Standard Profits . . . . .	\$ . . . . .	
16. Excess Profits . . . . .		\$ . . . . .
17. Tax at 20% on Item 16 . . . . .		\$ . . . . .
18. INCOME SUBSEQUENT TO DECEMBER 31, 1946, AS PER ITEM 4 . . . . .		\$3,214,881.98
19. Less: Standard Profits as per Item 11 . . . . .	\$999,158.58	
One-sixth of Standard Profits . . . . .	\$166,526.43	\$1,165,685.01
20. Excess Profits . . . . .		\$2,049,196.97
21. Tax at 15% on Item 20 . . . . .		\$ 307,379.55
<b>AMOUNT OF EXCESS PROFITS PAYABLE:</b>		
22. Insert Item 6 or Item 8 (whichever is applicable) . . . . .		\$ . . . . .
23. Insert Item 17 (where applicable) . . . . .		\$ . . . . .
24. Insert Item 21 . . . . .		\$ 307,379.55
25. Total of Items 22, 23 and 24 . . . . .		\$ . . . . .
Less: Allowance for British and Foreign Tax . . . . .	\$ . . . . .	
Allowance for Excess Donations . . . . .	\$ . . . . .	
Total Excess Profits Tax Payable . . . . .		\$ 307,379.55

CRB: MES

IN RE THE EXCESS PROFITS TAX ACT and ANACONDA AMERICAN BRASS LIMITED of the Town of New Toronto in the Province of Ontario.

NOTICE OF APPEAL

NOTICE OF APPEAL is hereby given from the assessment bearing date the 6th day of December, 1948, wherein a tax in the sum of \$307,379.55 is levied in respect of alleged Excess Profits for the taxation period 1947.

DATED this 3rd day of January, 1949.

BLAKE, ANGLIN, OSLER and CASSELS
Solicitors for the Appellant

10

Statement of Facts and Reasons for Objection and Appeal

1. The income of Anaconda American Brass Limited, the Objector (Appellant), hereinafter for convenience called "the Company", for the taxation year 1947, as duly and correctly reported by the Company, was \$1,594,301.71

The Income Tax in respect of the said income as imposed on the Company by the Income War Tax Act, as amended, in respect of the said income for the said 1947 taxation period is 478,290.51

20 The Excess Profits Tax imposed on the Company by The Excess Profits Tax Act 1940 for the said taxation year 1947 is 64,292.51

The total of the Income Tax and Excess Profits tax was therefore 542,583.02

2. The said Company has duly paid to the Receiver General the said sum of \$542,583.02 and is not liable under either of the said Acts or under any other Act of the Parliament of Canada to be assessed for any further Income Tax or Excess Profits Tax for the said 1947 taxation period.

3. The said assessment, dated 6th December 1948, purports to assess the income of the Company for the said taxation period at the sum of \$3,214,881.98 and to levy upon the said Company the sum of \$964,464.59 Income Tax for the said 1947 taxation period and \$307,379.55 for Excess Profits Tax for the said taxation period, and also \$9,892.20 for interest in respect of the said Income Tax and \$5,061.56 for interest in respect of the said Excess Profits Tax, but the said attempt to levy upon the Company in respect of the said taxes is illegal and invalid and constitutes an attempt by the Minister or Deputy Minister of National Revenue to levy upon the Company without statutory or any other authority the parts of the amounts 10 stated in this paragraph which exceed the said sum of \$542,583.02.

4. The Minister and Deputy Minister are well aware that the Company did not in fact receive in the taxation year the net income assessed by the Notice of the said assessment, dated 6th December 1948, and the said income is not the taxable income of the Company within the meaning of Section 3 or of Section 9 or any other provision of the Income War Tax Act or of The Excess Profits Tax Act.

5. The method adopted by the Minister and the Deputy Minister in the attempt to assess the Company for income not in fact received by it in the said taxation period and to impose taxes on the Company not in fact imposed by the said Income War Tax Act or The Excess Profits Tax Act or either of them is to increase the 20 Company's actual income for the year 1947 by the sum of \$1,611,756.43, representing the net difference in values attributed to the Company's inventories of base metals in excess of any value properly attributable to them. As is well known to the Minister and Deputy Minister, the Company did not in fact receive any such sum in respect of its said inventories and could not have received or collected it in the course of conducting the business in which its actual and real income for the said period as stated in Paragraph 1 hereof was earned.

6. The business of the Company is the manufacture of base metal alloys, principally of copper, zinc, lead, tin and nickel. The process of manufacture is long and highly complicated. Raw metal is purchased in a variety of forms. For 30 example, new copper is bought in shapes (billets and cakes) and cathode; new zinc is bought in slab form, lead in ingot form, tin in ingot form and nickel in cathode. Each of these principal metals is also purchased as scrap in a variety of forms, such as turnings, cuttings, clippings, rod ends and so on. To meet customers' specifications the metals mentioned (including scrap from the Company's own

mill) are alloyed by melting in electric furnaces and are cast into cakes, billets, bars etc. for processing into sheet, tube, rod, extruded shapes etc., all of which must conform to very definite metallurgical requirements as to composition, tensile strength, hardness, electrical conductivity etc. Copper products are produced in the mill through the fabrication of refinery shapes. The Company's products are used in practically every industry, including in particular automobile, electrical and building.

7. In order to conduct the said business it is essential for the Company to carry large inventories, but the Company keeps its inventory at the minimum amount  
10 necessary to maintain continuous operations. The maintenance of this necessary minimum quantity is as essential to the conduct of the Company's business as machinery or buildings. It cannot be liquidated while the Company continues the operation of the business in which it earns its taxable income.

8. The Company fixes its selling prices on the basis of then current metal costs. The Company has always refrained from speculation in its inventory. It makes no attempt to profit from the fluctuations in the market prices of metals and therefore as nearly as possible replaces stocks of its product as sales orders are taken and accepted.

9. The practice of the Company under normal conditions in the industry is as  
20 follows: When an order is received from a customer the metal content of the product ordered is calculated. This may consist of copper alone or of copper and zinc and other metals. The value of the metal content of the product ordered is calculated at the market price for raw metal cost on that day, and to this cost are added differentials to cover the estimated processing cost and a margin for profit. The daily price thus obtained is used as the selling price to the customer. The larger customers, with whom the major portion of the Company's business is transacted, usually expect and require firm contracts for delivery of substantial amounts of the Company's products over an extended period of time. The approxi-  
30 mate average period has been from two to three months. As the process of fabrication in most instances is a long one, the Company must keep a large quantity of metal in its plant in order to commence deliveries promptly and to maintain a full and continuous flow of production. The market prices and quotations of the metals used by the Company are apt to and have fluctuated rapidly and very widely. When sales orders are taken, the practice of the Company is to replace the volume of metal as nearly and as soon as possible after the orders are booked.

10. By these methods purchases of raw materials are matched against sales made at the time.

11. This process is correctly reflected in the Company's accounts when deliveries to customers were made, by charging against gross income and deducting from inventory the metal used in filling orders at the cost of those metals most recently purchased by the Company. The resulting net balance in the Inventory Account is included in the financial accounts of the Company, audited and presented to its shareholders at their Annual Meetings. The sales price of every pound of metal sold by the Company during the said taxation period (1947) was credited to gross  
10 income and is reflected in the net income of the Company, viz. \$1,594,301.71, as stated in Paragraph 1 hereof.

12. The Company did not in computing its income limit its calculation to the actual cash income it received, which it is submitted it is and was entitled to do under the Income War Tax Act and The Excess Profits Tax Act, but it valued the inventory on the basis of the cost of the inventory after deducting the metals used to make shipments at the cost of the metal then most recently purchased.

13. If the Minister and the Deputy Minister adhere to their attempt to assess the Company under the said Notices of Assessment dated 6th December 1948 for the large amount of income not in fact received by the Company, then the Company  
20 submits that it should be assessed in accordance with the Income War Tax Act and The Excess Profits Tax Act respectively for the actual cash income actually received by it during the 1947 taxation period, which was substantially less than the amount of income actually returned by the Company, and that the said assessments and levies made by the Minister and the Deputy Minister should be set aside and proper and legal assessments under the said Acts should be substituted therefor.

14. Apart from the ordinary fluctuations in the market prices of metals in which the Company deals, which are apt to be wide and rapid, during recent years the Canadian prices were violently, suddenly and arbitrarily affected by Government  
30 Price Controls. For example, on the 27th January 1947 the price of copper was raised suddenly from 11½ cents per pound to 16·625 cents per pound and the export price from 18·5 cents to 20·5 cents. There was also a pool for copper during the recent War, which was not terminated until 31st December 1947. This pool, which had official Government sanction, permitted the Company to purchase barely

enough copper to supply its domestic orders, so that even had the Company so desired there was no opportunity of building up or accumulating inventory beyond that required for current sales.

15. The Minister and the Deputy Minister have applied market quotations at 31st December 1947 to the volume of metals then on hand without regard to the fact that the result of such inventory method is to charge against income as the metal cost of goods sold earlier purchases of metal, the cost of which had no relation to the sales of metal then made. In making the said assessments they have assumed without proof (a) that the metal used by the Company in making the  
10 sales made by it in the 1947 period was metal which had been acquired at prices lower than the said quotations, and (b) that it would have been possible for the Company to sell the metal on hand at 31st December 1947 at prices represented by the quotations used by the Minister and Deputy Minister, and at the same time to continue to carry on the business by which alone it has earned its taxable income.

16. The Company has kept its accounts in a manner which correctly records its income for the said taxation period by charging against its current sales during the said 1947 period the then current prices at which the Company was from time to time buying metal to cover the quantities so being sold by it. The gross income was accordingly charged with the quantity of metal included in products sold at  
20 the prices at which the most recent purchases of such metal had been ordered and acquired, as these were the purchases made for the purpose of matching the sales so made, and the result of this method of accounting was that the balance of the Company's Inventory Account represented earlier purchases of metal which had been acquired at lower prices, but these prices had not been used or reflected in fixing the prices charged by the Company for the sale of its products. This is the method of accounting well recognized by the leaders of the accounting profession as appropriate to ascertain and determine the real income of a business of such a character as that of the Company. The most eminent economists agree with this view.

30 17. If the income of the Company for the taxation year 1947 were calculated upon the basis on which the said assessments have been made, by treating the metal on hand as if it were equivalent to cash, based on the quotations at 31st December 1947, when in fact the Company, as well as the Minister and the Deputy Minister, know that in fact it could not carry on its business if it had in fact sold



the metal on hand at 31st December 1947, the income of the Company would have been padded to the extent of \$1,611,756.43, thus anticipating profits which were not in fact earned in the said accounting period and which may or may not be earned in subsequent periods. If the Company had represented that its income for the said period 1947 was \$3,214,881.98, the amount on which the said assessments are based, it would have constituted a false representation of the income earned by it during the said period. The Company would not make such a false representation and it should not be assessed on such a basis.

18. Under the method adopted by the Minister and the Deputy Minister the  
10 Profit and Loss Account of the Company would include as the equivalent of cash  
a credit which was not only not earned in the taxation period and was in fact not  
realized at all, but which has been tied up or frozen in unsold inventories and was  
not realizable or available in the 1947 taxation period at the amount attributed to  
it by the Minister and the Deputy Minister. The inaccuracy of the method adopted  
by the Minister and the Deputy Minister is emphasized during periods when prices  
of metals were controlled, which had the result of depressing the value of metals  
at the beginning of the 1947 taxation period, but arbitrarily and suddenly increasing  
the quotations during the period. This had no relation to the actual business done  
by the company and the fictitious unrealizable "profit" is not a profit resulting  
20 from the business which is taxed under the said Acts.

19. Under the method adopted by the Minister and the Deputy Minister sales  
made by the Company in the taxation period would be treated as having come  
in part out of the opening inventory and in part out of the earliest purchases of  
the year, though these items are not so allocated and used by the Company and  
the Company's sales prices are not based on them and had no relation to them.  
The resulting calculation of profit by this wrong and fictitious method, based on an  
unrealized and unrealizable price increase, is certainly not a profit in the said  
taxation period from the manufacturing and selling operations of the Company.

20. The Company does not consider it necessary or useful, in view of the small  
30 amount of tax involved, to spend the time and incur the expense which would be  
involved in correcting the two small items relating to the sale of the Breakdown Mill  
and the disallowance of some small donations, as the calculation and proof of the  
error of the Department in these small items would probably involve a cost more  
than the small addition of tax.

The Company therefore submits that the assessment complained of should be set aside and the taxable income should be reduced by the amount of \$1,611,756.43, which has been added to its income by the Minister and the Deputy Minister without authority or justification, and that the said assessments for Income Tax and Excess Profits Tax should be corrected accordingly.

IN THE MATTER of The Excess Profits Tax Act, being Chapter 32 of the Statutes of Canada 1940, and amendments thereto.

AND

IN THE MATTER of The Appeal of Anaconda American Brass Limited of the City of New Toronto, in the Province of Ontario, hereinafter called the taxpayer,

APPELLANT

### DECISION OF THE MINISTER

WHEREAS the taxpayer duly filed an Income and Excess Profits Tax Return 10 showing its income for the years ended 31st December, 1946 and 1947.

AND WHEREAS taxes were assessed by Notices of Assessment dated the 10th November, 1948 and 6th December, 1948.

AND WHEREAS Notices of Appeal were received dated 29th November, 1948, and 3rd January, 1949, in which objection is taken to the assessed taxes for the reasons therein set forth.

The Honourable the Minister of National Revenue having duly considered the facts as set forth in the Notices of Appeal and matters thereto relating, hereby affirms the said Assessments on the ground that in determining the income of the taxpayer its inventories have been correctly valued. Therefore on these and related 20 grounds and by reason of the provisions of the Income War Tax Act and Excess Profits Tax Act the said Assessments are affirmed.

Notice of such decision is hereby given pursuant to Section 59 of the Act and is based on the facts presently before the Minister.

In accordance with the provisions of Subsection 2 of Section 60 of the Act any further facts, statutory provisions and reasons which the taxpayer intends to submit to the Exchequer Court must be included in a Notice of Dissatisfaction, or statement attached thereto.

DATED AT OTTAWA this 2nd day of February, A.D. 1949.

JAMES J. McCANN

*Minister of National Revenue*

(Signed) Per: V. W. SCULLY

*Deputy Minister of National Revenue  
for Taxation*

30

To: Anaconda American Brass Limited, New Toronto, Ontario.

AND

To: Messrs. Blake, Anglin, Osler and Cassels, Barristers and Solicitors,  
The Canadian Bank of Commerce Building, Toronto, Ontario.  
Its Solicitors herein.

## NOTICE

Section 65 of the Income War Tax Act provides that after an appeal has been set down for trial, any fact or statutory provision not set out in the Notice of Appeal or Notice of Dissatisfaction may be pleaded or referred to in such manner and upon such terms as the Court may direct and the Court may refer the matter back to the Minister for further consideration.

If on appeal to the Exchequer Court any facts are pleaded or brought before the Court which are not contained in the Notice of Appeal or Notice of Dissatisfaction, then a motion will be made for the Court to refer the matter back to the  
10 Minister for further consideration with the request that costs be charged against the taxpayer in respect of all proceedings up to the time of the said motion.

IN THE MATTER of The Excess Profits Tax Act, being Chapter 32 of the Statutes of Canada, 1940 and amendments thereto:

AND

IN THE MATTER of the Appeal of ANACONDA AMERICAN BRASS LIMITED, of the Town of New Toronto, in the Province of Ontario, hereinafter called the taxpayer,

APPELLANT

NOTICE OF DISSATISFACTION

The above named Appellant is dissatisfied with the decision of the Minister of National Revenue, dated the 2nd February 1949, affirming the assessments of the Appellant for Excess Profits Tax for the years ended 31st December 1946 and 1947, and desires its appeal to be set down for trial.

The Appellant repeats the Statement of Facts and Reasons for Objection and Appeal set out in its Notice of Appeal dated 3rd January 1949.

DATED this 14th day of February, 1949.

BLAKE, ANGLIN, OSLER and CASSELS  
*Solicitors for the Appellant*

IN THE MATTER of The Excess Profits Tax Act, being Chapter 32 of the Statutes of Canada, 1940, and amendments thereto,

AND

IN THE MATTER of The Appeal of Anaconda American Brass Limited of the City of New Toronto, in the Province of Ontario, hereinafter called the taxpayer,

APPELLANT

REPLY OF THE MINISTER

Notice of Dissatisfaction with the Decision of the Minister dated the 2nd day 10 of February, A.D. 1949, affirming the Assessments levied upon the Appellant for the years 1946 and 1947 having been received, and Security for Costs having been duly furnished as required by Section 61 of the said Act, and the facts and reasons submitted in support of the Appeal having been further and fully considered, the Honourable the Minister of National Revenue replies thereto as follows:—

(1) Denies the allegations in the Notice of Appeal and Notice of Dissatisfaction insofar as they are incompatible with the statements contained in his Decision.

(2) Affirms the Assessments as levied.

Notice of such affirmation is hereby given pursuant to the provisions of Section 20 62 of the Income War Tax Act.

DATED AT OTTAWA this 9th day of March, A.D. 1949.

JAMES J. McCANN

*Minister of National Revenue*

(Signed) Per: V. W. SCULLY

*Deputy Minister of National Revenue  
for Taxation.*

To: Messrs. Blake, Anglin, Osler and Cassels, Barristers and Solicitors,  
The Canadian Bank of Commerce Building, Toronto, Ontario.

**In the Exchequer Court of Canada**

IN THE MATTER OF THE EXCESS PROFITS TAX ACT,

AND

IN THE MATTER OF THE APPEAL OF ANACONDA AMERICAN BRASS  
LIMITED, of New Toronto, in the Province of Ontario

APPELLANT;

AND

THE MINISTER OF NATIONAL REVENUE

RESPONDENT.

10

STATEMENT OF CLAIM

(Filed pursuant to Order of the Registrar dated the 8th day of November, 1949)

1. The Appellant is a body corporate incorporated under the laws of the Dominion of Canada and has its head office and chief place of business at New Toronto in the Province of Ontario.

2. The Appellant as required by law duly filed its Income Tax and Excess Profits Tax returns for 1946 showing the amount of its taxable income for that year and the amount of income tax and excess profits tax payable thereon and paid the amounts of such taxes. On the 10th day of November, 1948, the Respondent forwarded to the Appellant a Notice of Assessment for income tax and excess profits tax for the said year 1946 and therein the Respondent reduced the amount of taxable income declared by the Appellant by the sum of \$32,469.75 as a consequence of an adjustment made by the Respondent in the valuation of the Appellant's inventory and reduced the amount of Income and Excess Profits taxes payable by the Appellant for the year 1946 by the sum of \$11,088.53.

3. The Appellant as required by law duly filed its tax returns for 1947 showing the amount of its taxable income for that year and the amount of income tax and excess profit tax payable thereon and paid the amounts of such taxes. On the 6th day of December, 1948, the Respondent forwarded to the Appellant a Notice of Assessment for income tax and excess profits tax for the said year 1947 and therein the Respondent increased the amount of taxable income declared by the Appellant by the sum of \$1,611,756.43 as a consequence of an adjustment made

by the Respondent in the valuation of the Appellant's inventory and increased the amount of excess profits taxes payable by the Appellant for the year 1947 by the sum of \$248,148.60 including interest.

4. On the 29th day of November, 1948, the Appellant filed Notice of Objection to the assessments of the Respondent for the year 1946, and on the 3rd day of January, 1949, filed further Notice of Objection to the assessments made by the Respondent for the year 1947.

5. On the 2nd day of February, 1949, the Respondent notified the Appellant pursuant to Section 69A of the Income War Tax Act (1917 C. 28 and amendments 10 thereto) that the said assessments for the said years 1946 and 1947 had been reconsidered and were confirmed particularly on the ground that the Respondent had correctly valued the inventory of the Appellant.

6. On the 14th day of February, 1949, the Appellant gave notice of Dissatisfaction with this decision.

7. The business of the Appellant is to process for its customers copper, zinc and small quantities of other metals and to produce metal sheets, rods and tubes of various sizes, thickness, hardness and metal content.

8. The Appellant at all times for the purposes of its business necessarily carried large inventories of raw materials because more than fifty cents of each of its 20 sales dollars represents copper and zinc content of its product and because of the long period of time elapsing in processing.

9. The prices of the raw materials used by the Appellant fluctuate widely and rapidly. In the year 1946 a fixed wartime price for raw copper prevailed. Wartime controls were withdrawn in June 1947 and an immediate change in price occurred and between then and September 1949 there have been ten (10) other changes in the price of copper varying both upwards and downwards from a low of 16 cents per pound to a high of 23½ cents per pound.

10. At the end of each fiscal year the copper and zinc inventory of the Appellant including raw materials and metal content of work in process is valued and has been 30 so valued since 1936 in accordance with a generally accepted accounting practice on the basis of cost determined on the assumption of last-in, first-out flow of cost factors, or the matching of current costs against current revenue. This method is generally known as the Lifo method of inventory valuation and is the method which most clearly reflects the income as defined by Section 3 of the Income War Tax Act of the Appellant for the taxation periods.

11. At all material times it has been the practice of the Appellant to determine the selling price of its products by valuing the metal content of the product at the current purchase price of the raw material and adding thereto the Appellant's



costs in processing the metal including a margin of reasonable profit on such processing. In carrying out this policy it is the practice of the Appellant to withdraw from inventory the quantities of raw materials required and to purchase at current price levels sufficient raw materials to replace those withdrawn from inventory. The Appellant does not speculate in inventories and any departure from the practice above-mentioned is only to provide inventory for anticipated requirements. Thus the Appellant seeks its profit on processing only and any profit or loss on metals taken from inventory is incidental and nominal.

12. The Respondent erred in adjusting the inventory valuations of the Appellant for the years 1946 and 1947 and in consequence of increasing the taxable income of the Appellant for the said years by adding thereto an amount which does not constitute any part of the income of the Appellant as defined by Section 3 of the Income War Tax Act.

13. In the alternative the Appellant says that the Respondent has erred in calculating the taxable income of the Appellant for the years 1946 and 1947 by charging and deducting as disbursements or expenditures laid out or expended in the said taxable periods the cost of raw materials and inventory purchased by the Appellant prior to the particular taxation period under review and has not allowed as proper deductions expenditures made for raw materials and inventory purchased in the particular taxation period.

14. The Appellant claims—

- (a) The allowance of its appeals from the decision of the Minister of National Revenue dated the 9th day of March, 1949;
- (b) A Declaration that the inventory adjustments made by the Respondent in assessing the Appellant's tax returns for the years 1946 and 1947 were made in error and that the assessments made accordingly were wrong in principle and contrary to the Income War Tax Act and that the additional excess profits tax claimed by the Respondent from the Appellant as a consequence thereof is neither due nor owing;
- 30 (c) A Declaration that the Appellant in determining its taxable income under the Income War Tax Act is entitled to value its inventory by what is called the Lifo method;
- (d) Such further and other relief as this Honourable Court may allow.
- (e) Costs.

DELIVERED this 7th day of December, A.D. 1949, by Messrs. BLAKE, ANGLIN, OSLER & CASSELS, 25 King Street West, Toronto, 1, Ontario, Solicitors for the Appellant.

**In the Exchequer Court of Canada**

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IN THE MATTER OF THE EXCESS PROFITS TAX ACT,

AND

IN THE MATTER OF THE APPEAL OF ANACONDA AMERICAN BRASS  
LIMITED, of New Toronto, in the Province of Ontario.

APPELLANT;

AND

THE MINISTER OF NATIONAL REVENUE

RESPONDENT.

10

STATEMENT OF DEFENCE

(Filed the 20th day of January, 1950)

1. The Respondent admits the allegations contained in paragraph 1 of the Statement of Claim.

2. The Respondent admits that the Appellant filed Income Tax and Excess Profits Tax Returns for 1946 purporting to show the amount of its taxable income for that year and the amount of income tax and excess profits tax payable thereon. The Respondent admits that the Appellant paid the amount of the tax so shown but denies that the return made or the tax paid was a correct return or the true amount of the tax payable. The Respondent admits the allegations contained in  
20 the second sentence of the second paragraph of the Statement of Claim.

3. The Respondent admits that the Appellant filed tax returns for 1947 purporting to show the amount of its taxable income for that year and the amount of income tax and excess profits tax payable thereon and admits that the Appellant paid the amount of the tax so shown. The Respondent denies that the returns were correct or that the tax shown and paid was the correct tax. The Respondent admits the allegations contained in the second sentence of the third paragraph of the Statement of Claim.

4. The Respondent admits the allegations contained in paragraphs 4, 5 and 6 of the Statement of Claim.

5. The Respondent does not admit the allegations contained in paragraph 7 of the Statement of Claim but says that the Appellant in its business does not process copper, zinc or other metals for its customers but on the contrary manufactures or processes metals on its own account from its own materials and sells the finished product to its customers or others. All metal sheets, rods and tubes produced by the Appellant are produced on its own account from its own materials and when finished sold to its customers or others.

6. The Respondent says that on or about the 9th day of March, 1949, he delivered to the Appellant a reply to the Notice of Dissatisfaction referred to in 10 paragraph 6 of the Statement of Claim, in which reply the Respondent denied the allegations in the Notice of Appeal and Notice of Dissatisfaction insofar as they were incompatible with the decision of the Respondent and affirmed the assessments as levied.

7. The Respondent does not admit the allegations contained in paragraphs 8 or 9 of the Statement of Claim.

8. The Respondent denies the allegations contained in paragraph 10 of the Statement of Claim and says that in the assessments referred to the inventories of the Appellant were correctly valued.

9. The Respondent does not admit any of the allegations contained in para- 20 graph 11 of the Statement of Claim.

10. The Respondent denies the allegations contained in paragraphs 12 and 13 of the Statement of Claim.

The Respondent submits that the decision of the Respondent appealed from is correct and that these appeals should be dismissed with costs.

DATED at Ottawa, in the Province of Ontario, this 20th day of January, 1950.

F. J. CROSS,  
*Solicitor for the Respondent,*  
444 Sussex Street, Ottawa.

**In the Exchequer Court of Canada**

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IN THE MATTER OF THE EXCESS PROFITS TAX ACT,

AND

IN THE MATTER OF THE APPEAL OF ANACONDA AMERICAN BRASS  
LIMITED, of New Toronto, in the Province of Ontario

APPELLANT;

AND

THE MINISTER OF NATIONAL REVENUE

RESPONDENT.

10

REPLY

As to the whole of the Statement of Defence herein, excepting the admissions contained therein, the Appellant joins issue.

DATED at Toronto this 1st day of February, A.D. 1950.

Messrs. BLAKE, ANGLIN, OSLER &  
CASSELS,  
25 King Street West, Toronto, 1,  
*Solicitors for the Appellant.*

**In the Supreme Court of Canada**  
**On appeal from the Exchequer Court of Canada**

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IN THE MATTER OF THE EXCESS PROFITS TAX ACT, 1940

AND

THE MINISTER OF NATIONAL REVENUE

APPELLANT (*Respondent*)

AND

ANACONDA AMERICAN BRASS LIMITED

RESPONDENT (*Appellant*)

10

NOTICE OF APPEAL

Take notice that the Appellant above named intends to appeal and does hereby appeal from the judgment herein given by the Honourable the President of the Exchequer Court of Canada, dated the 7th day of June, A.D. 1952, to the Supreme Court of Canada.

This notice is given pursuant to section 82 of the Exchequer Court Act.

DATED at Ottawa this 30th day of September, A.D. 1952.

F. J. CROSS  
*Solicitor for the Appellant.*

To:  
20 The Registrar, The Supreme Court of Canada.

And To:  
Anaconda American Brass Limited, New Toronto, Ontario.

Copy To:  
The Registrar, The Exchequer Court of Canada.

**In the Supreme Court of Canada**  
**On appeal from the Exchequer Court of Canada**

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IN THE MATTER OF THE EXCESS PROFITS TAX ACT, 1940,  
and AMENDMENTS THERETO.

BETWEEN :

THE MINISTER OF NATIONAL REVENUE

RESPONDENT (*Appellant*)

AND

ANACONDA AMERICAN BRASS LIMITED

APPELLANT (*Respondent*)

10

AGREEMENT AS TO CONTENTS OF CASE

We agree that the case upon appeal to the Supreme Court of Canada shall consist of the following material:

1. The Respondent's return of income and excess profits for its 1947 taxation year.
2. The Notice of Assessment mailed to the Respondent on December 6, 1948, in respect of income and excess profits tax for its 1947 taxation year.
3. Respondent's Notice of Appeal to the Minister in respect of its 1947 assessment for excess profits tax.
- 20 4. The Decision of the Minister.
5. The Respondent's Notice of Dissatisfaction.
6. The Minister's Reply to Respondent's Notice of Dissatisfaction.
7. The Statement of Claim.
8. The Statement of Defence.
9. The Reply to the Statement of Defence.
10. The introductory remarks of counsel at the hearing before the President of the Exchequer Court of Canada.

11. All of the vive voce evidence at the hearing before the President of the Exchequer Court of Canada consisting of the testimony of:
- (a) Arthur H. Quigley
  - (b) Jacob S. Vanderploeg
  - (c) Urda M. Evans
  - (d) Theodore E. Veltfort
  - (e) Arthur Robert McGinn
  - (f) Duncan Lockhart Gordon
  - (g) Donald B. Crawley
  - 10 (h) George Richardson
  - (i) Maurice Peloubet
  - (j) Kenneth Carter
  - (k) Leslie McDonald
  - (l) J. Keith Butters
  - (m) Gerald Jephcott
  - (n) Edward A. Kracke
  - (o) William Frederick Williams
  - (p) James C. Thompson
12. All of the exhibits filed at the hearing before the President of the Exchequer Court consisting of Exhibits numbered 1 to 35 inclusive and Exhibits lettered "A", "B" & "C".
- 20
13. The judgment of the Exchequer Court of Canada.
14. The reasons for judgment of Thorson, P.
15. The Notice of Appeal to the Supreme Court of Canada.

DATED AT OTTAWA, this 17th day of November, A.D. 1952.

F. J. CROSS,  
*Solicitor for the Appellant.*

BLAKE, ANGLIN, OSLER & CASSELS,  
*Solicitors for the Respondent.*

**In the Supreme Court of Canada**

MONDAY the 17th day of November, A.D. 1952

**Before the Registrar in Chambers**

IN THE MATTER OF THE EXCESS PROFITS TAX ACT, 1940 and  
AMENDMENTS THERETO

BETWEEN:

THE MINISTER OF NATIONAL REVENUE

RESPONDENT (*Appellant*)

AND

10

ANACONDA AMERICAN BRASS LIMITED

APPELLANT (*Respondent*)

Upon the application of Counsel for the Appellant, Counsel for the Respondent consenting hereto,

IT IS ORDERED that the printing of the Exhibits filed at the hearing of this matter before the Honourable the President of the Exchequer Court and being:

- (a) Exhibit 34—A book entitled—“Effects of Taxation—Inventory Accounting and Policies” by J. Keith Butters.
  - (b) Exhibit 30—Appendix A appearing on pages 269 to 299 inclusive of the book marked as Exhibit 34.
  - 20 (c) Exhibit 31—Table 29 appearing on pages 286 and 287 of the book marked as Exhibit 34.
- be dispensed with.

AND IT IS FURTHER ORDERED that the Appellant furnish ten copies of the book marked as Exhibit 34, containing Exhibits 30 and 31, for the use of the Court.

AND IT IS FURTHER ORDERED that the costs of this application be fixed at the sum of fifteen dollars and that the same be costs in the cause.

PAUL LEDUC,  
*Registrar.*



**In the Supreme Court of Canada**

THURSDAY THE 4TH DAY OF DECEMBER, A.D. 1952

BEFORE THE REGISTRAR IN CHAMBERS

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IN THE MATTER of the Excess Profits Tax Act, 1940 and amendments thereto.

**BETWEEN :**

THE MINISTER OF NATIONAL REVENUE

*(Respondent)* APPELLANT;

AND

ANACONDA AMERICAN BRASS LIMITED

*(Appellant)* RESPONDENT.

10

Upon the application of Counsel for the Appellant, Counsel for the Respondent consenting hereto,

IT IS ORDERED THAT the printing of the Exhibits filed at the hearing of this matter before the Honourable the President of the Exchequer Court and being Exhibits numbered 1 to 29 inclusive, 32, 33, 35, "A", "B" and "C" be dispensed with.

AND IT IS FURTHER ORDERED THAT the Appellant do furnish ten copies of the aforesaid Exhibits for the use of the Court and that three copies of the aforesaid Exhibits be furnished by the Appellant for the use of the Respondent.

20

PAUL LEDUC  
*Registrar*

No. 26435.

**In the Exchequer Court of Canada**

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IN THE MATTER OF THE EXCESS PROFITS TAX ACT

AND

IN THE MATTER OF THE APPEAL OF ANACONDA AMERICAN BRASS  
LIMITED, OF NEW TORONTO, IN THE PROVINCE OF ONTARIO

APPELLANT

AND

THE MINISTER OF NATIONAL REVENUE

10

RESPONDENT.

HEARD at Toronto, Canada, on the 19th, 20th, 21st, 22nd, 23rd, 26th and 27th days  
of June, A.D. 1950, before the Honourable Mr. Justice J. T. Thorson,  
President of the Court.

G. BELLEAU,  
*Deputy Registrar.*

NELSON R. BUTCHER & COMPANY,  
*Official Reporters,*

*Per:* H. E. CUTLER, and  
FRANK NETHERCUTT,

*Sworn Reporters.*

*Counsel:*

20    A. S. PATTILLO, K.C.,  
      W. E. P. DE ROCHE, and  
      A. J. McINTOSH.    }    *for the Appellant.*

      J. W. PICKUP, K.C., and  
      F. J. CROSS.        }    *for the Respondent.*

*Opening Statement of Counsel for the Appellant*

HIS LORDSHIP: All right, Mr. Pattillo.

Mr. PATTILLO: Thank you, my lord. I am appearing for the appellant, the  
Anaconda American Brass Limited and I have with me Mr. DeRoche and Mr.  
McIntosh;

30    And my learned friend Mr. Pickup is appearing for the Crown and he has with  
      him Mr. Cross.

*Opening Statement (Appellant)*  
*Mr. Pattillo—(Cont.)*

My lord, I would like to state at the opening that under the provisions of section 68 of the Income War Tax Act the proceedings shall be held in camera.

HIS LORDSHIP: Well you have that as a matter of right.

Mr. PATTILLO: Yes.

HIS LORDSHIP: So the proceedings in this case will be heard in camera. What about the witnesses?

Mr. PATTILLO: I do not think there is anybody in the court room, my lord, who is not properly here.

Mr. PICKUP: I would like it to be noted, my lord, if it needs to be noted, that 10 that is at the request of my friend. The Crown is no party to any such suggestion as that.

HIS LORDSHIP: No, and it has always disturbed me with regards to these matters relating to hearing in camera as to what to do with the judgment and the report. It seems to me that the judgment and the report is public property.

Mr. PATTILLO: That is my feeling in the matter, my lord, and on that I am not asking that it be otherwise.

HIS LORDSHIP: Then the proceedings will be held in camera.

Mr. PATTILLO: Thank you, my lord.

Now, my lord, I presume that all of the documents relating to the appeal, prior 20 to the pleadings, are before your lordship?

HIS LORDSHIP: Yes, pursuant to the provisions of the Act.

Mr. PATTILLO: Now your lordship will observe that, according to the pleadings, the dispute arises out of assessments made in the years 1946 and 1947. And when we had occasion to thoroughly investigate the matter we discovered that the difference in the assessment for the year 1946, between the amount assessed by the Department and the amount returned by the company, arose solely out of a question of scrap allowance.

HIS LORDSHIP: That is in 1946?

Mr. PATTILLO: In 1946 and did not affect the vital issue between the two of 30 us—so that we advised our learned friends that we would not be interested in proceeding on the 1946 appeal. As I say it dealt solely with the question of scrap allowance, which we considered we were entitled to and I do not think there is any dispute between our learned friends and ourselves with regard to that.

Mr. PICKUP: Yes there is. From an examination of your Notice of Appeal and your pleadings, we regarded the dispute in both appeals as being the same and the Appellant is endeavouring now to withdraw or seek to withdraw the appeal

*Opening Statement (Appellant)*  
*Mr. Pattillo—(Cont.)*

in 1946, to take advantage of a different system of evaluating, in the case of 1946, because the Crown has been consistent throughout and has evaluated it throughout on the basis that estimates the use of the goods. Now that was done in 1946 although a return was made in that year for the first time on a different basis, resulting in a refund of some 12 thousand dollars or something like that by the Minister.

His LORDSHIP: To Anaconda?

Mr. PICKUP: By the Crown to Anaconda and my friend appealed in connection with that refund. Now they seek to withdraw that and all I am going to say to your lordship at this stage on this matter of the old appeal—of the 1946 appeal—  
 10 is that we just keep it in reserve or in abeyance and if my friends offer no evidence on it, then your lordship, will know better how to deal with it at the end. I do not want your lordship to deal with it now because if you should decide that the Minister is right, then of course the appeal of 1946 should be allowed but whether you allowed it or not, I suppose the refund would be made, regardless of the disposition of it.

On the other hand if you decide that what my friend contends for is a sound one and should be followed, it may well be that by withdrawing their 1946 appeal they have been permitted to take an opposite position from that which would be the position if they succeeded on the 1947.

20 I just suggest to your lordship that you retain it for the time being and when you have heard all the evidence you will know better what to do with the request.

His LORDSHIP: What have you to say to that, Mr. Pattillo?

Mr. PATTILLO: My lord, if my learned friend takes that position on the matter I would rather not withdraw my appeal. I would like to reserve that question.

His LORDSHIP: It seems to me that there is some merit in Mr. Pickup's suggestion that I should reserve my decision on your motion to withdraw the appeal and I want to know whether you have anything to say in regard to that.

Mr. PATTILLO: Then I would like to withdraw my motion.

His LORDSHIP: Then you withdraw your motion?

30 Mr. PATTILLO: Yes, I thought that we were on common ground, but apparently we are not.

His LORDSHIP: So the appeal will proceed both on the 1946 assessment and on the 1947 assessment?

Mr. PATTILLO: Yes, my lord.

His LORDSHIP: Yes, all right.

Mr. PATTILLO: Now my lord, the point at issue between us can be treated very simply, I think.

*Opening Statement (Appellant)*  
*Mr. Pattillo—(Cont.)*

The company is contending that, in ascertaining its taxable income for the years 1946 and 1947 it is entitled to employ what is known as the l.i.f.o. method in ascertaining its cost of sales.

His LORDSHIP: In ascertaining what?

Mr. PATTILLO: Its cost of sales.

The Department has taken the opposite position, that the company is not so entitled and that to arrive at the taxable income the proper method to use in calculating cost of sales is the method known as the f.i.f.o.

Mr. PICKUP: No, cost or market, whichever is lower.

10 His LORDSHIP: Cost or market, whichever is lower, you say?

Mr. PICKUP: Yes, my lord.

Mr. PATTILLO: I think when my learned friend uses the phrase "cost or market whichever is lower", I think he is talking about the valuation of the inventories.

His LORDSHIP: I want to be sure.

I understand the actual valuation of the inventory—whether there has been an increase or decrease in the value of the inventory, that is not before the court in this case.

Mr. PATTILLO: That arises out of the method which he uses.

20 His LORDSHIP: No, but I mean, we are not concerned—or are we concerned with any increase or decrease in the value of the inventory during these years.

Mr. PATTILLO: Yes.

His LORDSHIP: We are concerned with that as well, as an item in respect of the inventory, quite apart from the question of the raw material and the cost of it in relation to the finished product.

