

FEDERAL TRADE COMMISSION DECISIONS

Findings, Opinions and Orders

IN THE MATTER OF

BOISE CASCADE CORPORATION, ET AL.

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

Docket 8958. Complaint, April 18, 1974 — Final Order, Jan. 11, 1978

This order, among other things, requires a Boise, Idaho manufacturer and seller of softwood plywood, and four of its competitors, to cease, in connection with sales and transportation of their products, employing weight estimates to determine freight charges; and using any rate of freight other than that applicable to particular business transactions. The order further requires that respondents, when offering delivered prices, provide purchasers of their products the option of obtaining point of origin prices and furnishing their own transportation. Additionally, respondents must advise persons responsible for sales and policy of the terms of the order, and publish such terms, as prescribed.

Appearances

For the Commission: *James C. Egan, Jr., Amy R. Richter, Roger J. Leifer and Robert J. Enders.*

For the respondents: *Hammond E. Chaffetz, James H. Schink, Steven D. McCormack and Stephen C. Neal, Kirkland & Ellis, Chicago, Illinois for Champion International Corporation, Georgia-Pacific Corporation, Weyerhaeuser Company and Willamette Industries, Inc. John T. Loughlin, Robert T. Johnson, Jr. and Robert W. Sheppy, Bell, Boyd, Lloyd, Haddad & Burns, Chicago, Illinois for Boise Cascade Corporation.*

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 (15 U.S.C. 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 Boise Cascade Corporation is a corporation organized, existing and doing business under the laws of the State of Delaware with its principal office and place of business at Boise, Idaho. In 1971, Boise Cascade Corporation had sales of \$1,785,870,000.

PAR. 2. Respondent Champion International Corporation 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 777 3rd Ave., New York, New York. In 1971, Champion International Corporation had sales of \$1,599,829,000. [2]

PAR. 3. Respondent Georgia-Pacific Corporation (hereinafter "Georgia-Pacific") is a corporation organized, existing and doing business under the laws of the State of Georgia with its principal office and place of business at 900 S.W. 5th Ave., Portland, Oregon. In 1971, Georgia-Pacific had sales of \$1,447,300,000.

PAR. 4. Respondent Weyerhaeuser Company is a corporation organized, existing and doing business under the laws of the State of Washington with its principal office and place of business at Tacoma, Washington. In 1971, Weyerhaeuser Company had annual sales of \$1,299,533,000.

PAR. 5. Respondent Willamette Industries, Inc., is a corporation organized, existing and doing business under the laws of the State of Oregon with its principal office and place of business at 3800 1st National Bank Building, Portland, Oregon. In 1971, Willamette Industries, Inc., had sales of \$194,173,636.

PAR. 6. 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. 7. 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. [3]

(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 difference between the actual freight and the phantom freight.

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. 8. 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. 9. 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 Fordyce, 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. 10. 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. [4]

PAR. 11. 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. 12. 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. 13. 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, Oregon. 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. 14. 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 [5] 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 September 1972, a retail dealer in New Orleans, Louisiana, purchased softwood plywood produced at a plant located 60 miles away in Holden, Louisiana. The dealer paid a delivered price of \$4,289, which was computed on the basis of rail freight from Portland, Oregon. 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% or \$684 of the purchaser's total delivered price consisted of phantom freight.

PAR. 15. The American Plywood Association, 1119 A St., Tacoma, Washington, 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.

1

Complaint

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. 17. 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: [6]

(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. 18. 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 [7]

(g) mislead and deceive customers with respect to freight.

PAR. 19. The conduct of respondents hereinbefore alleged were and are unfair methods of competition, and unfair or deceptive acts in

Initial Decision

91 F.T.C.

commerce in violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. 45), as amended.

INITIAL DECISION BY MORTON NEEDELMAN, ADMINISTRATIVE LAW
JUDGE

NOVEMBER 29, 1976

[2] I

STATEMENT OF THE CASE

The complaint in this proceeding issued on April 18, 1974. It charges that respondents, manufacturers of softwood plywood, have, individually, and in combination, pursued parallel courses of business behavior constituting unfair methods of competition, and unfair and deceptive acts and practices in violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

Specifically the complaint alleges that respondents, individually and in combination, have: (a) established and maintained a system of delivered prices for plywood¹ which is based on computation of the freight charge from the Pacific Northwest for shipments made from mills located in the South; (b) established and maintained a system of delivered prices based on computation of rail freight and applied these computations to shipments made by other and cheaper modes of transportation; (c) refused to permit customers the option of purchasing at respondents' southern plywood plants at a true F.O.B. price; and (d) used identical and inaccurate estimated weights as the basis for delivered price quotes. (Complaint ¶'s 17(a)-(d)).

The complaint further alleges that the effects of these practices have been to: stabilize prices and provide certainty in the pricing of plywood among competitors; reduce and hinder actual and potential competition among respondents in the sale and distribution of plywood; create disincentives to the most efficient location of plywood producing points; create [3] disincentives for customers to locate close to plywood producing points; discourage use of the cheapest and most efficient mode of transporting plywood; discriminate in prices between customers; and to mislead and deceive customers with respect to freight. (Complaint ¶'s 18(a)-(b)).

Respondents' answers, filed by Boise Cascade on May 22, 1974 and by the others on June 7, 1974, admit certain corporate and jurisdictional facts, but deny all substantive allegations in the complaint.

¹ Unless otherwise specified, the term "plywood" as used in this initial decision means softwood plywood only. The

Initial Decision

In the prehearing stage, complaint counsel had extensive discovery of respondents' records. Upon completion of the discovery phase, the case-in-chief began on December 2, 1975, and was concluded on December 22, 1975. The defense case was presented between January 19, 1976, and April 1, 1976. The rebuttal and surrebuttal cases were heard between April 19 and June 8, 1976. During these hearings, all counsel were afforded full opportunity to be heard, and to examine and cross-examine witnesses.

The record was closed on June 30, 1976, for the receipt of evidence. Proposed findings of fact and conclusions of law, together with briefs were filed by the parties on July 30, 1976. Answering briefs were filed on August 30, 1976. Oral argument on the briefs was heard on September 8, 1976. On September 7, 1976, complaint counsel moved to strike from the record certain documentary exhibits which had not been relied on either in proposed findings or in replies. This motion was opposed in part by respondents, and except for those deletions which respondents were against, complaint counsel's motion was granted by my order dated September 13, 1976. By leave of the Commission, the date for filing this initial decision was set for November 29, 1976. [4]

After reviewing all the evidence, the proposed findings, conclusions, and briefs submitted by the parties, and based on the entire record, including my observation of the demeanor of all witnesses, I make the following findings of fact.²

² Proposed findings not adopted in the form proposed or in substance, are rejected as either not supported by the entire record, or as involving immaterial matters.

The following abbreviations are used in citing to the record: "Tr." (transcript of testimony); "CX" (complaint counsel's exhibits); "RX" (respondents' exhibits). CX 1, an index to complaint counsel's exhibits, contains a description of each document, date received or rejected, source, and part of the document which is in evidence. (Exhibits which were offered and received for only a part of the document, indicate received portion bracketed in red.) The same information for respondents' exhibits appears on RX 1.

