

Complaint

IN THE MATTER OF

UNITED STATES STEEL CORPORATION ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6078. Complaint, Jan. 21, 1953—Decision, Apr. 28, 1955

Consent order requiring the manufacturers controlling 75% of the domestic steel drum business, to cease cooperating in fixing prices for steel drums, including the base price for a "standard" drum and extras added to and deductions from any base price for variations, etc.

Before *Mr. Abner E. Lipscomb*, hearing examiner.

Mr. James I. Rooney, Mr. James S. Kelaher, Mr. Fletcher G. Cohn and *Mr. Everette MacIntyre* for the Commission.

Mr. Thomas Lynch, of New York City, and *Mr. L. L. Lewis, Mr. Merrill Russell, Mr. John C. Bane, Jr. and Reed, Smith, Shaw & McClay*, of Pittsburgh, Pa., for United States Steel Corp. and United States Steel Co.

Mr. J. Theodore Ross, of Pittsburgh, Pa., for Jones & Laughlin Steel Corp. and Jones & Laughlin Barrel Co.

Mayer, Froedlich, Spiess, Tierney, Brown & Platt, of Chicago, Ill., for Inland Steel Co. and Inland Steel Container Co.

Dickler & Halbert, of New York City, for Rheem Manufacturing Co.

Mr. Thomas F. Patton, Mr. Harold C. Lumb and *Mr. William J. De Lancey*, of Cleveland, Ohio, for Republic Steel Corp.

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Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the parties named in the caption hereof, and more particularly described and referred to hereinafter as respondents, have violated the provisions of Section 5 of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent United States Steel Corporation is a New Jersey corporation with its office and principal place of business located at 71 Broadway, New York, New York, and through its subsidiaries is the leading steel producer in the United States.

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Respondent United States Steel Company is a New Jersey corporation and is doing business under the trade name and style of "United States Steel Products Division, United States Steel Company," with its office and principal place of business located at 30 Rockefeller Plaza, New York, New York, and is a wholly-owned subsidiary and under the immediate direction and control of respondent United States Steel Corporation. Said respondents are hereinafter referred to as "U. S."

Respondent Jones & Laughlin Steel Corporation is a Pennsylvania corporation with its office and principal place of business located in the Jones & Laughlin Building, Pittsburgh, Pennsylvania, and is the fourth largest steel producer in the United States.

Respondent Jones & Laughlin Steel Barrel Company is a New Jersey corporation with its office and principal place of business located at 70 East 45th St., New York, New York, and is a wholly-owned subsidiary and under the immediate direction and control of respondent Jones & Laughlin Steel Corporation. Respondents Jones & Laughlin Steel Corporation and Jones & Laughlin Steel Barrel Company are hereinafter referred to as "J & L."

Respondent Inland Steel Company is a Delaware corporation with its office and principal place of business located at 38 South Dearborn St., Chicago, Illinois, and is the seventh largest steel producer in the United States.

Respondent Inland Steel Container Company is an Illinois Corporation with its office and principal place of business located at 6532 South Menard Ave., Chicago, Illinois, and is a wholly-owned subsidiary and under the immediate direction and control of respondent Inland Steel Company. Respondents Inland Steel Company and Inland Steel Container Company are hereinafter referred to as "Inland."

Respondent Rheem Manufacturing Company is a California corporation with its office and principal place of business located in the Russ Building, San Francisco, California. Said respondent is hereinafter referred to as "Rheem."

Republic Steel Corporation is a New Jersey corporation with its office and principal place of business located in the Republic Building, Cleveland, Ohio, and is doing business under the trade name and style of "Niles Steel Products Division, Republic Steel Corporation." Republic Steel Corporation, hereinafter referred to as "Republic," is the third largest steel producer in the United States.

PAR. 2. Respondents U. S., J & L, Inland, Rheem and Republic are engaged in the manufacture and sale, among other products, of steel

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shipping containers, including steel drums. A steel drum is any single walled cylindrical or bilged container of 13 gallons to 110 gallons capacity, inclusive, constructed of steel sheet and inclusive of all gauges. Steel drums are essential for the transportation of food, petroleum, chemical, paint, and other products, many of which are vital in the defense mobilization program of the United States Government.

