

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 this order.

IN THE MATTERS OF

INTERNATIONAL PAPER COMPANY - Docket C-2518
VANCOUVER PLYWOOD CO., INC. - Docket C-2519

CONSENT ORDERS, ETC., IN REGARD TO ALLEGED VIOLATIONS OF THE
FEDERAL TRADE COMMISSION ACT

Complaint, July 1, 1974—Decisions, July 1, 1974

Consent orders requiring New York City and Florien, La. manufacturers of softwood plywood, among other things to cease using a basing point system of pricing; requiring the two firms to give customers the option of paying f.o.b. prices on picked-up purchases for a 10-year period and disclose the amount of actual freight on customers' invoices covering shipments sold on a delivered price basis; and requiring that in quoting prices the companies base estimated weights upon actual experience determined by representative sampling or by other reasonable methods. The agreement also provides that the orders shall not become effective until other cases involving the softwood plywood industry are resolved; the two companies shall have the option to accept the same order which may be entered against the other five non-consenting firms.

Appearances

For the Commission: *L. Barry Costilo* and *Ira S. Nordlicht*.

For the respondents: *H. F. Baker, Howrey, Simon, Baker & Murchison*, Wash., D.C. for International Paper Company. *J. Randolph Wilson, Covington & Burling*, Wash., D.C. for Vancouver Plywood Co., Inc.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondents have violated and are now violating Section 5 of the Federal Trade Commission Act (U.S.C. Title 14, Section 45), and believing that a proceeding by it in respect thereof is in the public interest, hereby issues its complaint charging as follows:

PARAGRAPH 1. Respondent International Paper Company is a corporation organized, existing and doing business under the laws of the

State of New York with its principal office and place of business at 220 E. 42nd Street, New York, N.Y. In 1971, International Paper Company had sales of \$1,969,550,000.

PAR. 2. Respondent Vancouver Plywood Co., Inc., is a corporation organized, existing and doing business under the laws of the State of Louisiana and is engaged in the sale of plywood in substantial amounts. In 1972, it had sales of \$40,000,000. It is managed and operated by Vanply, Inc., a wholly-owned subsidiary of Skelly Oil Company. Vancouver Plywood Co., Inc. has its principal office and place of business at Florien, La.

PAR. 3. Each of the respondents is substantially engaged in the manufacture, sale and distribution of softwood plywood. In the course and conduct of their business, each of the respondents is and has been for a substantial period of time engaged in selling such products to purchasers located in various States of the United States, and has caused such products to be transported from their facilities in various States of the United States to purchasers located in various other States of the United States. Each of the respondents is therefore engaged in "commerce," as "commerce" is defined in the Federal Trade Commission Act, and has been continuously so engaged for several years.

DEFINITIONS

PAR. 4. For the purpose of this complaint, the following definitions shall apply:

(a) "Softwood"—woods from coniferous trees such as pine, fir, spruce, and hemlock, which are generally light in texture, non-resistant and easily worked.

(b) "Softwood plywood" (sometimes referred to as "plywood" in this complaint)—material consisting of sheets of softwood glued or cemented together with the grains of adjacent layers arranged at right angles or at a wide angle usually being made of uniformly thin veneer sheets on either side of a thicker central layer.

(c) "Phantom freight"—the differential in amount between the actual freight costs incurred in shipping a product and higher freight charges used as the basis for billing the customer.

NATURE OF TRADE AND COMMERCE

PAR. 5. The manufacture and sale of softwood plywood is a substantial and expanding industry in the United States. In 1971, domestic shipments were \$1,246,911,000. Softwood plywood is a material which

enters heavily into the cost of construction of residential and commercial buildings. There has been a trend toward factory-built housing in which 29 percent-39 percent more plywood is used than in conventional housing. Large markets for softwood plywood include the major urban areas and suburban centers in the northeast and northcentral regions of the nation and certain urban areas in the south and the west.

