

Syllabus

IN THE MATTER OF

AMERICAN SHEET & TIN PLATE CO. ET AL.

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

Docket 2741. Complaint, Mar. 26, 1936¹—Decision, June 24, 1936

Where some fifteen corporations engaged in (1) manufacture of tin plate and in sale thereof to tin plate jobbers and to metal container and tin can manufacturers, including the two principal purchasers of such plate's below described "production" grade and consumers of approximately sixty-five per cent of the domestic production; and in the course of their said business, (2) producing the (a) "production plate" grade made in accordance with customers' specifications and constituting bulk of tin plate made by them, (b) "stock plate" grade of overruns, seconds and warming-up sizes accumulated in large quantities without specific orders therefor in course of manufacture of former and theretofore sold, in substantial part, to such jobbers, and, by resale by latter, to small can manufacturers and packers unable to carry "production" in stock in various sizes and quantities required, and (c) "waste-waste," in which defects are so great as not to permit same to qualify as seconds—

- (a) Agreed not to quote prices on "stock" nor to offer same to jobbers and manufacturers, and to restrict and eliminate competition in interstate sale and distribution of such tin plate to jobbers thereof and to metal container and tin can manufacturers, through certain conferences resulting in elimination of the "stock plate" classification and in requirement that buyers of "production" accept seconds up to twenty-five per cent of their orders;
- (b) Refused, in pursuance of their aforesaid agreement, to quote prices on "stock" or to offer or sell same to jobbers and manufacturers, although producing it in substantial quantities, and sold as "production," at prices higher than those theretofore received for "stock," some of latter produced and accumulated by them; and
- (c) Cut up some of such "stock" into such shapes as to render it unfit for manufacture of tin cans or other metal containers, and classified and sold same as "waste-waste" for domestic consumption, while classifying and selling as "waste-waste," "stock" for export, without mutilation;

With result that there was an undue tendency to substantially lessen, restrict, and suppress competition in interstate sale of tin plate throughout the United States and particularly in sale of "stock," and to enhance prices of latter above those which had theretofore prevailed and which would prevail under normal, natural, and open competition between them, and there was a tendency to destroy business of tin plate jobbers and force them out and to create a monopoly in manufacture of tin containers in two aforesaid companies by depriving their small manufacturer competitors of their normal source of supply of tin plate, and such small tin can and metal container manufacturers who had theretofore purchased their neces-

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sary supplies of plate classified as "stock" through such jobbers were forced to purchase "production" at prices which were substantially higher than formerly paid by them for "stock" and, purchased in less than 100-case lots, higher than price paid therefor by said can companies:

Held, That such acts and practices, and each of them, were to the prejudice of the buying public generally and competitors, and constituted unfair methods of competition.

Before *Mr. John W. Norwood*, trial examiner.

Mr. Everett F. Haycraft and *Mr. Reuben J. Martin* for the Commission.

Mr. Kenneth B. Halstead and *Mr. Harold H. Corbin*, of New York City, for American Sheet and Tin Plate Co. and Columbia Steel Co.

Cravath, DeGersdorff, Swaine & Wood, of New York City, for Bethlehem Steel Co.

Black, McCuskey, Ruff & Souers, of Canton, Ohio, for Canton Tin Plate Corp.

Reed, Smith, Shaw & McClay and *Smith, Buchanan, Scott & Ingersoll*, of Pittsburgh, Pa., for John Follansbee, George T. Ladd, and Isaac M. Scott, trustees in bankruptcy for Follansbee Bros. Co.

Chadbourne, Stanchfield & Levy, of New York City, for Granite City Steel Co.

Mayer, Meyer, Austrian & Platt, of Chicago, Ill., for Inland Steel Co.

Mr. W. L. Copeland, of Pittsburgh, Pa., for Jones and Laughlin Steel Corp.

Mr. Ralph H. Frank and *Mr. J. P. Fife*, of Pittsburgh, Pa., for McKeesport Tin Plate Co.

Mr. T. F. Patton and *Mr. A. J. Gentholtz*, of Cleveland, Ohio, and *Mr. John S. Brookes, Jr.*, and *Mr. Stuart Young*, of Washington, D. C., for Republic Steel Corp. and The N. and G. Taylor Co.

Reed, Smith, Shaw & McClay, of Pittsburgh, Pa., also for Washington Tin Plate Co.

Thorp, Bostwick, Reed & Armstrong, of Pittsburgh, Pa., for Weirton Steel Co., and along with *Mr. Wright Hugus* and *Mr. J. E. Bruce*, of Wheeling, W. Va., for Wheeling Steel Corp.

Manchester, Ford, Bennett & Powers, of Youngstown, Ohio, for The Youngstown Sheet & Tube Co.