All *in camera* exhibits are listed in my omnibus *in camera* order of June 23, 1976. By the terms of this order (§ 4) there is no limitation whatever on the public use of this material in decisions written by the undersigned, the Commission, or other reviewing authorities. Also, my *in camera* order of June 23, 1976 (§ 5) states that *in camera* status will end on June 30, 1981, when all *in camera* exhibits are to be placed on the public record.

In reviewing documentary exhibits, it is helpful to consult CX's 801A-805E which give the employment history of senders and recipients of respondents' memoranda and letters. [5]

The record, excluding pre-hearing conferences, consists of 4,703 pages (121 of which are oral argument on briefs). There are approximately 1,000 trial exhibits consisting of several thousand pages. The witnesses were as follows:

Name	Called By	Tr. Pages
Robert E. Smith	Complaint	314-367
C.C. Crow Publications, Inc.	Counsel ("c.c.")	535-569
Lester E. Anderson		
Random Lengths Publications, Inc.	c.c.	368-527
Gordon J. King		
Hampton Lumber Sales (formerly with Boise Cascade)	c.c.	570-702
James C. Schmidt		
Louisiana Pacific Corporation (formerly with Boise Cascade)		

(Continued)

[8] II

FINDINGS OF FACT

The Respondents

1. Respondent Georgia-Pacific Corporation ("Georgia-Pacific") is a Georgia corporation with its principal office and place of business located at 900 S.W. Fifth Ave., Portland, Oregon. (Complaint and Georgia-Pacific Answer ¶ 3.)

2. Georgia-Pacific is a manufacturer and distributor of softwood and hardwood plywood, paper and other forest products. In 1971, Georgia-Pacific's total corporate sales were \$1,447,300,000. (Complaint and Georgia-Pacific Answer ¶ 3; CX 460.)

3. Respondent Champion International ("Champion") is a New York corporation. At the time complaint issued its principal office and place of business were located at 777 3rd Ave., New York, New York. (Complaint and Champion Answer ¶ 2.) Champion's corporate headquarters was subsequently moved to Stamford, Connecticut. (Tr. 2570.)

4. Champion (through its United States Plywood Division) is a manufacturer and distributor of plywood and other wood products. (Tr. 2561.) Champion's 1971 sales of all products were \$1,599,829,000. (Complaint and Champion Answer ¶ 2.)

5. Respondent Boise Cascade Corporation ("Boise") is a Delaware corporation with its principal office and place of business located in Boise, Idaho. (Complaint and Boise Answer ¶ 1.)

6. Boise manufactures and distributes wood products, including plywood,³ and had total sales [9] in 1971 from all products of \$1,785,870,000. (Complaint and Boise Answer ¶ 1.)

7. Respondent Weyerhaeuser Company yellow is a State of Washington corporation with its principal office and place of business located in Tacoma, Washington. (Complaint and Weyerhaeuser Answer ¶ 4.)

8. Weyerhaeuser is a manufacturer and distributor of plywood and other forest products, including lumber, particleboard, wallboard, and paper. In 1971, Weyerhaeuser's sales of all products were \$1,299,533,000. (Complaint and Weyerhaeuser Answer ¶ 4; CX's 101H-i, 110E, 807B.)

9. Respondent Willamette Industries, Inc. ("Willamette") is an Oregon corporation, with its principal office and place of business located at 3800 1st National Bank Building, Portland, Oregon. (Complaint and Willamette Answer ¶ 5.)

10. Willamette is a manufacturer and distributor of paper products, plywood, lumber, and particleboard. In 1971, Willamette's total

³ In addition, Boise's Eastern Division produces "Kingsberry" pre-fabricated homes which are manufactured in panelized sections and assembled on site. (CX 421, p. 9.)

sales from all products were \$194,173,636. (Complaint and Willamette Answer ¶ 5; CX 65B.)

The Product

11. This case involves plywood manufactured by respondents from two types of softwood evergreen trees — the Douglas fir grown principally in or near the Pacific Northwest, and the yellow pine grown in the South.⁴ [10]

12. Plywood is a flat wood panel, constructed of thin sheets of wood bonded together with the grain direction of each sheet or “ply” at right angles to the one adjacent to it. The plywood “sandwich” consists of thin outer veneer sheets on either side of a thicker central layer. (CX 320, p. 2; Tr. 572, 1374, 1895.)

13. Plywood is manufactured by debarking and cutting logs into “peeler blocks” approximately 8 feet 6 inches in length. The peeler blocks are softened by steaming. (Tr. 1373.)⁵

14. After the steaming process, the “peeler blocks” are then revolved against a sharp blade and “peeled” into continuous sheets in much the same manner as paper is unwound from a roll. (Tr. 1373-74.)⁶ These peeled veneer sheets are passed down a conveyor, clipped to the desired lengths and dried. (CX 320, pp. 2-3, 11-12; Tr. 1374.)

15. The veneer sheets are then graded by quality according to the incidence of defects. The highest grades, designated “N” (intended for natural finish) and “A,” must be completely smooth and devoid of any open defects when sanded. The remaining grades — “B,” “C,” and “D” — may have defects of specified size and in some instances of specified number. Grade “D” veneer [11] may have any number of defects so long as these defects do not seriously impair the strength or serviceability of the panel. (CX 320, pp. 2-3, 11-12; Tr. 386-87, 1894-95.)

16. The veneers are coated with glue and arranged together in the desired number of plies — most plywood is made in 3, 4, or 5 plies — to form the plywood “sandwich.” The stacked veneers are then glued under pressure in a hot press. (CX 320, p. 2; Tr. 572, 1374.)

17. Plywood panels with inner cores composed of D grade veneers are known as “interior type.” Interior grade panels are not used in

⁴ “Southern yellow pine” is not one species. It is a term applied to Loblolly, Slash, Shortleaf, and Longleaf pines. (CX 320, p. 4.)

⁵ The technical standard for the manufacture of plywood is established by the plywood industry under the auspices of the Product Standards Section of the U.S. Department of Commerce and is published by the National Bureau of Standards in “Softwood Plywood - Construction and Industrial Standard PS 1-66,” and its successor, PS 1-74. (CX 320; Tr. 1895.)

⁶ Because it is impossible to peel the log entirely, there is always a small “core block” remaining after the peeler block is converted into veneers. These cores constitute a by-product of the plywood production process and are either sold outright or ground into chips and then sold. (CX 320; Tr. 4299.)

applications where there is constant exposure to weather. Plywood panels of "exterior type" construction, which may be exposed to weather, are constructed with C grade inner veneers. (CX 320, pp. 2-3; Tr. 350.)⁷

18. Following the drying process the plywood panels are trimmed to desired size. Panels 4 feet by 8 feet are the most commonly produced. (RX's 434A-435F; Tr. 350, 1374.)