Mr. PATTILLO: Yes. I am not quite sure what your lordship is driving at but may I put it this way—we arrive at our cost of sales by employing what we call the l.i.f.o. method.

His LORDSHIP: That is in relation to the cost of sales of your finished product?

30 Mr. PATTILLO: Of our finished product throughout the year.

His LORDSHIP: Where you have taken raw material out of your inventory of raw material?

Mr. PATTILLO: And processed it and sold it.

His LORDSHIP: And used it in the process of processing your finished product?

*Opening Statement (Appellant)*  
*Mr. Pattillo—(Cont.)*

Mr. PATTILLO: And then sold it and then in arriving at the cost of sales we have used the l.i.f.o. method.

The Department in their reassessment of it, added so much money to our inventory and they arrived at that figure which they added to our residual inventory on hand at the end of the fiscal period by employing the f.i.f.o. method rather than the l.i.f.o. method—and that meant that they came up with an inventory at the end of the fiscal period considerably higher than the inventory which we had—the difference amounting to about \$1,700,000 approximately.

So that whichever method you employ in the cost of sales affects the valuation.

10 His LORDSHIP: Affects the valuation of your inventory?

Mr. PATTILLO: At the end of the fiscal period. Now my learned friend used the phrase a minute ago "Cost or Market whichever is lower." My understanding, my lord, of that is that that is a phrase which is applicable to valuation of inventory.

His LORDSHIP: Apart from any question of the cost factor of the finished product?

Mr. PATTILLO: That is so, my lord. What I was talking about was the method that was used in ascertaining what was the cost of the finished product which we sold and on that I say that we used and claim to be entitled to use the l.i.f.o. method, which means that the last-in is the first-out and we say that we will be able to  
 20 establish in evidence that the figure which the Department came up with was arrived at by the f.i.f.o. method which is again another method and the origin of that is first-in, first-out.

His LORDSHIP: May I put it this way to see if I have it clear in my mind—you take raw materials out of your inventory?

Mr. PATTILLO: Yes my lord.

His LORDSHIP: For the purpose of using them?

Mr. PATTILLO: Yes my lord.

His LORDSHIP: Using them to process your finished product and then you maintain a constant inventory, or thereabouts?

30 Mr. PATTILLO: That is right.

His LORDSHIP: When you take your raw material out of your inventory you acquire some more raw material to put in its place?

Mr. PATTILLO: That is right.

His LORDSHIP: And then you acquire that raw material at a certain price?

Mr. PATTILLO: That is right.

*Opening Statement (Appellant)*  
*Mr. Pattillo—(Cont.)*

His LORDSHIP: And that is the price that you use as the cost factor of the raw material that you have taken out.

Mr. PATTILLO: That is it, my lord—that is the situation, my lord.

His LORDSHIP: Then actually I suppose in the course of time the substitution of new raw material in your inventory for the material that you have taken out is a little subsequent likely to your taking it out.

Mr. PATTILLO: That is correct—its actual arrival in the inventory.

His LORDSHIP: I mean you use a figure, do you—that is of price that is subsequent to your actually taking the raw material out of the inventory?

10 Mr. PATTILLO: No. Perhaps I can explain it this way—we start the year with so many pounds of copper on hand—

His LORDSHIP: I would rather that you took it out of the inventory for the purpose of making certain things.

Mr. PATTILLO: Then let me perhaps illustrate it in this manner—you receive an order—

His LORDSHIP: Yes, you receive an order.

Mr. PATTILLO: You receive an order from a customer and when you receive the order what is done is the metal content that will be in the finished product is ascertained.

20 His LORDSHIP: Yes.

Mr. PATTILLO: And the price of the finished product is then calculated on the then current market price of the raw material.

His LORDSHIP: What is the “then”.

Mr. PATTILLO: The immediate, that day’s price.

His LORDSHIP: The day of the order?

Mr. PATTILLO: The day that the order comes in. The first calculation is made on that day’s price. Then the company at the commencement of the month—the first nine days of every month—ascertains what orders it has on hand which it proposes to ship to its customers during that next month. Having ascertained  
 30 that, it then calculates the amount of raw material that will be going out of the plant the next month in those finished orders—and that is the basis you will hear in evidence that leads to further calculation and leads to the placing of an order with the suppliers of the raw material for shipments which are at the beginning of the next month and which are to flow regularly.

His LORDSHIP: And is that price fixed then?

Mr. PATTILLO: No.

*Opening Statement (Appellant)*  
*Mr. Pattillo—(Cont.)*

His LORDSHIP: There may be a subsequent delivery to it?

Mr. PATTILLO: The suppliers, during the war, the suppliers have insisted on shipping on the basis of price as at the date of delivery.

His LORDSHIP: Which might be different from the price of the raw material when it was taken out for the purposes of the order?

Mr. PATTILLO: Well what is done, to try to correct that situation is this, so long as the suppliers are insisting upon shipping at the price on date of delivery, the company is selling to the customer on a price based on the date of shipment.

His LORDSHIP: Oh I see—so that comes closer to it.

10 Mr. PATTILLO: They try to match it in that way.

His LORDSHIP: Then the amount of the raw material which goes into the finished product is finally determined as of the shipping date.

Mr. PATTILLO: That is right.

His LORDSHIP: Of the finished product.

Mr. PATTILLO: Of the finished product and the cost of it is then determined based on the price of raw material on the date of shipment and the price to the customer is determined that day.

Now, as I say, one of the difficulties the company has been confronted with post-war is the difficulty that has arisen because of the suppliers' demands. It is  
 20 not a difficulty that existed prior to the war.

Now the point at issue between the Crown and the company may be stated—and it can be done simply—although it is not so easy as your lordship can very well understand, to explain the reason for the differences of opinion that exist between the two.

You will hear evidence that the company maintains that it is engaged in the business of a primary producer of brass and copper products;

And that it seeks to make its profit solely in the processing of raw materials into finished goods.

His LORDSHIP: And not in any increase in value of inventory?

30 Mr. PATTILLO: It endeavours to avoid any profit or loss on metals—which are the raw materials.

Now evidence will be called to show that this objective of the company is sought to be achieved by a policy which is carried out in practice, of selling its products on the replacement cost of metals, plus what is known as a "processing charge."



*Opening Statement (Appellant)*  
*Mr. Pattillo—(Cont.)*

Secondly, changing the selling price of its products to reflect immediately any change in the cost of the raw materials.

His LORDSHIP: Well the one must follow from the first.

Mr. PATTILLO: Quite.

His LORDSHIP: Or the second must follow from the first.

Mr. PATTILLO: Quite, sir and thirdly, it matches its purchases to its sales.

His LORDSHIP: It matches its purchases of raw materials?

Mr. PATTILLO: Of raw materials to its sales.

His LORDSHIP: To its sales of finished products?

10 Mr. PATTILLO: Yes, both as to quantity and to price.

His LORDSHIP: And it sells no portion of its inventory?

Mr. PATTILLO: That is right, my lord.

His LORDSHIP: That is, its inventory of raw materials.

Mr. PATTILLO: Yes, that is right my lord. It is in the business of processing solely and this method of matching is sought to be accomplished, the evidence will be as I have already suggested to your lordship, by ordering in the early part of the month for regular deliveries in the succeeding month, raw materials to cover the orders which it is estimated will be shipped in that succeeding month;

20 And then by selling, as we did during the period which will be in question in this case, on prices prevailing on the date of shipment.

His LORDSHIP: Shipment of what?

Mr. PATTILLO: The date of shipment of the finished product and when I use the words "prices prevailing", that is, the prices of the raw materials prevailing.

His LORDSHIP: Yes.

Mr. PATTILLO: Now, my lord, we propose to show in evidence that the company has no control whatever over its suppliers. The suppliers are entirely independent and in no way associated with the company or its parent or any of the parent affiliates.

30 We also propose to show the terms on which we were able to buy pre-war because I think I should bring out here that it will be shown in evidence that the company had used the l.i.f.o. method until 1946 for corporate purposes—it had begun to use it in 1936—and its operations were carried on and the l.i.f.o. method was employed from 1936 on—pre-war.

His LORDSHIP: When did they start to file their returns?

Mr. PATTILLO: For the year 1946, that was the first year.

*Opening Statement (Appellant)*  
*Mr. Pattillo—(Cont.)*

His LORDSHIP: This is the first year that they filed their returns on the basis of the l.i.f.o. method?

Mr. PATTILLO: That is right, my lord.

Now we also intend to show in evidence what products the company produces—the raw materials which the company purchases and uses in the manufacture of its products—and the percentages that those raw materials bear to the whole.

The most important raw material which we purchase is copper, which represents more than 80 per cent of all the raw material which the company uses.

His LORDSHIP: What are the others?

10 Mr. PATTILLO: Zinc is the next important one. It represents between copper and zinc—they represent 98 per cent of the raw materials.

There will also be evidence to show that the raw materials are homogeneous and that the metal content of the sales dollar is high.

His LORDSHIP: What do you mean by “the raw materials being homogeneous”?

Mr. PATTILLO: One pound of copper is the same as another pound of copper.

Then the metal content in the sales dollar is high—the evidence will be that it amounts to more than fifty per cent.

The inventory of the company is large—that is physically and dollar wise—and it turns over slowly.

20 His LORDSHIP: It turns over slowly?

Mr. PATTILLO: Yes, my lord.

His LORDSHIP: You do not mean in the matter of total?

Mr. PATTILLO: The inventory turns over about four times a year and the evidence will be that at the present time, at the rate of operation, there are at all times about ten thousand pounds—or ten million pounds rather—in copper.

His LORDSHIP: That is in process?

Mr. PATTILLO: Ten million pounds in process.

Now, my lord, it is my intention to call officers of the company and also an independent expert who has had great familiarity with the brass industry on this  
 30 continent, whom I have brought here from New York to explain that the matters with which I have just been dealing are not extraordinary to this particular plant but that they are common to the primary producers in the brass industry on the continent.

You will also hear evidence as to the historical reasons for the operation of the primary producers in the manner in which I have mentioned;

*Opening Statement (Appellant)*  
*Mr. Pattillo—(Cont.)*

And you will hear evidence as to the danger of any primary producer in the brass industry gambling in the inventory;

And we will show that these historical reasons and the danger of the gambling in the inventory of this nature and the fact that the whole industry throughout the whole continent is carrying on in this manner, has led the company to operate in this way—not for tax considerations.

Now I also propose to call the auditors of the company. They will give evidence as to the application of the l.i.f.o. method and that it is employed to reflect the periodic income of the company in the best possible way, having regard  
 10 to the manner in which the company is carrying on business.

I also am proposing to call several, both American and Canadian, accounting experts.

HIS LORDSHIP: May I just interrupt you, a moment—how many experts—you are limited in the number of experts whom you may call, I suppose?

MR. PATTILLO: Well, My lord, if I am limited under the rules, might I ask at this time that the rule be relaxed?

HIS LORDSHIP: What I am saying is that you are limited as to the number of experts that you may call?

MR. PATTILLO: Yes.

20 HIS LORDSHIP: Unless the Court orders that a larger number may be called, and that must be done before you start.

MR. PATTILLO: Right, my lord. Well, my lord, I will tell your lordship the number I wish to call and why.

I would like to call one brass expert.

HIS LORDSHIP: One brass expert?

MR. PATTILLO: Yes, my lord, and then I would like to call two American accountants as experts.

HIS LORDSHIP: Two American accountants as experts, you say?

30 MR. PATTILLO: Yes, my lord. Then, I would like to call three Canadian accountants.

HIS LORDSHIP: As experts?

MR. PATTILLO: Yes, my lord. You have six now. Then, in addition to that, my lord, I thought that it might assist the Court if, prior to the commencement of the calling of my accounting experts, I called Mr. Richardson, from Clarkson-Gordon, who are the auditors of the Company, to explain these various methods.

HIS LORDSHIP: He will also be an expert?

MR. PATTILLO: Yes, my lord.

MR. PICKUP: Is he the one you referred to as the “auditor”?

*Opening Statement (Appellant)*  
*Mr. Pattillo—(Cont.)*

Mr. PATTILLO: No, Mr. Duncan Gordon, who has been in charge of the accountants, will be called as the auditor; but we propose to call Mr. Richardson from the same firm as an expert.

Mr. PICKUP: Why I asked that was because you had said a little earlier you would be calling an auditor or auditors as to the application of the l.i.f.o. method.

Mr. PATTILLO: To prove that the Company did follow it, and what it does.

His LORDSHIP: That would be as to facts?

Mr. PICKUP: I took it that you meant as an expert. I am just trying to help.

His LORDSHIP: There is one brass expert—an American accountant—another  
 10 American accountant—three Canadian experts—and Mr. Richardson—seven so far.

Mr. PATTILLO: Yes, my lord, and then I am proposing to call the author of a book, who may or may not become an expert.

His LORDSHIP: Oh well, will he not?

Mr. PATTILLO: I was merely going to—I want to get the book in.

His LORDSHIP: But he is going to be subject to cross-examination as to why he says this, and so on?

Mr. PATTILLO: That is quite correct.

His LORDSHIP: Then that is another expert—you have eight now.

Mr. PATTILLO: Well, that is my total list, my lord.

20 His LORDSHIP: Have you any objection to that, Mr. Pickup—we will just deal with that point now.

Mr. PICKUP: Well, I have, my lord, and I trust it is sound. As one always prepares his own case in the expectation of rules being followed—and the general rule applies to experts.

His LORDSHIP: The general rule is five?

Mr. PICKUP: The general rule is five in this Court, and three in the Supreme Court—and I had not heard of any motion until this morning suggesting any desire to call more than five experts.

His LORDSHIP: I have heard it said that even in this Court there should be  
 30 only three.

Mr. PICKUP: Well then, I may stand corrected on that, but I had the idea that the Exchequer Court was five, and I think that has been ruled on—but it may have some limited applications—it may not apply to a case of this kind.

His LORDSHIP: I have heard it argued that the Provincial Law is the law that ought to be applied.

*Opening Statement (Appellant)*  
*Mr. Pattillo—(Cont.)*

Mr. PICKUP: Well, then, your lordship is discussing a deeper question than the one I am.

His LORDSHIP: I mean the Provincial Law in the matter of the number of experts is the one which should be applied in this Court.

Mr. PICKUP: And the Provincial Law, of course, is three.

His LORDSHIP: I do not recall any ruling that we have made—it would not be a matter of ruling, would it, but five is pursuant to the Canada Evidence Act.

Mr. PICKUP: The Canada Evidence Act or the Exchequer Court Act—I would like over the noon hour to look it up—but it runs in my mind that there is a figure  
 10 of five applicable to this Court, but how it gets there I do not know.

Apart from that, we will look it up and give you our suggestions, but even now I wonder whether this case justifies as many as eight expert witnesses on this.

His LORDSHIP: Oh, this is a new point, and so far as I know there is not any jurisprudence on this particular point—and it is a matter of considerable importance.

Mr. PICKUP: Oh, yes, it is a matter of considerable importance.

His LORDSHIP: I do not know that three experts are any better than one, except that sometimes Counsel—sometimes experts get confused and Counsel upsets one expert on cross-examination and then gets put in his place by the next expert. That sometimes happens.

20 Mr. PICKUP: I feel, my lord, that three experts are sufficient.

His LORDSHIP: They are on separate points.

Mr. PICKUP: Well, are they?

His LORDSHIP: Yes, the brass expert is in one category—the American accounting experts, two—I do not know why he should be calling two—I am not sure about that—and then three Canadian accountants.

Mr. PICKUP: But they are all direct, are they not?

His LORDSHIP: They will all be direct to some extent, I suppose, on the l.i.f.o. principle or the f.i.f.o. principle.

Mr. PICKUP: I assumed when my friend spoke of a brass expert, and correct  
 30 me if I am wrong, he was proposing to call an expert on brass, to show that the l.i.f.o. method is a good principle to apply to brass.

His LORDSHIP: No, no, that he was going to show that the brass industry generally applies that principle, and why it does so.

*Opening Statement (Appellant)*  
*Mr. Pattillo—(Cont.)*

Mr. PATTILLO: I do not even go that far—I was going to say or to show that the brass industry throughout the Continent carries on business in a certain manner.

His LORDSHIP: Yes, in a certain manner.

Mr. PICKUP: If that is so, then I suppose that is factual.

His LORDSHIP: No, there is going to be an explanation of why they do that, and the reasons for it.

Mr. PICKUP: May I put it this way, my lord—

His LORDSHIP: If it is factual, of course he is not an expert, and you do not have to think of him.

10 Mr. PICKUP: No, but it did seem to me this way, that where their testimony is as to the judgment of the Minister, and seeking to show that the Minister is wrong, then there is an objection in the matter of numbers—bringing three or four or a whole lot.

His LORDSHIP: The numbers—we are not going to determine the weight of the evidence by the number of experts.

Mr. PICKUP: Well, the fact that eight or fifteen or twenty-five accountants in Canada and the United States think that this is a wonderful thing, in my opinion is not going to alter the position.

His LORDSHIP: No, but their opinions, nevertheless, may be very valuable for  
 20 consideration.

Mr. PICKUP: Yes, that may be so. Well, I am in your lordship's hands, but it did seem to me it came down pretty much to opinion evidence in this case being given by many witnesses.

His LORDSHIP: I would not like to tie the hands of Counsel in the preparation of his case. If a responsible Counsel thinks that it is important that there should be these experts on the various topics, and he makes his motion accordingly—no one is going to be hurt by the fact that there is a surplus of experts.

Mr. PICKUP: No, I am not suggesting, my lord, that I would have called even one additional expert if there were thirty.

30 His LORDSHIP: Well, are these the experts that you want to call?

Mr. PATTILLO: Yes, my lord.

His LORDSHIP: Then the Court grants permission to call these experts.

Mr. PATTILLO: Thank you, my lord.

*Opening Statement (Appellant)*  
*Mr. Pattillo—(Cont.)*

Now, we shall seek to prove by these experts that l.i.f.o. is an acceptable accounting method for the purposes of calculating costs—that l.i.f.o. is the best of the known methods for calculating costs to be employed under the facts of this case;

And that f.i.f.o., though an acceptable accounting method—

His LORDSHIP: Though what?

Mr. PATTILLO: Though it is an acceptable accounting method, it does not reflect accurately the income of the Company—the periodic income, I should say—of the Company and when it is operating as it is—

10 Mr. PICKUP: “It does not reflect accurately”, is that what you said?

Mr. PATTILLO: Does not reflect accurately.

His LORDSHIP: Periodic income of the Company—that is the income of the Company for a particular period?

Mr. PATTILLO: Yes, my lord.

His LORDSHIP: I suppose over a long period of time it might work out about the same?

Mr. PATTILLO: As a matter of fact, my lord, when you do not look at the tax situation at all—you merely look at two Companies, one operating with f.i.f.o. and one operating with l.i.f.o., and they both begin at the same time and they both end  
 20 at the same time, and they are both of the same type, what you get is exactly the same.

His LORDSHIP: Over a long period of time?

Mr. PATTILLO: That is it, my lord.

His LORDSHIP: The results would be the same?

Mr. PATTILLO: That is right, my lord.

His LORDSHIP: And that is why you say that?

Mr. PATTILLO: That is why I use the word “periodic”.

His LORDSHIP: Yes, and you mean it does not accurately reflect the income of the Company for a particular period?

30 Mr. PATTILLO: That is right, my lord.

Now, it may be that you will hear considerable about other methods of accounting, other than merely l.i.f.o. and f.i.f.o., but again I want to point out to your lordship that, so far as our submission is concerned, those will be the only two that we will deal with;

*Opening Statement (Appellant)*  
*Mr. Pattillo—(Cont.)*

And, as I said some time ago, we are able to prove, and will prove, that the Department did use f.i.f.o. in arriving at the taxable income of the Company for the years in question.

Now, it is the Company's contention that, in filing the returns which were filed for the years 1946-47 we complied with the Income War Tax Act;

And that the Company determined its annual income by an acceptable accounting method—and by the best of the known methods that fairly reflects its annual income.

The Company does not contend that the Crown has not used an acceptable  
 10 accounting method.

It does contend that in the circumstances of this case the Crown has used the less preferable method.

It is the Company's contention that the Department's method assumes that it is part of the Company's business to seek to make a profit on metals;

And we are contending that this is an error.

His LORDSHIP: Well, then, that answers—that contention answers—from my point of view, the question of the system or method.

Mr. PATTILLO: Yes, in any event we contend that as between two proper and acceptable methods of computing the annual income of the Company, it is the  
 20 taxpayer, and not the Minister, who is entitled to select the method which he desires to use.

His LORDSHIP: Oh, you will find that proposition hard to accept—to use a method that more truly reflects income.

Mr. PATTILLO: That is true, but I am saying, supposing that those were not at variance—that one would reflect the income just as well as the other—and it is merely a matter as to which method was going to be employed, then I say, providing we have selected one and this will reflect the income just as accurately as the other, the taxpayer is entitled to have that one used.

His LORDSHIP: I do not know how you would have that situation—that they  
 30 would both accurately reflect the income.

Mr. PATTILLO: Your lordship entirely agrees with me—or I agree entirely with your lordship—it is either one or the other.

His LORDSHIP: It more accurately reflects the income?

Mr. PATTILLO: Yes, my lord.

His LORDSHIP: And that is the one, I suppose, that would result in the determination of the tax that the taxpayer ought to pay on his income?

Mr. PATTILLO: Yes.



*Opening Statement (Appellant)*  
*Mr. Pattillo—(Cont.)*

His LORDSHIP: On his income received.

Mr. PATTILLO: That is correct, my lord—the profit received.

His LORDSHIP: Well, taxable income received.

Mr. PATTILLO: The taxable income, as I understand it, is defined as the “profits”.

His LORDSHIP: Yes.

Mr. PATTILLO: It is our contention that the assessment should be set aside and the annual returns of the Company found to be correct.

His LORDSHIP: Does not the Court just allow the appeal or dismiss the appeal—  
 10 and if it allows the appeal or dismisses the appeal, then the Minister makes the assessments accordingly.

Mr. PATTILLO: It is our contention, then, that the appeal should be allowed.

His LORDSHIP: And that is your opening?

Mr. PATTILLO: I think that is all I need to say, my lord, in opening.

His LORDSHIP: Then we might as well adjourn now, and as we lost some time this morning, perhaps we had better adjourn until a quarter past two.

Mr. PATTILLO: Thank you, my lord.

His LORDSHIP: And I suggest, when we come back, that the Court will sit from 10:30 to 1:00, and 2:30 to 5:00.

20 (At 12:50 p.m. Court adjourned, to be resumed at 2:15 p.m.)

#### AFTERNOON SESSION

His LORDSHIP: All right, Mr. Pattillo.

Mr. PATTILLO: Thank you, my lord.

My lord, before calling Mr. Quigley, the President of the Company, Mr. DeRoche pointed out to me that I neglected to say, in opening this morning, something that I know is quite obvious to your lordship, and that is, that this is an appeal in connection with the Excess Profits Tax, but in order to arrive at that, as your lordship knows, we must find what is the taxable income under the Income Tax Act; and my learned friends for the Crown and ourselves have agreed  
 30 that, although we have the appeal under the Income Tax Act, which would in the normal course of events go to the Court of Appeal or to the Tax Appeal Board, we have agreed that we would be bound by the results in this case.

*Opening Statement of Counsel (Appellant)—Mr. Pattillo (Conc.)  
Arthur H. Quigley (Appellant)—Examination-in-Chief by Mr. Pattillo*

HIS LORDSHIP: In respect of the income tax assessments?

MR. PATTILLO: Yes.

HIS LORDSHIP: Obviously you must go to this Court in respect to the appeal from the Excess Profits Tax assessment.

MR. PATTILLO: Yes, but I just thought that I should point that out to your lordship.

HIS LORDSHIP: Ordinarily, of course, an appeal from the Income Tax assessment would go to the Tax Appeal Board.

MR. PATTILLO: That is correct.

10 HIS LORDSHIP: In respect to Sections 46 and 47.

MR. PATTILLO: That is right, my lord.

HIS LORDSHIP: But you have agreed—

MR. PATTILLO: We have agreed that we would be bound, so far as the income tax is concerned, on the results of this case.

HIS LORDSHIP: Then this court has no jurisdiction?

MR. PATTILLO: No.

HIS LORDSHIP: This Court has no jurisdiction to deal with the assessment— or the appeal from the assessment for income tax purposes.

MR. PATTILLO: Quite, and that is why we agreed, between ourselves, as to the  
20 position we would take.

HIS LORDSHIP: It does not concern the Court what you do in that matter, because this Court has no jurisdiction.

MR. PATTILLO: Quite, and my lord at this stage I would like to call Mr. Quigley, the President of the Company.

ARTHUR H. QUIGLEY: Sworn:

*Direct Examination by Mr. Pattillo:*

Q. Now, Mr. Quigley, would you mind speaking up so that we can all hear you? You are the President of Anaconda American Brass Limited?—A. I am.

Q. And you assumed that position in what year?—A. April 3, 1946.

30 Q. You are also the President of the American parent company?—A. I am.

Q. And what is the name of that Company?—A. The American Brass Company.

Q. And the head office of the Canadian Company is at New Toronto in the Province of Ontario?—A. That is correct.

*Arthur H. Quigley (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

Q. And the head office of the parent company is where?—A. Waterbury, Connecticut.

Q. Now, when did the Anaconda American Brass Company commence business at New Toronto in the Province of Ontario?—A. In 1922—August 10th, I think, to be exact.

Q. And at that time, am I correct in thinking that you were the General Manager of the Company?—A. That is so.

Q. And you continued as such from 1922 up until 1927?—A. That is right.

Q. Now, from 1927 until you became the President of the Company in 1946, 10 did you have any position with the Company at all?—A. I remained as—you are speaking of the Canadian Company?

Q. Of the Canadian Company.—A. As a director.

Q. As a director continuously throughout that period?—A. That is correct.

Mr. PICKUP: That is from 1927 to 1946?

Mr. PATTILLO: Yes, as a director.

Mr. PATTILLO: Q. Now, would you please tell the Court the relationship that exists between the American parent company and the Canadian company, and how they operate as between themselves?—A. The American Brass Company is composed of six primary mills in the United States, as well as this Canadian 20 subsidiary.

This Canadian company is incorporated in Canada, but in our day-to-day operations we consider it as a branch.

Q. Now, you have spoken of this Canadian company as being a subsidiary—is it a wholly-owned subsidiary?—A. It is.

Q. Now, where is the plant of the Canadian company situated?—A. New Toronto.

Q. And would you tell the Court the type of business which is carried on there—what is done?—A. It is what we would call a “primary mill”—that is to say, we produce copper and copper alloys in the form of sheets, rods and tubes.

30 His LORDSHIP: Q. Do you do the same with zinc?—A. That is right, sir, the zinc is a part of the alloy.

Q. Oh, I see.—A. The copper alloy.

Q. Copper alloy would include your zinc?—A. That is right.

Q. The zinc would be the alloy with the copper?—A. That is right.

Mr. PATTILLO: Q. Now, these products which you have mentioned, which you manufacture, do they go directly from you to the ultimate consumer?—A. They do not. I expect one could call them “semi-finished products”. They are shipped to the manufacturers who make the end product, in general.

*Arthur H. Quigley (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

Q. Yes. Now, would you direct your attention, Mr. Quigley, for the moment, to the brass industry in the United States—does it operate by way of primary mills, such as the plant out at New Toronto?—A. The industry does, yes, mainly so, but there are in some instances similar companies who draw their raw products, if you might call them that, from the primary mills.

Q. And from your knowledge of the brass industry in the United States and the operations of the plant out in New Toronto, is there any difference in the manner in which the plant is carried on out at New Toronto and the primary plants are carried on by the industries in the United States?—A. I would say there was  
10 no difference.

Q. Now, when you were the General Manager of the Canadian company, in the years 1922 to 1927, do you know whether at that time the books of account of the company were being kept—or that the costs were being calculated—on the l.i.f.o. method?—A. At that time I would say that they were not.

Q. Do you know when, or do you know whether or not at the present time the books of the parent, the American company, are being kept—or that its costs—

His LORDSHIP: You mean at the present time?

Mr. PATTILLO: Yes.

Mr. PATTILLO: Q. Do you know whether or not at the present time the books  
20 of the parent American company are being kept so that their costs are being calculated by the l.i.f.o. method?—A. They are.

Q. Do you know when that was first introduced into the American company's policy?—A. My recollection and impression is that the idea started about 1927, more particularly, I think, on a base inventory at that time.

Q. Yes, and do you know from your knowledge of the affairs of the Company today—

His LORDSHIP: Which Company?

Mr. PATTILLO: Q. Of the American parent company, when it was first brought to the point that it now is, in the l.i.f.o. method?—A. That, I believe, was 1934.

30 Q. Now, do you know when the l.i.f.o. method was first employed by the Canadian company?—A. In 1936.

Q. And when the Canadian company employed the method in 1936, did it employ it for tax purposes—or was it only employed for corporate purposes?—A. Employed only for corporate purposes.

Q. And when was it first employed—

*Arthur H. Quigley (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

His LORDSHIP: Q. What do you mean by "corporate purposes"?—A. To estimate the earnings for the Company.

Q. And it was not applied for income taxes?—A. For taxes, that is right, it was not.

Mr. PATTILLO: Q. When was it first decided to file the income tax returns of the company by the use of the l.i.f.o. method?—A. In 1947.

His LORDSHIP: In 1947 or 1946?

Mr. PATTILLO: The decision was reached, my lord, in 1947, but it was for—what year was the first year for which the returns were filed?

10 The WITNESS: For 1946.

His LORDSHIP: It was first decided upon in 1947?

Mr. PATTILLO: Yes.

His LORDSHIP: They were late in making their returns?

Mr. PATTILLO: No, the 1946 returns would not have to be filed prior to April.

Mr. PATTILLO: Q. I am correct, Mr. Quigley, am I not, that it was in the early part of 1947 that the decision was made?—A. That is my recollection.

Q. Now, who made the decision for the Canadian company to file its income tax returns for the 1946 fiscal period by use of the l.i.f.o. method of calculating costs?—A. That was—that decision was made by our accountants and auditors.

20 Q. And did you, as President of the company, approve of that decision?—A. I did.

His LORDSHIP: Q. Who were your accountants and auditors?—A. That would be—you mean, by the name?

Q. Yes.—A. Well, it would be our regular American Brass accountants.

Q. Oh, your regular American Brass accountants?—A. Yes, with the approval of our auditors.

Mr. PATTILLO: Q. Your Canadian auditors?—A. That is right.

Q. And your Canadian auditors were Clarkson, Gordon and Company?—A. That is right.

30 Q. And the American auditor is Mr. Peloubet? And he is here to give evidence?—A. That is right.

Q. Now Mr. Quigley, what is the source of supply of the raw materials used by Anaconda American Brass—or the Canadian company?—A. Do you mean, by that, the actual name of the company?

Q. If you can give that.—A. Most of our copper is produced by the International Nickel Company, and is handled or sold to us by the agency of The Consolidated Mining and Smelting Company of Canada.

*Arthur H. Quigley (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

Q. Now, is or has Anaconda American Brass Company Limited any association with either of those companies?—A. They have not.

Q. Has the parent company or any of its affiliates in the United States any association with either company?—A. They have not.

Q. Now, you told us as to the source of supply of copper—what is the source of supply of zinc?—A. The greater part of our zinc is produced by the Consolidated Mining and Smelting Company of Canada, and sold to us by them. I believe we get some lesser quantities of zinc from Hudson Bay.

Q. Now, as to that latter company, is it in any way associated with the  
10 Anaconda Company?—A. It is not.

Q. Or any of its affiliates?—A. No, sir.

Q. Now, is there any policy laid down as to the method of the purchase of raw materials to be used by the Canadian company?—A. Our policy is to match purchases with sales.

His LORDSHIP: Q. Would you mind explaining what you mean by that?—  
A. I mean by that, sir, that as accurately as possible the materials invoiced in any month, purchases are made for them—for those sales—co-incidentally.

Mr. PATTILLO: Q. And has the Canadian Company any policy?

His LORDSHIP: Q. Just a moment, do I understand by that—I think I know  
20 what you mean by “matching the purchases with sales”, but by itself it will not mean anything. Mr. Pattillo explained what it meant in his opening, I think. You heard Mr. Pattillo’s opening statement.—A. I mean by that, sir, that the sales of any subsequent month were—

Q. You mean, sales of finished goods?—A. Yes, we start the purchasing about the ninth of the preceding month.

Q. The purchasing?—A. The purchasing of the raw material.

Q. That is the copper and the zinc?—A. That is right.

Mr. PATTILLO: Q. And am I correct, what you are trying to do is to have the flow of goods into the plant matching the flow of products out of the plant?

30 His LORDSHIP: The flow of raw materials coming into the plant, of copper and zinc, matching the outflow of finished products?

Mr. PATTILLO: Yes.

The WITNESS: That is so.

Mr. PATTILLO: Q. Now, has the Canadian company any policy as to the pricing of its products which it sells, and if so, would you explain that?—A. I do not know that I got the import of your question.

*Arthur H. Quigley (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

Q. Well, I will put it this way, Mr. Quigley—is there any policy of the Canadian company as to the factors which are to be taken into consideration in arriving at the sales price of its products?—A. We consider that we are not speculating in raw materials. We avoid that always. Therefore, our prices reflect, as accurately as possible, what we have paid for the raw materials. Then our processing charge is added on to that, which includes our labour, repairs and rentals—all manufacturing expenses, including power, shipping expenses, depreciation, shrinkage and profit, if any.

His LORDSHIP: Q. You say “profit, if any”—might you not just as well say  
10 “profit”?

Mr. PATTILLO: Q. Now, if there is a change in the price of the raw material, is it the policy of the Company to make any change in the selling price of its products or not?—A. We must immediately change our prices to conform to the markets of raw materials—more particularly copper, and secondly, to zinc, because we are not speculating, as I said before, and we cannot afford to absorb those expenses on the up-grade, and we must be fair to our trade on the down-grade.

Q. Now, I was going to ask you to explain to the Court the reason for this policy.

His LORDSHIP: May I just interrupt for a moment?

20 Mr. PATTILLO: Yes, certainly.

His LORDSHIP: Q. If you undertook to sell to a customer your finished products for future delivery at a certain date at a certain price—and in the meantime copper goes down, do you then reduce the price to your customer?—A. We do.

Q. Notwithstanding the fact that you had an anterior agreement to supply to him at a certain price?—A. Well, we are on the date of delivery basis.

Q. So if there is a drop in the price of copper prior to the date of delivery, do you reflect that decrease in the cost—the reduced cost to your purchaser of your finished product?—A. That is so when we are selling—when we are on the policy of selling on date of delivery, as we have been mainly since the war.

30 His LORDSHIP: Yes.

Mr. PATTILLO: Q. Now, Mr. Quigley, you told us it was the policy of the Company not to speculate in raw materials—will you please explain to the Court the reason for that policy, as you understand it?—A. Copper is a relatively expensive metal. It has always fluctuated violently in the market, and for those reasons—

His LORDSHIP: Q. What was the high to which it went?—A. The recent—the high since the war in Canada was 23½ cents.

*Arthur H. Quigley (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

Q. And I suppose it has been as low as 7 cents?—A. Not since the war.

Q. But before the war?—A. Yes, it was at one period in the thirties.

Q. Well, what have been the fluctuations since the war—I suppose during the war the prices were fixed?—A. The prices were controlled—and my recollection is that that controlled price was 11½ cents.

Q. And then that control was taken off?—A. That control was released, I believe in 1946.

Q. In 1946?—A. That is my recollection.

Mr. PATTILLO: I think, my lord, it was in 1947.

10 Mr. PICKUP: I wonder if my learned friend has not another witness who will be familiar with that?

Mr. PATTILLO: 11½ cents was the controlled price, but the controls were removed in the early part of 1947, but I will be bringing a witness who will give evidence as to a number of changes that have taken place.

His LORDSHIP: You mean the fluctuations?

Mr. PATTILLO: Evidence as to the fluctuations.

His LORDSHIP: From a certain high to a certain low?

Mr. PATTILLO: That is right, my lord.

Mr. PATTILLO: Q. Now, would you go on, Mr. Quigley, and explain to his  
20 lordship—you were dealing with the reason for the policy of there being no speculation in the raw materials, and you had explained that copper was or had always been, varying in prices—violent variations in prices.

His LORDSHIP: It was always fluctuating and varying in price.

Mr. PATTILLO: Yes.

Mr. PATTILLO: Q. Now, will you go on and explain that?—A. Well, in the use of such a material it would be most unsafe to speculate, and in the early times, before the war, when we did sell on a 90-day basis, we sold at the price of copper at the time the order was taken, because we could procure copper without much difficulty.

30 His LORDSHIP: Q. And when you sold on the 90-day basis—which was before the war?—A. That is right.

Q. You sold on the basis of the date of the order?—A. That is right, but we were taking the protection that existed at that time in basing our price on the orders, on the copper and zinc as at that date.

His LORDSHIP: Yes.



*Arthur H. Quigley (Appellant)—Examination-in-Chief by Mr. Pattillo (Cont.)*  
*Arthur H. Quigley (Appellant)—Cross-Examination by Mr. Pickup*

Mr. PATTILLO: Q. When you were selling on the 90-day basis—that is, the price was fixed as at the date of the order for delivery within 90 days, is that correct?—A. That is right.

Q. Were you at that time able to get the same terms from your suppliers of raw material—the raw materials that you were buying from them?—A. At that time we were able to buy from them within the 90 days.

Q. At the price of the date of the order for delivery, within 90 days?—A. Yes.

His LORDSHIP: Q. That is, you could buy from them at today's price, although delivery was not to be made until some time within the 90 days?—A. That is my  
 10 recollection, sir.

Q. This is before the war?—A. That is right.

Mr. PATTILLO: Q. Mr. Quigley, have you been associated with the American Brass Company—

His LORDSHIP: Q. Just a moment, was there any change in that after the war—in that situation so far as the suppliers were concerned?—A. Yes, that is right, they would not sell us so far ahead.

Mr. PATTILLO: And again, my lord, we are going to call a witness who will give you that information in detail.

His LORDSHIP: All right.

20 Mr. PATTILLO: Q. Mr. Quigley, you have been associated with the American Brass Company or its Canadian subsidiary all of your business life?—A. That is right.

Q. And during that period of time has there been any change in the way in which the companies carry on business, insofar as the purchase of raw materials and the sales of finished products were concerned?—A. It has always been the policy of the companies that I have been with, to avoid speculation in raw materials.

Mr. PATTILLO: Your witness, Mr. Pickup.

*Cross-Examination by Mr. Pickup:*

30 Q. Mr. Quigley, you may find that some questions that I will be asking you—that I more properly should be asking of a later witness, and if so, do not hesitate to say so—because I do not want to ask you a lot of questions about matters which some of your associates might better answer.—A. That is right.

Q. As I understand it, you have been in business in Canada since 1922?—A. That is right, sir.

*Arthur H. Quigley (Appellant)—  
Cross Examination by Mr. Pickup*

Q. And you, of course, have been making income tax returns for the Company from that time until this?—A. That is so.

Q. And during the period of the Excess Profits Tax—when that was payable, you, of course, made the usual returns required under that Section?—A. That is so.

Q. Throughout all the period from 1922 on down to and including 1945, you always made your returns—that is the Company's returns for Canada, on the assumption that the raw materials first-in were first-out, is that right?—A. That is so.

Q. Yes, I think for a while you adopted the base stock of some kind, did you 10 not?—A. Not in Canada, according to my knowledge.

Q. Perhaps I should not have said "base stock", but a base price for Company purposes—that was your first step?—A. That was our first step with the parent company.