AMENDED COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the

Federal Trade Commission having reason to believe that American Sheet & Tin Plate Co., Bethlehem Steel Co., Canton Tin Plate Corporation, Columbia Steel Co., John Follansbee, George T. Ladd, and Isaac M. Scott, trustees in bankruptcy for Follansbee Bros. Co., Granite City Steel Co., Inland Steel Co., Jones & Laughlin Steel Corporation, McKeesport Tin Plate Co., Republic Steel Corporation, the N. & G. Taylor Co., Washington Tin Plate Co., Weirton Steel Co., Wheeling Steel Corporation, Youngstown Sheet & Tube Co., hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its amended complaint stating its charges in that respect as follows:

PARAGRAPH 1. Said respondent, American Sheet & Tin Plate Co., is a corporation organized under the laws of the State of New Jersey in 1900, with its principal office and place of business located in the Frick Building in the city of Pittsburgh in the State of Pennsylvania. Said respondent since the date of its organization has been and now is engaged in the manufacture, among other products, of tin plate which it sells to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in States other than the State of Pennsylvania, causing said tin plate when sold to be transported from the place of manufacture within said State of Pennsylvania to the purchasers thereof located in States other than the State of Pennsylvania.

PAR. 2. Said respondent, Bethlehem Steel Co., is a corporation organized under the laws of the State of Pennsylvania in 1899, with its principal office and place of business located in the city of Bethlehem, in said State of Pennsylvania. Said respondent since the date of its organization has been and now is engaged in the manufacture, among other products of tin plate which it sells to jobbers of tin plate and to manufacturers of tin cans and other metal containers located in States other than the State of Pennsylvania, causing said tin plate when sold to be transported from the place of manufacture within the State of Pennsylvania to the purchasers thereof located in States other than the State of Pennsylvania.

PAR. 3. Said respondent, Canton Tin Plate Corporation, is a corporation organized under the laws of the State of Ohio in 1930, with its principal office and place of business located in the city of Canton in said State of Ohio. Said respondent since the date of its organization has been and now is engaged in the manufacture, among other articles, of tin plate which it sells to jobbers of tin plate and to manufacturers of tin cans and other metal containers located in

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States other than the State of Ohio, causing said tin plate when sold to be transported from the place of manufacture within said State of Ohio to the purchasers thereof located in States other than the State of Ohio.

PAR. 4. Said respondent, Columbia Steel Co., is a corporation organized under the laws of the State of Delaware in 1930, with its principal office and place of business located in the Russ Building in the city of San Francisco, in the State of California. Said respondent since the date of its organization has been and now is engaged in the manufacture, among other products, of tin plate which it sells to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in States other than the State of California, causing said tin plate when sold to be transported from the place of manufacture within said State of California to the purchasers thereof located in States other than the State of California.

PAR. 5. Said respondent, John Follansbee, George T. Ladd and Isaac M. Scott, are trustees in bankruptcy for Follansbee Bros. Co., a corporation, organized under the laws of the State of Pennsylvania in 1894, with its principal office and place of business located at Third Avenue and Liberty Avenue, in the city of Pittsburgh within the State of Pennsylvania. Said respondent since the date of its organization has been and now is engaged in the manufacture, among other products, of tin plate which it sells to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in States other than the State of Pennsylvania, causing said tin plate when sold to be transported from the place of manufacture within said State of Pennsylvania to the purchasers thereof located in States other than the State of Pennsylvania.

PAR. 6. Said respondent, Granite City Steel Co., is a corporation organized under the laws of the State of Delaware in 1927, with its principal office and place of business located at Twentieth Street and Madison Avenue in Granite City, in the State of Illinois. Said respondent since the date of its organization has been and now is engaged in the manufacture, among other products, of tin plate which it sells to jobbers of tin plate and to manufacturers of tin cans and other metal containers located in States other than the State of Illinois, causing said tin plate when sold to be transported from the place of manufacture within said State of Illinois to the purchasers thereof located in States other than the State of Illinois.

PAR. 7. Said respondent, Inland Steel Co., is a corporation organized under the laws of the State of Delaware in 1917, with its principal office and place of business located at 38 South Dearborn Street

in the city of Chicago, in the State of Illinois. Said respondent since the date of its organization has been and now is engaged in the manufacture, among other products, of tin plate which it sells to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in States other than the State of Illinois, causing said tin plate when sold to be transported from the place of manufacture within said State of Illinois to the purchasers thereof located in States other than the State of Illinois.

PAR. 8. Said respondent, Jones & Laughlin Steel Corporation, is a corporation organized under the laws of the State of Pennsylvania in 1922, with its principal office and place of business located at Third Avenue and Ross Street in the city of Pittsburgh, in the State of Pennsylvania. Said respondent since the date of its organization has been and now is engaged in the manufacture, among other products, of tin plate, which it sells to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in States other than the State of Pennsylvania, causing said tin plate when sold to be transported from the place of manufacture within the State of Pennsylvania to the purchasers thereof located in States other than the State of Pennsylvania.