19. Plywood panels containing higher veneer grades are often sanded to meet the requirements of such specialized end-uses as interior cabinet work and stair treads. In addition, panels may be improved or upgraded by repairs (patches) which eliminate defects in the face veneers. (CX 320, pp. 11-12, 20; Tr. 1374.) Plywood which incorporates the N, A or B grades of veneer on the face panel and which is fully sanded for complete smoothness on both sides is known as "sanded" plywood. (CX 320, p. 11.)

20. Unsanded plywood — also known as "sheathing" — contains C and D grades of veneer in the face and back. Since plywood grade designation is expressed by reference to the face and back veneers, sheathing designated as [12] "CD interior" consists of C grade veneer on the face, D grade veneer on the back and D grade inner plies. (CX 320, p. 11; Tr. 353, 1895-96.)

21. In addition to the sanded and sheathing products,⁸ plywood veneers of various grades may be manufactured into specialty products designed for particular uses. Among these are special engineering grades designed for applications in which unusually rigid structural properties are important. (CX 320, p. 20.)

22. Of the 12.5 billion square feet of plywood shipments reported by the American Plywood Association in 1974, approximately 8.7 billion square feet, or 69.7 percent, were sheathing; 2.7 billion square feet (21.9 percent) were sanded; and 1 billion square feet (8.3 percent) were specialty products. The most commonly produced softwood plywood product is CD interior with exterior glue,⁹ which accounted for approximately 66.6 percent of sheathing shipments reported by the American Plywood Association in 1974. (RX's 11N, Q.)

23. Residential construction in which CD sheathing is widely used for flooring, walls, and roofing,¹⁰ is the principal plywood application. The American Plywood Association estimates that 54.8 percent of

⁷ Almost all plywood — western or southern, interior or exterior — is now made with a moisture repellent exterior glue line. (Tr. 361.)

⁸ "Plyform" or "concrete form" is a plywood product which has an oiled edge and is used to form the mold for poured concrete. After the concrete hardens, the plyform is removed and used again. (Tr. 353, 536.)

⁹ Also known as "Standard Exterior" or "CDX." Note that CDX is an "interior"-type panel bonded with an exterior glue. (Tr. 360-61, 1894-96.)

¹⁰ Plywood has taken over almost all of the roof-sheathing market, and is an important factor in sidewall sheathing as well as in flooring where it is replacing the traditional oak floor. (Tr. 1375.)

industry production in 1973 was used in residential construction. [13] Other construction accounted for 13.6 percent. The industrial market including such applications as packaging materials and furniture accounted for 18.6 percent. The agricultural and over-the-counter markets accounted for 13 percent of industry production. (RX 12G; Tr. 353, 1374-75, 1423.)¹¹

The Industry

24. The production and sale of plywood is a substantial industry. In 1964 there were 164 plywood mills producing 11,678,621 thousand square feet (3/8 inch basis).¹² In 1974 the number increased to 195 mills which produced 15,878,380 thousand square feet (3/8 inch basis). (RX 11E.)

25. From the origin of the plywood industry in the early twentieth century until 1947, all plywood was produced in the States of Washington and Oregon. In 1947 the western plywood industry expanded into northern California, and in 1952 to the States of Idaho and Montana. (RX's 11E-F.) [14]

26. During the early 1960's, the technology of laminating southern pine veneers into a successful plywood bond was developed. The first southern mill specifically designed for plywood was constructed by Georgia-Pacific at Fordyce, Arkansas,¹³ and the first shipment of plywood from that mill was made in December 1963. (CX 460; p. 10; Tr. 1377-78.) Before the lamination problem was solved, southern pine was mainly used in the manufacture of pulp, paper or lumber, but it was not used for plywood. (RX 90B.)

27. Today there are three major plywood producing regions in the United States: the original "western" region encompassing the States of Oregon and Washington west of the Cascade mountains and

¹¹ These end-use percentages have remained relatively constant during the time period 1971-73:

	1971	1972	1973
Residential construction	53.6%	54.6%	54.8%
General construction	12.8	12.8	13.6
Industrial	19.5	19.2	18.6
Agriculture/over-the-counter	14.0	13.4	13.0

(RX 12G)
¹² For statistical purposes, various thicknesses of plywood are frequently converted to a uniform 3/8 inch basis for measuring volume in square feet regardless of thickness. For example, a 4 foot x 8 foot panel of 1/2 inch plywood contains 32 square feet (4 feet x 8 feet) of surface footage on an actual basis and 42.7 square feet [1/2 inch divided by 3/8 inch (4 feet x 8 feet)] of surface footage on a 3/8 inch basis.

¹³ During 1962 and 1963, Georgia-Pacific acquired the Crossett Company in Crossett, Arkansas and the nearby Fordyce Lumber Company. With these acquisitions, which together cost about \$140 million, Georgia-Pacific obtained 800,000 acres of pine timber. (RX 90B.)

1

Initial Decision

northern California; the "inland" (or "Inland Empire") region, which includes those portions of Washington and Oregon east of the Cascade mountains, and the States of Idaho and Montana; and the "southern" region comprising Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Arkansas, Louisiana, Texas, and Oklahoma. (RX 11C.) The production share by region in 1974 was as follows:

Western	61.4%
Southern	32.3
Inland	6.3

(RX 11D)

In terms of the key product manufactured in the South, plywood sheathing, the regional shares in 1974 were as follows:

Southern	45.7%
Western	35.6
Inland	18.7

(RX 11Q)

[15] 28. Total industry and respondents' production of all softwood plywoods are as follows:

TABLE 1: Production of All Plywood By Industry and By Individual Respondents

(In thousands of square feet - 3/8 inch basis)

	1964	1969	1971	1973
Industry	11,678,621	13,694,392	16,634,971	18,304,599
Georgia-Pacific	1,038,000	1,944,000	2,709,000	2,434,000
*Boise	401,985	920,419	1,366,648	1,352,480
Weyerhaeuser	624,280	851,600	1,036,700	1,213,200
*Champion	763,683	1,046,125	1,134,717	1,200,600
*Willamette	510,463	811,434	1,001,523	1,074,800

(Source: CX 930C)

* Includes all production of joint venture mills in which the particular respondent is a joint venture partner.

29. The five respondents account for the following percentage of total industry production:

TABLE 2: Percentage of Total Production Controlled By Each Respondent

	1964	1969	1971	1973
Georgia-Pacific	8.89	14.20	16.28	13.30
*Boise	3.44	6.72	8.22	7.39

	Initial Decision			91 F.T.C.
Weyerhaeuser	5.35	6.22	6.23	6.63
*Champion	6.54	7.64	6.82	6.56
*Willamette	4.37	5.93	6.02	5.87
5 firm total	28.59	40.70	43.57	39.74

(Source: Finding 28)

* Includes all production of joint venture mills in which the particular respondent is a joint venture partner.