Q. Then you are not in a position to tell me whether or not that was the first step with regard to the Canadian Company?—A. My impression is that it was not until the change was made in 1936, but I would rather that someone else answered that.

Mr. PICKUP: My friend says he will be calling the Comptroller—who is the Comptroller?

20 Mr. PATILLO: Mr. McGinn.

Mr. PICKUP: Q. And Mr. McGinn can tell me that—then, during the years from 1936 to 1945 you were keeping your books on what has been called this "l.i.f.o. basis"?—A. That is right.

Q. But during those years also you made returns for Income Tax purposes and Excess Profits Tax purposes by adjusting the figures contained in your books to the assumption that the goods first-in were first-out—is that right?—A. That is so, to my understanding of it. I would prefer that the Comptroller would answer that question.

Q. Then we may get Mr. McGinn to confirm that also. And you may also 30 want to refer this, but you may also know it—you have computed your standard profits—which are the basis of your taxes for Excess Profits, throughout, on the assumption of the first materials in being the first-out, is that not correct?

His LORDSHIP: That is for your standard profits?

The WITNESS: That, I would rather Mr. McGinn would answer.

Mr. PICKUP: Then I am wondering to what extent you are familiar with these departmental, shall I say, traditions or rules in the matter of taxation on the assumption of first-in and first-out—or shall I get that from Mr. McGinn.

The WITNESS: I would prefer Mr. McGinn to answer that.

*Arthur H. Quigley (Appellant)—  
Cross-Examination by Mr. Pickup (Cont.)*

Mr. PICKUP: Q. May I ask you this—whether or not there ever came to your attention a directive of the Commissioner back in 1941, directly against the suggestion of the adoption of l.i.f.o. for tax purposes—did that come to your attention?—A. It did not.

Q. Either directly or indirectly?—A. Not to my recollection.

Q. But I did assume this much, that you were aware that the Department of National Revenue would not accept the basis of l.i.f.o. during those periods from 1936 to 1945?—A. That is so.

Q. You were aware of that much, because you adjusted the figures to a basis  
10 which would be acceptable to the Department of National Revenue?—A. Yes.

Q. Then you made up—or the Company then decided, in 1947 I think you said, to file on the basis of the l.i.f.o. principle, and that decision, you say, was made before the 30th of April, is that right?—A. I would say it was.

Q. Now, you put it as being a decision made by your accountants and auditors, and I think you went on to say that that meant Mr. Peloubet, am I right in that?—A. What is that?

Q. Subject to the approval of the Clarkson firm—the Clarkson Gordon firm?—A. That is right.

His LORDSHIP: Perhaps it would be better to say it was made on their advice—  
20 they could not decide it.

Mr. PICKUP: Q. I know they cannot decide it, but I thought I would clear that up, and your lordship has suggested that perhaps they did not make the decision—you made the decision, or your Board of Directors?—A. That is right.

Q. And it was a decision made early in 1947, on the advice of Mr. Peloubet, approved by the auditors in Canada?—A. That is right, and in line with what we were doing in the United States.

Q. At that time in the United States, there was an Act of Congress requiring that to be done?—A. That is right.

Q. I mean, in the United States it was done by Act of Congress?—A. That is  
30 right.

Q. And done with certain safeguards and certain conditions attached to the use of l.i.f.o. in the United States?—A. That is right.

Q. And was it following that change in the law of the United States that you adopted it for the parent company in that country?—A. I would not recall the dates of this—the passage of that law—because I was not particularly responsible for that end of our business at that time.

Mr. PICKUP: And it may not be of any importance.

*Arthur H. Quigley (Appellant)—  
Cross-Examination by Mr. Pickup (Cont.)*

His LORDSHIP: I suppose we will have that—the reference to the United States Act of Congress?

Mr. PICKUP: I do not think we could get through this case without having it at some stage or other.

Mr. PICKUP: Q. I think you said that you did not know just when that decision was made—apart from it being before April 30, 1947—but can you tell me whether or not it was after the price change which was made in January of 1947?—A. That, I cannot do.

Q. And you cannot, speaking from your present position and recollection, tell us when the price change was made by the Prices Board or just when the control was entirely dropped?—A. I would not have that in mind, sir.

Q. You know now, of course, that the price control was entirely dropped some time in 1947, do you?

His LORDSHIP: For copper and zinc?

Mr. PICKUP: Q. For copper?—A. Yes.

Q. And does that also apply to zinc—I am told all non-ferrous metals.—A. That is right.

Q. But you do not know the date in 1947?—A. No.

His LORDSHIP: Q. That is for all non-ferrous metals?—A. Yes.

20 Mr. PICKUP: Q. And you are not—or you cannot either confirm or deny whether, prior to that, that the price of copper was raised by the Prices Control Board?—A. That I would not recall.

Q. Will you tell me why you made that decision in 1947?—A. That was the first occasion when it was of great consequence to the Company.

His LORDSHIP: Q. Is that because of any special fluctuation, or anything of that sort at the time—you say that was the first occasion when it was of great consequence to the Company—in what way?—A. Well, that was the first peacetime year, when profits were of such volume as to make it a point to the Company as to what was a proper method of arriving at a taxable income.

30 Mr. PICKUP: Is your lordship through?

His LORDSHIP: Yes.

Mr. PICKUP: Q. I am wondering whether the decision was made in expectation of the dropping of controls on the prices of copper and zinc—was that in your mind.—A. I would say “not”.

Q. Then just what was in your mind, to cause you to do that—I do not yet understand it.—A. Well, during—

*Arthur H. Quigley (Appellant)—  
Cross-Examination by Mr. Pickup (Cont.)*

Q. I would like to have it a little better, I am not able to understand it as well as I might—what I have in mind is, that since 1936 on to 1945 you have been keeping your books on a l.i.f.o. basis, and paying your taxes on what we call the f.i.f.o. basis.

Then in 1947, for some reason, on the advice of auditors, you decided to change the basis upon which you made the returns for tax purposes, and I am trying to get at, what was the reason which caused you to make that change?—  
A. During the thirties, or any time from the inception of this Company, it was not a high earning Company—it started in a very small way—the earnings were  
10 small. Then we entered into the war period, when, of course, everything was abnormal; but as we came out of the war period, we came into a period of peace activity that was unprecedented.

His LORDSHIP: Q. After the war.—A. After the war. We had never got to any such volume of business in this mill, prior to the war, as in peacetime, and the earnings, of course, were proportionate, and it became obvious that we ought to make our returns on the same basis as we were making them in the United States.

Mr. PICKUP: I see—that is because of the continuance, shall I say, of the very large volume of business in peacetime, which you had enjoyed in wartime, and  
20 you thought that you should follow the policy that you had followed in the United States—towards taxes?—A. That is right. Of course, the volume which I spoke of postwar, was even not remotely equal to the wartime volume.

Q. But I think you said larger than pre-war?—A. Much larger.

Q. Then it was in anticipation of continued larger business than you had enjoyed before the war, that was what caused you to make the change in 1947?—  
A. Well, it became obvious.

Q. Any other reason?—A. It became obvious that we should be on the l.i.f.o. basis.

Q. Why?—A. That being the accepted method of returns. It was fairer  
30 to the Company, not to pay on an unrealized profit.

Q. Not to pay taxes—

His LORDSHIP: Q. Not to pay taxes on an unrealized profit?—A. Yes.

Mr. PICKUP: Q. Then the reason was associated with payment of taxes—that is the reason for the decision?

Mr. PATILLO: Oh, yes, we admit that.

His LORDSHIP: Not to pay taxes on an unrealized profit—that is what he said.

*Arthur H. Quigley (Appellant)—  
Cross-Examination by Mr. Pickup (Cont.)*

Mr. PICKUP: Q. And you were anticipating, were you, at that time, larger profits—were you?—A. I would not say that we were anticipating them—we were having them at that time.

Q. Maybe I did not put my question in quite the way I intended—you were anticipating—

His LORDSHIP: A continuance.

Mr. PICKUP: Q. A continuance of increasing prices, is that so?—A. Not increasing prices. Increasing volume—or a sustained volume.

Q. Well, now, what about your anticipation of prices—you must have had  
10 something in mind about whether prices were going to go up or going to go down—the prices for raw materials?—A. I would not say that we did.

Q. Well, you would have known, would you not, if there had been an increase in prices made in January 1947?—A. I would know it at the time, but I would not bear it in mind now.

Q. Let me have the price list. Now, again, so far as this is concerned, if you prefer I may ask Mr. McGinn about it, but I have before me the base price list of the Anaconda Metal Products—it is No. 2,—and it is dated January 22, 1947, and I am suggesting to you that that price list came out after the increase in the price of copper.—A. It probably did.

20 Q. And I am also suggesting to you that in making this decision early in the year 1947 you were anticipating—no, you had in mind, an increase in copper which had taken place—and had also in mind an increase in the price of copper that would result from the lifting of controls—now, did you or did you not?—A. I would say we did not.

Q. I see. Well, then, have you given me—

His LORDSHIP: Q. Did prices go up after the lifting of controls?—A. Yes, they did.

Q. Substantially?—A. Yes, they did, but I have never felt competent to see into the future and what business there is going to be, beyond a few months.

30 Mr. PICKUP: Q. Well, did you anticipate that something would be fair to the Company—and I suppose you are referring to the year 1947, are you not—that is, it would not be fair unless you got on the l.i.f.o. basis?—A. I think that our accounting people at that period felt that, as I said before, that we should change.

Q. Yes, you told us that, and I did not want to interrupt you—I do not want to interrupt you if you have not finished.—A. Well, I think we acted on the recommendations of our accounting people.

*Arthur H. Quigley (Appellant)—  
Cross-Examination by Mr. Pickup (Cont.)*

HIS LORDSHIP: Q. Would it be because the future as to the prices of your raw materials was uncertain?—A. They always are uncertain.

Q. Yes, uncertain, but if you adopted the l.i.f.o. principle, if there was sustained volume, your profits would be sustained.—A. That is right, sir, and I think we looked upon it as being a volume that was more apt to stay up than at any time prior to the war.

Q. Would it be fair to say that you adopted the l.i.f.o. principle as an assurance of the continuation of profits, regardless of fluctuations in the prices of your raw materials?—A. I think that would be a fair statement.

10 Mr. PICKUP: Q. And do you agree with me that it would also be a fair statement that it meant not only a continuation of profits but a levelling of profits over different periods?

HIS LORDSHIP: Q. What do you mean by “levelling”?

Mr. PICKUP: I mean that it would have a tendency to keep the profits in one period near the same level as the profits in another period.

HIS LORDSHIP: That is, in the same period—that is maintenance of the profits, assuming the volume of business to be the same—and the uncertain factor of your costs of materials removed.

Mr. PICKUP: Q. I think your lordship means the same thing—and you so  
20 understand his lordship’s question?—A. I do, but I would say that our profit, naturally, is dependent upon the volume—there being always a point where one breaks even.

Q. Now, then, I want to make sure that I do catch on as to what you had in mind with regard to “unfairness” in relation to taxes—you had that in mind in making the decision, that if you did not adopt l.i.f.o., it was unfair to the Company tax-wise—you told us that.

Now I take it you mean by that, do you not, that you would be paying too much taxes, in your opinion, in 1947, if you did not adopt l.i.f.o., is that right?—  
A. I would say that we would be paying a tax that had not been earned.

30 Q. And you mean then a tax that you ought not to pay?—A. That is right.

Q. Now, then, you spoke about “matching purchases with sales”, and I am not sure that I still have got that clear in my mind—you first make, commit the Company to a sale, before you do any matching?—A. I would prefer, sir, that that schedule be explained to you by someone who is more familiar with the detail of the work.

*Arthur H. Quigley (Appellant)—  
Cross-Examination by Mr. Pickup (Cont.)*

Q. I am intending to do that—and I am not intending to go into the details—but you have said in your evidence that it is the policy of the Company to match purchases with sales, and I am trying to get from you, if you can tell me, in what way you attempted to match purchases with sales.

HIS LORDSHIP: Why would it not be the other way around—well, maybe not—the purchases are purchases of raw materials, and the sales are sales of finished products. You commit yourselves to a sale of the finished product, and then you have to make a purchase of the raw materials.

Mr. PICKUP: Q. I am not going into the details, Mr. Quigley, but I want to  
10 see if I have got all you meant by this policy of “matching”. You have a certain inventory on hand—and you always have—I think we have been told about ten million pounds of copper in process of manufacture, is that right?—A. That is right, in addition to some quantities of raw materials and scrap.

Q. And do not consider yourself bound to just a precise figure for this cross-examination—we may get that from somebody else—but you would have approximately ten million pounds of copper in process of manufacture to fill orders which you had received, and orders which you had expected—that is right?—A. That is right.

Q. And on getting such an order, you proceed to fill it, or to manufacture  
20 the copper from some stock which you have on hand?—A. Stock in process.

Q. Well, when do you start your stock in process?

HIS LORDSHIP: Q. You take it out of your inventory.

Mr. PICKUP: You take it out of your inventory on hand?—A. Yes, and that stock runs all the way from castings up to the finished material.

Q. And does the stock go into process before you receive the order or after?—  
A. We always have a floating stock, as you have noticed.

Q. A floating stock that is not the subject matter of a final sale?—A. That is right.

Q. What proportion of the ten million pounds that are in process from time  
30 to time would that amount to?—A. I perhaps did not answer correctly there, before, in all our stock in process there must have been orders in on it.

Q. That is what I thought—that you would not have stock in process unless there were orders in on it—and that meant to me if you had ten million pounds in process then you had at that time ten million pounds under contract for sale—that is right?—A. No, not necessarily, under contract for sale.



*Arthur H. Quigley (Appellant)—  
Cross-Examination by Mr. Pickup (Cont.)*

Q. Well, then, you put it in your own way—which is the correct statement?—

A. Well, we must have an operating stock, and we must maintain it at a fair level, and that is in all stages from castings all through the mill—as long as we are in business.

His LORDSHIP: Q. With respect to which you have no sale commitment?—

A. There might be—but we are shipping every day and we are buying frequently.

Mr. PICKUP: Q. Then, suppose I get it this way—and it may be sufficient for our present purposes—that substantially all of the materials in process would be the subject matter of existing contracts or orders for sale?—A. That stock is always  
10 changing—it is not static.

Q. I realize that, but there is always stock or raw materials in process of manufacture, is there not?—A. That is right.

Q. And I thought I was right in suggesting to you that to a large extent that what was in manufacture was the subject matter of an existing sale.

His LORDSHIP: Or an anticipated sale.

Mr. PICKUP: I think existing sale.

The WITNESS: Anticipated, as well.

Mr. PICKUP: Q. Anticipated—apart from the stock which you would want to keep on hand?—A. Well—

His LORDSHIP: I should not interrupt, but there was a phrase used “floating  
20 stock”—do you mean by “floating stock”—that would be stock in respect of which you had not a firm commitment for sale?—A. That is right.

Q. But you anticipated having those orders?—A. So long as we are in business, with certain customers, we know what their requirements are, and it comes in more freely at some times than others, but with the accumulated experience in the mill, we are naturally going to carry broken-down stock of the things which we think we are going to sell.

Mr. PICKUP: Q. Let me put it to you another way, and perhaps we can get clear enough on it—with all the processing, at least 80 per cent of it is to fill  
30 specifications of orders which you have on hand?—A. That I would not want to answer without investigation.

Q. You can go this far, that a large percentage of it would be sold—and do not let me catch you on that—if you do not want to do it.—A. If we are shipping on a four weeks basis, say, we have to make plans accordingly, and we have to supply the material for those sales—we have to keep up the volume of stock.

Q. Yes, I understand that.

*Arthur H. Quigley (Appellant)—  
Cross-Examination by Mr. Pickup (Cont.)*

His LORDSHIP: Q. Are you not able to say—or are you able to say—whether a large portion of your stock that is in the process of manufacture is in respect of those sales which you have already made for future delivery?—A. For sales of, we will say, 6 to 6½ million pounds per month, which means that you make scrap on your sales as the material goes through the mill—and we have to have the stock adequate to enable us to make those shipments. If we were on a closer schedule we would not require so much stock.

Mr. PICKUP: I take it the witness is not able to answer the question I am putting to him and I will try to get it from somebody else.

10 Mr. PICKUP: Q. Let us see about this, then, Mr. Quigley, with regard to this—when you get an order for delivery of copper, the first thing that is done, so far as filling that order is concerned, is to take the stock which is necessary and put it in process unless it is already in process, is that right?—A. The first step—

His LORDSHIP: Q. You have got your order from the customer.—A. Well, knowing what our normal volume of business is and what we are going to likely ship during the succeeding month, we start, in the preceding month, to set out to provide the material to keep our stock up to make those sales.

His LORDSHIP: Yes.

Mr. PICKUP: Q. But that is not quite the point I am trying to get at, Mr.  
20 Quigley.

First, am I right on this, that when you get an order from Customer A, you fill that order from stock which you have on hand?—A. No, we do not.

His LORDSHIP: Depending upon when you are to make delivery, I suppose.

The WITNESS: How was your statement, sir?

Mr. PICKUP: Q. That you fill that order from stock?—A. From finished stock.

Q. No, not from finished stock. There is copper which you have on hand, and which you then put in process.—A. We might, or we might not. We might go back and cast it.

Q. You might go back and what?—A. You might go back to the casting shop  
30 and take that new material—that new copper and zinc, and cast it for these orders. That would mean the full process all the way through with that stock.

Q. But you would never use, for that order, any copper which comes into your mill after that date?—A. We might.

Q. How?—A. Well, if the order were in process for, say, a month, why we might not get to that order the first day after it went into the mill.

*Arthur H. Quigley (Appellant)—  
Cross-Examination by Mr. Pickup (Cont.)*

Q. But you do not make your order for the month—your order for new material for the month will be dependent upon what is going out by way of delivery during the month, will it not?—A. During the succeeding month.

Q. During the succeeding month?—A. Yes.

Q. That is, you would in July, say, by way of illustration, order enough copper to cover orders that will be delivered in August, is that right?—A. That is correct.

Q. That is correct, but you take longer than one month.

HIS LORDSHIP: Q. And your raw copper would also be delivered in August from the supplier of copper?—A. We might take longer than one month on some  
10 things, and we might take less than one month on some others.

MR. PICKUP: Q. Let us take copper for the moment—I am sorry being so long in trying to get this where I understand it—in the month of July you have an order which requires you to use, say, one million pounds of copper—now, that may be an awkward way of saying that, but never mind—

HIS LORDSHIP: And that has to be delivered when?

MR. PICKUP: Q. That would not be for delivery in August, would it—it would take longer than that, as I understand it?—A. Not necessarily.

Q. Well, can you tell me how long it does take?—A. Well, it varies according to what your schedule is and how much work you have in the mill.

20 Q. Then you might be taking an order say in July for delivery in August?—  
A. I might.

Q. On a million pounds of copper?—A. We might.

Q. And then in July you would order a million pounds of copper, anticipating delivery of that other million pounds in August, is that right?

Q. Would you state that again, please?

Q. That having agreed to sell a million pounds for delivery in August, and knowing that you would be delivering a million pounds in August, you would buy a million pounds, or order a million pounds in July.—A. We would prepare to.

Q. Prepare to?—A. That is right.

30 Q. But when would you order it?—A. We would get our schedules ready about the first ten days of the month.

HIS LORDSHIP: But when would you put in your orders to your suppliers of copper?

MR. PATILLO: My lord, I have not liked to interrupt my learned friend's cross-examination, but I am proposing to call the General Manager of the Works Department who is carrying out these practices from day to day, and I think

*Arthur H. Quigley (Appellant)—  
Cross-Examination by Mr. Pickup (Cont.)*

probably it would be better if you would leave the matter of practice for him. Mr. Quigley is the man who deals with policy, and I suggest that matters of practice be left for these other witnesses.

Mr. PICKUP: Well, I am content, so long as my friend tells me that there will be a witness who can give me that explanation.

His LORDSHIP: That may be more satisfactory, to get the detail in that way.

Mr. PICKUP: Then may I put one other matter to you, Mr. Quigley—

His LORDSHIP: Are you going to be much longer with this witness?

Mr. PICKUP: I think not, my lord, I think perhaps five minutes.

10 His LORDSHIP: Then we will recess for a short time, after that.

Mr. PICKUP: Q. You made a statement here, Mr. Quigley, that your prices, as I noticed—that your prices to the people you sell to “reflect as accurately as possible what we have paid for the raw material”—now, did you mean that, that they reflect prices which you have paid or that they reflect prices which you expect to have to pay?—A. Which we contract to pay.

Mr. PICKUP: Yes.

His LORDSHIP: Q. But not necessarily which you have paid?—A. No.

Q. But which you have contracted to pay?—A. That is right.

Mr. PICKUP: Q. And which you have contracted to pay for goods which you  
20 would take into inventory to replace the goods which you use in filling that order—  
is that not right?—A. Would you state that again?

His LORDSHIP: Will you read it, Mr. Reporter?

(REPORTER READING): “Q. (*Mr. Pickup*) And which you have contracted to pay for goods which you would take into inventory to replace the goods which you use in filling that order—is that not right?”

Mr. PATTILLO: That is a pretty difficult question to answer.

His LORDSHIP: Do not assist him.

The WITNESS: I did not follow the question very well.

Mr. PICKUP: Will you have it read again, slowly?

30 (REPORTER READING): “Q. (*Mr. Pickup*) And which you have contracted to pay for goods which you would take into inventory to replace the goods which you use in filling that order—is that not right?”

The WITNESS: Well, I would say that that was substantially right.

Mr. PICKUP: Q. Yes. Then one other question, Mr. Quigley—and that is, you spoke of violent fluctuations in the prices of copper. Now that is a bit of a contentious term—can you give me any illustration of what you refer to as a “violent

*Arthur H. Quigley (Appellant)—Cross-Examination by Mr. Pickup (Cont.)*  
*Jacob S. Vanderploeg (Appellant)—Examination-in-Chief by Mr. Pattillo*

fluctuation" in the price of copper which has occurred since the war—or before that, for that matter?—A. Well, in the spring of 1949, early, my recollection is that copper was 23½ cents, and I am not so clear as to what it went down to now, but—

Q. Are you speaking of 1949?—A. Yes, 1949.

Q. Yes?—A. My recollection is that it went down to 16½ cents.

Q. Yes? And is that what you refer to as a "violent fluctuation in the price of copper"?—A. Well, I do not know that "violent" is the proper word, but that is the deciding factor, altogether, there—it is one-third, practically.

Q. I am not criticizing your statement.—A. No, I understand.

10 Q. But you used the expression, and I was just trying to find out what you meant by that.

Then that was a change which you are referring to in 1949?—A. Yes.

Q. There was no such change as that, was there, in 1948?—A. No, there was not, but—

Q. Perhaps two cents maybe, or a little less than two cents, in 1948?—A. I do not recall the historical situation in 1948, but I know that it was not so much as in 1949.

Q. And then you do not recall the changes in 1946 or 1947?—A. My recollection is they were not too bad—I do not recall how fast copper advanced in 1947.

20 Q. Then I take it that I may assume this, that so far as your evidence is concerned, you cannot refer me to anything that you would consider a violent change in the price of copper except the illustration which you gave us in 1949?—  
 A. That is so.

Mr. PICKUP: Thank you, Mr. Quigley.

His LORDSHIP: Any re-examination, Mr. Pattillo?

Mr. PATTILLO: No, my lord.

His LORDSHIP: Then we will recess for ten minutes.

(A short recess was here taken.)

After the Recess:

30 Mr. PATTILLO: I will call Mr. Vanderploeg, the General Manager of the Company.

JACOB S. VANDERPLOEG, Sworn:

*Direct Examination by Mr. Pattillo:*

Q. Mr. Vanderploeg, you are the General Manager of Anaconda American Brass Limited, which carries on business in New Toronto, in the Province of Ontario?—A. Yes.

*Jacob S. Vanderploeg (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

Q. When did you first assume this position?—A. In 1943.

Q. And prior to 1943 what was your position with the Company?—A. I was Sales Manager from about 1927 onward to 1943, and before that in the Sales Department.

Q. And did you come to Canada to take a position with the company when it first commenced operations in 1922?—A. Yes.

Q. And prior to that time were you associated with the American Brass Company in the United States?—A. Yes, for about eight years.

Q. Now, what are your duties generally, as the General Manager of the  
10 Company?—A. Well, I would say as “senior resident officer”, to carry out, along with my key executives, the general policy of the Company.

Q. You have heard Mr. Quigley tell us the sources of supply as he knew them of the raw materials used by the Company—do you agree with what Mr. Quigley says on that?—A. Yes, I do.

Mr. PICKUP: That is pretty leading.

Mr. PATTILLO: I just wanted to cover that.

Mr. PATTILLO: Q. In regard to the prices which the Company pays for its raw materials, which are acquired from those suppliers, has it or has it not any control over the prices which it pays?—A. We have no control over the prices which we  
20 pay. We pay the current market.

Q. Have you anything to say—has the Company anything to say as to the terms of sale in reference to the suppliers of raw materials?—A. No, sir.

Q. Now, prior to the last war, can you tell us what were the terms of sale which the suppliers were giving the Company?—A. Well, prior to the war the suppliers would cover us by a firm price, for shipment over a 90-day period.

His LORDSHIP: Q. That is all very well to say “cover us”—that is technical language—will you explain what you mean by that?—A. Well, sir, we could place an order on a given day at a firm price for delivery over the following 90-day period, with that price not subject to change up or down. It was a firm commitment.

30 Mr. PATTILLO: Q. And since the war have you been able to buy on terms such as that?—A. No, sir.

Q. And during the year 1947, can you tell us what were the terms which the suppliers were giving you?—A. I think the major part of the year the terms were the prices effective on day of shipment or day of delivery, I perhaps should say. I have not the exact date in mind.

His LORDSHIP: Q. Prices on day of delivery?—A. On day of delivery, yes.

Q. Rather than on the day of order?—A. Yes, that is quite right.

*Jacob S. Vanderploeg (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

Q. So that you did not know what the price was going to be?—A. No, sir, not until the material was shipped. We just simply placed a booking—just the quantity.

Q. What is that?—A. It was simply a booking—the quantity with the price to be determined later.

Q. It was the quantity?—A. Yes.

Q. A quantity booking?—A. Yes.

Q. With the price to be determined later?—A. Yes.

Q. And that would be, naturally, on the day of delivery?—A. That is right,  
10 my lord.

Q. Do you mean there were no suppliers of copper who would undertake to supply to you copper within a certain period of time at a fixed price?—A. The prevailing rule was the price on date of delivery. There was a short period there—if I can call for that Exhibit, Mr. Pattillo—when there was a variation of the firm prices—we got the price effective on the first of the month following the shipment, and there was also—may I see these figures, my lord, just to get them straight?

His LORDSHIP: Yes.

Mr. PATTILLO: Q. Now, Mr. Vanderploeg, I am showing you a document which consists of two pages—

20 The first page of it is marked:

“Purchase price of copper and zinc, and price of these metals included in price lists” from July 1945 to December 1949, and showing the purchase price for raw material, copper and zinc.

And on the second page it shows the:

“Price of metal included in price lists.”

And the date of the price lists, and the price of copper and zinc.

Was this Exhibit prepared under your supervision?—A. Yes.

Q. And have you checked it?—A. It is correct to the best of my knowledge.

Mr. PATTILLO: And I will be calling later the person who actually made it,  
30 my lord.

His LORDSHIP: I do not quite understand what it shows—what did you call it?

Mr. PATTILLO: It is a statement showing the purchase price for raw materials of copper and zinc—the dates—and the prices—are shown.

His LORDSHIP: Are those dates of delivery or dates of order?

Mr. PATTILLO: No, this will be the dates of the effective price changes.

*Jacob S. Vanderploeg (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

His LORDSHIP: Well, that would be related to the days of delivery?

Mr. PATTILLO: That is right.

His LORDSHIP: In the years subsequent to the war.

Mr. PATTILLO: That is right, my lord.

His LORDSHIP: Q. Is that what you mean?—A. Well, there was a variation in the selling price of the suppliers. There was—after the war, there was no such thing as covering firm for 90 days—you could not do it. The general practice was the price at day of shipment, but there was a variation on that, which date I have not exactly in mind, but it is in the Exhibit—the price was the average price 10 for the week, for example.

His LORDSHIP: Q. They would give you a price, then, for a week?—A. Yes.

Q. An average price for the week?—A. Yes. That was the only variation, and that was a slight variation only, from the pre-war practice of covering for 90 days.

Mr. PATTILLO: I have another Exhibit which I want to put in, but I have a special order in which I would like to present them, if your lordship might permit me. I want to get this one marked first, and then I will put in another one, and then I will come to this—you will see this one which I would like to have marked now as Exhibit One—

His LORDSHIP: How would you describe that, Mr. Pattillo?

20 Mr. PATTILLO: I would say the Exhibit shows—

His LORDSHIP: Describe it briefly.

Mr. PATTILLO: An Exhibit showing the prices of copper and zinc from July 1945 to December 1949—the dates when those prices came into effect—and also showing the date on which price lists were issued by the Company to its customers.

His LORDSHIP: I suppose the price list issued to customers, it would be the price that day, but subject to change later at the date of delivery?

Mr. PATTILLO: If you look, my lord, at this Exhibit, you will see—and I think I can illustrate it very quickly—you see, take August 4, 1948, in the first page on the left-hand column, the fourth entry, you see “23½”.

30 His LORDSHIP: Yes.

Mr. PATTILLO: And if you look at the next page you will see the price list No. 8 was issued on August 4, 1948.

His LORDSHIP: Yes.



Mr. PATTILLO: In other words, what we are trying to show by this Exhibit is that the Company did in fact, as a change in the price of raw materials occurred, the Company would issue a new price list reflecting that change in the price.

His LORDSHIP: Oh, this second page is the price list of the Appellant.

Mr. PATTILLO: That is right.

His LORDSHIP: You did not say that.

Mr. PATTILLO: The first page is.

His LORDSHIP: You did not say that, I mean. I suppose that is indicated in the words "price list".

10 The WITNESS: That was the intention—that is our price list.

His LORDSHIP: Your price list for the finished product.

The WITNESS: Yes, for sheets, rods and tubes made from those raw materials listed on the first page.

His LORDSHIP: And that will be Exhibit One.

EXHIBIT 1: Filed by Mr. Pattillo	}	Document prepared by the Anaconda American Brass Limited, showing purchase price of copper and zinc and price of these metals included in price list, July 1945 to December 1949.
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20 Mr. PATTILLO: Q. Now, again looking at Exhibit One, Mr. Vanderploeg, can you tell us how many changes occurred—and you might have Exhibit One in front of you—my lord, if you care to have a copy so that you may follow it—

His LORDSHIP: It is quite all right.

Mr. PATTILLO: Q. Now, looking at Exhibit No. 1, can you tell us how many changes in prices occurred in the price of copper commencing with January 22nd, 1947, and ending with November 4th, 1949?

Mr. PICKUP: Are we concerned at all with that?

His LORDSHIP: Are we interested in what happened subsequent to the assessment years?

30 Mr. PICKUP: I do not think so, my lord.

Mr. PATTILLO: Q. I will put the question this way—looking at Exhibit No. 1—

His LORDSHIP: After all, I am concerned with the assessments for 1946 and 1947—and do I have to look beyond 1947—that is the fiscal year of 1947?

Mr. PATTILLO: Only for the purpose of seeing the method of carrying on business.

*Jacob S. Vanderploeg (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

HIS LORDSHIP: Do I care how they carried on business subsequent to the date of the assessment—has anything which happened after the date of the assessment any relevancy to the issues in this case?

MR. PATTILLO: Well, my lord, if you consider that—

HIS LORDSHIP: I put that question to you. Supposing I had heard this appeal—you had put in your appeal and I heard it the day after you had appealed from the assessment?

MR. PATTILLO: Yes?

HIS LORDSHIP: Well, I would not have heard any reference to anything which  
10 happened subsequently.

MR. PATTILLO: Quite right.

HIS LORDSHIP: Then, I have no more right to refer to it now because the hearing is taking place later.

MR. PATTILLO: I am not doing it, my lord, and I was not intending to do it with the idea of in any way pulling myself up by my bootstrap. I merely wanted to show and what it does show is what we did in 1946 and 1947, was what we had always been doing.

HIS LORDSHIP: Well, you cannot show what you had always been doing by showing what you did after 1947.

20 MR. PATTILLO: That is quite true, my lord, and, my lord, I am quite content to confine it to 1946 and 1947.

MR. PATTILLO: Q. Mr. Vanderploeg, looking at Exhibit One, will you tell the Court first, was there any change in the price of copper during the year 1946—that is, the raw material?—A. Not from the wartime controlled price.

Q. And when did the first change take place?

HIS LORDSHIP: Perhaps I had better look at a copy of this, Mr. Pattillo.

(Copy of Exhibit One handed to his lordship.)

MR. PATTILLO: Q. What was the controlled price of copper?—A. 11½ cents.

Q. In 1946—A. 11½ cents.

30 Q. When did the first change occur from that controlled price of 11½ cents?—  
A. On January 22nd, 1947.

Q. And it went to 16.625 cents, is that correct?—A. That is correct, sir.

Q. Now, when did the next price change occur, in copper?—A. It occurred on June 10th, 1947, when the price advanced to 21½ cents.

Q. Were there any further changes during the year 1947 in the price of copper?  
—A. No, sir. These, my lord, are the prices which we paid.

*Jacob S. Vanderploeg (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

Q. Was there any further change in the price of raw materials—of copper—after June 10th, 1947, in the year 1947?—A. No, sir.

Q. Now, then, coming to zinc—what was the controlled price of zinc—A.  $5\frac{1}{4}$  cents per pound.

Q. And during the year 1946 was there any change from that price?—A. No, sir.

Q. When was the first change in price in 1947 in zinc?—A. On January 22nd, 1947.

His LORDSHIP: Q. What happened on January 22nd?—A. The controls were 10 lifted, sir.

Mr. PATTILLO: Q. No, no.—A. Pardon me, the controls were eased instead, to allow the refineries to charge those prices—

His LORDSHIP: Q. The controls were eased on January 22nd?—A. The refineries were allowed to raise their prices.

Q. They were allowed to change the sales price?—A. That is right.

Q. What was that price on January 22nd?—A.  $10\frac{1}{4}$  cents per pound.

Mr. PATTILLO: Q. When was the next change in price that occurred?—A. On June 10th, 1947.

Q. What was the price then?—A. 11 cents.

20 His LORDSHIP: Q. And what happened on that day?—A. Well, there again, sir, I speak from memory, but I think the controls were finally removed.

Mr. PICKUP: It is common ground there, I think, that the controls came off on June 10th.

His LORDSHIP: That is what I wanted to know.

The WITNESS: Yes.

His LORDSHIP: Q. On January 22nd the Prices Board allowed an increase?

Mr. PATTILLO: That is right.

His LORDSHIP: Q. And on June 10th the controls went off?—A. That is right, and the refineries raised their prices to us on those two metals.

30 Mr. PATTILLO: Q. Was there anything—any further change in the price of zinc in the year 1947?—A. No, sir.

His LORDSHIP: Well, when was your fiscal year?

Mr. PATTILLO: It corresponded with the calendar year, my lord.

His LORDSHIP: In each case?

Mr. PATTILLO: Yes, my lord.

*Jacob S. Vanderploeg (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

His LORDSHIP: So when you made your returns for 1946, you would make them some time in April 1947?

Mr. PATTILLO: That is right.

His LORDSHIP: And similarly for 1947 you would make it in April 1948?

Mr. PATTILLO: That is right.

Mr. PATTILLO: Q. Now you have seen this Exhibit One, and it shows copper and zinc—what percentage of your raw materials used at New Toronto does copper represent?—A. Well, it will vary, sir, but presently it is over 80 per cent.

Q. And what percentage of your total raw materials does zinc represent?—  
10 A. Well, there again you have a variation, but in the neighbourhood of 15 per cent—the two together comprising the great bulk of our raw metal needs.

His LORDSHIP: Q. You make both copper and brass?—A. Well, copper, sir, in sheets, tubes and rods, that are rolled from the refinery product, the pure copper.

Zinc is used with copper and other metals too, to make alloys like brass or bronze. You see, brass is chiefly copper—the chief metal in brass is copper.

Mr. PATTILLO: Q. And what percentage of the total raw materials purchased by the Company do the two, copper and zinc combined, represent?—A. Well, I just said the two together probably account for 98 per cent. There again there will be some little variation—some minute variation.

20 His LORDSHIP: Q. You gave 80 per cent and 15 per cent.—A. Well, over 80 per cent.

Q. Between the two of them, it is about 98 per cent?—A. To a great part, sir.

Q. What are the others—the 2 per cent?—A. Nickle.

Q. There is some nickle?—A. Yes, nickle, lead.

Q. Some nickle and some lead—A. And some tin. The tin, by the way, sir, is about the only metal which we import because it is not mined here in Canada—to our specifications, at least.

Q. And that would make up the other 2 per cent?—A. Yes, and to carry the story further, there is a little of silicon and magnesium—for use in other alloys.

30 Q. Some other substitute to make other alloys?—A. Yes, a very small amount.

Mr. PATTILLO: Q. Now, dealing for the moment with the types of orders for products which the Company receives—do those types of orders all fall into the one classification or is there more than one classification?—A. Well, there is more than one, but the great bulk are ordered to the customers' specifications—tailor-made, so to speak.

Mr. PICKUP: And how much?

*Jacob S. Vanderploeg (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

Mr. PATTILLO: Q. I have not asked the percentage yet. How much is the percentage of that class of business—how much does that represent?—A. It would amount to in the neighbourhood of 80 per cent.

Q. Now, what is the remainder of your business—what does that consist of—what kind of orders?—A. It consists of orders for items—standard items in common use—which can be shipped from finished stock.

His LORDSHIP: Q. Like what, for instance?—A. A good example, my lord, would be the brass rods made for the automatic screw machine people. I might explain, sir, that there again, though, the stock is made up to a proper specification.

10 Q. Yes, but that would be common standards?—A. Yes, in more general use.

Q. Then what else?—A. Another example, sir, is what we call copper water tube or copper plumbing tube, which is ordered in standard sizes by all users.

Q. That would be one-half inch, and so on?—A. Yes, one-half inch, and three-quarter inches, that is quite right, sir.

Mr. PATTILLO: Q. Now, Mr. Vanderploeg, at my request, did you have prepared an Exhibit showing exactly what process the customer's order goes through from the time it is received from the customer—at the plant, until the product is shipped?—A. Yes.

Mr. PICKUP: Mr. President, I do not think that that is the proper way for my  
20 friend to submit evidence. This is a running story of two pages—11 paragraphs of this witness' evidence.

Mr. PATTILLO: I think, my lord, it is not that. I thought it might save some time, and I did not think it was a matter of controversy between my learned friend and myself. It merely shows what happens to an order from the time it comes in until it goes out—right through. Where it goes for entering—what is done there—how it gets to the mill-room, etc., etc. I thought if we might put it in in this manner—we are prepared to prove the accuracy of it, and it would expedite matters for the Court.

His LORDSHIP: It might be useful, Mr. Pickup.

30 Mr. PICKUP: So long as the witness knows.

His LORDSHIP: He prepared it himself—that is, if he prepared it himself, and he knows that this is how it goes through.

Mr. PICKUP: All I wanted to do is to guard against the witness bringing in a prepared statement—prepared by some other person and bringing it in as his evidence. I will not press it, my lord.

Mr. PATTILLO: Q. I show you this document—it is headed:

“What happens to a customer's order from date of receipt to date of shipment.”

*Jacob S. Vanderploeg (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

HIS LORDSHIP: Is that how it is typed?

Mr. PATTILLO: Yes.