PAR. 3. Respondents U. S., J & L, Inland, Rheem and Republic manufacture steel drums in twenty-four plants, located throughout the United States as follows:

<i>Respondent</i>	<i>Plant Location</i>
Rheem (7 plants)-----	Bayonne, New Jersey; Sparrows Point, Maryland; Chicago, Illinois; New Orleans, Louisiana; Houston, Texas; San Francisco, California; and Los Angeles, California.
U. S. (6 plants)-----	Sharon, Pennsylvania; Chicago, Illinois; New Orleans, Louisiana; Beaumont, Texas; San Francisco, California; and Los Angeles, California.
J & L (6 plants)-----	Bayonne, New Jersey; Philadelphia, Pennsylvania; Cleveland, Ohio; N. Kansas City, Missouri; West Port Arthur, Texas; and New Orleans, Louisiana.
Inland (3 plants)-----	Jersey City, New Jersey; Chicago, Illinois; and New Orleans, Louisiana.
Republic (2 plants)-----	Niles, Ohio.

In the course and conduct of their respective businesses, all of said respondents for many years last past (respondent United States Steel Corporation through its wholly-owned subsidiary United States Steel Products Company until December 31, 1951 and thereafter through its wholly-owned subsidiary United States Steel Company, United States Steel Products Division) have caused and still cause their products, when sold by them, to be transported from the State of origin of the shipment to purchasers thereof located in various other States of the United States and in the District of Columbia in a regular current and flow of commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent U. S., J & L, and Inland began the manufacture of steel drums about 1939, at which time respondents Rheem and Republic were already engaged in the manufacture of said product. Prior to 1939, the steel drum industry was regarded as a "small business" industry. Since 1939, respondents U. S., J & L, Inland, Rheem and Republic have acquired a major portion of the steel drum business

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in the United States, and they now control, and for many years past have controlled, at least 75 percent thereof.

Said respondents have the power to dominate and manipulate the market in which purchasers must buy steel drums and other shipping containers, and to frustrate, destroy, suppress, and eliminate competition between themselves.

PAR. 5. Each of said respondents has been and is in competition with the others in making or seeking to make sales in commerce within the United States of their steel drums, except insofar as said competition has been adversely affected as hereinafter alleged.

PAR. 6. Steel drums are classified by said respondents into various product types according to construction and use. Said types are manufactured in various sizes and gauges.

For many years past and continuing to the present time, said respondents have designated and described a specific drum of each product type as "standard." The specifications for said "standard" drums are uniform among respondents and are descriptive of a finished product, including such components thereof as type of head, size and location of openings, type of flanges, plugs and gaskets to be inserted and type of paint to be applied.

Said respondents quote "base prices" for the various sizes and gauges of drums described as "standard." Prices for drums other than those designated as "standard" are calculated through use of pricing factors for "extras" to be added to and "deductions" to be made from the "base prices" of "standard" drums.

The "base prices" of respondents, or adjustments thereto due to "extras" or "deductions," constitute the minimum prices charged by said respondents and generally apply to purchases of 200 steel drums or more. Said respondents charge higher than minimum prices for purchases in lesser quantities, pursuant to published "quantity differential" schedules.

The "standard" drum specifications, "base prices," "extras," "deductions," "quantity differentials," as well as prices for replacement parts, terms and conditions of sale and delivery, and any and all other elements of the pricing structure for steel drums of said respondents have been and now are substantially the same.

PAR. 7. For many years past and continuing to the present time, respondents have been engaged in unfair methods of competition and unfair acts and practices in commerce, as "commerce" is defined in the Federal Trade Commission Act, in that they have acted, and are still acting unlawfully to hinder, suppress, and prevent competition by co-operating, combining, agreeing, and entering into and carrying out an

understanding and planned common course of action between and among themselves with respect to prices, terms and conditions of sale, and other pricing practices, in connection with the offering for sale, sale and distribution in commerce of steel drums.