PAR. 6. Historically, plywood was made from Douglas-fir trees and manufactured almost entirely in the coastal areas of the Pacific Northwest. In more recent years, the industry expanded to inland areas as types of softwood other than Douglas-fir began to be used in the manufacture of plywood. As a result of the development of new laminating techniques permitting utilization of the woods of southern pine, Georgia-Pacific established the first plywood mill in the south in For- dyce, Arkansas in 1963. Most of the large western plywood manufacturers thereafter established plants in the south. All of the respondents now have softwood plywood plants in the south.

PAR. 7. By the end of 1971, there were 51 softwood plywood plants located in the south. Since 1963, there has been a significant increase in the production of softwood plywood nationally, with most of the increase occurring in the south. By the end of 1971, production of plywood in the south reached approximately one quarter of total U.S. output.

PAR. 8. In 1969, the top eight softwood plywood producers accounted for approximately 64 percent of domestic plant shipments and the top four producers accounted for approximately 48 percent of shipments. The concentration level has increased since that time. The 1969 concentration level increased from 1963 when the top four and top eight softwood plywood producers had approximately 36 percent and 50 percent of domestic plant shipments, respectively.

PAR. 9. In 1971, the top eight softwood plywood producers accounted for approximately 74 percent of southern production and the top four producers accounted for approximately 61 percent of that production. A number of plants have recently been built in the south by the leading producers and this has resulted in an increase in concentration in the south. The respondents are among the leading producers in either the nation or in the south.

PACIFIC NORTHWEST SINGLE BASING POINT

PAR. 10. Before Georgia-Pacific opened its first softwood plywood plant in the South, respondents were charging softwood plywood delivered prices based upon rail freight rates computed from Portland, Oreg. Georgia-Pacific and each of the respondents which subsequently opened plants in the South have continued to charge delivered prices for

softwood plywood computed on the basis of rail freight from the Pacific Northwest, despite substantial shipments of softwood plywood from respondent's plants located in the south and other places geographically distant from the Pacific Northwest. As part of this basing point system, respondents have refused to permit customers the option of purchasing softwood plywood at the plant at f.o.b. prices which did not include freight from the Pacific Northwest, or to allow their customers to arrange for the mode of transportation cheapest to the customer.

PAR. 11. The parallel conduct of respondents and others in adhering to delivered prices based upon rail rates from the Pacific Northwest for shipments from mills located in other areas of the country has resulted in substantial margins of phantom freight accruing to respondents, particularly for shipments from plants in the south made to customers located in the southern, eastern, and northcentral areas of the country. This conduct enables those respondents which have plants in the west to ship plywood from their western plants to customers in the east without being undercut in price by southern mills which have a substantial geographic cost advantage. An example of the extent of phantom freight involved in the basing point system is as follows:

In Sept. 1972, a retail dealer in New Orleans, La., purchased softwood plywood produced at a plant located 60 miles away in Holden, La. The dealer paid a delivered price of \$4,289, which was computed on the basis of rail freight from Portland, Ore. Portland is 2500 miles away and the freight was \$764. The supplying plant in fact shipped the plywood to the purchaser by truck at a freight charge of \$80. Approximately 16 percent or \$684 of the purchaser's total delivered price consisted of phantom freight.

PAR. 12. The American Plywood Association, 1119 A Street, Tacoma, Wash., to which most of the respondents belong, has disseminated to the industry freight books specifying appropriate rail rates from the Pacific Northwest. This has facilitated the workings of the above-described basing point system.

PAR. 13. The respondents and the rest of the industry use uniform estimated weights to quote delivered prices to customers. Inaccuracies in a number of these weights further inflate the amount of phantom freight.

NATURE OF THE OFFENSE

PAR. 14. In the conduct of the aforesaid business, the respondents individually, and in combination with other companies, are now using and for a number of years have used and pursued parallel courses of

business behavior constituting unfair methods of competition and unfair and deceptive acts in commerce. Among the unfair methods of competition and the unfair and deceptive acts and practices which respondents individually, and in combination, have been and are now engaged are the following:

- (a) establishing and maintaining a system of delivered prices based on computation of rail freight from the Pacific Northwest for shipments made from mills located outside of that region;
- (b) establishing and maintaining a system of delivered prices based on computation of rail freight and applying it to shipments made by other and cheaper modes of transportation;
- (c) refusing to permit customers who purchase from southern plants the option of picking up purchases at the plant at true f.o.b. mill prices; and
- (d) using identical and inaccurate estimated weights as basis for quoting delivered prices.