[16] 30. Total industry and respondents' production of southern pine plywood are as follows:

TABLE 3: Total Softwood Plywood Production By Industry And By Respondents

(In thousands of square feet - 3/8 inch basis)

	1964	1969	1971	1973
Industry	80,024	2,875,355	4,410,062	5,558,618
Georgia-Pacific	64,000	962,000	1,729,000	1,824,000
*Boise	0	52,802	66,202	123,447
Weyerhaeuser	0	196,000	310,100	472,600
*Champion	0	189,041	264,037	265,481
*Willamette	0	157,650	280,696	328,407

(Source: CX 930C)

* Includes all production of joint venture mills in which the particular respondent is a joint venture partner.

31. The five respondents account for the following percentage of total southern plywood production:

TABLE 4: Percentage of Total Southern Production Controlled By Each Respondent

	1964	1969	1971	1973
Georgia-Pacific	79.98	33.46	39.21	32.81
*Boise	0	1.84	1.50	2.22
Weyerhaeuser	0	6.82	7.03	8.50
*Champion	0	6.57	5.99	4.78
*Willamette	0	5.48	6.36	5.91
5 firm total	79.98	54.17	60.09	54.22

(Source: Finding 30)

* Includes all production of joint venture mills in which the particular respondent is a joint venture partner.

[17] 32. The record does not contain precise proof of the dollar value of annual plywood production, but it can be estimated. In 1973, Georgia-Pacific, the dominant southern plywood producer, had an average sales realization of approximately \$100 (per thousand square feet) on sales from its southern sheathing plants. (RX 452 *in camera*.) Applying the Georgia-Pacific experience to total southern production

sales of southern sheathing of \$555,861,800. Western production is more difficult to estimate because the product mix of the western and inland regions is varied and includes higher priced items such as sanded and specialty. In any event, since southern production was only 30 percent of total industry production in 1973 (CX 321, p. 3), it can readily be seen that total industry production (18,304,599 thousand feet) produced sales of approximately \$2 billion. Census data, which combines softwood plywood with veneers, show 1972 sales valued at \$2,011,500,000. (CX's 677A-E.)

33. Georgia-Pacific is the largest manufacturer of softwood plywood, and it is recognized by other softwood plywood manufacturers, including respondents, as the industry leader and the dominant southern plywood producer. (CX's 110Z9, 325B, 356A, 461, p. 47, 502A, 589, 616; RX 90A-B.)

Respondents' Plywood Operations

34. With the exception of respondent Willamette,¹⁴ which for all practical purposes has no distribution outlets apart from its mills, respondents operate multiple level distribution systems where sales are made either directly from producing mills through centralized mill sales offices (usually in carload lots or from owned and operated and geographically dispersed distribution outlets variously called "distribution centers," "branches," "warehouses," "CSC's" ("Customer Service Centers," [18] Weyerhaeuser's name for its outlets) or "BM & S's" ("Building Materials and Service," Boise's name for its outlets). (See Findings 35-58.)

These distribution outlets may make sales out of inventory in "break-bulk" quantities or may sell on the basis that the plywood is to be shipped directly from the mill in carload or truckload lots, referred to as a "direct mill" sale by a branch. Customers of both the mills or the distribution outlets may range across the entire spectrum of plywood customers from end-users such as residential and industrial contractors and manufacturers to intermediate buying groups, retail lumberyards, and the distribution outlets of other plywood producers. But essentially, respondents' distribution outlets are wholesale warehouses which sell to lumber dealers who, in turn, resell to building contractors. (CX's 56A, 461, p. 48; Tr. 995-96, 1133-34).

¹⁴ Almost all of Willamette's sales are made from its mills: only 2 percent of its sales are made from company-owned retail lumberyards located in Oregon. (See Finding 55.)

Georgia-Pacific

35. In 1975 Georgia-Pacific produced plywood at 18 mills located as follows:

West

Coos Bay, Ore.
Coquille, Ore.
Springfield, Ore.
Toledo, Ore.

South

Crossett, Ark. (2 mills)
Emporia, Va.
Fordyce, Ark.
Gloster, Miss.
Louisville, Miss.
Monticello, Ga.
Russellville, S. C.
Savannah, Ga.
Taylorsville, Miss.
[19] Whiteville, N. C.
Talladega, Ala.
Warm Springs, Ga.
Prosperity, S. C.¹⁵

(CX's 452; Tr. 1529-30)

36. Georgia-Pacific's Building Products Division initially market all of Georgia-Pacific's softwood plywood (whether produced at Georgia-Pacific mills in the West or South or purchased from other producers) through sales departments located in Portland, Oregon; Crossett, Arkansas; and Augusta, Georgia. The Crossett and Augusta sales departments are under the control of the Portland sales office. About 90 percent of Building Products Division sales of plywood are made to Georgia-Pacific's own Distribution Division. (CX 133A; Tr. 1427, 1570.)

37. In addition to its own production, Georgia-Pacific purchases plywood from several sources including both manufacturers and independent wholesalers. (Tr. 2087.) Virtually all of the plywood purchased from outside sources is sold by the Georgia-Pacific

¹⁵ A Georgia-Pacific mill in Chiefland, Florida was closed during 1974. Three mills (Urania, Louisiana; New Waverly, Texas; and Corrigan, Texas) were spun off in 1972 to Louisiana-Pacific Corporation pursuant to an order of

Initial Decision

Distribution Division. (Tr. 1561-62.) Plywood purchased from outside sources accounts for approximately 25 percent of the plywood sold by Georgia-Pacific's Distribution Division.¹⁶

38. Georgia-Pacific's Distribution Division has 145 "Distribution Centers" operating throughout the United States. The centers or branches are wholly-owned outlets which sell a full line of wood and other building material products to dealers, industrial accounts, and [20] major contractors. Each of these centers is operated as an individual profit center which means that plywood produced at company mills or outside sources is transferred or sold at a certain cost and the centers are responsible for making a profit on the resale. (CX 461, p. 48; Tr. 954, 1560-61, 1566-68, 1891, 2000, 4383; see also Findings 97, 98.)

39. As indicated in Finding 36, more than 90 percent of Georgia-Pacific's plywood sales are made through the branches. The remainder is made directly from the mills through "Product Managers" located in Portland, Oregon; Crossett, Arkansas; and Augusta, Georgia. (Tr. 1372-73, 1427, 1483-85, 1569-70.)¹⁷

Boise

40. Boise began producing softwood plywood in 1959. (Tr. 2334.) Presently, it owns and operates 13 softwood plywood mills, located as follows:

West

Kettle Falls, Wash.
Yakima, Wash.
Spokane, Wash.
Camp Adair, Ore.
Valsetz, Ore.
Albany, Ore.
Independence, Ore.
Medford, Ore.
Sweet Home, Ore.
Elgin, Ore.
Emmett, Idaho

¹⁶ Only 1 1/2 percent of total sales of southern plywood are derived from the sale of outside purchases. (Tr. 1549-50.)

¹⁷ In addition, there are mill representatives located in Atlanta, Georgia; Clifton, New Jersey; Washington, D. C.; Chicago, Illinois; and Dallas, Texas. (Tr. 1483-85.)