PAR. 8. Pursuant to, as part thereof, in furtherance of, and in order to make effective the purposes and objectives of the aforesaid cooperation, combination, agreement, understanding and planned common course of action, respondents have formulated, adopted, performed and put into effect, among other things, the following acts, practices, methods, and policies in connection with the offering for sale, sale and distribution in commerce of steel drums:

1. Agreed to adopt and maintain, and have adopted and maintained uniform "standards," or specifications, for pricing purposes.
2. Agreed to fix and maintain and have fixed and maintained uniform "base prices" for "standard" steel drums.
3. Agreed to fix and maintain, and have fixed and maintained uniform pricing factors for "extras" to be added to and "deductions" to be made from "base prices" with respect to variations of "standard" steel drums.
4. Agreed to fix and maintain, and have fixed and maintained uniform price differentials for specified quantity purchases of steel drums.
5. Agreed to fix and maintain, and have fixed and maintained uniform terms and conditions of sale and delivery for steel drums.
6. Agreed to fix and maintain, and have fixed and maintained uniform prices for replacement parts for steel drums.
7. Agreed to adopt and maintain, and have adopted and maintained the same pricing formula, or mathematical device, for uniformly rigging prices for steel drums in the manner more particularly set forth and alleged hereinafter in Paragraph Nine.
8. Agreed to utilize, and have utilized said pricing formula, or mathematical device, described hereinafter in Paragraph Nine to arbitrarily and uniformly enhance, fix and maintain prices for steel drums.

PAR. 9. For many years past and continuing to the present time, respondents have used an arbitrary formula, or mathematical device, for raising and lowering "base prices" for "standard" steel drums.

As an integral part thereof, respondents publish and use arbitrary "differentials," or pricing factors, ranging from two cents (2¢) per drum to twenty cents (20¢) per drum dependent upon the size and gauge of each steel drum.

Respondents utilize these "differentials," or pricing factors, to calculate revisions, either upward or downward, in "base prices." The

amounts of said revisions are computed in terms of "differentials." Thus, a revision of one (1) "differential" results in changes in "base prices" by the amounts of the published "differentials." Revisions of more or less than one "differential" are readily calculated by multiplying the published "differentials," or pricing factors, by any desired number. For example, a price revision of one-half (.5) a "differential" is calculated by multiplying the published "differentials" by .5 and a price revision of five and one-half (5.5) "differentials" is calculated by multiplying the published "differentials" by 5.5. Under said formula, or mathematical device, the exact amount of a price revision for any particular steel drum is readily ascertainable.

Respondents are thus enabled, through the common use of the aforesaid formula, or mathematical device, to control the price level on steel drums by arbitrarily and uniformly fixing and adjusting "base prices," which form the keystone of the pricing structure for said drums, and to which all other elements of price, such as "extras," "deductions" and "quantity differentials" are related, as heretofore described in Paragraph Six.

PAR. 10. The aforesaid acts, practices, methods, agreements and understandings of respondents as hereinbefore alleged, all and singularly, are to the prejudice of the public; have a dangerous tendency and capacity to hinder, lessen, restrain and eliminate competition between and among respondents in the sale of steel drums in commerce and actually have hindered, lessened, restrained and eliminated such competition; have a dangerous tendency to create and have actually created in respondents a monopoly in the sale and distribution of said product, and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated April 28, 1955, the initial decision in the instant matter of hearing examiner Abner E. Lipscomb, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

On January 21, 1953, the Federal Trade Commission issued its complaint in this proceeding, charging the Respondents with unfair

methods of competition and unfair acts and practices in commerce, by cooperating, combining, agreeing, and entering into and carrying out an understanding and planned common course of action between and among themselves with respect to prices, terms and conditions of sale, and other pricing practices, in the offering for sale, sale and distribution in commerce of steel drums, in violation of the Federal Trade Commission Act.

Thereafter, on March 8, 1955, Respondents, by their duly authorized attorneys, entered into an agreement with counsel supporting the complaint and, pursuant thereto, submitted to the Hearing Examiner a Stipulation For Consent Order for the purpose of disposing of all the issues involved in this proceeding.