EFFECTS

PAR. 15. The capacity, tendency and effects of the conduct of respondents hereinbefore alleged are, among others, to:

- (a) stabilize prices and provide certainty in the pricing of softwood plywood among competitors;
- (b) reduce and hinder actual and potential competition among respondents in the sale and distribution of softwood plywood;
- (c) create disincentives to the most efficient location of producing points;
- (d) create disincentives to customers to locate close to producing points;
- (e) discourage use of the cheapest and most efficient mode of transportation in given cases;
- (f) discriminate in prices between customers; and
- (g) mislead and deceive customers with respect to freight.

PAR. 16. The conduct of respondents hereinbefore alleged were and are unfair methods of competition, and unfair or deceptive acts in commerce in violation of Section 5 of the Federal Trade Commission Act (U.S.C. Title 15, Section 45), as amended.

INTERNATIONAL PAPER COMPANY—Docket 2518

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereto with violation of

the Federal Trade Commission Act, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent International Paper Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 220 E. 42nd Street, New York, N.Y.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

3. The attached order shall not become effective until thirty (30) days after the Commission enters final orders to cease and desist, resulting from litigation or consent, against Boise Cascade Corporation, Champion International Corporation, Georgia-Pacific Corporation, Weyerhaeuser Company and Willamette Industries, Inc. An order shall be considered final either by operation of law or by failure of any of the above companies to seek court review, or if court review is had as to said companies, at such time as court review is final as to all said companies. In the event the Commission obtains a final order to cease and desist, or if the Commission or any court enters an order to dismiss the complaint against any of the companies named above, International Paper Company shall for a period of thirty (30) days thereafter have the option to accept such order or dismissal in lieu of the order contained in this consent agreement.

ORDER

I

Definitions

"Softwood plywood"—material consisting of sheets of softwood glued or cemented together with the grains of adjacent layers arranged at right angles or at a wide angle usually being made of uniformly thin veneer sheets on either side of a thicker central layer.

"Softwood lumber"—softwood cut at sawmills into various sizes and shapes from coniferous wood trees.

"Particleboard"—wood panel products made from wood particles mixed with a synthetic resin or other binder and formed by heat and pressure.

"Basing point system"—a method of pricing or price computation for products produced by respondent or on hand at respondent's mill or distribution point by which that respondent quotes a delivered price computed in whole or in part on a systematic basis upon freight charges from a location or locations which are geographically different from the actual point of shipment to the customer, or computed in whole or in part upon a mode of transportation which differs from the mode actually used.

"f.o.b. price"—a price set for purchases by the customer at the distribution point or originating mill which is not based in whole or in part on a basing point system of pricing, and which does not systematically vary according to the location of the customer. An f.o.b. price shall mean a price determined for, but not necessarily different for, each mill and distribution point operated by respondent. It shall not be set at an artificial level for the purpose of affecting purchases at the mill or distribution point at an f.o.b. price.

"Actual freight charge"—freight charges determined by distance, carrier rates, and respondent's estimated weights developed in accordance with the standards set forth in Paragraph III.

II.

It is ordered, That respondent, its successors and assigns, and its officers, agents, representatives, and employees, directly or indirectly, through any corporate or other device in connection with the sale and distribution of particleboard and softwood lumber and softwood plywood in "commerce," as "commerce" is defined in the Federal Trade Commission Act, shall within sixty (60) days from the date of entry hereof:

1. Cease and desist from engaging individually, or in combination with competitors, in establishing, maintaining or using a basing point system of pricing.

2. For a period of ten (10) years, give customers the option of receiving a quotation and purchasing at f.o.b. prices in quantities of at least a truckload (approximately 40,000 lbs.) of the products covered by this order produced by respondent or on hand at respondent's mill or distribution point when the customer furnishes its own or arranges transportation compatible with respondent's facilities and complies with reasonable loading schedules and procedures of respondent. Additional cost attributable to customer pickup may be passed on to customers making pickup in the form of a surcharge above the f.o.b. price.