HIS LORDSHIP: "What happens to—"

Mr. PATTILLO: "What happens to a customer's order from date of receipt to date of shipment."

Mr. PATTILLO: Q. And moreover, that Exhibit was prepared under your supervision, and you checked the accuracy of it accordingly?—A. Yes.

HIS LORDSHIP: That will be Exhibit Two.

10

EXHIBIT 2: Filed by  
Mr. Pattillo.

A statement prepared by the Anaconda American Brass Limited, showing what happens to a customer's order from date of receipt to date of shipment.

Mr. PATTILLO: Q. Now, what factors, Mr. Vanderploeg, are taken into consideration in determining the price at which the Company's products are sold?—A. Well, the major factor, of course, is the cost of the metal content of our finished goods—and the second factor is our processing costs—and the processing cost is labour, naturally, which is the major factor in that cost, and also includes the supplies of fuel, fuel oil, power, lumber, and all sorts of repair parts. As a further illustration, depreciation, of course, transportation, and an allowance which  
20 we hope, with good luck, will show us a profit.

Q. Would it be fair to say that this processing cost includes all your expenses, other than the replacement costs of metal?—A. Yes, and there is a minor element there of shrinkage, but it is so small and hard to determine, we do not include that in our processing charge.

Q. Now, does the processing charge go up and down with the price of the raw material?—A. No, sir. It may coincide at times, but generally it is independent of fluctuations in the cost of the raw metal.

I might add, sir, that the processing cost fluctuates less widely, by far, than the cost of raw metal. It tends to move in a more narrow range.

30

Q. Now, when an order is received by the Company, how is the price list or the price placed upon the order, calculated—what is used in the Company's plant to ascertain the price?—A. Well, I think you have to bear in mind, before I answer that, or when I answer that, that the price which we sell at is the price of day of shipment, but we put a provisional price on the order.

*Jacob S. Vanderploeg (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

His LORDSHIP: Q. Oh, you put a provisional price on the order?—A. At time of receipt, you see—that is for the customer's information—he likes to know the present price at least—and that provisional price is calculated from our published price list—which is made up of the metal content and the processing charge including these things that I have mentioned—the metal content being the current replacement cost, the then current replacement cost.

Q. At the time of the pricing?—A. Yes, but the price charged is the price on day of shipment, and may be the same or not the same as the provisional price used.

Q. I suppose you sell to the customer at a certain price, but there is a proviso  
10 that if there should be a change in the price of copper either up or down, well then his price or the price quoted will be increased or decreased?—A. Yes. He knows our policy through experience with us, and he knows that the price on a certain date or a certain copper market is so much, and if later, there is a move up or down, he expects to pay more or less.

And apart from the metal content, sir, he understands that there are moves at times in the processing charge.

Q. That is, if the processing charge is lower?—A. He pays the lower price which may have been charged, by virtue of the raw metal change or the processing charge change—or both at times. It is what governs the change in our price.

20 Mr. PATTILLO: Q. I show you, Mr. Vanderploeg, four "Base Price Lists", numbered one to four—are they the price lists that were issued by the Company to its customers, commencing with July 11, 1945, to September 1, 1947?—A. July 16, 1945.

Q. Yes?—A. Not the 11th—July 16, 1945 to September 1, 1947.

Q. And were there any further price lists published during the year 1947?—  
A. No sir, just those three in 1947 and the one in 1945.

Q. And I notice on the bottom of Exhibit One, Page 2, the price list No. 4 was issued to incorporate changes in labour and other costs, is that correct?—

A. That is correct, sir.

30 Q. By that you mean changes in the processing charge, and not in the price of metal?—A. That is correct—labour and other costs—apart from metals.

Q. Yes?

His LORDSHIP: Are you putting those in?

Mr. PATTILLO: Yes, my lord.

His LORDSHIP: Price lists, 1 to 4?

Mr. PATTILLO: Yes, my lord.

*Jacob S. Vanderploeg (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

His LORDSHIP: And that will be Exhibit 3.

EXHIBIT 3: Filed by Mr. Pattillo:	{	Four price lists issued by the Anaconda American Brass Limited under dates of—No. 1, July 16, 1945—No. 2, January 22, 1947—No. 3, June 10, 1947—No. 4, September 1, 1947.
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His LORDSHIP: Q. And those constitute the base price lists, 1 to 4?

The WITNESS: That is right, sir.

Mr. PATTILLO: Q. Now, Mr. Vanderploeg, you have explained to his lordship  
10 how you determined the provisional price when an order first comes in.

Now, when the order is shipped, is the price in the shipped order determined also from the base price list which is then in effect?—A. I do not quite follow your question, sir.

Q. Perhaps the reporter might read it.—A. I think I know it, but I am not just too sure.

Q. What I am concerned about is whether his lordship is clear on this point—when an order comes in, as I understand it, for your provisional price you look at the base price list, and you quote a price?

His LORDSHIP: The price list which is in effect at the date of the order.

20 The WITNESS: Yes.

Mr. PATTILLO: Q. And you quote a provisional price from that base price list which is then in effect, is that correct?—A. Yes.

Q. And then, when the goods are shipped out—on the date of shipment—do you then look at the base price list that is in effect that day, to determine the final price?—A. That is right, sir. If there has been a new price list, the price list at time of shipment governs the invoicing.

His LORDSHIP: Q. The price list in effect at date of shipment?—A. Yes. There may have been a change and there may not have been a change.

Q. The price list in effect at the date of shipment determines how much  
30 you charge?—A. Yes, that is right, my lord. There may be no change, of course, but if there has been a change, then the new price governs.

Mr. PATTILLO: Q. Now, Mr. Vanderploeg, at my request did you have an Exhibit prepared showing the terms of purchase of raw copper commencing with the year 1946, and the terms of sale of the finished products of the Company, also commencing from 1946?—A. Yes.



*Jacob S. Vanderploeg (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

Q. And is this the document that was prepared from the books of the Company and the records of the Company?—A. Yes.

Q. And is it correct, to the best of your ability?—A. To the best of my knowledge, it is correct.

Mr. PATTILLO: And that will be Exhibit 4, my lord.

EXHIBIT 4: Filed by Mr. Pattillo:	{	A Statement prepared by the Anaconda American Brass Limited, showing terms of purchase of raw copper and terms of sale of products—1946-1947.
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10 Mr. PATTILLO: Q. Now, referring to Exhibit 4, will you please tell the Court what was the policy of the Company, prior to the war and during the war, as to the terms of acceptance of customers' orders?

His LORDSHIP: First of all the policy of the Company prior to the war and during the war.

Mr. PATTILLO: Q. Prior to the war and during the war.—A. Well, prior to the war and during the war we accepted orders at firm prices for shipment within 90 days of date of acceptance.

Q. And when did you first make a change in that policy?—A. We made a change on June 1, 1946.

10 Q. And what terms did you bring into effect at that time?—A. We changed to a basis of price in effect on the first of the month, for shipment in that month.

Q. How long did those terms remain in effect?—A. Until the end of February, 1947.

Q. And then what terms were offered to your customers?—A. Well, from March 1, 1947 to the year end, we had our present practice of price in effect on date of shipment.

His LORDSHIP: Q. There were three policies—the pre-war policy?—A. Yes.

Q. Then the policy which was in effect for a short time in 1947—A. No, from June 1, 1946.

30 Q. To February, 1947?—A. That is right.

Q. That was your second?—A. Yes.

Q. And then your third?—A. Yes.

Mr. PATTILLO: Q. Do you sell to all of your customers on these base price lists prepared—numbered 1 to 4—which we have put in evidence—that is, are there any customers of the Company who buy on any other price list, other than

*Jacob S. Vanderploeg (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

these base price lists which we have here?—A. Well, we have a small amount of Government business and export business which we sell on the old practice of firm price, because it is a matter of competition, in one case—

Q. Which case is that?—A. The export—and the Government will not buy on any other basis.

HIS LORDSHIP: Q. That is for export?—A. That is a very small part, my lord—say roughly five per cent.

Mr. PATTILLO: Q. Yes?—A. Now, there are a few customers—large buyers of standard products—of certain size of copper strips, for example, the automobile 10 industry, to whom we have an agreed-upon processing charge, to which is added the current metal replacement cost. These are what we call “commodity accounts”. They are few. They are large in volume, but I should emphasize that the metal cost, nevertheless, is the current replacement cost at time of shipment.

HIS LORDSHIP: Q. The only thing which is firm is the processing charge?—A. The processing charge would not be the same as shown for quantities on the agreed price lists. The processing charge can vary, my lord, by agreement, but we quote the price at the current metal cost, plus the processing charge, which is not necessarily reflected by the published or printed price list—actually it is no different in principle.

20 Mr. PATTILLO: Q. Now, coming to the purchasing of raw materials from your suppliers, of whom you have told us—how do you determine the quantities of raw materials which you purchase?—A. Well, that involves an estimate, of course, because we have to give the refineries an order in the early part of one month for shipment or delivery in the following month, spread over the month, and that quantity or that estimate is determined by reviewing our order sheets—orders already booked for delivery in that month—and by estimating, as best we can, the orders which we may receive for the so-called stock items.

We also calculate the amount of scrap which may be engendered in our current month’s processing—and the amount of scrap which may come in from our 30 customers—which we accept as a matter of policy—and always have—and that determines largely the amount of the order which we place for delivery in the following month.

There, of course, is an adjustment sometimes up or down to take into account any necessary change in the working inventory.

Our volume fluctuates. You might say the pipeline is expanding or contracting.

Those, in brief, are the determining factors.

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Q. Now, you have explained what you have done. What is the objective which you are trying to reach, in following that practice?—A. We are trying to have metal coming in—the inward flow of raw metal—to match the outward flow of production—of our production of sheets, rods and tubes.

That matching, of course, is a quantity matching—it is a volume matching.

His LORDSHIP: Q. Not a dollar value matching?—A. No, sir, it is a volume matching.

Mr. PATTILLO: Q. And by “matching”—do you match exactly, or can you match exactly?—A. No, it is not possible—as exactly as we can—but there are 10 a number of variables which will throw you out.

Q. What are some of those variables?—A. Well, you may have delays in delivery.

His LORDSHIP: Q. Delays in delivery of what?—A. Of the incoming metal—you are speaking, sir, of the matching of our purchases of metals to the outgoing shipments of the finished goods?

Q. Yes.—A. There may be delays in delivery. For instance, by bad weather—it gets held up in the winter time. We may have bad luck with some of our processing, involving an unusual amount of mill scrap.

And sometimes we have been asked—or wanted—I might say, to take metal 20 in in advance, because of a possible strike trouble at the refinery—a very common problem these days—or it has been.

There are other factors, but those will give you good examples, I believe, sir.

Q. Do I understand you to say that the general objective is to maintain the same inventory?—A. Well, maintain, sir, an amount of metal coming in to match the outgoing production, plus or minus any adjustment in the inventory which may be occasioned by the rise or fall in the volume of business.

We aim to keep, for example, an inventory say of from 2½ to 4 months current shipments, you see. Well, if your business falls off rapidly, and you have an inventory of 4 months based on your past shipments, that can easily become out of line. 30 Therefore, you adjust, or buy downward, to reduce your working inventory.

I might mention another point there, and it is not exactly a matter of humour, but the production people in our plant are like production people in any plant, they seem more comfortable with a lot of metal around the place with which to work—they feel they will not be caught short with their production end—and sometimes we may allow them to influence management by having a little more metal around

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than might be warranted by the actual volume of business that is current—but that is held within very close bounds. That is the same, of course, the world over, in that respect—that is human nature.

Mr. PATTILLO: Q. Now, in determining the amount or the quantity of metal which you are ordering, as you have explained to his lordship, is any attention paid to the price—to the price prevailing for the raw material at that time?—A. Well, we know what the price is, but we do not bother about it, because our concern is to keep the mill in operation by a proper flow of material, and we do not speculate in metal—we figure to make our money or lose it in the processing of those metals. We are a  
10 processing industry—and I could add, sir, that it does not matter to us, in a sense, whether the customer ships us the metal for fabrication or processing—or whether we buy it ourselves, because we are a processing industry. We steer clear of speculation in raw material.

Q. And have you accepted business at New Toronto where the raw materials are supplied by the customer?—A. Before the war it was common practice, at times, for certain large buyers to send us the metal. They would provide it and we would process it at our current processing charge. Today, of course, they cannot do that—so that practice has ceased—not because of a matter of their choice, but the selling policy of the refineries has changed.

20 His LORDSHIP: Q. I suppose during the war, for example, your war business was done by the metal being supplied to you?—A. Not to my recollection, sir. We bought the metal. I think the Government felt that we could do it better than somebody else. We knew our production and we knew what was wanted.

Mr. PATTILLO: Q. Now, you explained to his lordship how you were trying to match your quantities of metal coming in with your quantities of metal flowing out.

His LORDSHIP: That was quantities of finished products.

Mr. PATTILLO: Q. The quantities of the metal contents of the finished products flowing out.

His LORDSHIP: Yes.

30 Mr. PATTILLO: Q. And you have explained that, although you know what the price of the raw material coming in is, that was no concern of yours, and you did not worry about that. Will you explain why that is so—why you are not concerned as to what—in ordering quantities—as to what the price is—the prevailing price is for the raw materials.—A. Just repeat your question, will you please?

Q. You have explained to his lordship that, in ordering quantities of goods, although you know what the price prevailing is for the raw material—that does not

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influence your decision as to what you are going to order—the quantities you are going to order—will you explain why that is so?—A. Well, that is because we do not pay for it then—the price is not fixed until it is delivered.

His LORDSHIP: Q. And then if the cost is changed, you charge him any increase—and you give him the benefit of any decrease?—A. Yes, we sell based on the cost then.

Mr. PATTILLO: Q. Now, what about the raw materials—copper and zinc and others—do they lose value in use, or is their value constant?—A. Value in use—or value in our stock—do you mean?

10 Q. Yes, I mean when you bring raw metal in—you bring it in one year—does it have to be used right away—that is, is it like perishable goods—or is its value, when you have got it in there—is it the same one day as later?—A. Yes, raw copper and zinc have that virtue—that it is not affected by years of standing around in the plant, if it does.

His LORDSHIP: Q. That would be different from iron?—A. Yes.

Q. Which loses its value?—A. Its intrinsic value, sir, is not changed.

Mr. PATTILLO: Q. Then what about the business that the Company does—is it seasonal in character, or not?—A. No, I would say it is not seasonal. There may be some customers that are seasonal, but our over-all or volume business reflects no  
20 particular seasonal fluctuation.

His LORDSHIP: Q. Well, apart from the cost—do you take the physical copper, which you have in your inventory, and do you use it up first?—A. Well, I would like to have our Works Manager talk on that, sir.

Q. I am thinking about the physical copper.—A. Yes, it does not matter to us. One pound is as good as another, and it has happened—and can happen—that you may be using something today that was bought ten years ago or five years ago—it depends upon where it was stacked.

Q. I mean, do you have a policy of using up the copper that you bought first—I mean, I am thinking of it purely from the physical point of view—of the copper—  
30 have you any such policy?—A. No, sir, it does not matter necessarily—there are times when metal comes in and it is stored, and something else comes in and it is stored in front of it and it is used in that inverse order. You may be waiting for a car to come in, and it goes right from the car into the plant.

Q. It goes right from the car into the processing?—A. Into the processing, yes.

Q. Although you may have some copper somewhere else?—A. That is right.

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Q. And you may have had it there for years—A. Correct, sir. When it is not easy to get at. But I think this matter of physical flow—if you call it that—will come up with our Works Manager.

Q. Your Works Manager would know about that?—A. Yes.

Q. Would know more about the physical flow of the copper?—A. Yes.

Q. Am I to understand that you have not, then, any fixed policy—or have you any—governing the physical flow of the copper?—A. Not to my knowledge. Sometimes the boys in the plant might change something to suit themselves, and so long as it is within the general terms of the policy, there is no complaint or  
10 criticism.

Q. Is there any such thing as oxidization of the copper—or some losses resulting from that?—A. No. If there is any discoloration, it can easily be cleaned. There is no loss of metal there.

We are concerned, of course, with starting with the right quality and the right shape of the metal. The copper is not just one exact thing—we buy different shapes—some contain silver and some contain something else.

Q. It has already got its alloy?—A. Yes, from the refinery—but apart from starting with the right quality and the right shape, the time that it came in is of no concern.

20 Q. And you mean by the “shape”—?—A. The copper shape which we buy.

Q. The ingot?—A. Yes, it is called an ingot, billet, or a cake. Those are trade terms.

Mr. PATTILLO: Q. Has the Company any problem so far as obsolescence is concerned?—A. I think I have covered that. There is no loss of intrinsic value. Something may not move for a time, but then it gets back into popularity again—some certain alloy, for example—but if it does not move in the production, sir, it is always available for reprocessing in the plant—you can adjust it by re-melting.

Q. That is, for instance, if there is a certain alloy passes out of popularity?—  
A. We remelt it, sir, and adjust it by adding other elements which will make a new  
30 alloy, which will be in demand.

Q. Now, you told his lordship that the business of the company is not a seasonable one—are there any periods of the year when your inventories are higher or lower than at any other times of the year?—A. Well, it depends upon the volume of business, of course—a good volume of production—but towards the end of the year it is the practice in many businesses to reduce inventories, and that is done in our case as well.

Mr. PATTILLO: That is all, Mr. Pickup.

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Mr. PICKUP: I will not finish tonight, of course, but I may as well get started  
His LORDSHIP: You may as well use the ten minutes.

*Cross-Examination by Mr. Pickup:*

Q. Now, Mr. Vanderploeg, you spoke of prices being effective on day of delivery, and then afterwards mentioned date of shipment—is there any difference between the two?—A. Well, the terms are used interchangeably when we are effecting our sales—we say “delivery” or “shipment”, as affecting our finished products, but I should have been, perhaps, more definite on the buying of the raw material, if I was not definite—where the terms were at one time price in effect on day of 10 shipment.

His LORDSHIP: Just a moment—

The WITNESS: Exhibit 4, is it?

Mr. PATILLO: Yes, Exhibit 4.

His LORDSHIP: Q. Terms of purchase of raw materials—of raw copper—and terms of sale of the finished products.—A. Yes, the sales of the finished products, Mr. Pickup, are the day of shipment from our plant.

Q. From your plant to the purchaser?—A. Yes.

Mr. PICKUP: Q. And incoming raw materials, as date of shipment?—A. Has been both.

20 Q. That is what I wanted to clear up.—A. There is actually very little difference, so far as the metals coming in, because copper just comes from Copper Cliff, and it just takes a few days to get here. Of course, there could be some change.

Q. Copper coming in from Copper Cliff, is it delivered f.o.b. Copper Cliff, or f.o.b. New Toronto?—A. F.o.b. New Toronto.

Q. So I may take it, then, that your incoming materials are date of delivery at your plant, and your outgoing prices are according to what?—A. At the present time, Mr. Pickup, the copper buying is the average price prevailing in the week next preceding shipment.

His LORDSHIP: Q. Next preceding shipment?—A. Yes.

30 Mr. PICKUP: I do not think we need to be concerned with that.

His LORDSHIP: Q. That is next preceding the shipment by the supplier?—  
A. Yes.

Mr. PICKUP: Q. I do not know that I am really concerned with the present position. I am more concerned with 1946 and 1947, and at that time your memo, Exhibit 4, shows that prices in effect on the first day of the month in which shipped

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—that, I think, is fairly plain—and that is dealing with your purchase of raw materials?—A. Yes, that policy was in effect from May 1, 1946 to November 30, 1946, as you will see, sir.

Q. Yes, and then from December 1, 1946 on to June 30—June 30, 1947—your incoming materials were priced at date of shipment?—A. Yes.

His LORDSHIP: Q. Date of shipment by whom?—A. By the refineries, sir.

Mr. PICKUP: Q. That is, coming from Copper Cliff, it would be the date shipped from Copper Cliff?—A. That is right, sir.

Q. And from June 30, 1947—or July 1, 1947 to the end of the year, it is at 10 the prices—at firm prices for delivery in the following month?—A. Yes.

Q. And then your sales of outgoing materials during 1947 were at prices—I had better take them in periods—to May 31, 1946, was it prices from price lists on day of acceptance of order, if accepted for shipment within 90 days?—A. What period is that, sir?

Q. To May 31, 1946?—A. Yes.

Q. And when you speak of price lists—these are your price lists?—A. That is right, sir.

Q. And then from June 1, 1946 to February 28, 1947, it is at prices from price lists effective on the first day of the month when shipped?—A. That is right.

20 Q. And again that is, your price lists?—A. Yes.

Q. And for the rest of 1947, it is at prices from price list on date of acceptance?—A. No, date of shipment.

Q. Oh, yes, I have it wrong—on date of shipment?—A. That is right.

Q. And in each case where we are speaking of your price lists, we are talking of your sales?—A. Correct, sir.

Q. And when you speak of a sale price of your materials being dependent—no, I am wrong there, not your purchases.

His LORDSHIP: The sale price of his products.

Mr. PICKUP: Q. The sale price of your products as being dependent upon any 30 change, it is a change which will be according to what the price list may be at the appropriate time—either the date of shipment or the date of acceptance—and that is so?

His LORDSHIP: No.

The WITNESS: Well, I explained, I believe, that the old practice was price in effect at date of acceptance, for shipment later. That is, our price, which was matched by the selling policy to us of the refineries—our purchase of raw materials,



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that is—and later there was a change—there were several changes in the policy of both the refineries and ourselves. They changed their policy to us and we changed our policy to our trade.

Mr. PICKUP: Q. Well, I thought that the factor governing that change—or change in price from your effective price—was a change in your own prices, is that not right?—A. Yes.

Q. And if there was a change in your own price lists from the time you received the order until the price became fixed, it would be a change in accordance with—or that change would affect the price of the order?—A. It would be implemented  
10 by a new price list.

His LORDSHIP: Q. You would bring out a new price list, if there was any change in the price of your product?—A. Yes.

Mr. PICKUP: Q. You immediately made a change in your price list if there was a change in the price of copper to you—that is right?—A. Yes.

Q. And then, if you make a change in your price list, then you change the effective price, to the price prevailing at date of shipment or whatever the appropriate date is, according to your price list?—A. Well, I am sorry, sir, I am not too clear, on following you, and I do not know that I understand you correctly. The new price list governs the pricing of the order at time of shipment, and it may be  
20 the same price as the price in effect when the order was taken, or it may be changed.

Q. Perhaps I am not putting it very clearly to you, but let us find out—take one period to illustrate—and I am taking the period from December 1, 1946, to June 30, 1947.—A. On our prices now, sir?

Q. Pardon?—A. You are speaking of our prices?

Q. I should be, but I am afraid I am looking at your purchases—it is the period from June 1.—A. Yes.

Q. June 1, 1946.

His LORDSHIP: Perhaps you had better start over again.

Mr. PICKUP: Q. No. Let us take, for example—yes, we will start over again—  
30 the period from March 1, 1947 to December 1, 1947, at which time your prices were the prices prevailing at date of shipment. I am right on that, am I not?—A. That is right.

Q. And in that case, you gave the tentative price at the time of the order?—  
A. Yes, orders commencing March 1.

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Q. And the tentative price at the time of the order was, so far as the cost of raw material is concerned and otherwise, in accordance with your price list?—

A. The tentative price was—you are speaking now of the raw material?

Q. No, I am speaking of the finished products.

HIS LORDSHIP: Q. Well, you gave them a tentative price?—A. Yes, according to our price list, that is right—yes, that is right.

MR. PICKUP: Q. And if your existing price list was changed, then you changed the price to the customer at the time of shipment?—A. That is right, sir.

Q. And your price list might change by reason of one of two causes?—A. Yes.

10 Q. A change in the price of copper to you would cause it?—A. Yes.

Q. Your price list would change also, without any price change in the price of copper or metal, if you had a change in your cost of processing?—A. That is correct, sir, and has changed for those reasons.

MR. PICKUP: Well, I think that is a convenient place to stop, sir.

HIS LORDSHIP: Then we will adjourn until 10.30 tomorrow morning.

(At 5 p.m. the hearing was adjourned, to be resumed at 10.30 a.m., June 20, 1950.)

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Toronto, Ontario,  
10.30 A.M., June 20, 1950.

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#### MORNING SESSION

HIS LORDSHIP: All right, Mr. Pickup.

MR. PICKUP: Thank you, my lord.

JACOB A. VANDERPLOEG, Recalled:

*Cross-Examination by Mr. Pickup, continued:*

Q. Now, Mr. Vanderploeg, you told us last night before the Court rose that changes of the tentative prices to your purchasers resulted from either increased cost to you of copper or zinc, or changes in processing costs—you told us that just before we recessed last night.—A. Yes.

30 Q. And I think you put in four Exhibits, or one Exhibit of four separate price lists, as Exhibit 3—do you recall the price lists, numbered 1, 2, 3 and 4?—A. Yes.

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Q. And am I right in saying that two of those price lists had nothing whatever to do with increases in prices of copper and zinc?—A. I think that is correct—that 1 and 4—it is in the Exhibit.

Q. There were two of them—it does not matter which two they were—but those price list increases were caused by increased prices other than prices of the metals?—A. Yes.

His LORDSHIP: Q. Had there been any increases in the prices of the metals in the meantime?—A. Well, there would not have been on that date—it was strictly a matter of extra labour or transportation or some other thing.

10 Mr. PICKUP: Your lordship will find that there were only two increases in prices.

His LORDSHIP: There were only two increases in prices?

Mr. PICKUP: And when each increase in price came in copper—

His LORDSHIP: Then there were increases—then there were two other price lists where the increases in price had nothing to do with the price of copper?

Mr. PICKUP: That is right, my lord.

Mr. DeRoche thinks there was only one. I am speaking only from memory, sir, but if I could have the Exhibit—

His LORDSHIP: Q. There were three changes in copper prices?—A. There was 20 January 22, 1947.

Q. January 22, 1947?—A. And June 10, 1947.

Q. And price list No. 2, that was due to an increase in the price of copper?—  
A. That was a very marked increase in copper, sir—about 50 per cent.

Q. And then June 10—that was due to an increase in copper—and then I think the next one is due to an increase in copper too, was it not—September 1?

Mr. PICKUP: No.

His LORDSHIP: There had been an increase in the price of copper on August 4.

Mr. PICKUP: That is 1948, my lord.

His LORDSHIP: Oh, I am wrong.

30 Mr. PICKUP: Q. Well price lists Nos. 2 and 3 were evidently caused by increases in the price of copper?—A. That is correct, although I speak from memory, sir. However, it is on the Exhibit.

Mr. PATTILLO: That is correct.

Mr. PICKUP: Q. Mr. Pattillo says “That is correct”, so the witness may adopt it, but when the price list No. 4 was issued on September 1, 1947, there had

*Jacob S. Vanderploeg (Appellant)—  
Cross-Examination by Mr. Pickup (Cont.)*

been no increase in price of copper or any other of the metals since the previous price list?—A. Well, speaking from memory, yes—if that is what the Exhibit shows, that is the fact.

Mr. PICKUP: Mr. Pattillo says that is correct, so that will satisfy me.

Mr. PICKUP: Q. Now, did you have anything to do with the decision to change from f. i. f. o. to l. i. f. o. method?—A. I did not make the decision, sir. I knew of it.

Q. I did not ask you whether you made it or not—I asked you whether you had anything to do with it.—A. Well, in a small way, yes.

Q. What?—A. Beg pardon?

10 Q. I say “what”?—A. Well, I would like to give you some background to my answer—I cannot answer that question just by a few simple words, I am afraid.

Q. I think I must let you answer it in your own way—answer it in your own way.—A. We came to Canada in 1922, and we just nicely got going when the depression hit us in 1929, and before the war—and before the change to l. i. f. o.—our volume was small and our profit was correspondingly small, when there was a profit.

Q. Before the change to what?—A. Before the change to filing on l. i. f. o. in 1947 for the year 1946.

Q. Your volume of business was small—

20 His LORDSHIP: He is starting away back.

The WITNESS: I may say, sir, that I got to the point when the depression hit us in 1929.

Mr. PICKUP: Q. I did not ask you for all this, you know.—A. I realize, sir.

Q. What I am trying to get at, Mr. Vanderploeg, is just what part you played, if any, in adopting l. i. f. o. in 1947?—A. I am trying to develop my answer, sir, and maybe it is not the right way, but I will do it the best way I can.

Q. I thought you could answer the question by saying that you had something to do with it or that you had nothing to do with it—or that somebody else did it—or whether you discussed it with your officers—or whether you had done it—when  
30 you started telling me this long story about the history of the Company.—A. To be brief—to be as brief as possible—before the war our volume was low and our profits were low. There were also losses in some of those years, and the tax returns—the tax rate—was low, and there was never any great amount at issue between the computing of the tax on the l. i. f. o. or the f. i. f. o. method.

During the war, under controlled prices, we were not affected by the method—l.i.f.o. and f.i.f.o. were much the same—or practically the same.

Q. You mean in the result?—A. Yes, in the result.

*Jacob S. Vanderploeg (Appellant)—  
Cross-Examination by Mr. Pickup (Cont.)*

Q. Yes?—A. But after the war, with our volume up at a far greater rate than prewar—and with the profits correspondingly high—and with the tax rate much higher—the difference between the two methods became a matter of a great deal of consequence, and we therefore decided that as a matter of simple justice to ourselves, to put it that way, we would file our returns on the l.i.f.o. basis. It was not a question of trying to evade or escape taxes—no one can do that these days—but it was simply a question of having the tax computed by a method that reflected our way of doing business.

Q. Now when you say it was not an effort to evade taxes—still you knew if  
10 you adopted this method you would be paying a much less tax.

His LORDSHIP: In one year.

The WITNESS: That is correct, sir.

His LORDSHIP: But you might be, over a period of years?

Mr. PICKUP: And it might not.

Mr. PICKUP: Q. But in the one year, you realized if you got the Department to adopt l. i. f. o., you would materially reduce your taxes?—A. As a matter of fact, sir—

Q. Is that so—did you realize that?—A. If you let me finish, please—as a matter of fact, sir, our first return on l. i. f. o. was for the year 1946, which was put  
20 in in 1947, and it, of course, actually showed more taxes on the l. i. f. o. basis than on the f. i. f. o. basis.

Q. Quite.—A. And we realized, to answer your question—quite correct, there was a tax saving on the l. i. f. o. method for that year.

His LORDSHIP: Q. For 1947?—A. For 1947.

Mr. PICKUP: Q. Now may I go back again to the part which you played, if any, in this change—was there a Directors' meeting about it?—A. No, it was a matter of personal consultation—telephone talks—between here and Head Office—and correspondence. I do not believe that it was ever a matter of a Directors' meeting.

30 Q. Now, I think some of us may have inadvertently misled the President as to the time of that return—your return for 1946 was not due until the 30th of June, was it?

His LORDSHIP: Oh yes, it is a Company return.

Mr. PICKUP: Yes, some of us were misled by that.

His LORDSHIP: I took it to be April, the same as individual returns.

Mr. PATTILLO: It was my fault.

*Jacob S. Vanderploeg (Appellant)—  
Cross-Examination by Mr. Pickup (Cont.)*

His LORDSHIP: The Company returns do not have to be made until June 30th.

Mr. PICKUP: That is right—and in fact, your return for 1946 is dated June 16, 1947. I am giving you that from the return, and you probably will agree with it, will you?

The WITNESS: If it is on the return, sir, I would say it is right.

Mr. PATTILLO: That is correct.

Mr. PICKUP: Thank you.

Mr. PICKUP: Q. And then that return was made after you were aware of the—well, after the controls had been lifted, which was June 10th, and after the increase 10 in the price of copper to \$21.50—that is right?—A. The first—

Q. Well, it follows, does it not?—A. Well, there was a first change there of 16 $\frac{5}{8}$ , I believe in January.

Q. Yes, and then the second—and only other change until the year 1948—was on the 10th of June, 1947?—A. That is correct, sir.

His LORDSHIP: There was a sharp increase on the 22nd of January, 1947, but that was prior to the lifting of the controls?

Mr. PICKUP: That is right.

The WITNESS: The easing of the controls.

Mr. PICKUP: Q. And in the result, you knew when you made your return on 20 June 16, 1947, that the price of copper had gone to 21 $\frac{1}{2}$  cents, and I suppose you, as General Manager, had kept fairly well familiar with world prices of copper, and particularly prices in the United States?—A. Yes, that is part of our day-to-day knowledge, I suppose you might say.

Q. And controls of copper and zinc had been lifted in the United States in May of 1946, had they not?—A. I am not sure of the date, sir.

Q. About then?—A. I know it preceded ours, at least.

His LORDSHIP: About a year?—A. Yes.

Mr. PICKUP: Q. By about a year?—A. Well, May 1946 would precede by some seven months the first partial lifting of controls—and by almost 13 months the full 30 lifting of controls.

Q. And that immediately controls were lifted in the United States, the price of copper in the United States jumped away up, did it not?—A. Yes.

Q. And all that was known to you when you made your first return on the basis of l. i. f. o.?—A. There is no argument about that, sir.

Q. Now, of course, at that time—

*Jacob S. Vanderploeg (Appellant)—  
Cross-Examination by Mr. Pickup (Cont.)*

His LORDSHIP: May I ask—may I interrupt you, Mr. Pickup?

Mr. PICKUP: Certainly, my lord.

His LORDSHIP: Q. Are you able to say how the books of your Company had been kept—that is your own accounts—apart from the tax returns—how they had been kept on what principle, so far as your inventory is concerned?—A. Well, I took our auditor's word for it that our books are kept on the l. i. f. o. method.

Our tax returns, however, were computed to meet the Government's requirements. They would not accept l. i. f. o.

Q. The Government would not accept l. i. f. o.?—A. Well, we knew that they  
10 would not. There had been some talk about it—I cannot say just when.

Mr. PICKUP: Q. We might know about that.—A. I would rather have that come up with the experts who have the details more at their fingertips than I have.

Q. Now we are still speaking about this time in June, the price of copper had gone to 21½ cents, and the fact is you had on hand between 10 million and 15 million pounds of copper, which was priced at 11½ cents—that is true, is it not?—A. Well, at that time, yes.

His LORDSHIP: Ten or eleven million pounds?

Mr. PICKUP: Q. Ten to fifteen million pounds.—A. I have not the figure here, but I would say it would be in that range.

20 His LORDSHIP: That you had bought?

Mr. PICKUP: Q. It was priced at 11½ cents—priced in the inventory.

His LORDSHIP: Priced at 11½ cents?

The WITNESS: Pardon me, sir—there may have been some other accounting value on that copper, depending on how the books are kept under l. i. f. o.—and I would prefer that that information be detailed by our Comptroller, who has the records here, and who is—or who has a more intimate knowledge of the subject.

Mr. PICKUP: Q. But surely you have this knowledge of the subject, have you not, Mr. Vanderploeg, that during the years—take the war years, for instance—your closing inventories price on copper was 11½ cents, which was the controlled  
30 price—you know that, do you not?—A. Yes, that would be the closing price to the best of my knowledge.

Q. So you began 1946 with your inventory price of 11½ cents, did you not?—A. Well, I must say, sir, there are some other factors in there.

Q. Answer the question, please, if you will.—A. Well, I cannot answer that, sir, with simply "Yes" or "No".

Q. Do you mean to say that you do not know?—A. It is not that at all.

*Jacob S. Vanderploeg (Appellant)—  
Cross-Examination by Mr. Pickup (Cont.)*

Q. Then answer me.—A. Under the l. i. f. o. method there are certain quantities of copper carried at various prices—I have not those details at my finger's end, sir, and I would certainly prefer that they would come out in the testimony of our Comptroller, who can give you a proper answer to your question—which I cannot, from memory—and I have not the figures myself, at my disposal, right here.

Q. Do you not know at what price you carried your copper into your Profit and Loss Statement at the end of 1946 or the end of 1947—that is in the inventories?—A. Well, I knew that the last price was 11½ cents before the rise, if that is what you want me to admit—I certainly knew that.

10 Q. And that is the price at which you carried it in your closing inventory, on the l. i. f. o. principle—leaving yourself as holding the earliest copper in your inventory—that is right, is it not?—A. I can only repeat my former answer, sir.

Q. Then it may be taken—

His LORDSHIP: He just said it was not so because there were some other factors that had to be taken into account—the different kinds of copper and so on—in the stock—but it would be approximately 11.5 cents, would it not?

The WITNESS: Well, sir, I have not the figures in front of me here. There are various quantities carried at various prices—I know that of general knowledge—but the details of it I have not got right here, but it may be obtained from our  
20 Comptroller. I am not an accounting expert, and do not profess to be.

Mr. PICKUP: Q. Is that the most that you can help me on that, Mr. Vanderploeg?—A. I am afraid so, sir, yes.

Q. Do you know at what price you did enter your copper in the closing inventory of 1947?

His LORDSHIP: At the close of the inventory of 1947, or at the beginning?

Mr. PICKUP: Q. At the close.

The WITNESS: I do not know from memory, sir, no, but the information is all here and it can be had from the proper people.

Mr. PICKUP: Then maybe this will be sufficient for our purposes, and I will not  
30 bother you with it further—that the prices averaged much less than 21½ cents?—

A. That would be correct, sir.

His LORDSHIP: That is at the close of 1947?

Mr. PICKUP: Yes, my lord.

Mr. PICKUP: Q. And those are the prices which you were carrying in the inventory at the close of 1947—prices much less than 21½ cents—and you knew in June that the average price of your copper on hand was much less than 21½ cents?—A. That is right.



*Jacob S. Vanderploeg (Appellant)—  
Cross-Examination by Mr. Pickup (Cont.)*

Q. And you knew, of course, that you were pricing your sales from June on to the end of December, on the basis of getting 21½ cents for your copper, which had cost you much less—that is right?—A. Well, I would say that is right. We are still on the replacement value.

Q. I am not speaking about replacement costs. I am speaking of actual costs.—A. But I am speaking of replacement values—we are still on replacement values.

Q. Will you answer my question in relation to actual value—and that is, that you knew that you were selling copper, in June 1947, on a basis of a 21½ cent price—and that the actual costs to you of the copper which you were using at that time, 10 was much less than that.—A. I make no such admission, sir.

Q. You will not say it is wrong?—A. Yes, I will say it is wrong.

Q. Will you tell me why?—A. Well, we are selling on replacement value. We have to consider that cost—replacement cost—in fixing our prices—and that is the way we do business—that is the l. i. f. o. concept.

His LORDSHIP: Yes, but that is not the question which is being asked of you, Mr. Vanderploeg—you are asked to compare two things—maybe they are not comparable—but you are asked whether or not you were pricing sales of your finished products on prices higher than your copper had cost you—that is the whole of the copper in your inventory—the average of it.—A. Well, it is obvious, yes.

20 Q. It is obviously so?—A. At the price we were selling or used as the base in selling—it was at a higher price than the previous price.

Mr. PICKUP: And I think that answers it, my lord.

His LORDSHIP: It is not an answer, but it is certainly obvious—but whether the two things that are being compared are properly comparable, that is a different matter.

The WITNESS: It had to be higher.

His LORDSHIP: Q. It is obvious that that must be so.—A. Yes, it had to be higher.

30 Q. Some of your inventory you had put at 11.5 cents?—A. The sale price had to be higher, sir, because we had to replace it—and if it goes down, we have to match that.

Mr. PICKUP: Q. Then, did you not, in June of 1947, instruct your auditors, one of your auditors, to go to Ottawa and see if you would not be permitted to use this l. i. f. o. principle?—A. There were some visits to Ottawa, sir—I do not recall the exact date. I did not go myself.

His LORDSHIP: Would it make a particle of difference, whether the Department permits it or not—if it is a proper method?