[21] *South*¹⁸

Moncure, N. C.
DeQuincy, La.¹⁹

(CX's 315A-C *in camera*, 363C *in camera*, 401; Tr. 573, 2334)

41. A Boise subsidiary, Bovill, Inc., is a 50 percent joint venture partner with a Southern Natural Gas Company subsidiary, Southern Natural Resources, Inc., in Boise Southern Company ("Boise Southern"). Boise Southern operates the softwood plywood mill located in DeQuincy, Louisiana, which began production in 1972. (CX's 316, 317 *in camera*, 421, p. 20, 682A-Z67 *in camera*; Tr. 2393.)

For the purpose of this litigation, and specifically in ruling on the admissibility of certain Boise Southern exhibits, I have concluded that evidence relating to the acts and practices of Boise Southern in connection with the operation of the DeQuincy mill may be received in evidence as indicative of the policies of respondent Boise for the following reasons:

[22] First, the joint venture agreement between Boise and Southern Natural Gas contemplates that respondent Boise will contribute its lumber expertise to the joint venture. Southern Natural Gas had no expertise in this area. (CX's 682M-N, S-U *in camera*.)

Second, by the terms of the joint venture agreement respondent Boise may appoint or remove the chief executive officer of Boise Southern at will. (CX's 682G-i *in camera*.) This indicates latent control over the policies of Boise Southern.

Third, key operating personnel have transferred freely between Boise Southern and respondent Boise. For example, the current president of Boise Southern (Bill Patterson) had previously worked for Boise (CX 802K) and Jerry Johnson, the plywood sales manager at Boise Southern, was initially employed by Boise and later returned to work for Boise. (Tr. 2412-13, 2451.) A Boise official testified: "before the [DeQuincy] mill started operating and before he [Johnson] moved down there we instructed him on procedures of selling down there." (Tr. 2412.) While he was employed at DeQuincy Mr. Johnson conferred with a plywood sales control manager at Boise several times a week. (Tr. 2413-14.) Weekly market reports prepared by Mr. Johnson at Boise Southern, which included pricing, production, and shipment informa-

¹⁸ In addition to the southern mills indicated, Boise acquired a plywood plant in Pensacola, Florida in December 1969. This plant was permanently closed in October 1974 and the equipment was removed. Its primary products throughout its years of operation were hardwood plywood, hardwood plywood paneling, and hardwood plywood siding made from woods such as mahogany, cypress, and cativo. It produced small amounts of softwood plywood between 1972 and 1974. (CX 315A *in camera*; Tr. 575, 669, 2352-57.) Still another Boise plywood mill located at Fort Bragg California was sold in 1973. (CX 401.)

1

Initial Decision

tion, were sent to officials at Boise. (CX's 370, 802A-P.) Moreover, while he was in the employ of Boise Southern, Mr. Johnson received a copy of the Moncure weekly market report which contained pricing, production and shipment information, as well as a copy of the Boise quarterly plywood price forecast. (CX's 383, 389, 840A-D.)

Finally, the Boise Southern profit statement indicates that Boise has the responsibility for selling the softwood plywood produced by Boise Southern (CX 350F *in camera*), but apparently Boise's actual role in marketing has been advisory. (Tr. 2413.) [23]

42. Boise's Building Materials and Services Division ("BM & S") currently operates 44 outlets which sell a variety of wood and hardware products, including softwood plywood. Each of these "BM & S" outlets is a profit center. (CX's 318A-C, 319, 421, p. 9; Tr. 596-97, 738.)

43. Western softwood plywood produced by Boise and *not* sold through "BM & S's" is sold by the Boise Wood Products Division located in Portland, Oregon. Southern softwood plywood is essentially sold by Boise directly from its mill sales office located in Moncure, North Carolina. (Tr. 2333, 2381-82.)²⁰ In addition, some of Moncure's plywood production has been sold by the six Boise "BM & S's" located in Springfield, and Newport News, Virginia; Georgetown, Delaware; and Raleigh, Charlotte and Greensboro, North Carolina. (CX's 387A-B; Tr. 2389, 2478-80.) Boise Southern (the joint venture with Southern Natural Gas) sells southern softwood plywood directly from its mill sales office in DeQuincy, Louisiana. (Tr. 2393-94.)

Weyerhaeuser

44. Weyerhaeuser produces softwood plywood at 12 mills located as follows:

West

Longview, Wash.
Snoqualmie Falls, Wash.
Coos Bay, Ore.
Cottage Grove, Ore.
Klamath Falls, Ore.
Springfield, Ore.

[24] *South*

Dierks, Ark.

²⁰ Until mid-1970, southern pine plywood produced at Moncure was sold by Boise's Portland, Oregon sales office. Tr. 576, 671, 2381.)

Jacksonville, N. C.
 Mountain Pine, Ark.
 Philadelphia, Miss.
 Plymouth, N. C.
 Wright City, Okla.

(CX 167; Tr. 2198)

45. Weyerhaeuser sells over 50 percent of its plywood through direct carload and truckload facilities ("trading centers") located in Tacoma, Washington and Hot Springs, Arkansas. (Tr. 2194-95.)

46. The balance of Weyerhaeuser's domestic plywood sales (about 32 percent of production) are made through 62 wholly-owned distribution outlets, known as Customer Service Centers ("CSC's"), located throughout the United States.²¹ (Tr. 2194-95, 2244.) Weyerhaeuser's "CSC's" are warehouses which receive direct carloads and resell in smaller quantities. (Tr. 2194, 2199.)

47. The Weyerhaeuser "CSC's" are individual profit centers. (CX's 881A-B; Tr. 1166.) The profit of a "CSC" is calculated by subtracting from its gross sales, the transfer cost of the wood sold and the costs of operation. (Tr. 1166-68, 1170.)

48. In addition to the distribution of its own production, Weyerhaeuser annually purchases for resale approximately 500 million square feet of plywood from other manufacturers. (Tr. 2244-45.) Approximately 90 percent of the sales of this outside plywood are made through the Weyerhaeuser "CSC's." (Tr. 2245.) [25]

49. Weyerhaeuser, through its "CSC's" and trading centers, sells mainly to retail dealers (RX's 434B, D, H) including chains such as Lowe's (RX 434i; Tr. 2286) and Wickes (Tr. 2284) as well as some independent wholesalers and wholesale buying organizations. (CX 112; RX 434C; Tr. 2284.)

Champion

50. Champion, through its U.S. Plywood Division, produces plywood at 14 mills which are located as follows:

West

Shasta, Calif.
 Seattle, Wash.
 Mapleton, Ore.
 Willamina, Ore.

²¹ If Weyerhaeuser's outside purchases of plywood (500 million feet or 1/3 of total sales) are included, the "CSC's"

1

Initial Decision

Gold Beach, Ore.
Lebanon, Ore.
Roseburg, Ore.
Bonner, Mont.