3. For a period of ten (10) years, state on invoices to customers for truckload or carload shipments by common or contract carrier sold on a delivered price basis the amount of actual freight charge to customers, the common or contract carrier rates from the place of shipment, the specified estimated weights if and when used, and the f.o.b. price.

III.

It is further ordered, That respondent does within one hundred twenty (120) days cease and desist from adopting or maintaining estimated weights as a basis for calculating freight charges in quoting delivered prices on softwood plywood when such estimates are not based upon the experience of actual weights of softwood plywood produced by the respondent individually. Such experience shall be accumulated and updated by representative sampling or by other reasonable methods at least once a year for five (5) years.

IV.

It is further ordered, That respondent shall cease and desist from directly or indirectly communicating, relaying or reporting to any manufacturer of softwood plywood, softwood lumber, or particleboard, information relating to prices, terms or conditions of sale (including transportation rates, charges or routing information) at which these products are sold or may be sold, except in connection with a bona fide sale to, or purchase from, such manufacturer or in connection with negotiations related thereto.

V.

Nothing contained in this order shall be interpreted as prohibiting respondent, when acting individually, 1) from granting allowances to

meet lower prices of competitors, 2) from absorbing all or any part of actual freight charges on shipment to any geographic area, 3) from charging the same delivered price to all customers within the normal area for delivery by a distribution point or mill when delivered by respondent's vehicles, or 4) from making otherwise legal communications to governmental bodies and trade or news publications.

VI.

It is further ordered, That respondent shall notify all persons having sales and policy responsibilities in its organization of the terms of the order and publish same in at least two major trade journals or periodicals twice annually for each of two years from the date of this order.

VII.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent which may affect compliance obligations arising out of the order, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries.

VIII.

It is further ordered, That within sixty (60) days from the date of service of this order, and on a periodic basis thereafter, the respondent shall submit, in writing, to the Federal Trade Commission a report setting forth in detail the manner and form in which respondent is meeting its compliance obligations.

VANCOUVER PLYWOOD CO., INC.—Docket 2519

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereto with violation of the Federal Trade Commission Act, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint,

and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 (b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Vancouver Plywood Co., Inc., is a corporation organized, existing and doing business under the laws of the State of Louisiana, with its office and principal place of business at Florien, La.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

3. The attached order shall not become effective until thirty (30) days after the Commission enters final orders to cease and desist, resulting from litigation or consent, against Boise Cascade Corporation, Champion International Corporation, Georgia-Pacific Corporation, Weyerhaeuser Company and Willamette Industries, Inc. An order shall be considered final either by operation of law or by failure of any of the above companies to seek court review, or if court review is had as to said companies, at such time as court review is final as to all said companies. In the event the Commission obtains a final order to cease and desist, or if the Commission or any court enters an order to dismiss the complaint against any of the companies named above, Vancouver Plywood Co., Inc. shall for a period of thirty (30) days thereafter have the option to accept such order or dismissal in lieu of the order contained in this consent agreement.

ORDER

I

Definitions

"Softwood plywood"—material consisting of sheets of softwood glued or cemented together with the grains of adjacent layers arranged at right angles or at a wide angle usually being made of uniformly thin veneer sheets on either side of a thicker central layer.

"Softwood lumber"—softwood cut at sawmills into various sizes and shapes from coniferous wood trees.

"Basing point system"—a method of pricing or price computation for products produced by respondent or on hand at respondent's mill or

distribution point by which that respondent quotes a delivered price computed in whole or in part on a systematic basis upon freight charges from a location or locations which are geographically different from the actual point of shipment to the customer, or computed in whole or in part upon a mode of transportation which differs from the mode actually used.

"f.o.b. price"—a price set for purchases by the customer at the distribution point or originating mill which is not based in whole or in part on a basing point system of pricing, and which does not systematically vary according to the location of the customer. An f.o.b. price shall mean a price determined for, but not necessarily different for, each mill and distribution point operated by respondent. It shall not be set at an artificial level for the purpose of affecting purchases at the mill or distribution point at an f.o.b. price.

"Actual freight charge"—freight charges determined by distance, carrier rates, and respondent's estimated weights developed in accordance with the standards set forth in Paragraph III.

II.

