

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION



In the Matter of)
)
CHICAGO BRIDGE & IRON COMPANY N.V.,)
)
a foreign corporation,)
)
CHICAGO BRIDGE & IRON COMPANY,)
)
a corporation.)
)
and)
)
PITT-DES-MOINES, INC.,)
)
a corporation.)

PUBLIC RECORD

Docket No. 9300

RESPONDENTS' MOTION FOR LEAVE TO SEEK FOREIGN EVIDENCE

[REDACTED]

(Complaint at ¶ 17) CB&I in its Answer has denied these allegations and asserts the existence of an international market.

2. In addition to the factual dispute over whether the market(s) at issue are

international in scope, the parties also disagree as to the ability of foreign consumers to

United States and sell the tanks at issue in this case. For example, the Complaint states that the

**Redacted Pursuant to
Protective Order**

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Protective Order**

5. Complaint counsel apparently plans to rely primarily on these **Redacted Pursuant to Protective Order** for its argument that foreign companies cannot compete effectively in the domestic cryogenic storage tank market. However, these statements are little more than speculation and conjecture.

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Protective Order**

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- Protective Order

In reality, the only way to

determine the ability of these foreign companies to effectively compete in the U.S. is to *obtain evidence directly from those foreign companies*. Respondents have identified a significant number of foreign companies that may have evidence relating to their ability to compete in the U.S., including:

- **Skanska/Whessoe** -- Skanska/Whessoe is a company based in the United

States and is also currently bidding on D/C jobs in the United

- **IHI** - Ishikawajima-Harima Heavy Industries Co., Ltd. (IHI), is a self-proclaimed world leader in the construction of LNG receiving terminals and tanks.

Additionally, IHI is involved in many kind of ...

liquefied petroleum gas (LPG), liquefied natural gas (LNG), liquefied ammonia, liquefied oxygen (LOX), liquefied nitrogen (LN2) and liquefied hydrogen (LH2). It has previously sought business in the U.S.

PSI - PSI Industries of France is one of the largest worldwide ...

Court that the subpoenas would satisfy Commission Rules of Practice 3.34 and 3.37. See F.T.C. Rule 3.36. Specifically, Respondents must make a specific showing that: (a) the material is

materially relevant to the Commission's inquiry into the alleged violation of the Act.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(c). Material sought is not available via other means -- The material sought in these foreign subpoenas is not available via other means. Information of the type sought by these subpoenas is certainly not publicly available, nor is it likely to be available from the files of potential domestic competitors. While some of these foreign firms do have U.S. subsidiaries or

[REDACTED]

sought. Specifically, the Hague Convention -- an international treaty -- governs efforts to secure evidence for use in litigation. See Hague Convention, Nov. 15, 1965, art. 1 *et seq.*, 20 U.S.T. 361 (hereinafter "Hague Convention"). Most foreign jurisdictions do not recognize civil or pretrial discovery as it exists in the United States. Instead, foreign countries permit evidence to be obtained "for use at trial." The companies CB&I seeks evidence from are located in countries that have agreed to abide by the terms of the Hague Convention. Specifically, the companies are

forth in paragraph 4 above either reside or have offices in France, Japan, Sweden, South Korea, or the United Kingdom, all of whom have signed and are members to the Convention. See Hague Convention, at Annex to the Convention.

8. In general, for countries that have adopted the Hague Convention, the international discovery process can be summarized as the following government to government transaction: a U.S. judicial proceeding (i.e., this Court) makes a request to the U.S. government, who in turn makes a request to its foreign government counterpart, who likewise makes a request

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ask this Court to grant its request to deny admission of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CERTIFICATE OF SERVICE

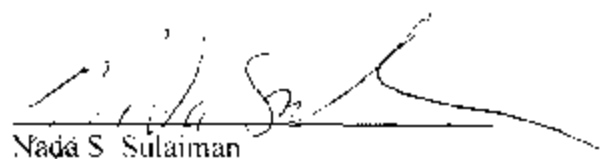
I, **Nada S. Sulaiman**, hereby certify that on this tenth day of April, 2002, I served a true and correct copy of: Respondents' Motion for Leave to Seek Foreign Evidence (Confidential Subject to Protective Order), by hand delivery upon:

The Honorable James P. Timony
Administrative Law Judge
Federal Trade Commission

Washington, D.C. 20580

Richard Liebeskind
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Nada S. Sulaiman

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

Joseph M. ...)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

a foreign corporation,)

CHICAGO BRIDGE & IRON COMPANY,)

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and)

PITT-DES-MOINES, INC.,)

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PROPOSED ORDER