PAR. 9. Said respondent, McKeesport Tin Plate Co., is a corporation organized under the laws of the State of Pennsylvania in 1902, with its principal office and place of business located at Port Vue, McKeesport, in the State of Pennsylvania. Said respondent since the date of its organization has been and now is engaged in the manufacture, among other products, of tin plate which it sells to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in States other than the State of Pennsylvania, causing said tin plate when sold to be transported from the place of manufacture within said State of Pennsylvania to the purchasers thereof located in States other than the State of Pennsylvania.

PAR. 10. Said respondent, Republic Steel Corporation, is a corporation organized under the laws of the State of New Jersey in 1899, with its principal office and place of business located at Youngstown in the State of Ohio. Said respondent since the date of its organization has been and now is engaged in the manufacture, among other products, of tin plate which it sells to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in States other than the State of Ohio, causing said tin plate when sold to be transported from the place of manufacture within said State of Ohio to the purchasers thereof located in States other than the State of Ohio.

PAR. 11. Said respondent, The N. & G. Taylor Co., is a corporation organized under the laws of the State of Maryland in 1929, with its principal office and place of business located in the city of Cumberland, in the State of Maryland. Said respondent since the date of its organization has been and now is engaged in the manufacture, among other products, of tin plate which it sells to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in States other than the State of Maryland, causing said tin plate when sold to be transported from the place of manufacture within said State of Maryland to the purchasers thereof located in States other than the State of Maryland.

PAR. 12. Said respondent, Washington Tin Plate Co., is a corporation organized under the laws of the State of Pennsylvania in 1907, with its principal office and place of business located in the city of Washington, in the State of Pennsylvania. Said respondent since the date of its organization has been and now is engaged in the manufacture, among other products, of tin plate which it sells to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in States other than the State of Pennsylvania, causing said tin plate when sold to be transported from the place of manufacture within said State of Pennsylvania to the purchasers thereof located in States other than the State of Pennsylvania.

PAR. 13. Said respondent, Weirton Steel Co., is a corporation organized under the laws of the State of Delaware in 1925, with its principal office and place of business located in the city of Weirton, in the State of West Virginia. Said respondent since the date of its organization has been and now is engaged in the manufacture, among other products, of tin plate which it sells to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in States other than the State of West Virginia, causing said tin plate when sold to be transported from the place of manufacture within said State of West Virginia to the purchasers thereof located in States other than the State of West Virginia.

PAR. 14. Said respondent, Wheeling Steel Corporation, is a corporation organized under the laws of the State of Delaware in 1920, with its principal office and place of business located in the city of Wheeling, in the State of West Virginia. Said respondent since the date of its organization has been and now is engaged in the manufacture, among other products, of tin plate which it sells to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in States other than the State of West Virginia, causing said tin plate when sold to be transported from the place of manufacture within said State of West Virginia to the purchasers thereof located in States other than the State of West Virginia.

PAR. 15. Said respondent, The Youngstown Sheet & Tube Co., is a corporation organized under the laws of the State of Ohio in 1900, with its principal office and place of business located in the Stambaugh Building in the city of Youngstown, in the State of Ohio. Said respondent since the date of its organization has been and now is engaged in the manufacture of tin plate which it sells to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in States other than the State of Ohio, causing said tin plate when sold to be transported from the place of manufacture within said State of Ohio to purchasers thereof located in States other than the State of Ohio.

PAR. 16. Said respondents, in the regular course and conduct of their said business, have been and now are producing several grades of tin plate—namely, “production plate,” “stock plate,” and “waste-waste.” These several grades of tin plate are described as follows:

“Production plate” which constitutes the bulk of the tin plate manufactured by said respondents, is the trade name and designation for tin plate made by the respondents in accordance with their customers’ specifications.

“Stock plate” is the trade name or designation for over-runs, seconds, and warming-up sizes accumulated by said respondents in the course of the manufacture of “production plate.” Because of the difficulties in controlling production in the manufacture of “production plate” large quantities of this “stock plate,” for which the said respondents have no specific orders, are accumulated by the respondents.

“Waste-waste” is the trade name or designation for tin plate which contains defects so great as not to permit said tin plate to qualify as seconds.

The said respondents have been selling and now sell the bulk of the tin plate produced by them to manufacturers of tin cans and other metal containers. The two large can companies, the American Can Co. and the Continental Can Co., who together consume approximately 65 percent of the domestic production of tin plate, are, by virtue of their size and large purchasing power, the principal purchasers of “production plate.”

“Stock plate” which has been accumulated in the course of the manufacture of “production plate,” as herein above set forth, was prior to January 1, 1935, sold by respondents to jobbers of tin plate who in turn disposed of the “stock plate” to small can manufacturers and packers who, because of lack of financial capacity were, and are not, able to carry “production plate” in stock in the various sizes and quantities required.