*Jacob S. Vanderploeg (Appellant)—  
Cross-Examination by Mr. Pickup (Cont.)*

Mr. PICKUP: It may make some difference, my lord—if the Company sent a deputation to Ottawa.

His LORDSHIP: I do not see it, but the facts are there.

Mr. PICKUP: I would like it on the record.

His LORDSHIP: Yes.

Mr. PICKUP: Q. Did you or did you not send Mr. Glassco to Ottawa, to interview the Deputy Minister in or about June 1947?—A. Mr. Glassco was a member—

Q. Wait for my question—asking to be permitted to use the l. i. f. o. method in making the returns, and to depart from your other method?—A. Mr. Glassco was—

10 His LORDSHIP: Q. Did you or did you not send Mr. Glassco?—A. Yes.

Mr. PICKUP: Q. And he reported back to you that the answer was “No”, did he?—A. Yes.

Q. And then later, did you not, as a Company, submit a long brief to the Deputy Minister containing the same request?—A. That is correct, sir.

Q. And then when you sent in your brief, of course the answer still was “No”?—A. That is correct, sir.

Q. Now, can you give me any reason for changing to l. i. f. o. in 1947, other than to avoid the heavy taxes in that year when prices went up?—A. Well, we were anxious to get approval of an accounting method that was then in use by ourselves  
20 and by many others as an accepted principle—trying to settle the case.

Q. Any other reason that you can give me, than the one you have just given?—A. I do not think so. I repeat, it was a matter of some consequence, and that is why we are here today.

Q. Then I understand that your Company has no record showing what copper you actually used in 1947, to fill orders, have you?—A. We have not what?

Q. No record showing what copper you actually used in 1947 to fill orders?—A. Well—

Mr. PATTILLO: My lord, I do not wish to interrupt my learned friend, but I think I know what he is getting at, and I do submit that the question is a most  
30 ambiguous question—“No record of your copper actually used”—the Company has all kinds of records as to the quantity used, but to identify it—

His LORDSHIP: As to the year of the purchase of the copper?

Mr. PATTILLO: We cannot identify it. We are quite clear that we keep no records of the identification of the copper, but we have extensive records of the quantities.

Mr. PICKUP: I am not speaking about quantities. I am speaking about identity—will you read the question, Mr. Reporter, please, if it is not clear?

*Jacob S. Vanderploeg (Appellant)—  
Cross-Examination by Mr. Pickup (Cont.)*

(Reporter reading): "Q. Then I understand that your Company has no record showing what copper you actually used in 1947, to fill orders, have you?"—"A. We have not what?" "Q. No record showing what copper you actually used in 1947 to fill orders."

HIS LORDSHIP: Well, I would not have been able to tell, from your question—although I knew what you were getting at.

MR. PICKUP: Then I will put the question again.

HIS LORDSHIP: The question, by itself, is capable of several interpretations.

MR. PICKUP: I will see if I can make it clearer.

10 MR. PICKUP: Q. It is my understanding that you have no records that show the identity of any copper used in 1947, from which you can find out what the cost of that copper—the actual cost of it to you—was. Is that right?—A. We have records of our own, sir.

HIS LORDSHIP: You might put it in a little different way—what you are trying to get at is if there are any records showing particular copper which was used for a new order—or otherwise—whether they kept any records showing the time of acquisition of that particular copper which would then give them some information as to the cost of that actual copper.

MR. PICKUP: That is not quite what I intended—that is an indirect way of  
20 getting at the price—but may I have my question read by the reporter?

HIS LORDSHIP: Certainly, would you mind reading the question, Mr. Reporter.

(Reporter reading): "Q. It is my understanding that you have no records that show the identity of any copper used in 1947 from which you can find out what the cost of that copper—the actual cost of it to you—was. Is that right?"

MR. PICKUP: Q. Now, can you answer that?—A. We have records of purchases, but we keep no records of identity with one possible exception—where we have had some trouble with refinery copper, we may bring in a special lot which we try out—which we earmark and try in our plant, to see if that lot would correct the trouble. Otherwise, there is no particular identity.

30 HIS LORDSHIP: Q. One pound of copper is the same as any other pound of copper?—A. That is right, sir.

Q. Except in respect to these special shipments of copper?—A. Or shapes of copper.

Q. Or alloys?—A. Yes.

*Jacob S. Vanderploeg (Appellant)—  
Cross-Examination by Mr. Pickup (Cont.)*

Mr. PICKUP: Q. Then I do want to press him, if I may, my lord—on a further answer to the question which was put to you by the Court yesterday—and that was as to your policy of using up inventories—surely you had some policy in regard to that?

HIS LORDSHIP: You mean, using up inventory, to any physical time?

Mr. PICKUP: Yes, in relation to—

HIS LORDSHIP: To the time of acquisition?

Mr. PICKUP: Q. To the time of acquisition—surely you had some policy in the matter?—A. It all boils down to a matter of good warehousing policy—what is a  
10 good thing to do. We have no policy of using raw material that would match either the l.i.f.o. or the f.i.f.o. concept of physical flow.

Q. No, but I am thinking of the physical copper itself—do you mean that you have never issued any instructions to your people who handle the copper, by way of general policy, as to whether they are to use copper at this end of the warehouse or copper at the other end—or any other kind of copper?—A. No, but I would ask you, sir, to ask that question of our work manager who is more concerned with the actual handling of the metal for the plant.

Q. No, I am not dealing with the actual handling of it. I am dealing with your policy.—A. Personally I have issued no policy instructions along that line.

20 Q. Then that means, so far as you are concerned, you left the plant manager free to use any part of the copper that he saw fit, without having any policy in the matter as to the using of this copper?—A. Without policy from me?

Q. Or from the company.—A. That is the same thing, I presume.

Q. I would have thought so. I did suppose that, while you were quite content to have your manager use some copper that might be handier at the moment, for instance when a carload came in—instead of using some copper that might require more handling—that he would have a leeway as to that—or other similar things—but that there would be some over-all policy of using the older first, subject to the matter of convenience—but you tell me that is not so?—A. That is right.

30 HIS LORDSHIP: Q. You say that there was no policy of using earlier inventories first?—A. It is simply a matter of convenience, my lord—as I understand. You might use something today which just came off the tracks.

Mr. PICKUP: Q. Or you might use something today which was there for five years?—A. Something which may have been lying around for five years.

Q. And no policy as to it—and no way of telling how you did it?—A. It is not a matter of that—we are not concerned with the physical flow, but with the cost factor.

*Jacob S. Vanderploeg (Appellant)—  
Cross-Examination by Mr. Pickup (Cont.)*

Q. But I am not dealing with the cost factor.—A. That answers your question the best I can.

HIS LORDSHIP: Q. There was no policy?—A. Except it was left to the works manager to use his judgment—that is his position—that is his responsibility.

Q. Only a matter of convenience—am I to understand that?—A. It boils down to that, largely, sir, yes.

Mr. PICKUP: Q. You could have identified it, could you not, the copper which was being used?—A. I would say “no”, because there is no identification record kept, as I answered before.

10 Q. I know you would have some difficulty with scrap.—A. We do keep the records by quantities and grade of copper—ingots and so on.

Q. But if you wanted to know what the cost of the copper you actually used in 1947 was, you could have kept a record so as to show that, apart from some difficulties with scrap?—A. Perhaps we could have kept the record, but it would have been so ponderous and useless to almost make it not worthwhile—it would be as long as your arm before you got through.

Q. You do keep a copper control account—I do not think you have the figures with you but you keep such an account?—A. By quantities, yes.

HIS LORDSHIP: Q. Do you keep any account of in what portion of the ware-  
20 house you put any particular copper?—A. Well the copper is stored at various places around the plant. Again it is a matter of convenience. For example you may put some in your sheet mill—or you may even put some out in the yard, if you are crowded. You may also put some in your metal storage building.

That is the best answer I can make to that, sir. There is no location order as to where to put that stock or this stock, when it arrives.

Q. When you get in a carload of copper, do I understand you have no record of where, in your plant, that is actually put—or where you put that carload of copper—you may put that carload in several different places in your plant—some of it here and some of it there, and so on?—A. Take as an example—take the case  
30 of what we call a “copper cake”, for rolling into a sheet—that would normally go into the sheet mill where it is broken down—or if there is no room there it may be put in the yard until it is time to move it.

Q. But would you have a record of the car, whether it came in the form of cakes or sheets?—A. We have records of shapes.

Q. You would have records of shapes?—A. Yes.

Q. But you would not, for instance, have of a cake which would go into the mill?—A. Into the operating mill.

Q. Yes, because they would be used for making plates?—A. Yes.

*Jacob S. Vanderploeg (Appellant)—  
Cross-Examination by Mr. Pickup (Cont.)*

Q. And would you not similarly have some kind of record to show where the ingots went or the billets went—or would you?—A. Well I am not familiar with our billet record, to be frank. I could have that answered thoroughly for you by our controller but I would answer again—that our billets or tubes would go to the tube mill—or in the yard storage nearby.

The ingots or cathodes, I should say, which are used for alloy purposes, would go into the metal storage building adjacent to the casting shop—and where it is melted to make our various alloys—or again it may be stored outdoors if we are cramped at the time.

10 Mr. PICKUP: Q. Well you could, of course, stamp metal, as it came in, with a number or other means of identifying it as to cost, that would not be a very big job, would it?

HIS LORDSHIP: What purpose would it serve?

Mr. PICKUP: To just identify the cost, that is all, my lord, and I am just directing the question to the fact that the company could identify the copper which it used, if they wanted to do so.

The WITNESS: I have said, sir, that we could conceivably keep a record—but especially a record of scrap over a period of years would become so long that it would become cumbersome—so cumbersome that it would not be of much use.

20 Mr. PICKUP: Q. That is apart from scrap—there would not be much difficulty in keeping a record of the cost of incoming copper and identifying it with what copper went into the process, would there?—A. I would like the matter of records of that—and again I repeat—left to the work manager and controller who have those details at their finger ends. I cannot answer that and be sure I am right, and I want to be right.

Q. My question is not directed to any existing records. It is directed to the principle of keeping such a record that you did not keep.

HIS LORDSHIP: He said it could be but there might be certain reasons that he doubted the value of it.

30 The WITNESS: By quantity and not by identity.

Mr. PICKUP: But what I was putting to you as a further question—that you could mark it when it came in and also note the mark or a number of marks as it went from the stock to the mill.

HIS LORDSHIP: It could be done, of course.

Mr. PICKUP: Q. Of course it could be done.

The WITNESS: It could be done.

*Jacob S. Vanderploeg (Appellant)—  
Cross-Examination by Mr. Pickup (Cont.)*

His LORDSHIP: Certainly, it could be done. If you want to keep a record you can keep a record of anything.

Mr. PICKUP: Q. Then I want to ask you something about "matching", Mr. Vanderploeg.

As I understand your evidence, when you speak about "matching" you are talking simply of matching the outward flow of copper or zinc, against the inward flow—that is right, is it not?—A. Yes, plus the other factors that I brought out about a necessary increase or decrease.

Q. I know—that is subject to the variables?—A. Yes.

10 Q. And you buy, as a whole, in relation to a calendar month?—A. Yes.

Q. And it is always after the event of a sale?—A. Well after an order is booked. The sale is not consummated until the material is shipped.

Q. No, but I would like you to tell me what is the relative period for delivery of your outgoing process goods—it is more than a month?—A. It will vary with the character of the product. Some things take longer than others and if we are busy our schedule might be increased on a given product—or it might be four or six weeks—and then there are some things, as I explained, that can be shipped from stock.

20 Q. I am not speaking of goods which can be shipped from stock because they can be shipped very quickly—there may be variables there—but as a general rule it would not be less than two months, would it?—A. Well that is a little on the high side at present—on the average I would say.

Q. What is a little on the average?—A. A little on the high side of the average, of eight weeks—a little high.

Q. I have asked for some representative orders to be brought here and schedules—and I must say the number of the ones that were produced—I will not say all because I did not look at them all—were December orders for delivery some time in February—is that about right?—A. Well that could be quite true, sir, on certain accounts with whom we have arrangements to place their orders in one month for 30 shipment the second month thereafter.

Q. Well what do you say as to it being representative?—A. On an order that comes in just out of the blue, so to speak, the schedule we put on that depends on how busy we are in that particular department. It may be four, six or eight weeks.

Q. And that is the best I can get from you, is it—that is from four to eight weeks?—A. It varies with the product, sir.

Q. And the variation is from four to eight weeks, apart altogether from the stock?—A. That would be true about now.

*Jacob S. Vanderploeg (Appellant)—  
Cross-Examination by Mr. Pickup (Cont.)*

Q. And that would be true in 1947, would it?—A. I cannot speak so well of 1947, sir—what the schedules were—it was a very busy year and I am pretty sure we were long on some items but we still have this arrangement with some accounts. to place orders in one month for shipment the second month thereafter—and the capacity was reserved for those accounts. I might say it was the automotive accounts who buy large quantities of certain sizes fairly consistently.

Q. But you do not attempt, for instance, when you take an order for say 10,000 pounds—that requires 10,000 pounds of copper—you do not attempt, in respect of that order, at once to replace your stock with another 10,000 pounds?—A. No, sir.

10 Q. As you explained yesterday, what I think you did was to have someone figure in July what amount would be delivered in August?—A. Yes.

Q. Of all outgoing orders—that is right, is it not?—A. Yes, we estimate the necessary copper, zinc and lead and nickel required in the metal content in the next month's orders.

Q. Then having estimated the metal content of deliveries in August, by way of illustration, you ordered, in July to receive in August, a similar total amount?—A. Yes, the inward flow is matched as closely as possible to the outward flow of our own production.

20 Q. So that, barring accidents and barring the variables, you would expect to receive new copper in August to an equal amount of the goods which went out—the copper content of the goods which went out—that is right?—A. That is right.

Q. And that is what you meant when you spoke about “matching inward and outward flow”?—A. Yes.

Q. And as you said there are some variables to that. I think to illustrate that, if you felt there might be a strike coming with your suppliers, you would buy more?—A. We make the best guess we can.

Q. And you use the best judgment you can?—A. But we are not infallible. We make mistakes. And at times, as you say, you do have more than you need?—A. Well we have more than might be a reasonable ratio to our shipments.

30 Q. That is, at times I take it you buy more than would be what you would call the “maximum”?—A. It is a target we aim at. The target is shifting. It is not a fixed target. It is a moving target.

Q. And you may exceed it or you may go under it?—A. That is correct.

Q. And I would suppose that, as a good general manager, if you found the price of copper low—or in your opinion low—you would be inclined to buy more copper?—A. No. I would like to impress on you, sir, that speculation in raw materials is out of our minds.



*Jacob S. Vanderploeg (Appellant)—Cross-Examination by Mr. Pickup (Cont.)*  
*Urda M. Evans (Appellant)—Examination-in-Chief by Mr. Pattillo*

Q. Well I am putting to you I think a fairly simple question.—A. You are putting to me, sir, a speculative question. We aim to have, as I said yesterday, an inventory of about—a range—you cannot have it correct—a range of two and a half to four months current shipments but depending on how your production is going that ratio will be affected from month to month.

Q. You do not care to answer that question?—A. I would like to make this expressly clear. About three months ago we were offered some Japanese copper at 2 cents a pound below the then current market—and the question was “Do we need it?”—and we did not buy it because we did not need it at the time—and if we  
 10 had wanted it we would have no way of knowing, of course, in advance what the market would be at the time we would use that copper.

Now there may be other reasons why we did not buy it—not wanting to pass up our other suppliers, our friends here in Canada—but here was a chance to buy something at a much lower price and we did not do it because we did not need it.

Another example, a clerk with whom our dealers, scrap dealers, have contact, will come to me and say “We can buy a certain amount of copper scrap or brass scrap”—and the governing factor in the decision is “Do we need it to fit our business policy?”

Mr. PICKUP: And that is all, thank you, Mr. Vanderploeg.

20 His LORDSHIP: Mr. Pattillo, any re-examination?

Mr. PATTILLO: No questions, my lord.

Mr. PATTILLO: Then I am calling Mr. Evans, the plant manager.

URDA M. EVANS, Sworn:

*Examined by Mr. Pattillo:*

Q. Mr. Evans, what is your position with the company—the Anaconda American Brass Limited?—A. I am the works manager.

Q. When did you assume that position?—A. In 1942.

Q. What are the duties of the works manager of the company?—A. My  
 30 duties are to run the plant—in charge of production—maintenance service—and personnel.

Q. And you have assumed this position in 1942. How long had you been with the company?—A. With the American Brass Company since 1922.

Q. And prior to that time were you in the brass business?—A. Yes, I was with the old Brown Brass Company since—from 1918 to 1922.

Q. And the Brown Brass Company was a company that the Anaconda American Brass purchased?—A. Yes, it was the Brown Brass and Rolling Mills Limited.

*Urda M. Evans (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

Q. Now would you tell the products which the company manufactures?—

A. We make sheets, rods and tubes in copper and copper alloys.

Q. And would you tell us the raw materials which are used in the manufacture of those products?—A. Chiefly copper, and zinc, with smaller quantities of lead, nickel and tin.

Q. And what percentage is copper to the whole of your raw materials?—A. I would say it was 80 per cent.

Q. And zinc, what percentage is it?—A. It would be around 15 per cent or better. I would say the total would probably make up 98 per cent between copper 10 and zinc.

Q. Now we have been told that the large percentage of the company's business is the production of orders received from customers to customers' specifications?—

A. That is right.

Q. Is that a relatively slow process or a quick process?—A. I would say that as a rule it is slow—a slow process.

Q. And about how long after the receipt of an order in 1947, to be made up to customers' specification, would it be before the order would be ready for shipment?—A. That would vary a great deal according to the amount of business we had at the time for any particular product. In some cases the items could be shipped 20 from stock within one or two weeks while in other cases it might take 12 weeks—or even longer. You see it is a question of machine capacity.

Q. Now what about the inventory that was being carried by the company during the years 1946 and 1947—about what quantity of metal would you have in process at all times during that period?—A. In process—you mean materials other than the raw copper and zinc—that is, that we are starting through the plant?

Q. I mean from the time it starts in the plant—what would be in the plant being worked up?—A. Oh I would say it would be over 10 million pounds—10 to 12 million pounds probably.

Q. And about how often, during that period of time, were you turning over 30 your inventories?—A. I would say about three to four times a year.

Q. And has that condition continued since 1947?—A. Yes, it remains about the same.

Q. Now Mr. Vanderploeg mentioned something about alloys, will you explain that to the court—what is done about that—the making of alloys?—A. Yes, we buy copper in cathode form.

His LORDSHIP: Q. Now would you mind explaining to me what you mean by "cathode form"?—A. A cathode is a sheet of copper that has been deposited electrolytically.

*Urda M. Evans (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

Q. That is, there has been a separation by electricity?—A. Yes, by electricity.

Q. And the copper has gone into a cathode?—A. Yes.

Q. And that is what you call "cathode form"?—A. Yes.

Q. In what form is that?—A. It is a slab or a sheet about  $\frac{5}{8}$ ths of an inch thick. The length is 36 inches by 9 inches. The tank actually takes a sheet 3 feet square—and they are cut into four pieces.

Q. That is the electronic tank?—A. That is right.

Mr. PATTILLO: Q. Now you explained that you buy this cathode—and then go on?—A. Yes. Then we buy zinc in these slab or ingot forms. We weight those  
10 two materials up with the addition of lead, tin or nickel, depending on the alloy and the amount needed for the furnace charge, which is usually about 1,500 pounds. We then put them in the electric furnace where they are melted and poured from the furnace into cast iron moulds—and the casting may be in what we call cake slabs.

His LORDSHIP: Q. And that comes out of the furnace?—A. Yes.

Q. And it may be cakes?—A. Cakes, slabs, billets or tubes.

Mr. PATTILLO: Q. Now you have explained to his lordship about casting the alloys to use in the mills—do you merely use new materials in the casting shop?—  
A. No we do not. We use a large amount of scrap in making these castings—our  
20 own scrap and scrap which we purchase through our customers and to some extent from the scrap dealers.

Q. Now you have spoken about your own scrap, would you explain to his lordship how that is generated—and what it amounts to?—A. We make scrap at almost every operation, even including these casting shops. There is a gate or a button to be cut off each casting, which goes back for remelting and at each operation in the mill we generate some scrap.

His LORDSHIP: Q. In trimming your sheets?—A. In trimming the sheets and croppings.

Mr. PATTILLO: Q. If you started out in the mill with raw material weighing about 100 pounds, what would be the amount of scrap that would be generated  
30 before that raw material would become the metal content of a product?—A. On an average there would be about 30 per cent.

Q. Oh, as much as that?—A. Yes. We try to keep it under 30 per cent but that is a pretty good average figure. Some departments are lower than others but the average of the whole plant would be about 30 per cent.

Mr. PATTILLO: Q. And does all of that scrap go back to the casting shop—and keep on going through?—A. That is right, it goes back daily into the scrap room where we accumulate it and weigh it up, along with new materials, for additional castings.

*Urda M. Evans (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

Q. Now going back for the moment to the casting shop where these alloys are made, are the castings put through there daily in accordance with the order in which the orders come through, or is there any attempt made to group other similar castings—and that sort of thing?—A. No, the actual customers' orders do not go to the casting shop. The castings are ordered by a clerk in the department requiring the material.

Q. And is there any grouping—for instance if you want one particular alloy for several different orders, do you endeavour to group those together for efficiency in castings?—A. Yes, as much as we can we try to group our orders going to the  
10 casting shop. As a matter of fact we do that all through the plant, as far as possible.

Q. Now after the castings are made, where do they go?—A. The cakes and slabs go to the rolling mill. The billets go to the rod mill for extrusion. The tube castings go to the tube mill for drawing.

Q. Now you have explained to his lordship that in these mills scrap is generated—is there anything else happens in the process of the manufacturing of the raw material into the finished product—for instance, do you have shrinkage?—A. Oh yes, we have an allowance in the castings for shrinkage because there is a loss in melting zinc.

20 His LORDSHIP: Q. A loss in melting?—A. Yes.

Q. How does that come about?—A. It goes off in fumes from the melting process.

Q. Is that from the fusing?—A. Yes. Whether it is fusing or scrap it does not make any difference—we lose a lot of the alloys.

Q. And is that the case in the case of copper?—A. Not the copper—there is no loss of copper—in the melting there is no loss in the copper.

Mr. PATTILLO: Now the work which is done in the various mills of the plant, is that of an exact nature and of close tolerance exactitude?—A. Yes, we call it so.

His LORDSHIP: Q. I did not hear the last part of your question.

30 Mr. PATILLO: Of an exact nature and the close tolerance exactitude.

The WITNESS: You are talking now about dimensional tolerances?

Mr. PATTILLO: Yes.

His LORDSHIP: Was the question directed to the casting plant?

Mr. PATTILLO: No, in the mills—the work which was done in the mills.

The WITNESS: That applies also to the casting, of course. We keep very close control in our laboratory in the final analysis of the alloy.

*Urda M. Evans (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

Mr. PATTILLO: Now you told his lordship about the scrap which is generated in the plant—does the company use any other scrap, other than its own?—A. Oh yes, we take that, almost without question, scrap generated in our customers' plants.

His LORDSHIP: Q. That is your own material?—A. Yes, largely our own material.

Mr. PATTILLO: Q. And in addition to customers' scrap—have you any other source of supply of scrap?—A. Yes, we occasionally buy some from scrap dealers.

Q. Are these supplies of scrap constant—I mean do they run at a constant level?—A. No, there is quite a bit of variation in scrap returns.

Q. Can you give us any idea from the records of the company as to what scrap 10 was received—that was received in the year 1946?—A. Yes, speaking from memory I think the average scrap for that year that we received was about 134 tons a month.

His LORDSHIP: Q. What was that?—A. 134 tons monthly—that is the average scrap, for that year—I think we only worked seven months that year.

Mr. PATTILLO: Q. Why was that?—A. On account of the strike in the summer of 1946.

Q. In the year 1947 do you know what the records show as to the amount of scrap received during that year?—A. It was somewhere around—I believe it was 1,100,000 pounds a month—in that neighbourhood.

Q. Would you be receiving close to that for each month—or were there vari- 20 ances up and down?—A. There was quite a variation, particularly in 1946. I remember looking at some recent figures where we received in two or three months well over 2 million pounds.

His LORDSHIP: Q. This is not including your own?—A. No, this is scrap received from the outside.

Q. From your customers or from scrap dealers?—A. Yes.

Mr. PATTILLO: Q. Now in the operation of the plant—is there any variation between one pound of raw metal of the same alloy and another pound?—A. No, it does not make any difference so far as we are concerned.

Q. What about the age of the raw metal—the periods of time which you have 30 them—has that any effect?—A. I have never known it to have any effect.

Q. Now my learned friend was asking Mr. Vanderploeg as to identification—do you keep any record of identification of any of the raw materials flowing through your plant?—A. Not once they start into process, no.

His LORDSHIP: Q. No, that is not exactly an answer to the question. You qualified that. What do you mean by that qualification?—A. Well we do have a record of our copper and zinc received prior to going into process in the various mills—that is that we receive it by carload and each carload is given a lot number and we can identify it up until we put it through the rolls or into process.

*Urda M. Evans (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

Mr. PATTILLO: Q. You can identify it?—A. Yes, we can, any one lot up to that point.

Q. You can identify it up to the time it commences to go into process?—A. That is correct.

Q. And after that time—after it has got into the mill and has started to be used, can you identify it from there on?—A. No, we do not keep any records of any lot numbers from there on.

Q. Now having regard to this high percentage of scrap, which you have mentioned, and the scrap flowing back into the casting shop, is it possible for you to identify it once you start throwing the scrap back through?—A. No, I would say it would be impossible.

10 Q. My learned friend was also addressing some question—

His LORDSHIP: Will you be some time still with this witness?

Mr. PATTILLO: I was going to deal with this one subject, my lord—I thought I would deal with the matter of the physical flow, but if your lordship would like to take a recess now.

His LORDSHIP: We will take a recess of ten minutes.

(A short recess was here taken)

Mr. PATTILLO: Q. Mr. Evans, just before the recess we were dealing with the question of identification and you told his lordship that you were able to identify the carloads of raw materials which came in from the refineries up until the time  
20 that they go into the plant?—A. Yes.

Q. Is it possible to identify the raw materials that are used in filling any customer's order?—A. No, no sir.

Q. Now my learned friend asked Mr. Vanderploeg about the physical flow of goods in the plant—is there any particular policy that you enforce as to the physical flow of goods in the plant?

His LORDSHIP: What do you mean by "physical flow of goods in the plant"?

Mr. PATTILLO: Quite right, my lord. I will perhaps put it first—as to the raw materials coming to the plant from the refinery, have you a policy as to the order in which they are to be used?—A. No. In the case of copper and zinc they go right  
30 to the casting shop or the scrap receiving department and it is a matter of convenience whether it comes in by car or truck. The foreman of the casting shop, if he can, takes the material right from the car or truck into the weighing department and on into the casting floor.

In the case of cakes or billets it is the same thing. We have limited storage space, and the castings are taken directly from the car to the melting furnace, if there is an order in at the time that they require that particular shape.

*Urda M. Evans (Appellant)—Examination-in-Chief by Mr. Pattillo (Cont.)*  
*Urda M. Evans (Appellant)—Cross-Examination by Mr. Pickup*

HIS LORDSHIP: Q. I suppose that is for the purpose of saving handling?—  
 A. That is right, sir. It is a question of handling cost.

Q. And you say you have limited storage space?—A. Yes, inside the building.

MR. PATTILLO: Q. And do you happen to know, Mr. Evans, of your own knowledge whether you have on hand at the plant, copper that has been received from the refineries that has been there for a good many years and that has never yet gone into the mill?—A. I would not know whether there would be any around there or not.

HIS LORDSHIP: Q. Is it likely that there would likely be any considerable  
 10 portion of quite old copper in the plant?—A. No, there would not be, sir, any large quantity that you could identify as being an old lot. There might be. There is only one instance that I know of where we had some cast billets which had been in the yard for about five years—that is an alloy.

Q. Some cast billets?—A. Yes.

Q. That were in the yard, and was that any particular kind of alloy?—A. It was a special alloy for which we had no orders during that period.

MR. PATTILLO: Your witness, Mr. Pickup.

*Cross-Examined by Mr. Pickup:*

Q. Mr. Evans, do you know how much of your copper inventory is usually in  
 20 work in process?—A. Just copper alone, sir?

Q. Yes, take copper.—A. Well we would have—say if we had 10 million pounds of copper content, we would probably have about 7 million pounds.

Q. I am thinking of the percentage of the copper inventory that you have on hand compared to—no, the percentage of copper inventory which is in process as compared with your total copper inventory and two-thirds, you say?—A. That is copper and zinc, it would be about two-thirds.

HIS LORDSHIP: Q. That is in process?—A. Yes.

Q. Is about two-thirds of your total?—A. That is about right.

MR. PICKUP: Q. And you said I think that it was in the ratio of 80 to 15?—  
 30 A. About that.

Q. That is 80 per cent copper and 15 per cent zinc?—A. About that ratio, yes.

Q. And you mentioned scrap and the average they—no, I think you said you got 30 per cent scrap out of 100 pounds say of copper that goes into process when you are doing something according to specifications?—A. That is right—that would be either copper or alloy.

*Urda M. Evans (Appellant)—  
Cross-Examination by Mr. Pickup (Cont.)*

Q. And I suppose that means that out of 100,000 pounds that goes into work in process on some particular thing, you get 30 per cent scrap? And I understand then that the scrap goes back into—A. It goes right into the scrap receiving department.

Q. How do you measure the metal content of the article which is delivered?—  
A. How do we measure the metal content of the article that is shipped to our customers?

Q. Yes.—A. We do that through our laboratory control and through our weighing apparatus in the casting shop.

10 Q. Is that a matter of weighing before or after the scrap comes out?—A. Well it could be either, sir.

Q. Well I am not making myself very plain. Let us take again 100 pounds is weighed for a particular order—A. Are you speaking of copper or alloy?

Q. I am speaking of copper now.—A. Yes.

Q. 100 pounds is weighed for a particular order and how do you tell how much of that copper to include in your price of the article?—A. Well I do not know anything about the prices, sir. I am not concerned with the prices.

Q. I see. You do not know then whether the price is quoted according to the metal content or according to the copper which goes in from stock to fill that  
20 order?—A. Well I know generally that the ratio between the makeup of the price of the copper and the processing charge—

Q. My friend suggests to me and perhaps I will adopt it—how do you know what the metal content is?

His LORDSHIP: Of what—of the finished product?

Mr. PICKUP: Q. Of the finished product?—A. Just what do you mean.

Q. How do you know what the metal content is of the finished product?—  
A. We know, if it is a copper item, it is 99·9 per cent copper.

His LORDSHIP: Q. You weigh it?—A. Surely, we weigh it going out of the shipping door.

30 Mr. PICKUP: Q. And that is the answer I was after.—A. I did not catch what you were driving at.

Q. After you finished the finished product you will weigh it and therefore get the metal content?—A. That is right.

Q. And thus that which should be charged, to thereby see that you do not charge a customer with some scrap which has gone back into the stock?—A. Oh, yes. I am sorry, I did not get your question.



*Urda M. Evans (Appellant)—  
Cross-Examination by Mr. Pickup (Cont.)*

Q. Now then you said that you could identify goods—that is copper coming in, up to the time it commences to go into process. Now my friend afterwards said something about identifying it up to the time when it goes into the plant.

Is the first answer the right one—that is, you can identify it up to the time the copper goes into process?—A. Yes, by lot numbers.

Q. So you can identify it beyond the time that it goes into the plant?—A. Yes, up to the time that it goes into process.

His LORDSHIP: Q. You can identify it up to the time it goes into process?—A. Yes.

10 Q. That is from the time you receive it into the plant, up to the time it goes into process?—A. That is right.

Mr. PICKUP: Q. So any copper going into process, the price of that copper would be known to the company?—A. I would expect so, yes.

Q. But is any record kept of that—here, it is known at the moment it goes into process what the copper cost is, but is any record made of what that copper cost—that copper which went into process did cost?—A. I am not familiar with just what records are kept but I know that we have records that we can identify any lot up to that time. In other words, when a carload is received we give it a lot number—each carload—if it is not a mixed carload and very few of them are—we apply a lot  
20 number to it and that lot number is attached to the carload number and the carload numbers have the refinery identification numbers—so up to that point we have all that information.

His LORDSHIP: Q. I suppose you would want to keep that for the purposes of determining the quality?—A. That is correct, sir.

Q. To see which supplier you got it from?—A. Well we have only one supplier of copper although there are two or three of zinc—but that is a factor and it is a question of being able to make a speedy check of inventory. We try to use up one complete lot at a time.

Q. Oh, just a minute, you try to use up one complete lot at a time?—A. Yes.

30 Q. Well then you have some policy?—A. In that respect, yes—in regard to using up one lot—although that may not always be possible, again depending on our storage facilities. We might only have room for part of the car in the mill and the other part would be outside and in that case we would not use up the complete lot, but if another car came into the mill and we had room we would use it up first.

Mr. PICKUP: With regard to the scrap which you take in from customers—do you take that in at the current price of copper at the time?—A. I am not too familiar with the prices again, but I understand that we have a price list for scrap, as well as our finished product.

*Urda M. Evans (Appellant)—Cross-Examination by Mr. Pickup (Cont.)*  
*Theodore E. Veltfort (Appellant)—Examination-in-Chief by Mr. Pattillo*

His LORDSHIP: Q. And by that you mean what?—A. A scrap allowance to the customers, which is listed.

Mr. PICKUP: Q. And who can give me that information—Mr. McGinn?—A. Mr. McGinn or Mr. Vanderploeg could give you that.

Q. You do not know whether it is the same price that you pay for copper which you buy from the refinery?—A. No, I would not be too sure.

Q. You spoke of an instance where you did know of a certain casting or cast billet of alloy that was on hand for some period of time?—A. Yes.

Q. Is it still on hand?—A. Part of it.

10 Q. And that is the only material that you could identify that is not completely sold—and that is still on hand?—A. So far as I can recall, yes. I would not say that. There may be some scrap hidden away in the scrap bins in the scrap room that may have been made months ago—I cannot be too sure about that.

Q. But that is all you know of?—A. That is the only one I know of offhand.

Q. And that is an alloy which could only be used for some particular purpose, is that it?—A. That is correct.

Q. And you would not use that in filling any order which required the use of raw copper?—A. You say we would or we would not?

Q. You would not.—A. No, we would have to use it for a specific job.

20 Q. And the reason why you have not used it is because you have not had an occasion to use it?—A. That is correct.

Mr. PICKUP: All right, thank you.

His LORDSHIP: Any re-examination?

Mr. PATTILLO: That is all my lord, and I will call Mr. Veltfort.

THEODORE E. VELTFORT, Sworn:

*Examined by Mr. Pattillo:*

Q. Mr. Veltfort, what is your present position?—A. I am manager of the Copper and Brass Research Association.

Q. Where is its office?—A. 420 Lexington Avenue in New York City.

30 Q. How long have you been the manager of that Association?—A. Since 1938 under that title, although I have been supervising the activities of the Association since it was organized in 1933.

Q. Is the American Brass Company a member of the Association?—A. The American Brass Company is not a member of the Association.

Q. Prior to your becoming associated with this Association, with whom were you associated?—A. With the Stone and Webster Engineering Corporation.

*Theodore E. Veltfort (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

Q. And what was your position with them at the time that you left to go with the Association?—A. I was known as a consultant, a position with Stone and Webster, which meant that you were on call to go on any special assignment—general business problems of one kind or another.

Q. Are you an engineer?—A. I am an engineer, civil engineer.

Q. Now prior to your going with this Association had you had any experience with primary brass plants in the United States?—A. I did. Among my assignments was a complete report on one of the brass mills.

Q. And since going with the Association have you had very much personal  
10 experience with the primary brass mills in the United States?—A. Of course it is one of my duties to keep in constant touch with the mills by visit and by frequent meetings we hold of various committees and sections in the Association— and to speak for the industry at hearings and before government agencies and so on.

Q. Now at my request did you make an inspection of the Toronto plant of the Anaconda American Brass Company?—A. Yes, I did.

Q. And what do you say as to that plant, as compared to the primary brass plants in the United States?—A. I would say that in all respects it is a typical brass mill, as I know brass mills.

Q. Was there any difference that you could see in the manner in which the  
20 plant was being operated and the manner in which the plants in the United States operate?—A. Outside of differences in equipment and details of procedures and so on—no, it is exactly the way that I would expect a brass mill to be run.

Q. Now in your position with the Association in New York, do you obtain particulars from the members of the Association—of your Association—as to the cost of copper and as to the cost of their products?—A. Not from the members.

Q. Not from the members?—A. Not from the members.

Q. Do you prepare charts from data which come into your possession as to the comparison between the price of copper and the price of the copper products sold in the United States?—A. I do.

30 Mr. PICKUP: In fact I do not know, my lord, but I submit he cannot give an opinion based on anything except on facts.

His LORDSHIP: Is an expert confined to facts?

Mr. PICKUP: Before we put this in, my lord, I was just wondering whether it was admissible as proof of copper prices. The witness has so far said that he made it up from information which comes to his office. That I hardly think is sufficient. It may not be of much importance but I do not think that a witness can just come here and say that certain information has come to his office and “I transcribed that information” and then offer that as proof.

*Theodore E. Veltfort (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

His LORDSHIP: Well would there be trade journals and so on?

Mr. PICKUP: It must be an easy matter to prove the price of copper at any time but I question this method of proving it.

His LORDSHIP: That may be so—what do you say, Mr. Pattillo?

Mr. PATTILLO: Perhaps, my lord, if my learned friend would just make his objection and I can get the witness to tell the information that he has used to prepare this chart and then if your lordship decides that it is not admissible I will have it struck out.

Mr. PICKUP: That is satisfactory—if the witness knows.

10 His LORDSHIP: And also it may be that there may be a more exact and precise method of proving prices but it might require calling some other witnesses to prove exactly what the prices were. Now if there is no real dispute or controversy as to it—perhaps we can deal with the whole question after we have heard from this witness as to what sources he used to compile this chart—perhaps that would be the best way to do it.

Mr. PATTILLO: Q. Mr. Veltfort, I am showing you a chart which is headed:

“Comparison of prices of composite of copper products with metal costs.”

Who prepared this chart—did you prepare it?—A. Yes, Mr. Pattillo, I did.

20 Q. And I see that it covers, according to the bottom line, the years 1939 up to the present time—the middle of 1950?—A. That is right, it does.

Q. First, dealing with the lower line which is marked “Copper Costs”—what is that line supposed to represent?—A. That is based on the price of copper as reported by the American Metal Market which is the authoritative trade journal in the industry—which you will find on the desk of every executive in the industry.

Q. Now looking at the left hand column of this chart you have marked “Cents per pound”—so that this is being expressed in the price per pound?—A. That is right, sir.

30 Q. Now looking at the top line, which you have marked “Composite of copper products”—what does that line represent?—A. That line represents the average of brass metal prices as again reported.

His LORDSHIP: Q. That is for the finished product?—A. For the finished product, again as reported by the American Metal Market.

Mr. PATTILLO: Q. Now does this chart purport to deal with any of the products of the brass mill, except copper products?—A. That is all.

His LORDSHIP: Q. Now that is, there is nothing in this relating to alloy products?—A. No, just 100 per cent copper—no alloys.

*Theodore E. Veltfort (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

Mr. PATTILLO: Q. And I see at the bottom right hand corner of your chart you have marked: "Source: American Metal Market, metal statistics."—A. That is the official source,—the effective sources which we use in giving percentages of economic facts with respect to the industry.