South

Hammond, La.
Waycross, Ga.
Newberry, S. C.
Corrigan, Texas
Cordova, Ala.
Pocomoke City, Md. (50% interest)

(Tr. 2565, 2743-44, 2944)

51. Virtually all of the plywood produced by Champion mills or purchased from outside sources is sold by wholly-owned company warehouses or branches. Champion owns 125 warehouses located throughout the United States. Each of these branches operates as an independent profit center. (Tr. 813-14, 1022-23, 2569-72, 2698.) The branches sell a full line of wood products, primarily to retail dealers and to the building and industrial markets. (Tr. 2569-72.) [26]

52. The Champion branches order softwood plywood through Champion's central purchasing office, located in Eugene, Oregon, and known as West Coast Purchasing (WCP). Plywood is ordered by the branch either for direct shipment to the customer or for its own inventory for subsequent distribution to customers, usually by truck. (Tr. 2572-73.)

53. Approximately 60 percent of total Champion sales are made out of branch inventory while about 40 percent of total sales are made directly from the mill. Mill sales are usually in carload or truckload quantity. Sales shipped directly from the mill to the branch's customer, save the branch the transactional cost of breaking bulk and putting the plywood into inventory. Accordingly, branches try to sell as much plywood as they can directly from the mill. (Tr. 814, 2572.)

Willamette

54. Willamette owns and operates 11 softwood plywood mills located as follows:

West

Sweet Home, Ore.
Dallas, Ore.

Foster, Ore.
Lebanon, Ore.
Griggs, Ore.
Springfield, Ore.
Redmond, Ore. (50% owned)

South

Dodson, La.
Natchitaches, La. (50% owned)
Ruston, La. (85% owned)
Minden, La. (50% owned)

(CX's 39A, 65B; Tr. 1738-39)

[27] 55. Approximately 98 percent of the plywood produced by Willamette is sold directly from its various mills. Most sales are made by telephone out of offices located in Albany, Oregon and Ruston, Louisiana. Only about 2 percent of Willamette's production is sold through seven wholly-owned retail lumberyards located in Oregon. (Tr. 1740-41.)

56. Virtually all products sold through Willamette's Albany and Ruston sales offices, as well as the sales by its wholly-owned retail lumberyards, are manufactured by Willamette. (Tr. 1743.)

57. Willamette's principal plywood customers at the mill level are office wholesalers (those who ordinarily buy and sell without taking physical possession of the plywood) and wholesale distributors (those wholesalers who ordinarily take possession of the plywood before reselling it), although mill direct sales are also made to retail lumberyards and industrial accounts such as fabricators. (CX's 87C, i.) From its wholly-owned retail lumberyards, Willamette sells primarily to building contractors and to do-it-yourself consumers. (Tr. 1740.)

"Commerce"

58. Each respondent manufactures, sells, and distributes softwood plywood throughout the United States, and each is engaged in "commerce" as "commerce" is defined in the Federal Trade Commission Act. (Complaint and Answers ¶ 6.)

Significance of Price

59. Competition in the southern plywood industry is essentially in terms of price since pine sheathing, the primary item produced by

respondents and other southern producers, is considered to be fungible and not readily susceptible to quality differentiation. (Tr. 1896, 2603.)²²

[28] 60. The demand for plywood sheathing is mainly a function of the residential housing industry. (RX's 11H, 12D, 13i, 14A; Tr. 675, 1423, 1966.) Overall demand for the product does not increase by reason of a price reduction at a time of depressed housing starts. (RX's 10G, 69M, Z9.) On the other hand, prices increase sharply when the number of housing starts accelerate. (Tr. 1423 and see note 98, *infra.*) There are long-term contracts for the sale of plywood, but in those instances the price is left open to be decided at time of shipment. (See Finding 94.) Generally plywood is bought by the housing industry at time of actual need. (RX's 10G-H, 11D, 13C, i, 14A-16B.) These ultimate purchasers do not build up inventories.²³

Because of the price inelastic nature of the product, a price reduction does not produce an overall increase in demand; it merely means that the existing business, as determined by the housing market, will be shared at a lower profit among the producers. Given the nature of the demand for the product, and the concentrated structure of the industry (Finding 31), plywood producers have a strong incentive to avoid price cutting. As a Georgia-Pacific branch manager put it:

If all of a sudden I am starting, or I feel that I am getting more than my share of that market, it is an indication to me that maybe I am selling my wood too cheap. (Tr. 1892-93; see also Tr. 1758-59, 2742.)

Or in the words of a Willamette official who was giving his version of why West Coast freight was added to southern pine plywood prices to arrive at a delivered price which was near the western price: [29]

He [the plywood purchaser] couldn't buy plywood any cheaper from anyone else so there was no reason to cut our prices. (Tr. 1754.)

Respondents' Pricing Practices

61. The central issue in this case is the legality of the pricing practices followed by respondents since 1963 after the opening of the southern pine plywood industry.

62. As indicated earlier (Findings 25, 26), prior to the opening of the southern plywood industry in 1963 by Georgia-Pacific, virtually all²⁴ plywood was manufactured from the Douglas fir trees grown in

²² For evidence of quality differences between southern and western plywood see Findings 131(a), (b).

²³ Purchases for inventory, however, may be made by lumber wholesalers and retailers in anticipation of rising markets. (Tr. 849.) But see CX 356A which indicates that independent distributors are becoming increasingly "less willing to stock [plywood] . . . for redistribution" and Tr. 2871 for evidence that retailers do not tend to buy for future needs.

²⁴ Plywood had been manufactured in the South prior to Georgia-Pacific's entry, but Georgia-Pacific was the first producer to build a southern plant designed exclusively for plywood manufacture. (Tr. 1376-77.)

the Pacific Northwest and the "Inland Empire" areas of Idaho and Montana.

63. All softwood plywood, whether produced in the West or the South, is generally bought on a delivered price basis. (CX 665D; Tr. 321, 956-57, 1084, 1148-49, 1911, 2340.)²⁵

64. Both before and after the opening of the southern plywood industry in 1963, the delivered price of western plywood was a function of a mill price to which actual freight from the West Coast was added. (Tr. 1391-92, 1747, 1863.)²⁶ In the sale of western plywood, the [30] freight charge, which was paid by the purchaser to the carrier, was the actual rail rate from the West Coast to the customer's destination.²⁷

65. The reason Georgia-Pacific was anxious to expand into plywood production in the South was that it had found that southern pine plywood for rough uses, such as sheathing for residential construction, costs no more to produce than its Douglas fir counterpart, and Georgia-Pacific expected that in the long run it would cost less. The main advantage however which Georgia-Pacific anticipated from the opening of the southern plywood industry was in the area of freight. In 1965 it cost buyers \$15 to \$18 to ship 1,000 square feet of plywood from the Pacific coast to southeastern cities such as Memphis and Atlanta. Actual freight costs from southern pine plywood mills, even allowing for slightly heavier weight per square foot, ranged from a third of that amount to practically nothing depending on mill and customer location. By pricing its southern pine plywood at or near the same *delivered* price of Douglas fir plywood, Georgia-Pacific planned to add this saving in freight to its gross margins. (RX's 90A-B.)²⁸ [31]

66. There were several possible impediments to Georgia-Pacific's plan. In the first place, the mere fact that plywood was to be shipped from the South could add materially to price uncertainty in the industry and thereby reduce margins. This particular hazard came about because of the crucial differences between western and southern freight rates. (Findings 67, 68.)