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PAR. 17. Said respondents on or about October 15, 1934, entered into an understanding, agreement, combination, or conspiracy among and between themselves to restrict, restrain, suppress, and eliminate competition in the sale and distribution of the certain grade and quality of tin plate known in the trade as "stock plate" to jobbers of tin plate and to manufacturers of tin cans and other metal containers located throughout the several States of the United States, as aforesaid, by agreeing not to quote prices on said "stock plate" nor to offer the same for sale to said jobber customers and manufacturers.

PAR. 18. Said respondents, in furtherance of and pursuant to their aforesaid understanding, agreement, combination, or conspiracy, and acting in cooperation with each other, have, since on or about January 1, 1935, refused to sell, and now refuse to sell, "stock plate" or to offer the same for sale to said jobber customers and manufacturers, although said "stock plate" has been since January 1, 1935, and is now being produced by said respondents in substantial quantities. The said "stock plate" which is now accumulated by said respondents in the course of the manufacture of "production plate" has been since January 1, 1935, and is now being cut up by said respondents into such shape that it cannot be used by the jobbers of tin plate or small can manufacturers or other manufacturers of metal containers and is now being classified as "waste-waste" and sold for domestic consumption. Said product is also being sold as "waste-waste" for export but without mutilation of shape.

PAR. 19. The result of the acts of the said respondents, as hereinbefore set out in paragraphs 17 and 18, have been and now are to unduly tend to substantially lessen, restrict, and suppress competition in the interstate sale of tin plate throughout the United States, particularly in the sale of "stock plate," and to enhance the prices of said tin plate above the prices which had theretofore prevailed and which would prevail under normal, natural and open competition between said respondents; and also tends to destroy the business of and force out of business the jobbers of tin plate; and also tends to create a monopoly in the manufacture of tin containers in the American Can Co. and the Continental Can Co. by depriving their competitors, the said small manufacturers of tin containers, of their normal source of supply of tin plate. The said small manufacturers of tin cans and metal containers, who heretofore, purchased their necessary supplies of "stock plate" through the jobbers of tin plate are now forced to purchase "production plate" at prices which are substantially higher than they were formerly required to pay and in fact higher than the

price that is paid for the same product by the said American Can Co. and the said Continental Can Co.

PAR. 20. The foregoing alleged acts and practices of the said respondents have been and still are to the prejudice of the buying public generally and to the jobber and small manufacturer of containers, customers of said respondents, in particular, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, and entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on the 17th day of February, A. D. 1936, issued and served its complaint in this proceeding, and on the 26th day of March, A. D. 1936, issued and served its amended complaint in this proceeding upon the respondents, American Sheet & Tin Plate Co., Bethlehem Steel Co., Canton Tin Plate Corporation, Columbia Steel Co., John Follansbee, George T. Ladd and Isaac M. Scott, trustees in bankruptcy for Follansbee Bros. Co., a corporation; Granite City Steel Co., Inland Steel Co., Jones & Laughlin Steel Corporation, McKeesport Tin Plate Co., Republic Steel Corporation, The N. & G. Taylor Co., Washington Tin Plate Co., Weirton Steel Co., Wheeling Steel Corporation, and Youngstown Sheet & Tube Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and said amended complaint, said respondents filed their answers thereto. Thereafter said respondents petitioned said Commission to allow them to withdraw the answers theretofore filed and, pursuant to permission granted by the said Commission, filed their substituted answers thereto, admitting the material facts alleged in the amended complaint, and the Commission having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Said corporate respondent, American Sheet & Tin Plate Co., is a corporation organized under the laws of the State of

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New Jersey on March 28, 1900, and until May 29, 1936, it maintained an office for the transaction of business in the Frick Building, Pittsburgh, Pa. From the date of its organization to May 29, 1936, said respondent had been engaged in the manufacture of sheet steel products, but was engaged in the manufacture of tin plate only from on or about December 31, 1930, to May 29, 1936; which said tin plate it sold to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in States other than the State of Pennsylvania, causing said tin plate, when sold, to be transported from the place of manufacture within said State of Pennsylvania to the purchasers thereof located in States other than the State of Pennsylvania. On May 29, 1936, and after the issuance of the complaint against said respondent, the said American Sheet & Tin Plate Co. was duly merged into Carnegie-Illinois Steel Corporation (a New Jersey corporation maintaining an office for the transaction of business in Carnegie Building at Pittsburgh, Pa.) under and pursuant to the laws of the State of New Jersey, and thereupon said Carnegie-Illinois Steel Corporation succeeded to the assets and liabilities, and took over and continued, and still continues, the business of said respondent, American Sheet & Tin Plate Co.

PAR. 2. Said respondent, Bethlehem Steel Co., is a corporation organized under the laws of the State of Pennsylvania in 1899, with its principal office and place of business located in the city of Bethlehem, within said State of Pennsylvania. Said respondent has for a number of years been, and now is, engaged in the manufacture, among other products, of tin plate which it sells to jobbers and to manufacturers of tin cans and other metal containers located in States other than the State of Pennsylvania, causing said tin plate, when sold, to be transported from the place of manufacture within the State of Pennsylvania to the purchasers thereof located in States other than the State of Pennsylvania.