Q. Now Mr. Veltfort, did you prepare this chart for the purpose of giving evidence at this trial—or was it prepared for any other purpose?—A. It was prepared for an entirely different purpose. It was prepared for a talk which I gave about eighteen months ago before the Connecticut section of the American Mining and Engineering Institute.

10 Q. And you just brought it up to date?—A. I am keeping it up to date now,—among numerous other statistical documents.

Mr. PATTILLO: I would like to tender this, my lord, and have it marked.

His LORDSHIP: I think it could be marked. That will be Exhibit 5.

EXHIBIT No. 5: Filed by Mr. Pattillo	{	A chart prepared by the witness Veltfort showing the comparison of prices of composite of copper products with metal costs.
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Mr. PATTILLO: Q. Now in addition to Exhibit 5 with which we have just dealt, have you—or I show you this chart which is headed:

"Comparison of prices of composite of brass mill products with metal costs."

20 And then in brackets:

"70-30 Brass."

Did you prepare this chart, Mr. Veltfort?—A. I did.

His LORDSHIP: Q. What does "70-30 Brass" mean?—A. 70-30 is an expression, my lord, used to mean 70 per cent copper, 30 per cent zinc. It is a 70-30 brass, which is known in the trade.

Mr. PATTILLO: Q. Now dealing with this chart—and again looking at the right hand side—you have marked "cents per pound"—so the chart is calculated on a cost per pound, is that correct?—A. That is correct.

His LORDSHIP: Q. Is that weighted for the different ingredients?—A. Yes.  
30 That is, for instance, in the metal cost we have taken 70 per cent of the cost of copper and 30 per cent of the cost of a pound of zinc—so that is what is known in the industry as the metal cost—it is the cost of the mixture that enters into that particular brass.

Q. I notice that line is somewhat lower than the line marked "copper cost" in Exhibit 5?—A. That is correct because zinc costs less.

Q. That is because zinc costs less?—A. That is right, sir.

*Theodore E. Veltfort (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

Mr. PATTILLO: You have now explained the lower line to his lordship.

Will you tell him what the upper line, which is marked "Composite of brass mill products" is supposed to represent?—A. That is again based on the prices of finished brass metal products of that kind, as reported in the American Metal Market—in or about the same proportion as they are shipped. In other words, including so much brass and so much labor and it is about the only way you could indicate it. I might add for your information that it is for simplification only. A test shows that if the individual products were put down there they would be merely a series of parallel lines, so for the convenience of explaining it to this  
10 technical group, I used this composite.

Mr. PATTILLO: Q. And again, Mr. Veltfort, did you prepare this particular chart for the purposes of this trial?—A. No, it was prepared the same as the other chart which you have here for this talk which I gave at the meeting of the members of the metal industry—of the American Institute of Mining Engineers.

Q. And it has been brought up to date?—A. It has been brought up to date.

His LORDSHIP: Q. And it is prepared from the same sources?—A. The same sources, very much.

Q. The same as the previous exhibit?—A. That is right, sir.

Mr. PATTILLO: And I would like to tender this, my lord, as an exhibit.

20 His LORDSHIP: It will be Exhibit 6.

EXHIBIT No.6: Filed by Mr. Pattillo	{	A chart prepared by the witness Veltfort showing comparison of prices of composite of brass mill products with metal costs—70-30 brass.
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Mr. PATTILLO: Q. Now Mr. Veltfort, from your knowledge of the manner in which—

His LORDSHIP: Just a moment, this is a comparison that relates to what metals?—A. No, it is the industry as a whole—that represents the industry.

Q. Not members of your Association?—A. No. I might point out, your lordship, that the Association carefully avoids any discussion of any individual  
30 mills as to their pricing policy. When we deal with it we deal with the industry as a whole.

Q. And this is representative of the entire industry?—A. Yes, entirely.

Q. In the United States?—A. In the United States.

Mr. PATTILLO: Q. Mr. Veltfort, from your knowledge of the primary brass mills in the United States, can you say what is their policy as to the pricing of goods which they sell?—A. I will have to qualify that answer in the terms that are just expressed—that I have no direct knowledge.

*Theodore E. Veltfort (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

Mr. PICKUP: And I must object to that, my lord. In the first place, I do not think that we are concerned here with the pricing policy—and secondly, I do not know how the witness can speak as to the policy of individual mills in the United States, except from hearsay—and I have no opportunity at all to cross-examine the person whose policy is brought before this court.

On those two grounds I submit it is not relevant—that the witness is not in a position to tell us what company “A” or company “B”, of which he is not an officer, did—he can only tell us from hearsay.

His LORDSHIP: Mr. Pattillo, what do you say as to that?

10 Mr. PATTILLO: My lord, what I am endeavouring to establish here is that, as I said in my opening,—there is nothing extraordinary or peculiar in the way in which we do business. We simply have been doing business—and have for years—been doing business in the same way as the whole industry.

His LORDSHIP: You were doing business in the same way as was done by the average business in the industry?

Mr. PATTILLO: That is right, my lord.

His LORDSHIP: That is the industry in the United States.

Mr. PATTILLO: That is the industry in the United States. From 1922 on we were the only business of the kind in Canada and there were no other companies—  
20 although now there have been one or more small ones started up. If my learned friend will say that he admits that, I will not pursue the matter.

Mr. PICKUP: Admit what?

Mr. PATTILLO: That what we say that our method of doing business has been followed generally—if you know of your knowledge that that is so, I will not pursue the matter but I do think—I have brought this man here, who is an expert—

His LORDSHIP: He is an expert on what—methods of doing business?

Mr. PATTILLO: I think he has a peculiar knowledge of the brass industry in the United States.

His LORDSHIP: And how it operates?

30 Mr. PATTILLO: And how it operates—and I think once we have said that, I think that I am entitled to try and get from him what he does know about these particular matters which are of significance in this case.

His LORDSHIP: Well has he not already really stated that?

Mr. PICKUP: Yes, and I did not object to that.

His LORDSHIP: That in all respects it is a typical brass mill—that there is no difference between it and the mills in the United States.

Mr. PATTILLO: Yes.

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His LORDSHIP: Except in the matter of a difference of equipment and so on—but that may be as to physical operation.

Mr. PATTILLO: That is what I was afraid that it would be limited to,—and that is why I wanted to go on with the rest,—so that the record will be clear.

His LORDSHIP: Well I will note Mr. Pickup's objection and you may proceed.

Mr. PATTILLO: Thank you, my lord.

Q. Now, Mr. Veltfort—would you again, Mr. Reporter, read the question which I had asked.

The Reporter: (Reading)

10 “Q. Mr. Veltfort, from your knowledge of the primary brass mills in the United States can you say what is their policy as to the pricing of the goods which they sell?”

The WITNESS: Well I qualified that to begin with just to make clear, that the Association does not enter into discussion with the individual mills as to their pricing or pricing policies but I want to add that, in my position, it readily comes to my knowledge what is happening in that respect because discussions at various times on various things, brings these things in incidentally. The matter is public—prices are regularly published both in trade journals and in the trade press, which come to me and I would say “universally” the mills price their finished products  
20 on the price of copper and brass at the time.

His LORDSHIP: Q. The mills price their finished products—A. On the basis—  
Q. On the basis of copper at the time?—A. That is right.

Mr. PATTILLO: Q. And you say as “at the time”—what time do you mean?—  
A. Well it is different from time to time—sometimes on the date of delivery—sometimes it has been at the time the order was taken—and sometimes on an average over the previous week—very much depending on the source of protection which they get from the copper producers.

Q. Well would it be correct then to say that the mills price their finished products on the basis of the replacement cost of the copper—the copper content—of the  
30 finished product?—A. In season, yes, but there may be times, like before the War when an order was taken the price given was the cost of the copper right at that date because they could protect themselves. If you want to consider that replacement.

Q. That is “replacement” subject of course to what the producer or the supplier of the copper does?—A. That is right—that is right.

Mr. PATTILLO: Q. Now Mr. Veltfort, in your position as manager of this Association in New York, do you know of your own knowledge what percentage of your members keep their accounts by the cost of sales on a L.I.F.O. basis?—A. I do



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not know with respect to the corporate accounts. If you mean by that, for tax purposes, that is something else because I made the study of that recently in connection with an application we made. I made an enquiry and I received replies—it is not yet complete—I received replies from two-thirds of the primary mills and among those two-thirds, the number of mills—

Mr. PICKUP: I object, my lord, to the witness giving us his evidence in proof of fact of the user of l.i.f.o., the replies which he has received from various people as to whether they did or did not. It is purely hearsay.

His LORDSHIP: How does an expert come to express an opinion as to an industry  
10 —if he is an expert on an industry, how does he proceed to give an opinion with respect to the industry and how it operates and so on?

Mr. PICKUP: In fact, I do not know, my lord, but I submit he can not give an opinion based on anything except on facts.

His LORDSHIP: Is an expert confined to facts?

Mr. PICKUP: No. He can give an opinion which is based on facts and not an opinion which is based on something else. He is now at the moment not giving evidence—he is not giving us an expert opinion at all. At the moment he is giving us evidence in answer to a question as to what percentage of mills—primary brass mills I suppose—what percentage of them, for various purposes, use l.i.f.o., and  
20 he does not know himself but he says he has made some enquiries and written the mills to find out and they have given him answers.

Q. I suppose technically speaking you are perfectly right but the Appellant would call all the various persons from all the mills in the industry to give us that.

Mr. PICKUP: Yes.

His LORDSHIP: He could do that and we would adjourn, if necessary, for him to do that.

Mr. PICKUP: Well—

His LORDSHIP: You are perfectly right in your objection.

Mr. PICKUP: I know I am perfectly right.

30 His LORDSHIP: You are perfectly right in your objection but another solution may be found for it, and it might be necessary to sit here until all that information is obtained if it is relevant.

Mr. PICKUP: My lord, I never want to delay proceedings, as your lordship knows, but at the same time I am opposed to letting a case be tried on hearsay evidence when it is going to take too long to try it properly.

His LORDSHIP: I quite appreciate that but what is being sought is just one point—one point which is being sought to be made, as I understand Mr. Pattillo

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to say—to establish the manner in which his client operates is similar to that in which the industry as a whole in the United States operates. Now that is the only fact that he is seeking to establish. Technically of course you are right in your objection.

Mr. PICKUP: I thought he was seeking to establish more than that—and that is this, he is agitating before this court that l.i.f.o. is a good principle.

His LORDSHIP: Not only a good principle but a proper principle.

Mr. PICKUP: And he says “one reason that I am saying that is that a certain percentage of other companies in another country are doing it.” Now the moment  
10 he says the second thing, that is a question of fact which I am not prepared to accept as having been proven. The witness says “I wrote these companies to find out and they said, Yes I am or I am not.” Now I do not think it can hurt us at all so far as my view of the case is concerned, but at the same time I think I should be entitled to get a trial based on evidence which is evidence, notwithstanding what my friend might want to give—not whether 50 or 100 companies in the United States are using that method.

His LORDSHIP: Mr. Pattillo, what have you to say as to this?

Mr. PATTILLO: I thought I might be able—I think if I phrase my question in this way, although perhaps my learned friend may wish to say something about  
20 it, and I will ask the witness not to answer it until my learned friend has had an opportunity to object if he wishes to do so.

Q. Mr. Veltfort, from your experience with the primary brass producers in the United States, in your opinion are any of them returning their tax returns on the basis of the employment of the l.i.f.o. method of calculating cost?

Mr. PICKUP: And that is an unfortunate way of getting the witness to say what I have objected to him saying, by way of an opinion.

His LORDSHIP: Surely whether the l.i.f.o. principle is being used in the United States to a considerable extent is easy of determination, but how would you determine it without calling a lot of individual persons? Somebody must know  
30 that. Would not the accountant know whether the l.i.f.o. principle is in common use in such an industry as the brass industry in the United States—would they not know whether that was in common use?

Mr. PICKUP: I do not know, my lord, whether they will know or not.

His LORDSHIP: They might not know individually but there are certain things that are general knowledge.

Mr. PICKUP: Well I would say that a matter as to whether or not it was 50 per cent or 60 per cent or 70 per cent of the industry—

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His LORDSHIP: I do not care about the percentage. I agree the percentage, when it comes to percentage, that might become debatable, but supposing the question were put in this way—are you able to say whether the l.i.f.o. principle is in common use in the brass industry in the United States—now do not answer that—would that meet the situation?

Mr. PATTILLO: It would be perfectly satisfactory so far as I am concerned, my lord.

His LORDSHIP: Well now is that not a matter of common knowledge which a person who has general experience could testify to? He may not be able to say  
10 whether this particular company uses it or that particular company uses it, but surely he can say whether or not the principle was in common use in the brass industry in the United States.

Mr. PICKUP: Will that not depend upon the witness?

His LORDSHIP: I mean if he can say it—if he can give the information—why would that not be admissible?

Mr. PICKUP: If the witness can say it is a matter of common knowledge in the United States—that is your point.

His LORDSHIP: No, not a matter of common knowledge because he is an expert in relation to the industry but whether it is in common use in the industry.

20 Mr. PICKUP: Then we get away from the use of the common knowledge which your lordship just mentioned to me.

His LORDSHIP: He is an expert. His knowledge is a specialized knowledge of that industry.

Mr. PICKUP: Quite so.

His LORDSHIP: And he can then express his opinion whether, in that industry having regard to his special knowledge of that industry, he can say whether or not the l.i.f.o. principle was in common use.

Mr. PICKUP: My lord, I still take the position which I have outlined, that to express an opinion which is not an opinion at all—it is a statement of fact—  
30 and if he is not basing it on common knowledge he can only base it from hearsay and that is exactly where we started.

His LORDSHIP: Well you may put the question, Mr. Pattillo.

Mr. PATTILLO: Will the reporter please read your lordship's question?

His LORDSHIP: I do not know that I have phrased it in the best possible way but I put that forward.

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Mr. PATTILLO: I would like to adopt that question, if the reporter will please read it, as my question.

The REPORTER: (Reading)

“His LORDSHIP: Supposing the question were put in this way—are you able to say whether the l.i.f.o. principle is in common use in the brass industry in the United States?”

His LORDSHIP: Q. From your knowledge of the brass industry in the United States, are you able to say whether the l.i.f.o. principle is in common use in the brass industry in the United States?—A. From my actual knowledge, your lordship,  
10 of the industry, I am able to say that it is.

Mr. PATTILLO: Q. Now Mr. Veltfort, from your knowledge of the industry do you know what the general practice in the industries in the United States is with respect to toll business?—A. Well by the toll business—

His LORDSHIP: Q. First, what is “toll business”?—A. May I explain, your lordship?

Q. Yes.—A. On the toll business the customer supplies the copper to the mill.

Q. Yes.—A. And then that mill converts either that copper or an equivalent amount of copper into the product which the customer wants—the finished mill product which the customer wants—that has not been an uncommon practice in the  
20 industry. It varies from time to time and the business is done on the basis that the customer receives his products on the same basis as any other customer does and is merely credited for the copper which he supplies.

Mr. PATTILLO: Q. By that you mean that there is no variation made in the processing charge when he supplies the copper—to the case when the mill supplies the copper?—A. From my knowledge there is not.

His LORDSHIP: Q. He can either supply his own copper or have the mill supply it?—A. That is correct, sir.

Mr. PATTILLO: Q. And from your knowledge of the industry, can you tell us what proportion of the industries' products are made in anticipation of sales and  
30 what proportions are made up according to the customer's specification?—A. From my estimate based on—

Mr. PICKUP: Again my objection.

His LORDSHIP: Yes, the same objection. It will be noted.

Mr. PATTILLO: Yes.—A. From my estimate of the products produced by the industry, which are regularly reported, I estimate that not more than one-third of their products are such that they can be produced in anticipation of orders. The balance would be made particularly to specification.

*Theodore E. Veltfort (Appellant)—Examination-in-Chief by Mr. Pattillo (Cont.)*  
*Theodore E. Veltfort (Appellant)—Cross-Examination by Mr. Pickup*

His LORDSHIP: Q. And approximately 70 per cent would be made to the customer's specifications and 30 per cent in anticipation of orders?—A. Yes, and I might explain that that covers such things as water tubing, piping and so on.

Q. Standard products?—A. Standard products. Known as "merchandising products" in the industry. Sheet copper, you see, for the flashing of roofs and certain types of rod which are used for screw machine purposes, which is highly standardized.

Mr. PATTILLO: Q. And from your knowledge of the industries in the United States, what do you say as to the policy followed by the primary brass producers 10 as to the flow of raw metals in, having relation to the flow of the metal content of products out?—A. Repeat that again, please, I am not sure that I got the sense of your question.

Mr. PATTILLO: Mr. Reporter, will you please read the question?

Mr. REPORTER: (Reading)

"Mr. PATTILLO: Q. And from your knowledge of the industries in the United States, what do you say as to the policy followed by the primary brass producers as to the flow of raw metals in, having relation to the flow of the metal content of products out?"

Mr. PATTILLO: Q. Now will you answer that?—A. From my knowledge of the 20 industry I would say that it is traditional in the industry to keep its inflow of metals strictly in accord with its required outflow.

Mr. PATTILLO: Your witness, Mr. Pickup.

Mr. PICKUP: I have just a very few questions, Mr. Veltfort.

His LORDSHIP: It is almost one o'clock.

Mr. PICKUP: Well perhaps we had better not start now then.

His LORDSHIP: Then we will adjourn until 2.30.

(At 1.00 p.m., the court was adjourned, to be resumed at 2.30).

#### AFTERNOON SESSION

His LORDSHIP: All right, Mr. Pickup.

30 THEODORE E. VELTFORT,  
*Cross-Examined by Mr. Pickup:*

Q. Mr. Veltfort, just a question or so about Exhibits 5 and 6.

I understand from your evidence that these exhibits show your figures of costs or prices in the United States only?—A. That is right.

*Theodore E. Veltfort (Appellant)—  
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Q. And they were prepared by you for the purpose of enabling you to give a talk on, I think you said, "The economics in the brass industry."—A. I said "The economics of the brass industry."

Q. That is, they were prepared from an economic standpoint?—A. That is right.

Q. Then you spoke of the l.i.f.o. principle being in common use by the brass industry in the United States—I was wondering what period you are speaking of—are you speaking of the present period?—A. I am speaking of the current period.

His LORDSHIP: Q. Then how far back?—A. Back to the time that the question  
10 was under consideration in the industry back to 1939.

Q. Back to 1939?—A. Yes.

Mr. PICKUP: Q. So you are speaking of the period since the amendment by Congress to the code relating to internal revenues?—A. That is right, sir. The question involved the use of this principle.

Q. And just to shorten it—and I believe you may agree with me—that that code came into effect relating to certain industries, including the brass industry, in 1938?—A. That is right.

His LORDSHIP: The code in the United States?

Mr. PICKUP: The amendment to the code, which is Section 22(d).

20 His LORDSHIP: In what year?

Mr. PICKUP: The code came into effect in 1938 and then it was amended in 1939.

His LORDSHIP: Now what is the full name of the Act—I mean does it have a name or is it just identified by date and year?

Mr. PICKUP: Well the reference I have here is to the 1939 amendment and it is referred to as an amendment to Code, Section 22—and that is the Internal Revenues Code.

His LORDSHIP: Give me that again.

Mr. PICKUP: The Internal Revenues Code—and it is Section 22(d).

30 His LORDSHIP: Of 1938—of the Act of 1938.

Mr. PICKUP: Well of course the Internal Revenues Code goes away back of that and I do not know whether—

His LORDSHIP: Oh, I know that.

Mr. PICKUP: And I do not know whether that is referring to 1938 or not. The year 1938 is, I know, the year in which the amendment was made to that code which first enabled the use of the l.i.f.o. method. That was in 1938.

*Theodore E. Veltfort (Appellant)—Cross-Examination by Mr. Pickup (Cont.)*  
*Arthur Robert McGinn (Appellant)—Examination-in-Chief by Mr. Pattillo*

Mr. PICKUP: Q. That is right, is it not, witness?—A. That is right.

Q. And at that time did it cover such an industry as the brass industry?—

A. That is right.

Q. And I think one or two others?—A. That is right.

Q. And Mr. Cross tells me that it is called an elective method?—A. I think that term was used, yes.

Q. And as introduced over there it had certain restrictions and conditions attached to it?—A. Yes.

Q. So when you speak of something being—of this l.i.f.o. method being in  
 10 common use in the United States—you are first speaking of a period since 1938?—

A. And with respect to the brass industry.

Q. That is right?—A. That is right.

Q. And you are speaking of the l.i.f.o. method in the sense that it is employed in that statute, with the restrictions or conditions which attach to it?—A. That is right, sir.

Mr. PICKUP: And that is all, thank you.

His LORDSHIP: Any re-examination?

Mr. PATTILLO: No, my lord—and I will call Mr. McGinn.

ARTHUR ROBERT MCGINN, sworn

20 *Examined by Mr. Pattillo:*

Q. Mr. McGinn, you are the controller of Anaconda American Brass Limited?

—A. I am, sir.

Q. How long have you had that position?—A. Since October 1943.

Q. When did you join the company?—A. In 1941.

Q. You are a chartered accountant?—A. Yes.

Q. And prior to 1941 you were practising as a chartered accountant in the City of Toronto for a number of years?—A. Yes.

Q. Now, Mr. McGinn, will you please tell us whether the books which the  
 30 company keeps are different from those kept by any normal manufacturing company,—and if so in what particulars they are different?—A. I do not think they differ, sir—they are all pretty well the same.

Q. And what about the inventory records—does the company keep inventory records?—A. Yes.

Q. What do they consist of?—A. The record of the metal received and as it is passed through the mill in the state of processing—and scrap—and the total poundage.

*Arthur Robert McGinn (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

His LORDSHIP: Q. They record the metal received?—A. That is one thing they record, yes.

Q. And what else do they record?—A. As it is passed into the mill it is taken out of the raw metals and put into goods in process, and when it is shipped out the door it is credited to the inventory account.

Q. When it is shipped?—A. When it is shipped.

Q. When the finished goods are shipped?—A. Yes.

Q. Then it is credited?—A. The metal content is credited.

Q. The metal content is credited to the inventory?—A. To the inventory  
10 account, yes.

Q. That is when you make the credit—as of the date of the shipment of the finished goods?—A. Yes.

Mr. PATTILLO: Q. When it comes to preparing a financial statement of the company at the end of each fiscal period, are these inventory records used in connection with the preparation of those statements?—A. Yes, they are.

Q. Are these inventory records at any time verified by physical check?—A. Yes, they are.

Q. When is the physical check made?—A. Usually in the holiday season, in the summer. At the end of July or the first week of August—usually the last week  
20 of July.

Q. And the fiscal year of the company ends when?—A. December 31st.

Q. And when the physical check is made, what has been the experience of the company as to the variation, if any, between it and the inventory records?—A. It is not substantial.

Q. And where there is found to be—or if there is found to be a variation, what is done?—A. The inventory accounts are corrected to take up the shortages or the overages of the metals on hand.

Q. In other words, the physical check is the one which is treated as being accurate?—A. That is right.

30 Q. Now you used the word—in speaking about this variation—you say it is “not substantial”, would you explain that, please?—A. Well we deal with many millions of pounds of metal in each year. I do not know, offhand, the number, but we deal in roughly six or seven million pounds a month and our differences would be a very, very small fraction of that—very small.

Q. Would it be as much as—would it be less than a million pounds?—A. Oh yes, much less.

His LORDSHIP: Q. A year?—A. Yes.



*Arthur Robert McGinn (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

Mr. PATTILLO: Would it be less than 500,000 pounds?—A. Yes, I would say it would be less than 500,000 pounds.

Q. Now have you, in your capacity as controller of the company, made any calculations to ascertain the proportion of the sales' dollar derived from the sales of the company's products, which is represented by the cost of metal?—A. Yes, I have sir.

Q. And what have you found the figure to be?—A. Approximately 60 per cent.

Q. In the years 1946 and 1947, would that be it?—A. That would be it.

Q. That would be the figure at that time?—A. Yes.

10 His LORDSHIP: Q. And that is, the cost of the metal would be approximately 60 per cent of the sales' dollar?—A. Yes.

Mr. PATTILLO: Q. Now is the method known as "l.i.f.o." used in calculating cost of sales in connection with all of the raw materials used by the company?—A. No sir, just on four of the major metals.

Q. Which four are those?—A. Copper and zinc are the two major metals of course—and lead and tin are also taken on the l.i.f.o. basis.

His LORDSHIP: —Not nickel?—A. No, not nickel.

Mr. PATTILLO: Q. When did the company first employ the l.i.f.o. method in arriving at cost of sales in connection with the raw materials, copper and zinc?—  
20 A. 1936.

Q. And has it, for its corporate purposes, continued to use that method in connection with those raw materials ever since 1936?—A. It has, yes.

Q. When did it first commence to use the method in so far as the other two raw materials are concerned?—A. 1947.

His LORDSHIP: Q. Which other two materials?—A. The lead and the tin.

Mr. PATTILLO: Q. That is commencing with the year 1947?—A. Yes.

His LORDSHIP: Q. Up to that time you had used it only for the two?—A. That is right, sir.

Mr. PATTILLO: Q. Now would you explain the method that is used by the  
30 company or that was used by the company in the year 1947 in ascertaining the cost of sales?

His LORDSHIP: In 1946 and 1947.

Mr. PATTILLO: Q. In 1947, in ascertaining the cost of sales in respect of copper for that year?—A. The purchases of copper during the year are added to the opening inventory of copper—the closing inventory is subtracted—the resultant figure is the cost of sales with respect to copper for that year.

*Arthur Robert McGinn (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

Q. Now you told us that you added the purchases of copper during the year to the opening inventory?—A. Yes.

Q. How would that opening inventory be costed?—A. Costed on the l.i.f.o. method, sir.

His LORDSHIP: Q. The opening inventory costed on the l.i.f.o. method?—A. That is right, sir.

Q. What does that mean?—A. Well the l.i.f.o. method—

Q. No, what does that mean—just the opening inventory costed on the l.i.f.o. method?—A. Well it is a method of arriving at cost of sales, sir, and it is the  
10 method of matching current purchases against current sales.

Q. A valuation of the opening inventory.

Mr. PATTILLO: Q. Perhaps I can explain it by an exhibit, my lord.

His LORDSHIP: I want to get it—I want to get at the valuation of the opening inventory—will you explain that?

The WITNESS: Yes. In the l.i.f.o. method of inventory valuation the inventory is made up of several distinct parts—that is the original part at the start, plus the yearly increments at the average cost of that year—so you have various different parts in your inventory under the l.i.f.o. method at different prices.

Q. At different prices—A. Yes.

20 Mr. PATTILLO: Q. Mr. McGinn, I show you—

His LORDSHIP: Q. May I ask—that would be, or would that be at the cost of acquisition of the inventory or the market value as at the date?—A. The cost of acquisition.

Q. The cost of acquisition?—A. Yes, my lord.

Mr. PATTILLO: My lord, I have an extra copy of this document which I am going to submit to the witness.

Q. I show you this document which is headed:

“Cost of sales and inventory—l.i.f.o. method—December 1947.”

Q. And it is obviously a photograph—what is this a photograph of?—A. It is  
30 a photograph of some of the working papers which we use to estimate cost of sales in making up our annual statements.

Q. Is this a photograph of the actual working sheet of the company which was prepared at the time?—A. Yes.

His LORDSHIP: Q. “Working papers” you said?—A. Yes.

Q. It is not a record of the company—it is an accounting term?—A. A working sheet is a working paper.

*Arthur Robert McGinn (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

Q. But it is one of the accounting work papers?—A. It is one of the company's working papers.

Q. Oh, one of your company's working papers?—A. Yes.

Mr. PATTILLO: And my lord I would like to tender this and have it marked and then I will examine the witness on it.

His LORDSHIP: It will be Exhibit 7.

EXHIBIT No. 7: Filed by  
Mr. Pattillo

Statement prepared by the company showing cost of sales and inventories—l.i.f.o. method—December 1947.

10

Mr. PATTILLO: Q. Now Mr. McGinn, looking at this exhibit which has been marked Exhibit No. 7, will you explain to his lordship what it is?

Looking at the first column "pounds" there, you see to the left of that the words "Inventories January 1, 1947, starting quantity"?—A. Yes.

Q. And then you see the figure of 6,500,000 pounds—will you explain what that is?—A. The starting quantity is the quantity which we consider the base below which we cannot go when we originally installed the system of l.i.f.o.

Q. In the year?—A. In the year 1936.

Q. Yes. Then you see underneath that: "Increase in 1936, 802,697 pounds",  
20 what does that mean?—A. That is the increment in the year.

His LORDSHIP: Q. Excuse me again—the starting quantity as at what date?—  
A. As at the origination of the system of l.i.f.o.

Q. And what date was that?—A. That was in 1936.

Q. The beginning of 1936, was it?—A. Yes.

His LORDSHIP: All right.

Mr. PATTILLO: Q. Then we see immediately underneath that the increase in 1936 and the figure shown, the poundage, what does that mean?—A. That is what we call the increment in the year.

Q. If, in any year under the l.i.f.o. system you buy more than you sell, there is  
30 more in inventory at the end than there is at the beginning?—A. And that increment is added to your inventory.

Q. Could we illustrate that in this way, that if you bought 150 pounds of metal during the year and you only sold 100 pounds of metal during the year, the increment which you would add would be 50 pounds?—A. Yes.

Q. So that where we show this increase in 1936, that poundage figure was the amount of pounds which you purchased in the year over and above the amount of pounds which you used in that year 1936, is that correct?—A. Yes.

*Arthur Robert McGinn (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

Q. And is that also so for each of the following years which are shown, 1937, 1938, 1939, 1945 and 1946?—A. Yes.

Q. Now—A. Maybe I should make myself clear, that opening quantity is the basic quantity which was put there at the start of the method—the very first year 1936 may not be exactly the difference between purchases and sales. It is the difference between the opening quantity and the amount we had on hand at the end of the year.

The other years are the exact differences between purchases and sales.

Q. Right. Now then we show on the third column, a price figure under the  
10 heading of “price”—“075”—will you explain what that means?—A. That is 7½ cents per pound, which was the cost at the start of the system—the cost per pound of copper.

Q. And then we show for the increment of 1936, a price of “09466”—what does that mean?—A. That is the average per pound of copper in the year 1936 determined on the purchase of copper—the average price of copper purchased.

Mr. PICKUP: Excuse me, I just do not find that.

His LORDSHIP: In the third column under “price”.

Mr. PICKUP: Oh yes, I see it now, thank you, my lord.

Mr. PATTILLO: Q. Am I correct in thinking that you get that price figure that  
20 is shown there by taking the amount paid out for copper during the year and dividing it by the quantities or the number of pounds purchased?—A. That is right, sir.

Q. And that is the way you arrive at that price?—A. That is right.

Q. And does that show for each of the succeeding years where we show different prices appearing—for example, in 1939 we show 11·036 cents?—A. That is right, sir.

His LORDSHIP: 11·191?

Mr. PATTILLO: That is for 1937, my lord. I skipped down to 1939.

His LORDSHIP: Oh yes, 1939, 11·036.

Mr. PATTILLO: Yes, my lord.

30 His LORDSHIP: Q. Then we come into the years where the price was fixed, is that right?—A. Yes, my lord.

Mr. PATTILLO: Now, we show in the second column under “amount”, various figures—and taking the figure in the first column of 48750000—that is 48 million is it?—A. No, it is \$487,500.

Q. Right. Now how do you arrive at that figure?—A. By multiplying the net price per pound of 7½ cents by 6½ million pounds.

*Arthur Robert McGinn (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

Q. Right, and have you arrived at the remainder of the figures that are shown in the "amount" column, opposite these years in the same manner?—A. Yes.

Q. That is by taking the poundage shown for the year and multiplying it by the price, and you get the "amount"?—A. Yes.

His LORDSHIP: The increased poundage—the increase of poundage?

Mr. PATTILLO: The increase of poundage for the year.

Q. Then we next see, looking at the statement again, under the heading "copper":

"Total—11 months—58,606,159".

10 Q. What does that mean?—A. That is the total copper purchased in the first 11 months of the year.

Q. In poundage?—A. In poundage.

Q. And then we see "this month"—is that the month of December 1947?—  
A. Yes.

Q. That was the amount purchased in that month?—A. Yes.

Q. Then we have the total for the 12 months of the year?—A. Yes.

Q. Following underneath there?—A. Yes.

Q. And then we show, reading over that line—"total 12 months", we see a price of .18854—what is that?—A. That is the average price per pound paid for all  
20 copper purchased in the year.

His LORDSHIP: Q. That is in 1947?—A. Yes.

Mr. PATTILLO: Q. And you get the "amount" figure which is shown there by multiplying the number of pounds by this average price?—A. Yes.

Q. And then we come, immediately underneath that you have "cost of sales"—"cost on l.i.f.o. basis"—"From purchases 1947" and I see there, in poundage, that you have the exact figure in poundage that you show was purchased during the year, is that correct?—A. That is right, sir.

Q. And again the "amount" figure which you show is identical to the "amount" that you have paid out for copper during the year?—A. That is right.

30 Mr. PICKUP: That is not quite right, is it?

Mr. PATTILLO: Q. Or I may be wrong but may I bring it to your attention, I see a figure of 63 million odd, including the carry-over sales and what was purchased, is that not so?

Mr. PICKUP: No.

Mr. PATTILLO: I am correct in that, am I not, Mr. McGinn—that amount of 63,268,555 is the amount in poundage of copper which was purchased during the year?—A. Yes.

*Arthur Robert McGinn (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

Q. And bears no relation to the above figure, which was the amount in poundage of the opening inventory at the beginning of the year?—A. No relationship at all.

Q. All right. Now then immediately under the column which we show “from purchased 1947”, you have an increase in 1947 of 730,703.

His LORDSHIP: You mean in 1946?

Mr. PATTILLO: Q. In 1946, quite right, my lord, 730,703—will you explain what that is?—A. That is the difference in the quantities on hand at the beginning and at the end of the year.

10 You will notice that the beginning inventory is 15,021,000 and the closing inventory is 14,291,000,—

Q. Now you are going right down to the bottom of the column to get that figure of 14 million?—A. That is right.

Q. And you say this figure of 730,703 is the difference between the total of your opening inventory and the total of your closing inventory—in poundage?—A. That is right.

Q. What is meant by this figure—or this statement: “Increase in 1946”.—A. The word “increase” should actually have been “decrease”. It is a typed form and they use it all the time—it should actually read “decrease in 1946.”

20 Q. What do you mean by that?—A. The inventory at the end of the year decreased over the inventory at the beginning of the year—the quantity.

Q. Do you mean that you drew—that you sold more goods in 1947—you sold more copper in poundage in 1947 than you purchased in poundage in 1947?—A. Yes.

Q. That is what that means?—A. Yes.

Q. To the extent of 730 thousand and some odd pounds?—A. That is right.

Q. Why do you relate that to the year 1946, when you put it in your working sheet?—A. Under the method that we were using in the company, that—each opening inventory—or when we reduced the inventory—the inventory was reduced at the year-end—we consider that the last increment has been used up first.

30 Q. That is at the opening—in your opening inventory—you showed that you had an increment, in 1946, of 2,936,000 pounds?—A. Yes.

Q. And when you sold more pounds in 1947 than you purchased, you treated it as if you had withdrawn from that 2,936,000 pounds—and that was in the opening inventory as an increment for the year 1946, is that correct?—A. That is right.

His LORDSHIP: Q. And you had withdrawn from that figure an amount of 730,703?—A. Yes.

Q. From the figure of 2,936,468.

*Arthur Robert McGinn (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

Mr. PATTILLO: Q. Now in the year, at the top of the page, where you show this figure of 2,936,000 pounds, you show a price of 11½ cents per pound?—A. Yes.

Q. And when you show the amount withdrawn of 730,703 pounds, you show an amount of 84,030.85—how did you arrive at that amount?—A. That is the same price at which it was included in the opening inventory—11½ cents.

Q. So you multiplied the 730,703 pounds by 11½ cents?—A. That is right.

Q. Now if you had had no increment in 1946, where would you have gone to get these 730,000 pounds which you needed?—A. We would have gone into 1945— or the next latest increment.

10 Q. And am I correct in thinking that the sum total of these 63 million pounds which you purchased in 1947—and this 730,703 pounds that you treated as drawn down from 1946, makes the total of this 63,268,555 pounds?—A. Yes.

Q. And that amount which is set opposite that of 12 million, is it?—A. I think so—12 million, 12,012,759.56.

Q. That amount is arrived at how?—A. By adding the two figures just above it there,—by adding the purchases in 1947 to the 84 thousand which is taken from inventory.

Q. Right, and that purchase figure for 1947 is determined by the poundage, multiplied by 18.854 cents?—A. Well yes, but it is the same thing as the actual  
20 purchases.

Q. Right—so then we come to the closing inventory, and am I correct in thinking that that is identical with the opening inventory until you get down to the year 1946?—A. Yes.

Q. And then in 1946 the figure that appears in the opening inventory, in poundage, of 2,936,468, dropped to 2,205,765?—A. Yes.

Q. Because you treated the 730,703 pounds as withdrawn from that year?—  
A. That is right.

Q. And this shows how you arrived, in making up your financial statement for 1947, at the cost of copper?—A. Yes.

30 Q. And we see on this same sheet “zinc”, “lead” and “tin”—and were they all done in exactly the same manner?—. They were, yes.

Q. Now we see from Exhibit 7 exactly what was done for the year 1947?—  
A. Yes.

Q. In so far as copper and zinc are concerned was the same process followed each year, commencing with the year 1936?—A. Yes.

Q. Now will you explain, Mr. McGinn, why you are calculating your cost of sales in that manner as exhibited by Exhibit 7?—A. Because we think it is the best inventory method, recognized method—which correctly reflects our method of doing business.

*Arthur Robert McGinn (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

His LORDSHIP: Q. "We think it is the best"?—A. The best inventory method, recognized inventory method, to correctly reflect our method of doing business.

Mr. PATTILLO: Q. And when you say your method of doing business, what do you mean by that?—A. Well the selling on replacement costs and the matching of purchase with sales.

Q. Now you have explained to us by use of this exhibit—

His LORDSHIP: Excuse me, he is talking about "matching purchases with sales".

Mr. PATTILLO: Yes, will you explain that?

His LORDSHIP: I am wondering whether it should not be transposed—"matching  
10 sales with purchases".

The WITNESS: Well we look at it this way, sir.

Q. You make the sales first, and you make the purchases afterwards?—A. Yes, that would be true, but when you start a business you buy the materials and then you sell them and it is in the reverse ratio in that respect—you buy your materials ready to start business and then you sell them—and then it is just maybe the way we have of talking arising out of our business.

Mr. PATTILLO: But it is correct that so far as Anaconda is concerned—or any company operating a brass plant like Anaconda—once you have your mill filled up—have your mill running—then your orders are received before you go out to  
20 purchase the goods?—A. Oh yes.

His LORDSHIP: I was wondering whether it would not be more proper to say "matching sales with purchases"—I do not know whether it is or not.

Mr. PATTILLO: Q. You have explained to us, by using Exhibit 7, what you do in the case of any year in which you use more pounds of copper—or any other raw material—than you have purchased in the year.

You may have also explained at the same time what is done if you buy more pounds of copper in a year than is used in that year—but I am not sure of that—will you explain how that is treated?—A. In the years in which we buy more pounds of copper than goes out in our sales, the excess is treated as an addition  
30 to inventory and it is priced at the average purchase price of the metal in the year.

Q. In other words you treat the year as being a unit?—A. The year as one unit.

Q. Now that is Exhibit 7 that I have been dealing with, relating to the year 1947?—A. That is right.

Q. Have you had figures made up for the year 1946 on a comparable basis, to compare them?—A. Yes, I have.

Q. And I show you this document which is headed:

"Inventory and cost of sales—copper—December 31, 1946."