²⁵ For different forms of delivered pricing in the South, see Finding 126.

²⁶ While the freight charge is based on the actual rail rate from the West Coast, the total amount paid may be overstated because the rate is multiplied by "association" weights rather than the actual weight of a particular shipment. See Finding 85.

²⁷ Except for inland (Idaho and Montana) mills which use the West Coast rate. (See note 30, *infra*.)

²⁸ In 1963, Georgia-Pacific projected an annual return on investment before taxes of 59.7 percent from a Crossett, Arkansas plywood mill and a net profit before taxes of \$14.93 (per thousand square feet on average sales of \$57.75). (CX's 845A-C *in camera*.) In 1964, Georgia-Pacific projected a return on investment after taxes of 27.5 percent from a second Crossett, Arkansas mill and a capital recovery period of about three years. From this mill Georgia-Pacific projected an average net profit before taxes of \$23.90 (per thousand square feet) on average net sales of \$66.75 (per thousand square feet). (CX's 488A-B, F.) A basic assumption of the planning for this Crossett mill was that there would be a freight "advantage" (i.e., difference between West Coast and actual freight) of \$3.75 per thousand square feet. An even greater "advantage" (\$15) was projected from a Virginia plywood mill. (CX 490B.) For similar calculations for Louisville, Mississippi (\$12) see CX 491F; for a Moncks Corner, South Carolina plant (\$12.00) see CX 493C; for Waverly, Virginia (\$15.00) see CX 493E; for Savannah, Georgia (\$12.50) see CX 495D; and for Chiefland, Florida (\$12.50) see CX 501D.

Initial Decision

67. The Interstate Commerce Commission rail rates applicable to *western* plywood shipments are established in the form of concentric bands or zones running north and south and originating with the Portland, Oregon zone which includes most of the western plywood producing region. As a shipment of plywood travels from the West to the East, it enters progressively higher West Coast freight zones and the rail rate is commensurately higher.²⁹ Almost all plywood shipments originating in the zone of origin where the Douglas fir plywood mills are located have the same freight rate (the so-called "Portland, Oregon" rate) to any point within one of the [32] eastern destination zones.³⁰ Under this "zone" freight rate for western plywood, there is no uncertainty about the freight rate factor in delivered prices. A customer located in Greensboro, North Carolina, for example, pays the same freight rate regardless of the mill in Oregon or Washington from which the plywood originated. Similarly, that precise same freight rate is applicable to customers located anywhere in the freight band stretching from Maine to Florida along the East Coast of the United States. (CX's 51A-B, 348A, 681; Tr. 579, 1391-92, 1445-46, 1745, 1932-34, 2806.)

68. In contrast to the predictable West Coast freight rate, the Interstate Commerce Commission plywood freight rates from points of origin in the southern United States are established on a "point-to-point" basis; that is, the published freight rate for each point of origin varies to each point of destination. For example, the rail rate from Ruston, Louisiana, to Greensboro, North Carolina, is significantly different from the rate from Ruston to Griffith, North Carolina, and still other freight rates apply to shipments from Minden, Louisiana to either Greensboro or Griffith, North Carolina. (CX's 51B, 91Z32, 865; Tr. 374, 510, 1391-93, 2741.)³¹

[33] 69. In addition to the problem of the southern freight rate, there were other factors which could have created uncertainty in the new southern plywood venture, and thereby depress prices. Thus as southern plywood output grew, it was anticipated that pressure would

²⁹ Rail freight rates for plywood are ordinarily expressed as dollars and cents per 100 pounds. (Tr. 1933.) Plywood prices are ordinarily expressed as dollars and cents per 1,000 square feet. For pricing purposes, the weight of 1,000 square feet of 1/2 inch plywood is 1,525 pounds (an "association" weight, see Finding 84) and the freight charge to the "\$2.79" zone will be \$2.79 (per hundred pounds) times 1,575 pounds (per thousand square feet), or \$42.55 per 1,000 square feet.

³⁰ There is a separate West Coast freight schedule for plywood shipped into the southwest United States from mills located in northern California. (CX's 348A, 681; Tr. 999-1000.) Although mills located in Idaho and Montana, as well as mills located in eastern Washington and Oregon, are not in the West Coast (*i.e.*, the Portland, Oregon) zone, it is common industry practice to use the higher West Coast rate in calculating delivered prices from these "inland" mills. (CX 348A and Tr. 2626-27.)

³¹ In addition, while western freight rates are applied uniformly to the total weight in a car, southern freight rates are based on an "incentive" system, which means that there is a lower freight rate per 100 pounds as the total weight in the car increases. (Tr. 1393, 1785-86.)

be created for producers to share at least some of the freight savings with their customers. (RX's 90A-B.)³²

70. Also, Georgia-Pacific's planning for the opening of the southern pine industry contemplated that the southern production would add no more to the available supply than "about 10 percent of the normal annual growth in the industry" and —

Since no let-up is in sight and since the market research people have projected a long-range substantial growth in the industry, there would seem to be no problem from this standpoint. (CX 488C.)

Clearly a "problem" would exist (in the form of a threat of sharply lower prices) if as the new southern production came on stream, instead of "normal annual growth" there existed a severely depressed housing market.³³

[34] 71. Finally, there was concern that instability in southern prices and any tendency of southern production to depress plywood prices in general, would have an adverse impact on major producers of Douglas fir plywood in the Pacific Northwest. (RX's 90A-B.)

72. Against the background of a plan to add the difference between West Coast and actual freight to its gross margins, and the possible creation of price instability because of factors inherent in the southern venture, Georgia-Pacific adopted a policy at the opening of the southern pine plywood industry in 1963 of including in the delivered price for southern yellow pine plywood, freight calculated on the basis of the West Coast rail freight rate from Portland, Oregon, rather than the actual freight from its southern mills. (RX's 90A-B; Tr. 1391-95.) In other words, a West Coast freight factor was used to arrive at prices for pine plywood which were intended to be the same as the delivered prices of fir plywood. (Tr. 1431, 1634-35.) Georgia-Pacific's policy of including West Coast freight in Southern plywood delivered prices has continued since 1963. (Findings 75(a), 76(a), 78(a), 96(a).)

73. Georgia-Pacific's policy of calculating delivered prices by adding West Coast freight was followed by the other respondents when they subsequently entered the southern pine plywood industry. The record shows the following:

(a) *Willamette*. Willamette began producing southern pine plywood in 1965 at

³² See also CX 490C where calculations were made by Georgia-Pacific in 1964 on the difference between maintaining and losing the "freight advantage." Note that in 1971, Georgia-Pacific personnel are concerned about a customer "... trying to find out about any freight advantage that might be enjoyed by Southern Pine sheathing producers." (CX 584, see also CX 585.)