PAR. 3. Said respondent, Canton Tin Plate Corporation, is a corporation organized under the laws of the State of Ohio in 1930, with its principal office and place of business located in the city of Canton, within said State of Ohio. Said respondent, since the date of its organization, has been, and now is, engaged in the manufacture, among other articles, of tin plate which it sells to jobbers of tin plate and to manufacturers of tin cans and other metal containers located in States other than the State of Ohio, causing said tin plate, when sold, to be transported from the place of manufacture within the State of Ohio to the purchasers thereof located in States other than the State of Ohio.

PAR. 4. Said respondent, Columbia Steel Co., is a corporation organized under the laws of the State of Delaware in 1930, with its principal office and place of business located in the city of San Francisco, in the State of California. Said respondent, since the date of its organization, has been, and now is, engaged in the manufacture, among other products, of tin plate, which it sells to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in States other than the State of California, causing said tin plate, when sold, to be transported from the place of manufacture within said State of California to the purchasers thereof located in States other than the State of California.

PAR. 5. Said respondent, Follansbee Bros. Co., is a corporation organized under the laws of the State of Pennsylvania in 1894 with its principal office and place of business located at Third Avenue and Liberty Avenue in the city of Pittsburgh, within the State of Pennsylvania. Said respondent, on June 18, 1934, filed its petition under section 77-B of the Bankrupt Act in the District Court of the United States for the Western District of Pennsylvania at No. 18787 in bankruptcy, alleging its inability to meet and discharge its obligations as they matured, stating its desire to effect a plan of reorganization, and praying for the appointment of trustees of its property and assets pursuant to the provisions of said section 77-B; that thereupon said court appointed John Follansbee and George T. Ladd as trustees of all the property and assets of Follansbee Bros. Co., and directed the said trustees to continue to operate the business of said corporation; that said trustees duly qualified under their said appointment and continued to operate the business of said corporation as directed by said court until July 17, 1934; that on the last mentioned date the said court made an order continuing said John Follansbee and George T. Ladd in office as permanent trustees of Follansbee Bros. Co. under said section 77-B, and appointed Isaac M. Scott as a third permanent trustee of Follansbee Bros. Co. under said section 77-B, and directed the said three permanent trustees to continue the operation of the business of said corporation; and that said three permanent trustees, respondents herein, duly qualified as such by filing the bond approved by the District Court of the Western District of Pennsylvania, and have ever since continued, and are now continuing, to operate the business of said corporation. Said respondents have been, and now are, engaged in the manufacture, among other products, of tin plate, which it sells to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in the State of Pennsylvania and other States, causing said tin plate, when sold, to be transported from its

manufacturing plant located at Follansbee, W. Va., to the purchasers thereof located in the State of West Virginia and States other than the State of West Virginia.

PAR. 6. Said respondent, Granite City Steel Co., is a corporation organized under the laws of the State of Delaware in 1927, with its principal office and place of business located in Granite City, in the State of Illinois. Said respondent, since the date of its organization, has been, and now is, engaged in the manufacture, among other products, of tin plate, which it sells to jobbers of tin plate and to manufacturers of tin cans and other metal containers located in States other than the State of Illinois, causing said tin plate, when sold, to be transported from the place of manufacture within said State of Illinois to the purchasers thereof located in States other than the State of Illinois.

PAR. 7. Said respondent, Inland Steel Corporation, is a corporation organized under the laws of the State of Delaware in 1917 with its principal office and place of business located at 38 South Dearborn Street, in the city of Chicago, in the State of Illinois. Said respondent, since on or about the 1st of January 1934, has been, and now is, engaged in the manufacture, among other products, of tin plate which it sells to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in the various States of the United States, causing said tin plate, when sold, to be transported from the place of manufacture within the State of Illinois to the purchasers thereof located in States other than the State of Illinois.

PAR. 8. Said respondent, Jones & Laughlin Steel Corporation, is a corporation organized under the laws of the State of Pennsylvania in 1922, with its principal office and place of business located in the city of Pittsburgh, in the State of Pennsylvania. Said respondent, since the date of its organization has been, and now is, engaged in the manufacture, among other products, of tin plate which it sells to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in States other than the State of Pennsylvania, causing said tin plate, when sold, to be transported from the place of manufacture within the State of Pennsylvania to the purchasers thereof located in States other than the State of Pennsylvania.

PAR. 9. Said respondent, McKeesport Tin Plate Co., is a corporation organized under the laws of the Commonwealth of Pennsylvania in 1901, with its principal office and place of business located in the Borough of Port Vue in the County of Allegheny, in the Commonwealth of Pennsylvania. Said respondent, since the date of its

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organization, has been, and now is, engaged in the manufacture, among other products, of tin plate, which it sells to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in States other than the State of Pennsylvania, causing said tin plate, when sold, to be transported from the place of manufacture within said State of Pennsylvania to the purchasers thereof located in the State of Pennsylvania and in States other than Pennsylvania.