*Arthur Robert McGinn (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

Now this is headed "December 31, 1946"—and the first line shows "Inventory—January 1, 1946"—is that for the year 1946?—A. Yes.

Mr. PATTILLO: And I tender that, my lord, as the next exhibit.

His LORDSHIP: And that will be Exhibit 8.

EXHIBIT No. 8: Filed by Mr. Pattillo	}	Statement prepared by the Anaconda American Brass Limited showing inventory and cost of sales of copper, December 31st, 1946.
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His LORDSHIP: Q. And is that made up in the same way?—A. It is made up  
10 from the same records, yes.

Q. Made up in the same way as Exhibit 7?—A. Yes.

Mr. PATTILLO: Q. Now Mr. McGinn, in connection with the year 1946—during that year—was the company buying raw material that was on a constant controlled price throughout the year?—A. Yes, it was.

His LORDSHIP: Q. During the whole of 1946?—A. Yes.

Q. And that would be the price of 11½ cents, I presume?

Mr. PATTILLO: That is 11½ cents, my lord.

Q. And in dealing with the question of this variation which exists between the company's returns to the tax department for the year 1946 and the subsequent  
20 assessments made for the year by the Crown, wherein did the difference lie?—A. Well so far as the two methods are concerned, there was no difference in the income tax determined by the two methods—l.i.f.o. or f.i.f.o.

His LORDSHIP: Q. No difference in 1946?—A. That is right.

Mr. PATTILLO: Q. Now will you explain to his lordship why that was so?—A. The price of metal was controlled throughout the whole year.

Q. It was constant?—A. It was constant and our matching process was then automatic, so far as the price was concerned.

Q. Yes. Well then—

His LORDSHIP: Q. Just a moment—the matching process was what?—A. Was  
30 automatic. The cost of sales and purchases were matched exactly.

His LORDSHIP: Q. The cost of the raw materials ceased to be a variable factor?—A. That is right, sir.

Mr. PATTILLO: Q. And wherein does the difference lie between the figure returned by the company and the subsequent assessment by the Crown?—A. It was a difference in the allowances that they let us take off on the f.i.f.o. system in the valuation of scrap.

*Arthur Robert McGinn (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

Q. Will you explain that to his lordship?—A. The scrap we purchased was slightly less than the raw material price—presumably sufficient to allow us for the extra handling and shrinkage involved.

His LORDSHIP: Q. The scrap price was less than the cost of raw material purchased?—A. That is right.

Mr. PATTILLO: Q. And you said that difference was to cover the cost of handling?—A. Cost of handling and extra shrinkage involved.

Q. And what about the cost of conversion?—A. The cost of conversion may be a little more. That is hard to say—that is out of my line—that is for another man  
10 to say.

Q. Go ahead.—A. In buying the scrap we priced it into our books at the market value of raw material and charged it with the cost of handling, to the best of our ability,—and our accounts show that our allowance is greater than the actual expenditures at times—and there is an element of profit, according to our accounts, which we considered was unearned to the extent of the inventory on hand and the Department agreed with us and allowed us to make the calculation and deduct that.

Q. That is to the extent of the scrap on hand or to the extent of the whole inventory on hand?—A. To the extent of the scrap content of the inventory on hand.

Q. And that would be calculated how?—A. Mr. Crawley can tell you more how  
20 that was calculated than I can.

Q. Anyway for some years prior to 1946 the Department had accepted this and made you an allowance for scrap?—A. That is right.

Q. And it was this allowance for scrap which represented the sole difference between the figure that you returned for 1946 and the figure that the Department assessed for that year, is that correct?—A. Yes.

Q. Now Mr. McGinn, did you have anything to do with the decision of the company, made in the year 1947, to file its tax returns commencing with the year 1946, on the L.I.F.O. basis?—A. I recommended that they do so, sir.

Q. Why did you do that?—A. Well early in January we could see the distortion  
30 that was going to take place in that year—

His LORDSHIP: Q. Early in January you could see what?—A. The distortion which was going to take place in that year when our income would be calculated on a f.i.f.o. basis—which led me to recommend that we file our return on l.i.f.o. Of course I had nothing to do with the company's decision.

Q. Now were you responsible for the preparation of the company's tax returns for the years 1946 and 1947?—A. Yes.

Q. And were those tax returns correct to the best of your knowledge and belief and ability—and in accordance with the books of the company?—A. Yes.

*Arthur Robert McGinn (Appellant)—Examination-in-Chief by Mr. Pattillo (Cont.)*  
*Arthur Robert McGinn (Appellant)—Cross-Examination by Mr. Pickup*

Q Now you have told us, Mr. McGinn, that it was your recommendation made as to the filing of the returns for 1946 and 1947—do you know of your own knowledge whether the company consulted counsel before the filing of such returns?—

A. They did, yes.

His LORDSHIP: What difference does that make?

Mr. PATTILLO: None whatever, my lord—I just thought that it might be a fact that the decision was not made lightly.

His LORDSHIP: And it would not make any difference whether it was made lightly or not, would it?

10 Mr. PATTILLO: Q. One other thing, Mr. McGinn. Another thing that I am not certain that I brought out clearly, Mr. McGinn, where we show, looking at Exhibit 7 again—and looking under the heading of “copper”—we show a column “Total 12 months” and looking under “amount” we see \$11,928,728.71—and this is on Exhibit 7, my lord.

His LORDSHIP: The total for the 12 months?

Mr. PATTILLO: The total for the 12 months.

Mr. PATTILLO: Q. Is that figure which I have just read out to you which appears in the “amount” column, the actual dollars that were paid out during the year in the purchases of copper raw materials?—A. Well now you say “copper raw  
 20 materials”—we buy copper in scrap also.

Q. I am talking about from the refinery.—A. No.

Q. Then will you explain it.

His LORDSHIP: Q. That is all the copper?—A. That is all the copper content we buy.

Mr. PATTILLO: Q. All the copper?—A. All the copper.

Q. Including the scrap which you get from customers?—A. Yes.

Q. And including scrap which you might buy from scrap dealers and the copper which you would buy from the refinery?—A. That is right, sir.

Q. But those are the dollars paid out?—A. Subject to the little difference I  
 30 mentioned, in the scrap.

Mr. PATTILLO: Yes. Your witness, Mr. Pickup.

*Cross-examined by Mr. Pickup:*

Q. Mr. McGinn, you spoke of inventory records?—A. Yes.

Q. What sort of a record do you mean—is that a record in the books?—A. Yes.

*Arthur Robert McGinn (Appellant)—  
Cross-Examination by Mr. Pickup (Cont.)*

Q. What do you call it?—A. We call it just a perpetual inventory record—that is all.

Q. Is that something different from the copper control account, for instance?—  
A. Oh yes.

Q. I see, so that is a record in the books—among the company's regular accounts?—A. Yes.

Q. And that record shows when a quantity of copper comes in, does it?—A. Yes.

Q. Does it start off with some figure which you carry forward—or is it just a record of incoming and outgoing copper?—A. I think it is a record of incoming and  
10 outgoing. I have not looked at it recently—but it does give the total copper on hand.

Q. Have you the sheet showing these records for 1947, for instance?—A. I have not anything here, no.

Q. Is it a loose leaf system?—A. Mr. Crawley can answer that better than I can. I am not sure. He says "No".

Q. I wonder if you would be good enough before the case ends—I do not want all the books brought—but you might bring that so that I might more clearly understand it.

His LORDSHIP: Perhaps if he is going to deal with it further he could bring a  
20 photostatic copy. It will not take long to make a photostatic copy, will it?

Mr. PATILLO: I will do that, my lord.

His LORDSHIP: Then if that can be done.

Mr. PICKUP: Q. But offhand you think it opens with an opening figure as to copper and other metals? And then goes on to add the copper coming in and the copper going out?—A. That is right.

Q. And then I suppose you have the total for the end of the year?—A. Yes.

Q. Then that is an account which is kept, not in dollars, but solely in pounds?—  
A. It is in pounds.

Q. It is just kept in pounds?—A. Yes.

30 Q. And when copper goes in you do not enter it anywhere—or do you—in dollars?—A. Well in our purchase records, yes, we must do that.

Q. Now does that purchase record also indicate an inventory record?—A. Yes, it does as to the total poundage—as to the total costs of what we have.

Q. And segregating prices of different shipments, for instance?—A. Well the total cost of these shipments, there must be records there, because that is the record from which we pay.

*Arthur Robert McGinn (Appellant)—  
Cross-Examination by Mr. Pickup (Cont.)*

Q. Then maybe my friend would bring me one of these also for 1947, so that we might see what that shows?

Mr. PATTILLO: The witness apparently did not understand, Mr. Pickup, what you wanted in that. Mr. Crawley is the man who knows the details of the records and he does not follow just exactly what you want on that.

Mr. PICKUP: Well what I was asking the witness was—the first account he speaks of just shows pounds.

His LORDSHIP: That is just the pounds of copper.

Mr. PICKUP: Then you have to get that in dollars somewhere, if you are going  
10 to identify that with cost—and then he said there is another account.

His LORDSHIP: He said the entries were in the purchase record, in dollars.

Mr. PICKUP: And that is the record which I was asking him now to let me have. Do you understand that now?

Mr. PATTILLO: That is correct.

His LORDSHIP: Then I suppose you might have to resort to both of those?

Mr. PICKUP: And that is what I was coming to next,—because his next statement was that he used this inventory record in preparing the financial statement.

The WITNESS: Yes.

Mr. PICKUP: Q. And of course the inventory record is in poundage —and he  
20 said he used that in preparation of the financial statement?—A. Yes.

Q. Now do you prepare a financial statement simply from the inventory record —or would you also add something in addition to that?—A. We must have the inventory record in order to see where the metal is in our mill—the state of process —so that we can apply our processing charges to the inventory and that is the main reason why we used that original inventory record.

His LORDSHIP: Q. That is the poundage record?—A. That is right, sir.

Mr. PICKUP: Q. Then how do you get that converted into dollars—from what record?—A. Well I do not know as I just understand what you mean there—you are talking now of processing differentials or dollar value?

30 Q. I am talking about what you call cost here—the cost of metal—in the inventory—and the cost of the sales—and you start with a record in pounds and if you are going to get cost, we have to get that somehow into dollars?—A. Well of course that schedule you have there will show you a statement of the pounds and the values which we have. I think that shows that. The other figure is the purchases for the year which is added to that—and the inventory is deducted at the end—and that gives us our cost of sales.

*Arthur Robert McGinn (Appellant)—  
Cross-Examination by Mr. Pickup (Cont.)*

HIS LORDSHIP: Q. Would you mind illustrating from say Exhibit 7, with respect to some particular year?—A. The opening values of the inventory, of course, are in our accounts.

Q. Yes.—A. The purchases which happen during the year are recorded in the purchase account.

Q. They are recorded in the purchase account?—A. That is right, and they are added to the original opening inventory—that is the total of purchases and the inventory value at the end is deducted, and that gives us our cost of sales.

Q. Would it be correct to say that you made this Exhibit 7 from your inventory record which is on a poundage basis only—and also from your purchase record?  
10 —A. That is right.

Q. Those are the two records which you used to make this Exhibit 7?—A. Yes.

MR. PICKUP: And that is what I wanted to get at, my lord. And when we see those two in connection with the next witness, we will get what we want perhaps.

HIS LORDSHIP: Then you will get both of those records from the next witness.

MR. PICKUP: Yes.

HIS LORDSHIP: That is get the inventory record which simply shows the poundage and nothing else and then you will also have the purchase record which will show the prices at which the poundage was bought.

20 MR. PICKUP: Yes, my lord.

Q. And then I want to ask you some questions about this Exhibit 7—

HIS LORDSHIP: Now when you get those, if you want to recall Mr. McGinn, you may do so.

MR. PICKUP: And I am sure my friend will not object.

HIS LORDSHIP: Then you can do that, or maybe you can get all the information from the next witness.

MR. PICKUP: Yes, my lord.

Q. Now then I want to deal with this starting quantity of 6½ million pounds—have you Exhibit 7 in front of you?—A. No, I have not.

30 *(Copy of exhibit handed to witness)*

MR. PICKUP: Q. Now that figure of 6,500,000 pounds—when did that figure begin?—A. I cannot answer that question, sir. I do not know. I was not with the company at the time.

Q. You see Exhibit 8 starts off with it and Exhibit 7 starts off with it. Is there anything to show the source of that figure?—A. I think it was the amount of metal on hand, possibly at the end of 1935 but I am not sure.

*Arthur Robert McGinn (Appellant)—  
Cross-Examination by Mr. Pickup (Cont.)*

His LORDSHIP: Q. When did you start the l.i.f.o. method?—A. My recollection is that somebody said the l.i.f.o. method started before that.

Mr. PICKUP: No, in 1936.

Q. You said you started the l.i.f.o. method in 1936?—A. That is right.

Q. And I had thought that you had gone this far in your examination in chief, to say that the 6,500,000 pounds was the figure that you adopted to begin the l.i.f.o. method?—A. Yes, that is what I said and I think it is very close to the number of pounds which were on hand at the inception of the system.

Q. And yet I thought you were careful to point out that it did not coincide?  
10 —A. I do not think it does exactly, pound for pound—I am not sure of that—I have not the figures here.

His LORDSHIP: Q. But it might be the amount which was on hand at the end of 1935?—A. Very close to that amount, I think—just rounded off I think.

Mr. PICKUP: Q. I think when you come to the second item on this Exhibit 7—802,697 pounds—that that includes more than the increase in purchases—it includes something by way of a carry-over from 1935?—A. I did not say that but it might include some small adjustment. I do not know. I am not sure on that point.

Q. Whatever that adjustment is, the source of the 6½ million pounds, you could tell me that?—A. No I cannot.

20 Q. Can Mr. Crawley?—A. I do not know whether he can or not.

Q. Is there any other official of the company who would know?—A. I do not know.

His LORDSHIP: Q. The 1937 is an exact amount?—A. Yes.

Q. And any adjustment would be as to 1936?—A. Yes, my lord.

Mr. PICKUP: Q. Now how do you get at the 7½ cents—can you tell me that?  
—A. That was the cost of the metal.

His LORDSHIP: Q. Cost or value?—A. I think that was the cost of the metal in the 1935 year. I think a witness following me has some information on this.

Mr. PICKUP: You mean the market price?—A. Well I do not know just what.

30 His LORDSHIP: Q. What difference does it make—it is cost or market price?  
—A. I think it was actual cost.

Mr. PICKUP: You think it was actual cost?—A. Yes.

Q. But you would rather we got that from someone else?—A. Yes, but if you want it I can go back to the company and try and dig up some of the history—but I think some other witness will have it.

His LORDSHIP: Perhaps Mr. Crawley would have it.

Mr. PICKUP: Yes.

*Arthur Robert McGinn (Appellant)—  
Cross-Examination by Mr. Pickup (Cont.)*

Q. Probably you might check it over, possibly over the evening?—A. I will.

Q. Because we want to clear it up at some time.

Then I notice, in dealing with the starting inventory, you show the “increase in 1936”, and subject to some possible inclusion of carry-over, I understand that to represent the increase in pounds in the year over what you used?—A. That is right.

Q. The same applies throughout the others down to and including the item of 1946?—A. Yes.

Q. Then is the figure below that—

His LORDSHIP: Down to or up to the year 1945.

10 Mr. PICKUP: No, also.

His LORDSHIP: 1946 has an adjustment.

Mr. PICKUP: Yes, 1946 requires adjustment. What I have said applies down to and includes the year 1945.

His LORDSHIP: Oh yes.

Mr. PICKUP: Q. And the figure for 1946 there of 2,936,000 odd does represent additional purchases or increases in inventory, does it not?—A. Yes.

Q. That is the amount of the increase in the inventory?—A. That is right.

Q. But in order to get the residual figure you have to deduct the 730,000 odd pounds because—A. We had used it up.

20 His LORDSHIP: Q. You had bought less than you had sold?—A. That is correct.

Q. I mean bought less of copper than you had sold?—A. That is right.

Mr. PICKUP: Then there is a figure just below the figure for 1946—I am still looking at the starting quantity inventory at the beginning of the year—a figure of 15,021,710—is that just an addition of the figures above?—A. Yes.

Q. Then I notice that you have no figures at all for the years 1940, 1941, 1942, 1943 and 1944—why is that?—A. Well that again, I cannot answer, definitely, but that could arise out of the L.I.F.O. system. When you use up the increment, you use it up completely. You never get it back again. You have to take the next previous year’s increment and add it in. There may be an increment for 1940 there.

30 Now in 1941 we may have used that up and it will never come back in this inventory as an increment. Each time that you have an increment you take in the present year’s increment at the current year’s value.

His LORDSHIP: You mean during those years it might not exactly balance?—A. It could but it is very unlikely. Most likely we used up some of those increments. If you saw them for five years back they would likely be somewhat different.

Mr. PICKUP: Q. Well—



*Arthur Robert McGinn (Appellant)—  
Cross-Examination by Mr. Pickup (Cont.)*

HIS LORDSHIP: Q. There would be some variation one way or the other?—  
A. Each year there is, yes.

Mr. PICKUP: Q. But as I understand you, the variation might later disappear because under the L.I.F.O. system you might call on a later year—A. You may have to have the whole increment disappear.

Q. Is there anything that will show us what the reason for that is, other than have to rely upon what you say—"may have disappeared"?—A. That is the normal thing in the system.

HIS LORDSHIP: Q. If you take year by year?—A. We can show you year by year  
10 figures if you would like to see them that way. We have not got them here but we can get them.

Mr. PICKUP: I would like it if you would get those.

HIS LORDSHIP: Get the years 1940, 1941, 1942, 1943 and 1944 and fill in the gap here between 1939 and 1945.

Mr. PICKUP: Q. Now where do I find the opening and closing figures for 1946 and 1497—do I get them from this exhibit?—A. Yes.

Q. For instance I would like to have on the record the amount of copper that you had on hand at the beginning of the year 1946—and do we not find that on Exhibit 8?—A. Yes.

20 Q. And is that the figure of 12,085,242?—A. That is the total copper on hand at the beginning of the year 1946, yes.

Q. And you valued that at varying prices, as shown on Exhibit 8, to bring out the figure in the second column as the value of the inventory—\$1,102,173.96?—  
A. That is right.

Q. Then the closing inventory at the end of 1946 we find to be 1,021,710 pounds of copper?—A. 15 million.

Q. Yes, I am sorry—15,021,710—and you priced that out as shown in this exhibit to a figure of \$1,439,867.78?—A. Yes.

HIS LORDSHIP: Excuse me, Mr. Pickup, will you be some time?

30 Mr. PICKUP: I will be some time.

HIS LORDSHIP: Then we will recess for ten minutes.

*(A short recess was here taken)*

Mr. PICKUP: Q. Mr. McGinn, then referring again to Exhibit 8 and the inventory at the end of 1946, am I right in this, that in figuring that inventory you treated the company as having used the most expensive copper which you had acquired during the year—and as having still on hand the cheaper copper that it had acquired over previous years?—A. No, no sir, no, I would not say that.

*Arthur Robert McGinn (Appellant)—  
Cross-Examination by Mr. Pickup (Cont.)*

Q. Well let us see. You valued the inventory at the end of the year, the 15 million odd pounds at what average price?—A. Well the average does not show there, actually.

Q. Is it the average of these figures which are shown?—A. Yes.

Q. So that it would be something—well at a guess—something less than 11½ cents—certainly less than 11½ cents?—A. Yes, that is right.

Q. And at that time the controlled price was 11½ cents?—A. Yes.

Q. And you treated the company as still having on hand all the 7½ cent copper that it had carried forward—6½ million pounds?—A. Yes.

10 Q. And you treated it as also having on hand the 9 cent copper?—A. Yes.

Q. And you treated it as having on hand the 11 cent copper—11.19 cent copper?—A. Yes.

Q. And you treated it as having on hand also the 10.44 cent copper?—A. Yes.

Q. Now those are the four lowest prices of copper which are shown?—A. That is right.

Q. And you showed those all as still being on hand—and the copper purchased at 11½ cents had not been used?—A. That is right.

Q. And the same applies to the copper purchased at 11 cents—that is treated as being on hand—the price being less than the 11½ cents, the purchase price during  
20 the year?—A. Yes.

His LORDSHIP: Q. And was that copper on hand which was bought at those prices?—A. Well under our method of doing business you cannot identify the copper in any way. There is no identification.

Q. Then it may or may not have been on hand?—A. It may or may not have been on hand.

Mr. PICKUP: Q. Then when we come to 1947, you open the year with the same figure of 15 million pounds, at the same price as you closed the year 1946?—A. Yes.

Q. And then you closed the year with an inventory of 14,291,007 pounds valued at the average of the prices shown on this Exhibit 7?—A. Yes.

30 Q. And again you treat the company as having on hand all the copper which over the years had been purchased at lower prices?—A. That is right.

His LORDSHIP: Q. And again that copper may or may not be on hand?—  
A. Yes, my lord.

Mr. PICKUP: Q. And you do not know of any of it that was on hand?—A. We do not know. We cannot identify our materials at all.

Q. And you cannot tell us if any of it was on hand, except that some might lie around, that the previous witness spoke of?—A. That is right.

Q. And it might be that none of the old copper was on hand?—A. It could be.

*Arthur Robert McGinn (Appellant)—  
Cross-Examination by Mr. Pickup (Cont.)*

Mr. PICKUP: Q. Can you tell me when, prior to 1946, copper was as low as 7½ cents?—A. I have only been in the business since 1941, sir, and I think—I think it was like that in 1935 but I am not sure.

Q. Certainly, but not since you were in the business—since 1941?—A. I do not think so. That is really not my field but I do not think it was ever so low since 1941.

His LORDSHIP: And that was before 1936 when it was lower?

Mr. PICKUP: Lower than 7½ cents—

The WITNESS: I think it went to 5 cents at one time.

Mr. PICKUP: Q. The figure on Exhibit 8 of 12,085,242 pounds of copper which  
10 you show in the opening inventory—is that a figure taken from any book record  
of yours or is it a figure which was worked out at that time?—A. Well that figure  
shows in our records.

Q. In what record would you find that figure?—A. Well your inventory record,  
when you put it into your book, shows your total poundage.

Q. But that is not the figure which you carried over at the end of 1945 in your  
tax return?—A. I do not know as I understand what you are getting at now.

Q. You made your returns in 1945?—A. Yes.

Q. That is the tax returns?—A. Yes.

Q. And you show the figure of—

20 His LORDSHIP: Have you the tax return of 1945?

Mr. PICKUP: Well I am afraid I cannot recognize it that way, because it is  
mixed up with other metals. The witness may be able to tell me that.

Q. Have you got anywhere a figure of the copper that was included in your  
books as being on hand in the total figures of metals at the end of 1945?—A. Well it  
will certainly be in our records, yes.

Q. In a book record or in some working papers?—A. It would be either one or  
the other.

Q. Would you be able to find it?—A. I have no doubt we can find it.

Q. What I was coming to—and you may be able to answer this—as to whether  
30 or not you carried into the opening figure in 1946, when you showed 12,085,242  
pounds, a figure which was shown on your books at that time as being the amount  
of copper in the—what did you call it—in the inventory record?—A. Well that  
would be inventory on hand that we put in our opening inventory and what we put  
in our return would be the same as our record.

Q. What you put in your return would be the same as your record—but you  
remember in 1945 you made your return on the basis of your book and the inventory  
according to the book—that is right, is it not?—A. Yes.

*Arthur Robert McGinn (Appellant)—  
Cross-Examination by Mr. Pickup (Cont.)*

Q. And then adjusted that to what you called the "f.i.f.o. basis"?—A. Well there would be very little adjustment necessary, because the prices were the same in 1945.

Q. Well there was some adjustment I think?—A. It would be very, very small. It would be just cents I would think. It would be very little difference.

Q. And do you mean that applies to 1939?

His LORDSHIP: No, not 1939.

Mr. PICKUP: Q. The control order was in 1941, was it not?—A. Yes.

Q. And you say that there would be no difference between f.i.f.o and l.i.f.o. 10 between 1941 and 1945?—A I think as long as—this is an opinion of course you understand—as long as the metal does not change in value—as long as you have the controlled price—that your income on either basis will be substantially the same.

Q. Well maybe I will leave it at that for now and if you can find it, then Mr. Crawley will bring us the record which shows the 12 million pounds odd of copper which we have referred to and I would like to see what record there is in the books that shows that—to make sure that you have carried forward a figure that existed before this, other than working out some figure on the l.i.f.o. basis—you will do that, will you?—A. We will do that.

His LORDSHIP: Might I suggest that perhaps after we adjourn you might make 20 it perfectly clear to the witness what additional records you want so that there will be no misunderstanding about it.

Mr. PICKUP: I will, my lord.

Q. Now then you say that in 1947 you recommended l.i.f.o. because you say that to continue on the f.i.f.o. basis there would be a distortion take place. Will you tell me what you mean by that word "distortion"?—A. Well we do not think that f.i.f.o. correctly reflects our methods of operation and we think—

His LORDSHIP: Q. That is f.i.f.o.?—A. f.i.f.o., yes, my lord, and we think that l.i.f.o. does correctly reflect our methods of doing business and that the profits determined by l.i.f.o. are the correct profits and I used the word "distor- 30 tion" to explain that.

His LORDSHIP: Q. The profits determined by l.i.f.o. are what?—A. Are the correct profits which we have.

Mr. PICKUP: Q. And you used the expression "distortion" to mean what?—A. Paper profits.

Q. I thought you probably meant this, when you used the word "distortion", that prior to 1945 you had adjusted your inventory figures on the f.i.f.o. basis

*Arthur Robert McGinn (Appellant)—  
Cross-Examination by Mr. Pickup (Cont.)*

and you thought it didn't make much difference but you found that if you used it in 1947 it made a big difference—is that what you meant by “distortion”—am I right?—A. No, you are not right.

Q. Well that is the fact of course.—A. I am not sure that I understand what you are getting at, there.

Q. I thought your evidence was this—it might have been the evidence of the previous witness—that from 1936 on you had used l.i.f.o. in your books?—A. That is right, yes.

Q. And that you had adjusted it for tax purposes at the end of the year, to fall  
10 in line with the f.i.f.o. basis, because you thought it did not amount to very much one way or the other—is that right?—A. That is right.

Q. Then you found in 1947 if you continued to make the adjustment which you had made previously, it would have made a big difference?—A. It certainly would.

Q. And I thought that was what you meant—that that would show a distortion if you continued on f.i.f.o.?—A. No, I see what you mean—a distortion in the profit—not in the taxes so much.

Q. Now there were a number of matters that I had started to ask your president about, I think, and he preferred that I should ask you about them. I will not be very long I think, but I think we have this clearly now—that throughout the  
20 period down to 1945—well I had better take before that—from 1936 to 1945 you adjusted your inventory to the f.i.f.o. basis?—A. That is right.

Q. Prior to that time you had kept them on the basis which assumed—or almost assumed—that goods first in were first out?—A. I cannot answer that question not having been with the company.

Q. Then you do not know about when the company adopted or used a fixed price basis for its inventory?—A. Except, as you say—I do not know.

Q. Has Mr. Crawley been with the company longer than you?—A. No, he was not there either.

Q. Now you would know however about the matter of standard profit?  
30 —A. Oh yes.

Q. The standard period was what?—A. 1936-1939 inclusive.

Q. And you have of course to compute your standard profit—

His LORDSHIP: For excess profits taxes.

The WITNESS: Yes, my lord.

Mr. PICKUP: And you have to compute your standard profits for purposes of arriving at your taxes under the excess profits tax?—A. Yes.

*Arthur Robert McGinn (Appellant)—  
Cross-Examination by Mr. Pickup (Cont.)*

Q. And throughout all the years that you were taxable for the excess profits tax, you have based your standard profits and computed them on the assumption that your inventory for raw materials were first in, first out?—A. That is right.

Q. And you did that in 1946 and 1947, did you not?—A. Yes, we did.

Q. So that in dealing with this taxation year 1947, we find your returns computed, and your standard profits based on the f.i.f.o. basis—and we find you were computing your taxable income on the l.i.f.o. basis?—A. That is right.

His LORDSHIP: The standard profits—Oh I see—that is in respect of the years 1936-39.

Mr. PICKUP: Q. The way that comes into this case I think—and the witness  
10 will correct me if I am not right—you have never been before the board to fix standard profits?—A. No.

Q. You throughout the years, went on the basis—A. Of our average basis.

Q. For those four years—of your profits?—A. Yes.

Q. So you are taking as your basis, the average which was computed on f.i.f.o.? —A. That is right.

Q. And computing your taxes, according to your present story, in 1946 and 1947 on that basis?

His LORDSHIP: Q. Might I ask you, would it have made any difference if you had computed your standard profits on the l.i.f.o. basis in the years 1936 to 1939?  
20 —A. There is no doubt, it would make some difference. I don't know just what difference it would make. There would be a difference in the profits determined by the two methods.

Q. Which would be because there would be some variations in price prior to 1941?—A. I would think so, my lord.

Mr. PICKUP: Q. Have you made any computation of the difference?—A. I have not.

Q. Mr. McGinn, I am wondering whether you are in a position to identify any earlier returns—and I am thinking now of the period prior to 1936?—A. I can identify the signatures for you, sir.

30 Q. Maybe you can tell us this, the years when—under the f.i.f.o. method of taxes paid, you found the market at the end of the year lower than the tax which was payable under f.i.f.o.—you always took advantage of the reduction of the market for tax purposes?—A. That has never been within my knowledge.

Q. Then you are not able to tell me, that it did not happen, are you?—A. I could not say one way or the other. I was not with the company.

*Arthur Robert McGinn (Appellant)—Cross-Examination by Mr. Pickup (Cont.)*  
*Arthur Robert McGinn (Appellant)—Re-Examination by Mr. Pattillo*  
*Arthur Robert McGinn (Appellant)—Re-Cross Examination by Mr. Pickup*

Mr. PICKUP: Well I may put in the tax returns for the earlier years.

His LORDSHIP: Yes.

Mr. PATTILLO: Mr. Gordon will be on the stand.

Mr. PICKUP: And you think he will be the proper one to answer that?

Mr. PATTILLO: He is the auditor and has all the records.

Mr. PICKUP: Then I think I will leave that so far as this business is concerned and I think that is all. Thank you, my lord.

*Re-examined by Mr. Pattillo:*

Q. Mr. McGinn, just looking at Exhibit No. 7?—A. Yes.

10 Q. And the first entry relating to copper of 6,500,000 pounds valued at a price of 7 $\frac{3}{4}$  cents a pound.

His LORDSHIP: 7 $\frac{1}{2}$ .

Mr. PATTILLO: Q. At 7 $\frac{1}{2}$  cents a pound, I am sorry. Am I correct in thinking that so far as the income of the company is concerned, for the years 1946 and 1947, it makes no difference what price is put on that 6,500,000 pounds of copper?—A. That is right.

Q. Now do the books of the company—do the records of quantities of raw materials on hand that are kept, show the same figure at the end of the year, in quantities, as at the beginning of the next year?—A. Yes.

20 Q. And that, so far as quantities are concerned, it does not make any difference whether you are on l.i.f.o. or f.i.f.o., is that correct?—A. None whatever.

Mr. PATTILLO: Thank you, that is all.

Mr. PICKUP: With your lordship's permission I would like to ask one question arising out of what my learned friend has said about that 6 $\frac{1}{2}$  million pounds—have I your permission?

His LORDSHIP: Yes.

*Re-Cross-examined by Mr. Pickup:*

Q. He said, Mr. McGinn, that it made no difference what price you put on it but the price, as I understand it, was the actual price and if having put some other price, 30 it would be an untrue price?—A. That, as I told you before, was put on before I came. It was the cost in 1935.

Q. And if you used some other figure it would be a false figure.

*Arthur Robert McGinn (Appellant)—Re-Cross-Examination by Mr. Pickup (Cont.)*  
*Duncan Lockhart Gordon (Appellant)—Examination-in-Chief by Mr. Pattillo*

HIS LORDSHIP: The answer was "it would make no difference so far as the income for 1947 was concerned."

MR. PICKUP: Oh no. I thought he meant it would make no difference in the cost.

HIS LORDSHIP: I did not so understand it.

MR. PATTILLO: And your lordship understood it correctly.

HIS LORDSHIP: If you are valuing it on a different basis it would make a difference of course.

MR. PICKUP: My point was it would be the cheaper copper—the earlier copper.

HIS LORDSHIP: Mr. Pattillo's question was directed to income for 1947.

10 MR. PATTILLO: And that is all. Thank you, Mr. McGinn, and I will call Mr. Gordon.

DUNCAN LOCKHART GORDON, Sworn:

*Examined by Mr. Pattillo:*

Q. Mr. Gordon, you are a partner in the firm of Clarkson, Gordon and Company, chartered accountants, practising in Toronto and other places throughout Canada?—

A. That is right.

Q. You are a chartered accountant?—A. Yes.

Q. And it is part of your duties to be in charge of and to supervise the audit of Anaconda American Brass Limited in its plant in New Toronto in the Province of  
 20 Ontario?—A. That is correct.

Q. Now I show you statement which was headed:

"Anaconda American Brass Limited—Financial Statement—year ended 31st December 1947".

And on the first page of the statement, which is the balance sheet of the company, it is signed "Clarkson, Gordon and Company" and dated Toronto, 4th March 1948—was that statement containing the balance sheet and statement of the Profit and Loss and also a statement of the general expenses for the year 1947, prepared by Clarkson, Gordon and Company?—A. That statement was prepared by—or verified by Clarkson, Gordon and Company.

30 Q. After an examination of the books of the company?—A. That is correct.



*Duncan Lockhart Gordon (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

Mr. PATTILLO: May I have that marked as an exhibit, my lord?

His LORDSHIP: It will be Exhibit 9.

EXHIBIT No. 9: Filed by  
Mr. Pattillo

{ Financial statement in connection with  
Anaconda American Brass Limited for  
the year ended 31st December 1947,  
prepared by Clarkson, Gordon and  
Company.

Mr. PATTILLO: Q. Now I am looking at the statement—and I have copies for your lordship if you would like to follow the examination of Mr. Gordon—looking  
10 at the statement for the year 1947 with particular reference to the Profit and Loss Account.

Would you please explain what basis was used in the costing of sales of raw metals—or the raw metal content in finished products in the preparation of this Profit and Loss Account?—A. The method used in the four major metals for costing sales was the method known as the l.i.f.o. method.

Q. And was that the method which was used by the company on its books throughout the year?—A. That is correct.

Q. And the fact that this method was used is disclosed on the balance sheet under—on page 1 under the heading “Assets”, is that correct?

20 His LORDSHIP: Q. Does it show on the balance sheet?—A. The other way, my lord.

Mr. PATTILLO: Q. Is that correct, Mr. Gordon?—A. That is correct.

His LORDSHIP: Q. Where is it?—A. “Inventories as determined and certified by the management and valued as follows: Metal—raw, scrap, finished and in process at cost which with minor exceptions is computed on a ‘last in, first out’ basis.”

Mr. PATTILLO: Q. Now I show you a statement which is headed:

“Anaconda American Brass Limited—Balance Sheet—31st December 1946.”

And which contains in it a letter dated March 12th, 1947 addressed to the “Shareholders of Anaconda American Brass Limited”—and signed at the end on page 7  
30 “Clarkson, Gordon and Company”—was that letter prepared and were the statements prepared by your firm?—A. Those statements were verified. They were prepared in our office and verified from the books of the company.

Q. Verified in accordance with the books of the company?—A. That is correct.

*Duncan Lockhart Gordon (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

Mr. PATTILLO: And I would file that as the next exhibit.

His LORDSHIP: That will be Exhibit 10.

EXHIBIT No. 10: Filed by Mr. Pattillo	}	Balance Sheet of the Anaconda American Brass Limited dated 31st December 1946, prepared by Clarkson, Gordon and Company.
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Mr. PATTILLO: Q. And looking at Exhibit 10, with particular reference to the Profit and Loss statement for that year—was l.i.f.o. used during that year for the purposes of determining the income?—A. l.i.f.o. was used in 1946 and in this statement for the purposes of determining income as far as zinc and copper were concerned.

Q. And in this case, also, that was disclosed on the balance sheet in the same place as it was in the previous exhibit?—A. No, it is not.

It is referred to. On our report we state:

“Valued as set out in the attached report.”

And on page 4 of the report, paragraph 2.

His LORDSHIP: Q. Paragraph 2 on page 4?—A. Yes, my lord.

Q. That is for copper and zinc?—A. That is right.

20 Q. And with copper and zinc content?—A. That is correct.

Q. And then “other metals at laid down cost”?—A. That is correct.

Mr. PATTILLO: Q. Now Mr. Gordon, have you made a search in the records of your firm as to obtaining the annual statement prepared by your firm for the year ended 31st December 1936?—A. I have.

Q. You were not at that time a member of the firm?—A. That is correct.

Q. And I show you statement headed:

“Anaconda American Brass Limited—Balance Sheet—31st December 1936”.

And letter dated 10th February 1937 to shareholders of Anaconda American Brass Limited—and which is signed on page 5 thereof: Clarkson, Gordon, Dilworth and  
30 Nash.

Was that your firm name at that time?—A. That was.

Mr. PATTILLO: I will then ask to have that marked, my lord.

His LORDSHIP: And that will be Exhibit 11.

EXHIBIT No. 11: Filed by Mr. Pattillo	}	Balance Sheet of Ananconda American Brass Limited as of 31st December 1936 prepared by Clarkson, Gordon, Dilworth and Nash.
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*Duncan Lockhart Gordon (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

Mr. PATTILLO: Q. And looking at this document for the year 1936 which has been marked as Exhibit 11—would you please tell us whether there is anything in it to indicate the method that was employed in that year in arriving at the cost of the metal content of the material sold?—A. On the Balance Sheet for that year, as set out, the methods of valuing the inventory—it is stated that:

“Copper at 7½ cents per pound for 6,500,000 pounds and 9.466 cents per pound for the remainder.”

“Zinc at 4½ cents per pound for 2,000,000 pounds and 4.865 cents per pound for the remainder.”

10 The other metals were valued at cost.

His LORDSHIP: Q. And you say that indicates what?—A. I think that indicates that the inventory was valued under the “Last in, first out basis.”

Q. Without saying so in so many words?—A. Correct—and we repeat practically the same statement on page 2 of the report.

Mr. PATTILLO: Q. Now from your examination of the records in the office of Clarkson, Gordon and Company for the years commencing with 1936 up to and including the year 1945, in preparing the financial statements of the company for each year, what method was used in arriving at cost of sales?—A. Well the “last-in, first-out method” was used throughout the whole period.

20 Q. On what particular raw materials?—A. For copper and zinc.

Q. And then Mr. McGinn said, commencing with the year 1947, the method was extended to other raw materials?—A. Lead and tin, I believe.

Q. And that is correct?—A. I believe so. There were certain two others and I think they were lead and tin.

Q. Now Mr. Gordon, at my request, have you prepared certain charts from the records of the company?—A. I have.

Q. Now I show you this chart which is headed:

“A comparison of the quantities of copper purchased and sold at each price level from January 1, 1946 to December 31, 1948.”

30 Was this chart prepared from the records of Anaconda American Brass Limited?—A. It was.

Q. And am I correct in thinking that it shows the years 1946, 1947 and 1948?—A. It shows completely 1946, 1947 and 1948 and I think they have inadvertently reproduced part of 1949.

His LORDSHIP: Again I suppose under your first idea—

Mr. PATTILLO: These were prepared, my lord, before your lordship said that you were not interested in that.