Respondent United States Steel Corporation is identified in the stipulation as a corporation, organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at No. 71 Broadway, New York, New York.

Respondent Jones & Laughlin Steel Corporation is identified in the stipulation as a corporation, organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 401 Liberty Avenue, Gateway Center, Pittsburgh, Pennsylvania.

Respondent Inland Steel Company is identified in the stipulation as a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 38 South Dearborn Street, Chicago, Illinois.

Respondent Rheem Manufacturing Company is identified in the stipulation as a corporation, organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 801 Chesley Avenue, Richmond, California.

Respondent Republic Steel Corporation is identified in the stipulation as a corporation, organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located in the Republic Building, Cleveland, Ohio.

Respondents admit all the jurisdictional allegations set forth in the complaint, and agree that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance therewith.

The stipulation contains a statement that Respondents withdraw their answers to the complaint, and, accordingly, their answers shall hereafter be considered as withdrawn.

Respondents also expressly waive the right to file answer herein. In addition, they expressly waive hearing before a hearing examiner or the Commission, the making of findings as to the facts or conclusions of law by the Hearing Examiner or the Commission, the filing of exceptions and oral argument before the Commission, and all further proceedings before the Hearing Examiner and the Commission to which Respondents may be entitled under the provisions of the Federal Trade Commission Act or the Rules of Practice of the Commission.

Respondents agree that the order contained in the stipulation shall have the same force and effect as if it were made after full hearing, presentation of evidence, and findings and conclusions thereon. Respondents specifically waive any and all right, power, or privilege to challenge or contest the validity of such order.

It is agreed that said Stipulation For Consent Order, together with the complaint, shall constitute the entire record in this proceeding, upon which the initial decision shall be based. The stipulation sets forth that the complaint herein may be used in construing the terms of the aforesaid order, which may be altered, modified, or set aside in the manner provided by statute for orders of the Commission.

The stipulation further provides that the signing of the Stipulation For Consent Order is for settlement purposes only, and does not constitute an admission by Respondents of any violation of law alleged in the complaint.

Counsel supporting the complaint states, in his memorandum submitting the Stipulation For Consent Order to the Hearing Examiner, that the order contained in the stipulation differs from the order accompanying the complaint. He avers, however, that the order agreed upon provides adequate relief from all the violations charged in the complaint.

Included as part of the order presented in the stipulation is a provision requiring a report of compliance with the order to cease and desist within sixty days from the service thereof upon respondents. According to the Commission's present practice, such orders of compliance are issued by the Commission itself as a part of its notification to a respondent that the initial decision of the Hearing Examiner has become the decision of the Commission. Observance of this practice avoids confusion as to the expiration date of the sixty-day period allowed for submission of reports of compliance. Accordingly, no

provision concerning the requirement of a report of compliance is included in the order hereinafter issued in this initial decision.

In view of the above facts, and in the light of the statement presented by counsel supporting the complaint, it appears that the order to cease and desist contained in the stipulation will safeguard the public interest to the same extent as if it had been issued after the completion of hearings and all other adjudicative procedure waived in said stipulation. Accordingly, in consonance with the terms of the aforesaid stipulation, the Hearing Examiner accepts the Stipulation For Consent Order submitted herein; finds that this proceeding is in the public interest; and issues the following order:

It is ordered, That Respondents, United States Steel Corporation, a corporation, Jones & Laughlin Steel Corporation, a corporation, Inland Steel Company, a corporation, Rheem Manufacturing Company, a corporation, and Republic Steel Corporation, a corporation, and their respective officers, agents, representatives, and employees, in, or in connection with, the offering for sale, sale, and distribution in interstate commerce of the steel drums involved in this proceeding, do forthwith cease and desist from entering into any planned common course of action, understanding or agreement between any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, and from cooperating in, carrying out, or continuing any such planned common course of action, understanding, or agreement, to do or perform any of the following things:

(1) Adopting, establishing, fixing, or maintaining prices or any element thereof at which steel drums shall be quoted or sold, including but not limited to base prices, the extras which shall be added to, or the deductions which shall be made from, any base price for any specified characteristic, or other conditions of sale;