PAR. 10. Said respondent, Republic Steel Corporation, is a corporation, organized under the laws of the State of New Jersey in 1899, with its principal office and place of business located in the city of Cleveland, in the State of Ohio. Said respondent, since the year 1928, has been, and now is, engaged in the manufacture, among other products, of tin plate, which it sells to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in States other than the State of Ohio, causing said tin plate, when sold, to be transported from the place of manufacture within said State of Ohio to the purchasers thereof located in States other than the State of Ohio.

PAR. 11. Said respondent, the N. & G. Taylor Co., is a corporation organized under the laws of the State of Maryland in 1929, with its principal office and place of business located in the city of Cumberland, in the State of Maryland. Said respondent, since the date of its organization, has been, and now is, engaged in the manufacture, among other products, of tin plate which it sells to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in States other than the State of Maryland, causing said tin plate, when sold, to be transported from the place of manufacture within said State of Maryland to the purchasers thereof located in States other than the State of Maryland.

PAR. 12. Said respondent, Washington Tin Plate Co., is a corporation organized under the laws of the State of Pennsylvania in 1907, with its principal office and place of business located in the city of Washington, in the State of Pennsylvania. Said respondent, since the date of its organization, has been and now is engaged in the manufacture, among other products, of tin plate which it sells to manufacturers of tin cans and other metal containers, and which it some years prior to January 1, 1935, also sold to jobbers of tin plate located in States other than the State of Pennsylvania, causing said tin plate, when sold, to be transported from the place of manufacture within said State of Pennsylvania to the purchasers thereof located in States other than the State of Pennsylvania.

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PAR. 13. Said respondent, Weirton Steel Co., is a corporation organized under the laws of the State of Delaware in 1925, with its principal office and place of business located in the city of Weirton, in the State of West Virginia. Said respondent, since the date of its organization, has been, and now is, engaged in the manufacture, among other products, of tin plate which it sells to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in States other than the State of West Virginia, causing said tin plate, when sold, to be transported from the place of manufacture within said State of West Virginia to the purchasers thereof located in States other than the State of West Virginia.

PAR. 14. Said respondent, Wheeling Steel Corporation, is a corporation organized under the laws of the State of Delaware in 1920, with its principal office and place of business located in the city of Wheeling, in the State of West Virginia. Said respondent, since the date of its organization, has been, and now is, engaged in the manufacture, among other products, of tin plate which it sells to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in States other than the State of West Virginia, causing such tin plate, when sold, to be transported from the place of manufacture within the State of Ohio to the purchasers thereof located in States other than the State of Ohio.

PAR. 15. Said respondent, The Youngstown Sheet & Tube Co., is a corporation organized under the laws of the State of Ohio in 1900, with its principal office and place of business located in the city of Youngstown, in the State of Ohio. Said respondent, since the fall of 1926 has been, and now is, engaged in the manufacture of tin plate which it sells to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in States other than the State of Ohio, causing said tin plate, when sold, to be transported from the place of manufacture within the State of Indiana to purchasers thereof located in States other than the State of Indiana.

PAR. 16. Said respondents, and each of them, in the regular course and conduct of their business have been, and now are, producing several grades of tin plate, namely, "production plate," "stock plate," and "waste-waste."

"Production plate" constitutes the bulk of the tin plate manufactured by said respondents, and by each of them, and is the trade name and designation for tin plate made by respondents, and each of them, in accordance with their customers' specifications.

"Stock plate" is the trade name or designation for over-runs, seconds and warming-up sizes, which is accumulated by the said

respondents, and each of them, in the course of the manufacture of "production plate." Large quantities of "stock plate" for which the respondents, and each of them, have no specific orders are accumulated by the respondents, and by each of them, due to the difficulties in controlling production in the manufacture of "production plate."

"Waste-waste" is the trade name or designation for tin plate which contains defects so great as not to permit said tin plate to qualify as seconds.

The said respondents, and each of them, have sold and now sell the bulk of tin plate produced by them to manufacturers of tin cans and other metal containers. The American Can Co. and the Continental Can Co. are the principal purchasers of tin plate, including "production plate," and together consume approximately 65 percent of the domestic production of tin plate.

Prior to January 1, 1935, a substantial portion of said "stock plate" which had been accumulated in the course of the manufacture of "production plate" was sold by said respondents, and each of them, to jobbers of tin plate. The said jobbers of tin plate in turn disposed of said "stock plate" to small can manufacturers and packers who were not able to carry "production plate" in stock in the various sizes and quantities required.