*Duncan Lockhart Gordon (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

His LORDSHIP: And I suppose the same thing applies—that what happened in 1948 cannot be of interest here.

Mr. PATTILLO: I was going to limit my question to the years of 1946 and 1947.

Q. Would you explain what you mean by the horizontal figures, running along the bottom of the chart?—A. The horizontal figures for each year are quantities of copper in pounds.

The total—the first figure is zero—the next one is 20 million—and the next figures, which seem to be blurred out, I am sorry—each one of these squares represents 20 million pounds. You can see it better in the next—zero-20-40- and 60.

10 Q. So that in the year—

His LORDSHIP: You will explain the legend, I suppose.

Mr. PATTILLO: Yes.

Q. So that in the year 1946 the company purchased less than 40 million pounds of copper?—A. That is correct.

Q. And in the year 1947?

His LORDSHIP: Pardon me, where does the year start?

Mr. PATTILLO: In the bottom left hand corner where you have the 20's.

His LORDSHIP: Oh, up to the next "0".

Mr. PATTILLO: That is it.

20 His LORDSHIP: These squares are in 10's, is that right?

The WITNESS: Each little square represents 1 million pounds.

His LORDSHIP: Each of these small squares, yes.

Mr. PATTILLO: Two million pounds, I think.

The WITNESS: I am sorry, that is correct, 2 million pounds.

Mr. PATTILLO: And have you it, Mr. Pickup?

Mr. PICKUP: Yes.

Mr. PATTILLO: Q. So that in the year 1946 the company purchased something less than 40 million pounds.

His LORDSHIP: It will be about 33.

30 Mr. PATTILLO: About  $33\frac{1}{2}$ .

His LORDSHIP: Q. About 33 million pounds, is that right?—A. Between 33 and 34 million pounds.

Mr. PATTILLO: Q. All right. Then we come to the year 1947 and it purchased in excess of 60 million pounds, is that correct?—A. That is correct.

Q. Now looking at the left hand side of the chart, what do the vertical figures indicate?—A. The price of raw copper in cents per pound.

*Duncan Lockhart Gordon (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

Q. Now then we see in these broken lines—one a heavy black line and the other a dotted line—what does the solid black line indicate?—A. The heavy solid black line represents purchases of copper in pounds—and the dotted line represents sales of copper content of products in pounds.

Q. Now will you explain throughout the year 1946 you had them both running along a straight line, parallel to one another, is that correct?—A. That is correct.

Q. Then in the year 1947 they run in parallel lines but there is a break—and will you explain that—between the dotted line and the heavy black line—particularly after you began the year?—A. If I may just explain that if the dotted line  
10 and the solid line stood exactly together, it indicates that the quantity of copper purchased at that price is exactly the same as the quantity of copper content in the sales at the same price.

Now in 1947 the chart shows that they purchased approximately 4 million pounds at 11.5 cents—but that they sold nearly 2 million more at the same price. In other words they purchased—or they started purchasing—at a higher price before they started selling at the higher price.

Q. Yes.—A. And the explanation of that—might I refer back to one of these exhibits that was put in yesterday—just the one which shows the matching of selling and purchasing at various times.

20 Q. I think that is Exhibit 4—is that the one you mean? (Document produced to witness)—A. That is correct, yes.

Q. Yes.—A. Well from Exhibit 4 we find that, during the period December 1st, 1946 to June 30th, 1947, the company was purchasing at prices prevailing on date of shipment.

During that period they were selling—or during the period from June 1st, 1946 to February 28th, 1947, they were selling at prices in effect on the 1st day of the month in which shipped.

His LORDSHIP: That was the third system that they adopted I think. One witness gave that before—I think it was the third one,—one of the witnesses gave  
30 evidence to that effect yesterday. Just a moment—I just want to check that.

Mr. PATTILLO: It would be Mr. Vanderploeg's evidence in chief, my lord.

The WITNESS: I think if I could go just right down this whole thing, I might explain it, my lord.

His LORDSHIP: Q. Yes.—A. During the War the company was purchasing raw copper at firm prices during the controlled period.

Q. Yes.—A. During the same time they were selling at prices from price list on date of acceptance if for shipment within thirty days.

*Duncan Lockhart Gordon (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

From May 1st, 1946 the refineries changed their basis of sales to at prices in effect on 1st day of the month in which shipped—in which the goods were shipped.

The company—

Q. You mean to say in which the copper was shipped by them?—A. That is correct—that was on the first page.

The company followed them on June 1st to at prices from price list in effect on 1st day of month in which shipped.

So that they got on the same basis.

On December 1st the refineries switched to at prices prevailing on the date of 10 shipment; and the company did not follow until March 1st.

Q. Until the end of February 1947?—A. That is correct.

Now if I may explain the result of that: The result of that was that when the price increase took place in January 1947 the company immediately had to pay the higher prices to the refinery. The company however on their shipments were committed to continuing to ship at prices which were in effect on the 1st day of January 1947; and that explains how this difference arose in that period.

Mr. PATTILLO: Q. Now we find later in the year, in 1947, another difference arises—will you explain that?—A. That is exactly the same difference as the first one—because the chart does project quantity.

20 His LORDSHIP: Q. There was a lag?—A. There is really only one reason for the change,—the quantities purchased at the new 16 some odd cents and the company sold, or the quantities sold at that price are roughly exactly the same. They are different on the chart.

His LORDSHIP: Did you put that chart in?

Mr. PATTILLO: No, my lord, I thought I had marked it, but I will ask to do so now.

His LORDSHIP: Exhibit 12.

30

EXHIBIT No. 12: Filed by  
Mr. Pattillo

{ Chart prepared by the witness Gordon showing a comparison of the quantities of copper purchased and sold at each price level from January 1, 1946 to December 31, 1948 by the Anaconda American Brass Limited.

His LORDSHIP: And if this is a convenient time at which to stop.

Mr. PATTILLO: Yes, my lord.

His LORDSHIP: You are not through with this witness.

*Duncan Lockhart Gordon (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

Mr. PATTILLO: No, my lord, but I am completely through with this particular exhibit so it will be satisfactory to adjourn now.

His LORDSHIP: We will adjourn until 10.30 A.M.

(At 5.00 p.m. the court was adjourned, to be resumed at 10.30 a.m., June 21st, 1950)

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Toronto, Ontario,  
June 21st., 1950 (10.30 a.m.)

MORNING SESSION

His LORDSHIP: All right, Mr. Pattillo.

10 DUNCAN LOCKHART GORDON,

*Examination continued by Mr. Pattillo:*

Q. May I have the last exhibit, Exhibit 12.

Mr. Gordon, just before adjournment last evening we were dealing with Exhibit 12. Would you explain what this chart shows for the years 1946 and 1947?

—A. The purpose of this chart is to show how closely the actual purchases and sales—the purchases of raw copper and the sales of the copper content of the product matched in each of those two years at the same price level.

An examination of the chart shows, with the price level, that the company's objective of matching purchases and sales at the same price level was practically  
20 met during those two years.

Q. Now I show you a chart entitled:

“A comparison of the base selling price of sheet metal in rolls with the purchase price of raw copper from May 1945 to November 1949.”

Q. Did you prepare this chart, Mr. Gordon?—A. The chart was prepared under my direction.

Q. Yes, and dealing with the years 1946 and 1947, am I correct in thinking that the legend on the bottom line indicates the months of the year?—A. That is correct.

Q. And that legend running along the vertical left hand side is the price in cents per pound?—A. That is correct.

30 Q. Now the heavy black line is what?—A. The heavy black line is the current market price of raw copper wire bars, which is the normal way of quoting the current market price of raw copper in effect at the various times and the line changes when there is any change in price.

Q. So that the first change in price, during the period, in the years 1946 and 1947, occurred in January of 1947, is that correct?—A. That is right.

Q. And then the next change occurred in June of 1947?—A. That is right.

*Duncan Lockhart Gordon (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

Q. And what does the dotted line that is immediately above indicate?—A. The dotted line is the selling price of sheet metal copper in rolls as taken from the company's base price list. It indicates the prices that the company were prepared to accept orders for at the date, according to their price list—at the various dates.

The first change in the price was in January 1947—and the next one in June 1947.

Q. And will you explain the over-all purpose of this chart?—A. Well I think that this chart shows that when there was a change in the raw metal price there is or there was at the same time, in January and in June, a change in the company's  
10 base price list of the copper content of their product.

There is one further change in September 1947 in the base price list which is not reflected in the year by its change in the raw copper price. That, you will remember, came up previously when we were discussing changes in the price list brought about by other factors than changes in the copper price.

HIS LORDSHIP: Q. That is a change in the processing charge or something like that?—A. Yes, my lord.

HIS LORDSHIP: And likewise, another change later on.

MR. PICKUP: That was in 1948, my lord, I think—the next change.

MR. PATTILLO: Q. Is there anything else you would like to add about this  
20 chart, Mr. Gordon?—A. No.

MR. PATTILLO: Then may I have that chart marked as Exhibit 13?

EXHIBIT No. 13: Filed by  
Mr. Pattillo

Chart prepared by the witness Gordon showing a comparison of the base selling price of sheet metal, copper in rolls with the purchase price of raw copper from May 1945 to November 1949—Anaconda American Brass Limited.

30 MR. PATTILLO: Q. I show you now a chart headed:

“A comparison of the base selling price of brush copper with the purchase price of raw copper from May 1945 to November 1949.”

HIS LORDSHIP: And I do not recall any reference to “brush copper” thus far.

MR. PATTILLO: Q. Will you explain what “brush copper” is, Mr. Gordon?—  
A. Brush copper is one of the items carried in the company's price list.



*Duncan Lockhart Gordon (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

His LORDSHIP: Q. But what is it?—A. I am afraid I cannot describe it accurately to you.

Mr. PATTILLO: Q. Now was this chart prepared under your supervision?—  
A. Yes.

Q. And from the records of the company?—A. Yes.

Q. And again the legend along the bottom of the chart indicates the months and the years?—A. Yes.

Q. And the vertical legend indicates the price in cents per pound?—A. Yes.

Q. And the heavy black is what?—A. The heavy black line is the raw copper  
10 price in effect from time to time.

Q. And that is the same as the preceding chart, Exhibit 13?—A. Yes.

Q. Now what is the dotted line?—A. The dotted line is the corresponding dotted line to the previous chart showing the different prices of the product.

Q. And am I correct in thinking that it indicates the same price changes took place in this product, as in the previous product in Exhibit 13?—A. That is right. A comparison of the two charts will show that the changes took place in both products at the same time.

Q. That is for the years 1946 and 1947?—A. That is correct.

Mr. PATTILLO: And may I have this filed as an exhibit, my lord.

20 His LORDSHIP: That will be Exhibit 14.

EXHIBIT No. 14: Filed by

Mr. Pattillo

{ Chart prepared by the witness  
Gordon showing a comparison  
of the base selling price of  
brush copper with the purchase  
price of raw copper, May 1945  
to November 1949, Anaconda  
American Brass Limited.

Mr. PATTILLO: Q. Now I show you a chart, Mr. Gordon, which is headed:

30 "A comparison of the base selling price of sheet metal, copper anodes, untrimmed anodes, with the purchase price of raw copper from May 1945 to November 1949."

Q. Was this chart prepared under your direction?—A. It was.

Q. And from the record of the company?—A. Yes.

Q. And again the legend along the bottom indicates the months and the years as in the two previous charts?—A. That is correct.

*Duncan Lockhart Gordon (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

Q. And the vertical figures on the left hand side indicate again the price in cents per pound?—A. That is correct.

Q. Am I correct in thinking that the heavy black line is the same line that appeared in the chart—in the two previous charts?—A. Yes.

Q. That is Exhibits 13 and 14?—A. Yes.

Q. And what is the dotted line?—A. The dotted line is the third product taken from the company's base price list.

Q. And does it indicate the same changes that occurred in the new product, in Exhibits 13 and 14?—A. Yes.

10 His LORDSHIP: And that will be Exhibit 15.

EXHIBIT No. 15: Filed by  
Mr. Pattillo

Chart prepared by the witness Gordon showing a comparison of the base selling price of sheet metal, copper anodes, untrimmed anodes, with the purchase price of raw copper from May 1945 to November 1949—Anaconda American Brass Ltd.

Mr. PATTILLO: Q. Now I show you this chart which is headed:

20 "A comparison of the base selling price of seamless tubes, deoxidized copper, with the purchase price of raw copper from May 1945 to November 1949."

Q. Was this chart prepared under your supervision?—A. It was.

Q. And it was prepared from the records of the company?—A. Yes.

Q. And am I correct in thinking that the legend on the bottom indicates the months and the year?—A. Yes.

Q. And the vertical line or rather the vertical left hand column, the price in cents per pound?—A. Yes.

30 Q. And the heavy black line, is it the same as in the three previous exhibits—Exhibits 13, 14 and 15?—A. It is.

Q. And what does the dotted black line indicate?—A. A further product taken from the company's base price list.

Q. And does it indicate the same change as for the other three products which we have put in, in the three previous charts?—A. It will parallel the changes in the other three charts.

*Duncan Lockhart Gordon (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

Mr. PATTILLO: And may I file this as an exhibit, my lord?

His LORDSHIP: That will be Exhibit 16.

EXHIBIT No. 16: Filed by  
Mr. Pattillo

Statement prepared by the witness Gordon showing a comparison of the base selling price of seamless tubes, deoxidized copper, with the purchase price of raw copper from May 1945 to November 1949—Anaconda American Brass Limited.

10

Mr. PATTILLO: Q. And I show you this chart which is headed:

“A comparison of the base selling price of sheet metal: Sheet copper, hot rolled, with the purchase price of raw copper from May 1945 to November 1949.”

Q. Was this chart prepared under your supervision?—A. It was.

Q. And from the records of the company?—A. Yes.

Q. And are the legends appearing on the bottom and on the left hand side identical with the previous four charts?—A. They are.

Q. The heavy black line is identical with the previous four charts?—A. It is.

20 Q. And will you tell us what this dotted black line is?—A. The dotted black line is a further product taken from the company's base price list and will parallel the dotted line on the other chart.

His LORDSHIP: Exhibit 17.

EXHIBIT No. 17: Filed by  
Mr. Pattillo

Chart prepared by the witness Gordon showing a comparison of the base selling price of sheet metal: Sheet copper, hot rolled, with the purchase price of raw copper from May 1945 to November 1949—Anaconda American Brass Ltd.

30

Mr. PATTILLO: Now I show you a chart which is headed:

“A comparison of the base selling price of yellow brass seamless tube with the purchase price of raw copper and zinc from May 1945 to November 1949.”

Q. Was this chart prepared under your supervision?—A. It was.

*Duncan Lockhart Gordon (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

Q. And was it prepared from the records of the company?—A. Yes.

Q. And am I correct in thinking that these legends along the bottom and along the left hand side vertically are the same as in the previous five charts?—

A. You are.

Q. Now will you explain what the heavy black line on this chart is—or perhaps you might go ahead and explain this chart?—A. Well the bottom line is the price—the purchase price—or zinc in effect at the various periods of time.

His LORDSHIP: Q. That is the dashes?—A. That is the dashes.

The third line up—the dotted line is the same price for raw copper wire bars  
10 as appeared on the previous chart. The line marked “yellow brass—metal content  
only,” with dashes and dots—and if I may just explain this yellow brass is 70  
per cent copper and 30 per cent zinc—show that line is the price of yellow brass in  
the proportion 70 per cent of the price for raw copper shown above and 30 per cent  
of the price for zinc shown below.

The centre line, therefore, is the metal content price of yellow brass in effect during the various periods of time.

Mr. PATTILLO: Q. That is the price to the company?—A. The purchase price.

Q. The purchase price to the company?—A. That is right.

Q. Yes.—A. The top line—right at the top of the chart—is a brass product  
20 taken from the company’s price list.

It should be noted in this chart that the selling price changes during 1946 and 1947 with the changes in price of the metal. There is one change in price for both zinc and copper in January 1947; and another in June. In both of those instances the selling price—according to the base price list of the company’s product, changed at the same time.

There is also indicated, in September 1947, a change in the selling price which was brought about not through a change in the metals.

Q. That is the change in processing of which we have heard?—A. Yes.

Mr. PATTILLO: And may I file this as the next exhibit, my lord?

30 His LORDSHIP: That will be Exhibit 18.

EXHIBIT No. 18: Filed by  
Mr. Pattillo

Chart prepared by the witness Gordon showing a comparison of the base selling prices of yellow brass seamless tubes with the purchase price of raw copper and zinc from May 1945 to November 1949 — Anaconda American Brass Ltd.

*Duncan Lockhart Gordon (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

Mr. PATTILLO: Q. Now I show you a chart which is headed:

“A comparison of the base selling prices of yellow brass wire with the purchase price of raw copper and zinc from May 1945 to November 1949.”

This chart, like the rest, was prepared under your supervision and from the records of the company?—A. Yes.

Q. And the legend along the bottom—and the vertical legend along the left hand side—are identical to the previous charts?—A. Yes.

Q. Now will you explain what the dotted line means?—A. Well in this instance we have just reproduced the yellow brass line which is the same as the yellow brass 10 line on the previous chart.

We have not put in copper and zinc, although if they were there they would parallel the last chart. The solid line is “wire, yellow brass”, which is another product of the company, taken from the base price list.

Q. And does it show changes similar to the changes in prices of the product dealt with in the previous chart?—A. That is right. The lines would parallel the other chart.

His LORDSHIP: Q. And the legends are the same?—A. Yes, my lord.

His LORDSHIP: And that will be the next exhibit.

20

EXHIBIT No. 19: Filed by  
Mr. Pattillo

Statement prepared by the witness Gordon showing the comparison of the base selling prices of yellow brass wire with the purchase price of raw copper and zinc from May 1945 to November 1949 — Anaconda American Brass Limited.

Mr. PATTILLO: Q. Now I show you this chart which is headed:

“A comparison of the base selling prices of yellow brass sheet metal with the purchase price of raw copper and zinc from May 1945 to November 1949.”

30 Chart prepared, as was the others under your supervision and from the records of the company?—A. It was.

Q. And the legends are the same as in the immediately previous charts?—A. That is correct.

Q. Am I correct in thinking that the dotted and dash line is the same as the line appearing on the immediately previous chart?—A. That is correct.

*Duncan Lockhart Gordon (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

Q. And will you explain what the heavy black line is?—A. The heavy black line is the selling price taken from the company's base price list from another product—yellow brass sheet metal. It parallels the line of the product shown on the previous chart.

Mr. PATTILLO: And that will be the next exhibit.

His LORDSHIP: That will be Exhibit 20.

10 EXHIBIT No. 20: Filed by  
Mr. Pattillo

Statement prepared by the witness Gordon showing a comparison of the base selling prices of yellow brass sheet metal with the purchase price of raw copper and zinc—from May 1945 to November 1949, Anaconda American Brass Limited.

Mr. PATTILLO: Q. Now I show you this chart which is headed:

“Costs and profits in relation to net sales of mill and cast products.”

And it has a sub-heading:

“Cost of sales on a last in, first out basis.”

Was this chart prepared under your supervision?—A. It was.

Q. And was it prepared from the records of the company?—A. Yes.

20 Q. Dealing with the years 1946 and 1947 only, will you please explain what the chart for the year 1946 shows and what it means?—A. The chart for 1946 shows an analysis of the—I will put it—an analysis of the use made of the revenue received through sales, on a percentage basis.

The metal cost shows that 54·2 per cent of every sales dollar was used for metals included in the metal content of the goods sold.

Manufacturing and administrative expenses totalled 41·1 per cent; and 4·7 per cent was the profit before taxes.

30 There are one or two other things that I might mention about that chart; that the manufacturing and administrative expenses appear to be very high that year compared with 1947 but I think the answer to that is that that was the year of the strike and the company's sales were much lower than in a normal year.

Q. That is the five months' strike?—A. That is right.

His LORDSHIP: Q. As the witness has said?—A. Yes, and that resulted in the manufacturing and administrative expenses forming a larger part in comparison to sales.

*Duncan Lockhart Gordon (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

Mr. PATTILLO: Q. Now will you explain the chart for 1947?—A. The chart for the year 1947—as far as manufacturing and administrative expenses and metal costs, is exactly the same as for 1946.

The profits before taxes need no description. The “manufacturing profits” 7·9—that is the profit which, according to the company’s records, they made from processing the metal which they purchased, which is included in the metal content of the goods sold.

During the year there was a “metal loss” of 4 per cent—4·04 per cent. That metal loss I think can best be described as being an indication of the mis-matching 10 which occurred during the year. Had they been successful in matching their purchases at a given price level exactly with their sales at a given price level, there would have been no metal loss. They did that in 1946 and the chart indicates no metal loss.

The profit before taxes, you will note, is the manufacturing profit less the metal loss.

Q. And the metal loss is less than one-half of one per cent?—A. That is correct.

One further point that I might just point out is, the very large percentage from metal costs are in the sales dollar and that indicates, I think, that in every product which the company sells a large part of the cost to the consumer is the metal which 20 the company has had to purchase in order to fill their orders.

The company, of course, makes its profit—that is the company realizes its actual profit on the other part of the sales dollar.

Q. Now is there anything further which you would like to explain about this chart, in reference to either the year 1946 or the year 1947?—A. No, I do not think there is.

Mr. PATTILLO: Then may I have that marked as the next exhibit?

His LORDSHIP: Exhibit 21.

30

EXHIBIT No. 21: Filed by  
Mr. Pattillo

Statement prepared by the witness Gordon showing cost and profits in relation to net sales of mill and cast products—and cost of sales on a last in, first out basis—Anaconda American Brass Limited.

Mr. PATTILLO: And I have run out of charts now, my lord.

His LORDSHIP: Q. Did you cover all other products of the company in these various charts?—A. No, my lord. We could have gone on reproducing them. I think there are at least 50 or 60 on the base price list and we would have had 50 or 60 parallel and similar charts.

*Duncan Lockhart Gordon (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

At the end of 1935—or the beginning of 1936—the actual inventory was 6,416,265 pounds—at a price of \$481,219.87. In 1936 they took in 83,735 pounds at the same price of 7·5 cents, to round off this starting figure to the amount of 6,500,000 pounds at 7·5 cents.

Q. Now you have dealt with the 1936 increase—the 1937 increase—and the 1938 increase?—A. Yes.

Q. Now will you deal with the 1939 increase?—A. In 1939 there was an increase of 3,023,345 pounds.

Now at a subsequent date which I will explain in a minute, we went back 10 into that increase in 1939 and it was reduced to the figure shown, of 973,477, prior to January 1, 1947.

His LORDSHIP: Q. Prior to January?—A. Prior to the time shown as the starting point of the inventory on Exhibit 7 and you see that is at January 1, 1947.

Q. Yes.—A. In 1940 there was a further increase of 7,840,812 pounds, which was subsequently used up in a later year. In 1941 there was an increase of 1,053,072 pounds. In 1942—

Mr. PATTILLO: Q. Well just dealing with that 1941 increase first—was that subsequently used up too?—A. Yes.

Q. Yes.—A. In 1942 there was a decrease of 266,687 pounds, which was 20 offset against the 1941 increase of 1,053,072 pounds.

His LORDSHIP: Q. So that all of the 1941 increase was not used up in 1941?—A. That is correct.

Mr. PATTILLO: In 1942, my lord—all of the 1941 increase was not used up in the following year.

The WITNESS: In 1942.

His LORDSHIP: Q. In 1942?—A. In 1943 there was a further decrease and it was divided. 786,385 pounds were offset against the increase in 1941. That, together with the decrease in 1942, eliminated the 1941 increment.

The balance of the decrease, 5,982,774 pounds, was offset against the 1940 30 increase of 7,840,812 pounds; still leaving a balance in 1940.

In 1944 there was a further decrease and 1,858,038 pounds used to eliminate the balance of the 1940 increase; and 2,049,868 pounds were offset against the 1939 increase of 3,023,345 pounds; coming down to the figure that we show of 973,477 pounds.

Mr. PATTILLO: Q. Then what happened in 1944?—A. I think that was 1944 I was speaking of.

Q. Then in 1945?—A. In 1945 there was an increase of 3,151,684?

Q. Yes.—A. And in 1946 an increase of 2,936,468.



*Duncan Lockhart Gordon (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

In actual fact the standard profits are based on the assessed income of the company and so far as I know the company has no option but to base the standard profits on that.

His LORDSHIP: On the assessed?—A. On the assessed income.

Mr. PATTILLO: For the years 1936 to 1939 inclusive?—A. That is right.

His LORDSHIP: Is that so, under the Act?

Mr. PATTILLO: That is my reading of the Act, my lord. I think it is Section 2 of the Act, my lord, where you will find that.

His LORDSHIP: “standard profits” means the average yearly profits derived by  
10 a taxpayer in the standard period.”

Mr. PATTILLO: And then if you look at subsection (f) on the previous page.

His LORDSHIP: “Profits” in the case of a corporation or joint stock company for any taxation period means the amount of net taxable “income of the said corporation or joint stock company as determined under the provisions of the Income War Tax Act in respect of the same taxation period.”

Mr. PATTILLO: Yes, my lord.

His LORDSHIP: Well that does not necessarily mean the same as you have said.

Mr. PATTILLO: Well if there was no appeal from those years I submit that.

His LORDSHIP: In the absence of an appeal that might be so. That would be  
20 the manner in which the profits were determined but it does not say how it is to be determined?

Mr. PATTILLO: No, my lord.

Q. So that—well now will you explain, for the year 1946, what you found in the examination which you made?—A. In 1946—and I am quoting from memory here—the profits were in the neighbourhood—of—the income of the company for the year was in the neighbourhood of \$300,000 and the standard profits of the company were in the neighbourhood of a million dollars and as such the company was not in the excess bracket for the excess profits tax.

And the calculation of the standard profits in 1946, therefore, had no effect on  
30 either the taxable income or the further taxes which would have been assessed on that taxable income.

His LORDSHIP: Whether the standard profits had been assessed or had been determined on the basis of l.i.f.o. or f.i.f.o., it would not have made any difference?—A. Yes, my lord. The standard profits did not come into the calculation of either income or taxes in that year in any way.

Q. That is in 1946?—A. That is correct, my lord.

*Duncan Lockhart Gordon (Appellant)—  
Examination-in-Chief by Mr. Pattillo (Cont.)*

Q. Yes, so would you say, from your examination of your working papers belonging to your firm, that this opening inventory as shown on Exhibit 7, is correctly set up?—A. I would.

Q. Now Mr. Gordon, yesterday, my learned friend was asking some questions regarding the tie-in between the opening inventory of 1946, as shown in Exhibit 8—and the closing inventory in 1945.

Can you tell us from your records what was the situation—first as to quantities?—A. Well I think I can. If I may give that without the records—I think I can say that the closing quantities at the 31st December 1935 were the opening quantities  
10 at 1st January 1946.

Q. That is 1945—not 1935?—A. December 1945 and January 1946—and that the dollar value of those inventories, closing inventories at 31st December 1945 was the opening dollar value of these inventories at 1st January 1946.

Q. That is the quantities and dollar value were identical with the opening and closing inventories?—A. That is correct.

Q. According to the books of the company?—A. Yes.

Q. And if you were returning a tax return for the year 1945 on the f.i.f.o. method, would that make any difference whatever in the quantities of the inventory on hand in pounds at the end of the year 1945, from the books of the company which  
20 were kept on the l.i.f.o. method?—A. No.

Q. Mr. Gordon, did you have anything to do with the preparation of the income tax returns and the excess profits tax returns for the year 1947?—A. I would say that they were reviewed by myself. I did not prepare them but I reviewed them.

Q. Now did you—what do you say as to their fairly reflecting the income of the Company calculated on costs on the l.i.f.o. method?—A. I consider that they did fairly calculate the income for the year using—can I have that question again?

Q. Using the l.i.f.o. method?—A. That is correct.

Q. And yesterday there was some mention of the standard profits—would you explain that problem?—A. Well, as I understood the cross-examination of Mr.  
30 McGinn, there was a point raised that, in calculating or using the income for 1936, 1937, 1938 and 1939, on which the company's standard profits were fixed, that those profits for those years had been calculated on the first in first out basis for tax purposes.

As I understood it, it was pointed out that had those four years been on a last in first-out basis there would have been some difference in the income for those four years. It might have affected the standards profits.

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In actual fact the standard profits are based on the assessed income of the company and so far as I know the company has no option but to base the standard profits on that.

His LORDSHIP: On the assessed?—A. On the assessed income.

Mr. PATTILLO: For the years 1936 to 1939 inclusive?—A. That is right.

His LORDSHIP: Is that so, under the Act?

Mr. PATTILLO: That is my reading of the Act, my lord. I think it is Section 2 of the Act, my lord, where you will find that.

His LORDSHIP: “standard profits” means the average yearly profits derived by  
10 a taxpayer in the standard period.”

Mr. PATTILLO: And then if you look at subsection (f) on the previous page.

His LORDSHIP: “Profits” in the case of a corporation or joint stock company for any taxation period means the amount of net taxable “income of the said corporation or joint stock company as determined under the provisions of the Income War Tax Act in respect of the same taxation period.”

Mr. PATTILLO: Yes, my lord.

His LORDSHIP: Well that does not necessarily mean the same as you have said.

Mr. PATTILLO: Well if there was no appeal from those years I submit that.

His LORDSHIP: In the absence of an appeal that might be so. That would be  
20 the manner in which the profits were determined but it does not say how it is to be determined?

Mr. PATTILLO: No, my lord.

Q. So that—well now will you explain, for the year 1946, what you found in the examination which you made?—A. In 1946—and I am quoting from memory here—the profits were in the neighbourhood—of—the income of the company for the year was in the neighbourhood of \$300,000 and the standard profits of the company were in the neighbourhood of a million dollars and as such the company was not in the excess bracket for the excess profits tax.

And the calculation of the standard profits in 1946, therefore, had no effect on  
30 either the taxable income or the further taxes which would have been assessed on that taxable income.

His LORDSHIP: Whether the standard profits had been assessed or had been determined on the basis of l.i.f.o. or f.i.f.o., it would not have made any difference?—A. Yes, my lord. The standard profits did not come into the calculation of either income or taxes in that year in any way.

Q. That is in 1946?—A. That is correct, my lord.

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Mr. PATTILLO: Q. Now will you go on and explain the situation regarding 1947?  
 —A. In 1947 the company was in the excess bracket and an error or a miscalculation or a difference in the standard profits would have affected the taxes payable under the Excess Profits Tax Act.

Q. Now this is correct, that the standard which was used in filing the company's returns under the Excess Profits Tax Act for the year 1947 was the standard that had been determined by the profits in the standard period, as assessed on the f.i.f.o. basis?—A. Yes.

Mr. PATTILLO: Your witness, Mr. Pickup.

10 His LORDSHIP: And Mr. Patillo, how does the appeal in respect of the 1946 assessment come before the court under the circumstances, if there was no assessment for excess profits taxes?

Mr. PATTILLO: Because under the Excess Profits Tax Act, during the war period, there was a tax on any corporation under the Income Tax Act of 18 per cent—I think I am correct in that—and then there was a tax under the Excess Profits Tax Act of 12 per cent, of all of the taxable income.

His LORDSHIP: Oh, on all of the taxable income whether it was in excess of the standard profits or not?

Mr. PATTILLO: Yes, my lord, and then there was an additional which was related  
 20 —an additional tax which was related to the standard.

His LORDSHIP: An excess over the standard.

Mr. PATTILLO: That is correct, my lord.

His LORDSHIP: Mr. Pickup.

*Cross-examined by Mr. Pickup:*

Q. Now Mr. Gordon, am I right in saying that you still, of course, recognize the well established principle of cost or market, whichever is lower, in valuing the inventories for the purposes of determining profits?—A. Yes, you are right.

His LORDSHIP: I did not catch what you said.

Mr. PICKUP: Q. My question was, that he still recognized the well established  
 30 principle of cost or market whichever is lower in the valuation of inventories in arriving at profits?—A. I would like to say that that is one of the things that I recognize.

Q. You still recognize that as a sound, accounting principle?—A. Yes.

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Q. And from there I take it you have got the l.i.f.o. principle for the purpose of getting at cost, as one of the alternatives—cost or market whichever is lower—is that right?—A. l.i.f.o. is a method of determining cost.

Q. That is the way you look at it?—A. Yes.

Q. Now I want you to look at Exhibit 9—that is the financial statement—

His LORDSHIP: Q. Excuse me, do you also recognize the f.i.f.o. principle as an established method of determining cost?—A. Well there are two or three methods of determining cost—l.i.f.o., f.i.f.o., average.

And the basis which you use is determined by the circumstances—whichever  
10 method will determine most accurately the income, is the one which you would use.

Mr. PICKUP: Q. So you do still recognize all three as sound accounting principles—that is l.i.f.o., f.i.f.o. and average cost?—A. Oh definitely.

Q. Then I want you to look for a moment at Exhibit 9, have you that before you—the financial statement for the year 1947—

His LORDSHIP: Q. Before you go on, would you mind telling me—I have had “f.i.f.o.” explained and “l.i.f.o.” explained, but you are referring to a third one?—A. Average.

Q. What is that?—A. Average—well just roughly, my lord, you would take your purchases as they came—supposing you had an opening inventory of so many  
20 articles at such a dollar value—and then you had purchases—you would add the purchases with your opening inventory—average the price—and that would be the price which you would take out of inventory for the next article—and then more would come in and they are averaged.

As opposed to f.i.f.o. where the opening inventory would come first—or the opening cost of inventory would come first; and l.i.f.o. where the last would come first.

Mr. PICKUP: Q. So on the “average” method, you are averaging the whole of the inventories that you have taken in—that is what is carried over and what you have added?—A. It depends on which method you use.

Q. But I am speaking if you are using the “average”?—A. Well there are a lot  
30 of variations under the “average”.

Q. Then we come to this Exhibit 9 and I want you to look at the balance sheet. You have already referred to your statement there that metals are computed on a last in, first out basis and you value—or the company values—the inventory on that basis at \$1,848,497.89.

Now my first question to you is that the figure of \$1,848,497.89, which is shown as the cost is not the actual cost of the raw materials used in processing the copper

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actually purchased and sold in 1947—that of course is right?—A. That \$1,848,497.89 is the cost of the inventory on hand at the year-end, computed on the last in, first out basis.

Q. But I am saying to you—or asking you—whether you do not agree with me that this is not the actual cost of that inventory?—A. Well it depends on how you compute “actual cost”. I cannot agree with you—and I do not think I can answer that question, my lord, because if I do I am saying something which I do not believe and if I do not, it could be misleading.

Q. Well can you answer the question as I first put it to you—and I will read 10 it again:

Is it not so that the value of \$1,848,497.89, shown as cost in that balance sheet, is not the actual cost of the raw materials used by the company in processing copper purchased and sold in 1947?—A. Well I can certainly say that that is not correct because this has nothing to do with the cost of the copper which was purchased and sold in 1947. It is the cost of the inventory.

His LORDSHIP: Are you now referring to the balance sheet?

Mr. PICKUP: Yes, my lord.

Q. Then let me put this question to you, are you, by this certificate, intending to certify that that figure is either the cost price or the market price of the metals 20 in the possession of the company on the 31st December 1947?—A. No. It is certainly not the market price—nothing to do with it—and it depends on what you mean by “cost price”.

It is “cost” as considered on the last-in, first-out basis.

Q. I suggest to you that this company—and you may be able to correct this or verify it—that this company in the last three months of 1947 took in, by way of purchase, as much copper or about as much copper as it carried at the end of the year—is that right?—A. It could easily be.

Q. Well we will have the figures—and if that is right it took it in at 21½ cents?—A. I think that is probably correct.

30 Q. And 21½ cents was the actual cost of all copper purchased by the company after June of 1947 and until the end of the year—was it not?—A. Yes.

Q. Yes, and the inventory which brings out this figure of \$1,848,497.89 is based on—or calculated on—the cost of copper of about 11½ cents?—A. A varying cost.

Q. Averaging about that—a varying cost averaging about 11½ cents.

His LORDSHIP: “Averaging about 11½ cents”—how could that be—how could it average 11½ cents?

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Mr. PICKUP: Oh no, I am wrong in that—I will put it again.

His LORDSHIP:  $11\frac{1}{2}$  cents would be the lowest.

Mr. PICKUP: An average lower than  $11\frac{1}{2}$  cents.

His LORDSHIP: No, it would be higher.

Mr. PICKUP: The  $11\frac{1}{2}$  cents is the highest— $7\frac{1}{2}$  cents is the lowest. And the average brings out this figure of \$1,848,497.89, as the average of a number of prices ranging between  $7\frac{1}{2}$  and  $11\frac{1}{2}$  cents—so the average would be lower than  $11\frac{1}{2}$  cents.

His LORDSHIP: Q. I am sorry—I did not understand that. I thought you said that some of it had been bought at 21 cents.

10 Mr. PICKUP: No, I am speaking now—all of the copper which was bought by the company from June to December was bought at 21 cents.

His LORDSHIP: June to December?

Mr. PICKUP: Yes, the whole of the copper actually purchased—and yet when they value the inventory at the closing end of the year they do not value any of it at  $21\frac{1}{2}$  cents. They value it at an average somewhere between  $7\frac{1}{2}$  cents and  $11\frac{1}{2}$  cents.

Mr. PICKUP: Q. That is right, is it not?—A. Yes, that is correct—but if you are talking about the word “average”—if you take the total pounds at the end of the year and divide it into the total dollars representing that inventory, the average  
20 —that one figure divided by the other which we use or call “average” for the moment would mean  $11\frac{1}{2}$  cents or less.

His LORDSHIP: Q. Or less?—A. Yes, my lord.

Mr. PICKUP: Q. Tell me, did Directive No. 66 from the Commissioner on this subject of l.i.f.o. in 1941, come to your attention?—A. No.

His LORDSHIP: What is this Directive you speak of—what bearing has a Directive got on this?

Mr. PICKUP: I do not know, my lord, that I can answer that without telling your lordship what the Directive is and it is still not in evidence.

His LORDSHIP: And it is going to be in evidence?

30 Mr. PICKUP: I do not know whether it is admissible or not.

His LORDSHIP: I do not know what bearing it has myself. What difference does it make whether there is a Directive from the Department unless the Directive is pursuant to some statutory authority?

Mr. PICKUP: The only difference it might make—and I am not being very definite in saying it would make any difference—but the only difference it might

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make is that if the Directive is brought to the attention of a taxpayer and over the years he acts on that to his own advantage in some years, it may affect his right to change.

His LORDSHIP: I wonder whether it does? I mean, if I carry on business in a certain way, what right has the Tax Department to tell me that I shall carry on in some other way?

Mr. PICKUP: Well if it were contrary—if the Directive were contrary to the statute, I would not be urging that.

His LORDSHIP: Oh no, of course.

10 Mr. PICKUP: But I do not think that we are met with that here. This witness has already said that there are these three well recognized principles of valuing inventory—and if the Department has used one—and a proper one—

His LORDSHIP: But what bearing could that have on the matter—what the Department says is the tax might have no bearing on the matter.

Mr. PICKUP: No, but the Minister is the one who makes the assessment under these Acts.

His LORDSHIP: Yes, he makes the assessment and he frequently makes wrong assessments.

Mr. PICKUP: But if he proceeds on a sound principle then it is going to be pretty 20 difficult to say that it is a wrong assessment.

His LORDSHIP: You have to look at each assessment.

Mr. PICKUP: That is right and I do not intend to get into an argument on that now and I will not press it further with this witness—and I will not really press it with any other witness.

That is all I have to ask this witness.

Mr. PATILLO: And that is all, Mr. Gordon.

His LORDSHIP: We will recess for ten minutes.

(A short recess was here taken)