It is ordered That respondent, its successors and assigns, and its officers, agents, representatives, and employees, directly or indirectly, through any corporate or other device in connection with the sale and distribution of softwood lumber and softwood plywood in "commerce," as "commerce" is defined in the Federal Trade Commission Act, shall within sixty (60) days from the date of entry hereof:

1. Cease and desist from engaging individually, or in combination with competitors, in establishing, maintaining or using a basing point system of pricing.

2. For a period of ten (10) years, give customers the option of receiving a quotation and purchasing at f.o.b. prices in quantities of at least a truckload (approximately 40,000 lbs.) of the products covered by this order produced by respondent or on hand at respondent's mill or distribution point when the customer furnishes its own or arranges transportation compatible with respondent's facilities and complies with reasonable loading schedules and procedures of respondent. Additional cost attributable to customer pickup may be passed on to customers making pickup in the form of a surcharge above the f.o.b. price.

3. For a period of ten (10) years, state on invoices to customers for truckload or carload shipments by common or contract carrier sold on a delivered price basis the amount of actual freight charge to customers, the common or contract carrier rates from the place

of shipment, the specified estimated weights if and when used, and the f.o.b. price.

III.

It is further ordered, That respondent does within one hundred twenty (120) days cease and desist from adopting or maintaining estimated weights as a basis for calculating freight charges in quoting delivered prices on softwood plywood when such estimates are not based upon the experience of actual weights of softwood plywood produced by the respondent individually. Such experience shall be accumulated and up-dated by representative sampling or by other reasonable methods at least once a year for five (5) years.

IV.

It is further ordered, That respondent shall cease and desist from directly or indirectly communicating, relaying or reporting to any manufacturer of softwood plywood or softwood lumber, information relating to prices, terms or conditions of sale (including transportation rates, charges or routing information) at which these products are sold or may be sold, except in connection with a bona fide sale to, or purchase from, such manufacturer or in connection with negotiations related thereto.

V.

Nothing contained in this order shall be interpreted as prohibiting respondent, when acting individually, 1) from granting allowances to meet lower prices of competitors, 2) from absorbing all or any part of actual freight charges on shipment to any geographic area, 3) from charging the same delivered price to all customers within the normal area for delivery by a distribution point or mill when delivered by respondent's vehicles, or 4) from making otherwise legal communications to governmental bodies and trade or news publications.

VI.

It is further ordered, That respondent shall notify all persons having sales and policy responsibilities in its organization of the terms of the order and publish same in at least two major trade journals or periodicals twice annually for each of two years from the date of this order.

VII.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent which may affect compliance obligations arising out of the order,

such as dissolution, assignment or sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries.

VIII.

It is further ordered, That within sixty (60) days from the date of service of this order, and on a periodic basis thereafter, the respondent shall submit, in writing, to the Federal Trade Commission a report setting forth in detail the manner and form in which respondent is meeting its compliance obligations.

IN THE MATTER OF

AMERICAN ALUMINUM CORPORATION, ET AL.

ORDER, OPINION, ETC. IN REGARD TO ALLEGED VIOLATIONS OF THE
TRUTH IN LENDING AND FEDERAL TRADE COMMISSION ACTS

*Docket 8865. Complaint, Oct. 4, 1971—Order & Opinion, July 2, 1974**

Order requiring a Birmingham, Ala., seller and distributor of residential aluminum siding, storm windows, storm doors and various other home improvement products, among other things to cease using any sales plan employing false, misleading or deceptive statements or representations to obtain leads to potential customers; disparaging advertised products; misrepresenting the savings available to purchasers; misrepresenting the duration, nature or extent of any guarantee; misrepresenting the durability or efficacy of its products; failing to maintain adequate records to substantiate any advertising claims made; and violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

Appearances

For the Commission: *John H. Bedford*, and *W. Roland Campbell*.
For the respondents: *Joseph J. Lyman*, Wash., D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and of the Truth in Lending Act and the regulations promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that American Aluminum Corporation, a corporation, and Norman J. Foucha and Bobby G. Smith,

* On September 16, 1974, respondents filed a petition for review in the Court of Appeals for the Fifth Circuit.