PAR. 17. During the summer and early fall of 1934 representatives of the respondents held conferences with respect to the elimination of the classification of tin plate theretofore known as "stock plate," and at one of such conferences held on, to wit, October 15, 1934, representatives of all of said respondents being present, adopted a recommendation that the production and sale of tin plate under the classification known as "stock plate" be eliminated entirely after January 1, 1935, and requiring buyers of "production plate" to accept seconds up to 25 percent of their orders, which recommendation was referred by them to their respective principals; that each and all of the respondents thereafter adopted the recommendations submitted to them, and thereafter, on or about January 1, 1935, each and every one of said respondents discontinued the manufacture and sale of the classification of tin plate known as "stock plate" with the full knowledge and belief, as a result of said conferences and recommendations resulting therefrom, that each and all of the respondents intended to and would take the same action on that date.

The said action taken by said respondents under the circumstances just recited constituted an agreement by said respondents not to quote prices on "stock plate" and not to offer the same for sale to jobbers and manufacturers, and said respondents thereby entered into an understanding, agreement, combination and conspiracy with each

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other to restrict and eliminate competition in interstate sale and distribution of the grade and quality of tin plate known as "stock plate," as herein defined, to jobbers of tin plate and to manufacturers of tin cans and other metal containers.

PAR. 18. Said respondents, and each of them, acting in cooperation with each other, and in furtherance of and pursuant to their said understanding or agreement, have since on or about January 1, 1935, refused to quote prices on "stock plate" and have refused to offer for sale or to sell "stock plate" to jobbers and manufacturers, although said respondents, and each of them, have since January 1, 1935, produced "stock plate" in substantial quantities. Some of the "stock plate" which has been produced and accumulated since January 1, 1935, by said respondents, and each of them, in the course of the manufacture of "production plate" has been sold as "production plate" at prices higher than the prices theretofore received for "stock plate", and some of the "stock plate" is cut up by said respondents into such shapes as to render it unfit for the manufacture of tin cans or other metal containers, and such "stock plate" has been classified by said respondents, and each of them, as "waste-waste" and sold for domestic consumption. Some of said respondents have also since January 1, 1935, classified some grades of "stock plate" as "waste-waste" and have sold the same for export without mutilation of shape. Said respondents, pursuant to said agreement, have also since January 1, 1935, required purchasers of "production plate" to accept seconds up to 25 per cent of their orders.

PAR. 19. The said respondents in their answers set up as justification for entering into the agreement hereinbefore set out in paragraph 17 hereof, and in justification of their actions thereunder, the following facts:

In August 1933, the members of the steel industry, including said respondents, were operating under the National Recovery Act of June 16, 1933, and the Code of Fair Competition for the Iron and Steel Industry adopted pursuant thereto; that the provisions of said code required manufacturers to file tin plate prices with the Code Authority for the Iron and Steel Industry and to refrain from certain unfair trade practices defined in said code, and provided penalties for the violation of the said provisions; that the sale of materials, including tin plate at less than filed prices, whether directly by overgrading or otherwise, constituted a violation of the said act and of said code; that many manufacturers, acting in alleged evasion and contravention of the provisions of said act and said code, engaged in the sale of tin plate as "stock plate" which should properly, according to trade usages and the practices theretofore prevailing,

and provided by the code, have been classified and sold as "production plate"; that respondents considered such practices unfair to manufacturers or purchasers of tin plate and to the buying public, and that it enabled manufacturers, while apparently selling at the same prices, to discriminate in favor of one customer as against another, and that such actions were an evasion and violation of the said code and the said act; and that in the summer and fall of 1934 said respondents believed that the foregoing facts necessitated corrective action within the industry.

The foregoing facts recited by the respondents, as herein set out, do not constitute any justification for the said agreement or the actions taken by said respondents pursuant to said agreement; the said code contained no provisions prohibiting the sale of "stock plate," and did not authorize the entering into agreements among and between the respondents, or activities thereunder, as hereinabove set forth in paragraphs 17 and 18. Further, since the termination of the National Recovery Act on or about June 1, 1935, said respondents have continued to observe the provisions of said agreement to not quote prices on "stock plate" and not to offer same for sale to jobbers and manufacturers as more particularly set forth in paragraphs 17 and 18 herein.

PAR. 20. The result of the acts and conduct of said respondents, and each of them, as hereinbefore set out in paragraphs 17, 18 and 19, has been and now is to unduly tend to substantially lessen, restrict and suppress competition in the interstate sale of tin plate throughout the United States, particularly in the sale of "stock plate," and to enhance the prices of said "stock plate" above the prices which have theretofore prevailed and which would prevail under normal, natural, and open competition between said respondents; and also tends to destroy the business of and force out of business jobbers of tin plate; and also tends to create a monopoly in the manufacture of tin containers in the American Can Co. and the Continental Can Co. by depriving their competitors, the small manufacturers of tin containers, of their normal source of supply of tin plate. Said small manufacturers of tin cans and metal containers who had heretofore purchased their necessary supplies of tin plate classified as "stock plate" through the jobbers of tin plate are now forced to purchase "production plate" at prices which are substantially higher than they formerly paid for "stock plate," and, when purchased in lots of less than 100 base boxes, are higher than the price paid for the same product by the American Can Co. and the Continental Can Co,