(2) Collecting, compiling, circulating, or exchanging between or among respondents, or any of them, any pricing factor, statement of pricing method, or extra charges thereto or deductions therefrom for any specified characteristic or quantity of steel drums or services connected therewith used or to be used in computing prices or price quotations of steel drums; or using, directly or indirectly, as a factor in computing price quotations or in making, quoting, or charging prices, any such factor or method so collected, compiled, circulated, or exchanged;

(3) Quoting or selling steel drums at prices calculated or determined pursuant to, or in accordance with, any system or formula which produces identical price quotations or prices or delivered costs, or which establishes a fixed relationship among price quotations or prices or delivered costs, or which prevents purchasers from securing any

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advantage in price in dealing with one or more of the respondents as against any of the other respondents.

It is further ordered, That each of the respondents do forthwith cease and desist from acting, individually or otherwise, so as knowingly to contribute to the maintenance or operation of any planned common course of action, understanding, or agreement between and among any two or more of the respondents or between any one or more of them and others not parties hereto through the commission of any of the acts, practices, or things prohibited by subparagraphs (1) through (3) of paragraph I of this order.

Provided, however, That in interpreting and construing the foregoing provisions of this order, it is understood that:

(1) The Federal Trade Commission is not considering evidence of uniformity of prices or any element thereof of two or more sellers at any destination or destinations alone and without more as showing a violation of law;

(2) The Federal Trade Commission construes the phrase "planned common course of action" and the word "continuing" contained in this order as interpreted by the Supreme Court in *FTC v. Cement Institute*, 333 U. S. 683, at page 728, and by the court in *American Chain & Cable Co. v. FTC* (CA 4th 1944), 139 F. 2d 622;

(3) The Federal Trade Commission is not acting to prohibit or interfere with delivered pricing or freight absorption as such when innocently and independently pursued, regularly or otherwise, with the result of promoting competition.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That respondents United States Steel Corporation, Jones & Laughlin Steel Corporation, Inland Steel Company, Rheem Manufacturing Company, and Republic Steel Corporation, corporations, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of April 28, 1955].

Decision

IN THE MATTER OF
MOOG INDUSTRIES, INC.ORDER, OPINIONS, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (A)
OF THE CLAYTON ACT AS AMENDED

Docket 5723. Complaint, Dec. 20, 1949—Decision, Apr. 29, 1955

Order requiring a manufacturer of automotive replacement parts in St. Louis, Mo., to cease discriminating in price between different customers by selling its products of like grade and quality at higher and less favorable prices to numerous small businessmen than to their larger competitors, in violation of sec. 2 (a) of the Clayton Act as amended.

Before *Mr. Earl J. Kolb*, hearing examiner.

Mr. Eldon P. Schrup, *Mr. James E. Corkey* and *Mr. Francis C. Mayer* for the Commission.

Mr. Edwin S. D. Butterfield, of Chicago, Ill., *Halfpenny, Hahn & Cashedy*, of Washington, D. C., and *Rosenblum, Mellitz & Frank*, of St. Louis, Mo., for respondent.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

This proceeding is before the undersigned Hearing Examiner for final consideration on the complaint, answer thereto, testimony and other evidence, and proposed findings as to the facts and conclusions presented by counsel.

1. The complaint in this proceeding charges that the respondent Moog Industries, Inc., has discriminated in price between different purchasers of its products in violation of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U. S. C. title 15, section 13).

2. The price differentials which are charged to be in violation of the Clayton Act arise from respondent's pricing practices, involving the granting of an annual retroactive volume rebate to its customers and also in the granting of such retroactive volume rebate to group purchasers on the basis of their aggregate purchases instead of upon the individual purchases of the members.

3. The general system of pricing used by the respondent, as developed by the record, and the variations therefrom in the case of group buyers, is not disputed by the respondent but was instead defended on the basis that the merchandise sold by the respondent to its various customers was not of like grade and quality; that the pricing practices of respondent has not resulted in any injury to