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CONCLUSION

The foregoing acts and practices of the said respondents, and each of them, have been and still are to the prejudice of the buying public generally and customers of said respondents in particular, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This matter coming on to be heard by the Commission on the complaint filed herein on February 17, 1936, and the amended complaint filed herein on March 26, 1936, and substituted answers of the respondents, American Sheet and Tin Plate Co. (now Carnegie-Illinois Steel Corporation), Bethlehem Steel Co., Canton Tin Plate Corporation, Columbia Steel Co., John Follansbee, George T. Ladd and Isaac M. Scott, trustees in bankruptcy for Follansbee Bros. Co., a corporation, Granite City Steel Co., Inland Steel Co., Jones & Laughlin Steel Corporation, McKeesport Tin Plate Co., Republic Steel Corporation, the N. & G. Taylor Co., Washington Tin Plate Co., Weirton Steel Co., Wheeling Steel Corporation, and Youngstown Sheet & Tube Co., in which they state they desire to and have thereby waived hearing on the charges set forth in the amended complaint; that they, and each of them, refrain from contesting the proceeding, and that they, and each of them, admit the material facts alleged in the amended complaint; that they, and each of them, consent that the Commission may, without trial and without further evidence, and without any intervening procedure, make and enter its findings as to the facts and the conclusion thereon, and issue and serve upon them, and each of them, the said respondents, an order to cease and desist from the methods of competition alleged in the amended complaint:

Now, therefore, it is hereby ordered, That the respondent corporations, American Sheet & Tin Plate Co. (now Carnegie-Illinois Steel Corporation), Bethlehem Steel Co., Canton Tin Plate Corporation, Columbia Steel Co., John Follansbee, George T. Ladd and Isaac M. Scott, trustees in bankruptcy for Follansbee Bros. Co., a corporation, Granite City Steel Co., Inland Steel Co., Jones & Laughlin Steel Corporation, McKeesport Tin Plate Co., Republic Steel Corporation, The N. & G. Taylor Co., Washington Tin Plate Co., Weirton Steel Co., Wheeling Steel Corporation, and Youngs-

town Sheet & Tube Co., their successors, officers, agents, or employees, and each of them, cease and desist from:

(1) Acting in cooperation with each other by entering into agreements not to sell, offer for sale, or quote prices in interstate commerce on "stock plate", consisting of warming-up sizes, over-runs and seconds, resulting from the manufacture of tin plate;

(2) Refusing, pursuant to agreement, to sell or offer to sell in interstate commerce to jobbers and manufacturers of tin cans and other metal containers "stock plate", consisting of warming-up sizes, over-runs and seconds, resulting from the manufacture of tin plate;

(3) Acting in cooperation with each other by entering into agreements to cut up or otherwise to mutilate warming-up sizes, over-runs or seconds, resulting from the manufacture of tin plate and known and described in the trade as "stock plate", for the purpose of classifying the same as "waste-waste" for domestic sale in interstate commerce and at the same time offering it for sale in foreign countries without mutilation;

(4) Cutting up or otherwise mutilating, pursuant to agreement, warming-up sizes, over-runs or seconds, resulting from the manufacture of tin plate and known and described in the trade as "stock plate", for the purpose of classifying the same as "waste-waste" for domestic sale in interstate commerce and at the same time offering it for sale in foreign countries without mutilation.

It is hereby further ordered, That said respondents, and each of them, shall within 60 days from the date of service of this order, file with the Commission a report or reports in writing, stating the manner and form in which they have complied with this order.

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IN THE MATTER OF
NATIONAL SILVER CO.

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

Docket 2512. Complaint, Aug. 13, 1935—Decision, June 25, 1936

Where a corporation, engaged in the sale and distribution of silverware to jobbers, wholesale and retail dealers, and to chain, hardware, department, and house-furnishing stores—

Sold and delivered sets of a certain pattern of silverware, upon each and every piece of which there was stamped the quality mark or words "Sectional Overlay", notwithstanding fact that ornamental pieces thereof did not have an extra deposit of silver at points of wear, so as to be properly represented, designated, or referred to by said quality mark;

With effect of deceiving ultimate purchasers into buying that which they did not intend to buy, and of placing thereby in the hands of its wholesale and retail purchasers means of deceiving ultimate purchasers, and with capacity and tendency so to do, and to divert to it trade of competitors engaged in selling similar products, truthfully advertised, represented, and described, and of competitors engaged in selling products which (1) do have extra deposits of silver at the points of wear, as denoted by said term as long known and understood by trade and purchasing public, and by former as quality mark denoting additional value in silverware, and which (2) are truthfully advertised and described by them; to the substantial injury of substantial competition in commerce:

Held, That such practices, under the conditions and circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Edward M. Averill*, trial examiner.

Mr. John Darsey for the Commission.

Brill, Bergenfeld & Brill, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that the National Silver Co., a corporation, has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent National Silver Co. is a corporation organized and existing under and by virtue of the laws of the State