³³ At about the same time that Georgia-Pacific was making its projections, Weyerhaeuser anticipated that the production of the southern mills could have created a severe competitive problem in the form of a price depressant unless housing starts increased. (CX's 99W; see also Tr. 2210-11.) This fear of the southern plywood industry persists: in September, 1974, a Boise Southern official reported "there is not enough demand to use all that is produced." (CX

the Ruston, Louisiana mill of its Santiam Lumber Company subsidiary. (CX 1A; Tr. 1750-51.) With its entry into the southern plywood industry, Willamette told its customers that "These prices [southern pine plywood prices] are based on the current Coast mill less 5 & 3% with freight from the Coast added." (CX's 2B, 5A, 12A.) Willamette has added West Coast freight to its southern plywood prices ever since. [35] (CX's 3, 5A-C, 6A-B, 7, 9A-15A, 16-17C, 18, 20, 22-25, 68, 69A, 88A-L, 89A, 90, 861, 862A, 884H; see also Findings 76(e), 78(d), 79(d).)

(b) *Weyerhaeuser*. Weyerhaeuser began producing southern pine plywood in 1964 and 1965 at mills located in Jacksonville and Plymouth, North Carolina. (CX 99C; Tr. 2199.) Weyerhaeuser entered the southern yellow pine industry with the expectation that the delivered prices of its southern mills would approximate the delivered prices of West Coast plywood, with the difference between actual and West Coast freight "to be an incremental gain for the [southern] mill." (CX 99V(1); Tr. 2216.) Thereafter, Weyerhaeuser continued to add West Coast freight to the price of its southern pine plywood. (CX's 97, 98, 104A, 106A, 107A, 108, 111A, 112B, 113B, 114A, 130A, 137A, 883A, 885-87; see also Findings 75(b), 76(c), 78(c), 96(c).)

(c) *Champion*. U.S. Plywood (Champion's plywood division) entered the southern pine plywood industry in 1964 as a 50% partner with Temple Industries in a joint venture called "Southern Pine Plywood Corporation" of Diboll, Texas. (Tr. 2609.)³⁴ From the outset of its southern plywood business, it was U.S. Plywood's policy to sell pine plywood at a price equal to the price of Douglas fir delivered from the West Coast. (Tr. 2610.) Champion has added West Coast freight to its southern plywood prices ever since. (CX's 192A, 200, 202A-B, 203A, 205B, 219B, 238A-B, 266, [36] 271H, J, 362A-C; Tr. 811, 1016; see also Findings 75(c), 76(d), 78(e), 96(d).)

(d) *Boise*. Boise's initial investment in the southern plywood industry was in the form of the purchase of a minority interest in the Triangle Plywood Corporation, Moncure, North Carolina, in 1968. Boise acquired a majority interest in this mill in 1969 and 100% ownership in 1973. (CX 364D *in camera*; Tr. 2335.) Boise planned for its entry into the southern pine plywood industry on the basis of the freight advantage between West Coast and southern rates. (CX's 324A-J.) With its entry into the southern plywood business, Boise used West Coast freight in calculating delivered prices. (Tr. 578-79, 717, 757.) For current use by Boise of West Coast freight, see Findings 76(b), 78(b), 96(b).)

74. The southern pine plywood prices of respondents and all other southern plywood producers,³⁵ include West Coast freight, whether the transaction is in the [37] form of contract or spot sales, or made from distribution centers or from mills, and irrespective of the "form" in

³⁴ By 1967, in addition to its joint venture at Diboll, Texas, U.S. Plywood had a wholly-owned plywood mill located in Hammond, Louisiana, and a joint venture plywood mill in Pocomoke City, Maryland. (Tr. 2727.)

³⁵ The only important exception to this pattern is the practice of one non-respondent producer, MacMillan-Bloedel, of quoting an F.O.B. price plus actual freight. (Tr. 1058-60.) However, even in the case of MacMillan-Bloedel the West Coast freight is absorbed into the quoted F.O.B. price. (CX's 202A-B, 417.)

Subsequent to issuance of the proposed complaint in this matter, Georgia-Pacific changed, at least temporarily, to an F.O.B. mill form of pricing southern pine plywood. That change remained in effect for approximately two months. (CX's 631A, 642, 661, 808A, 809A-810B; Tr. 1408-09, 1667-68.) Georgia-Pacific's F.O.B. mill price was not a bona fide mill price, however, since it was calculated on the basis of West Coast freight. (CX 631A.) Georgia-Pacific has reverted to pricing southern pine plywood (both for internal transfers and for sales to outside customers) on the basis of a "mill price" to which West Coast freight is added. (Tr. 1539.) Also, in September, 1974, a Boise official reported that a number of mills in Georgia and Alabama (not otherwise identified) had gone to an F.O.B. mill price plus actual freight. (CX 417; see also Tr. 739-40, 866.) In February 1974, Willamette contemplated using a true F.O.B. mill price and discontinuing the practice of quoting on a West Coast basis in order "to give a clearer, more concise price to our customer while preventing us from making mistakes as to where we can get the best price and still give our customer the most competitive price." (CX 68.)

which the price may be quoted. (Findings 75-80, 125, 126.) Moreover, the West Coast freight factor is included in intra-corporate transfers, which means that it is passed on to dealers, builders, and eventually to the consuming public. (Findings 75-80, 96-98.)

75. In sales of southern plywood from respondents' distribution outlets, the record shows the following about the use of West Coast freight:

(a) *Georgia-Pacific*. The Georgia-Pacific distribution centers include West Coast freight in setting prices to their customers. (CX's 610A-i, 867-69; Tr. 919, 931, 934, 956-57.)³⁶

[38] (b) *Weyerhaeuser*. In order to determine the "CSC" selling price for southern pine plywood, West Coast freight "must be added" to a base price. (CX's 104A, 106A, 107A, 108, 111A, 114A.)

(c) *Champion*. West Coast freight is added to a base price in arriving at the delivered price which the U.S. Plywood branches charge their customers. (CX's 238A, B, 263, 266, 271H, J; Tr. 810-11, 1016.) In addition, West Coast rail freight is added in sales by branches which are shipped directly from the U.S. Plywood mills to the customers of the branch. (CX's 232-37, 239A-251A; Tr. 814, 1026-27.)

76. In contracts for the sale of southern plywood, the record shows the following with respect to the use of a West Coast freight factor:

(a) *Georgia-Pacific*. In 1969 50% of Georgia-Pacific's southern pine sheathing sales in the southeast were made pursuant to contracts. The 1969 contracts, as well as later Georgia-Pacific contracts, included West Coast freight in the prices. (CX's 366A, B, 531, 586G.)

(b) *Boise*. West Coast freight is part of the delivered price in contracts negotiated at the Moncure mill. (Tr. 719-20, 3000.)

(c) *Weyerhaeuser*. In all contracts for the sale of southern pine plywood, West Coast rail freight is added by Weyerhaeuser. (Tr. 1190-92.)

(d) *Champion*. Approximately 15% of the total softwood plywood sales of U.S. Plywood branches is sold pursuant to [39] long-term contracts. (Tr. 2654.) In Champion's long-term contracts for the sale of southern plywood West Coast freight is added. (CX's 194-196, 205A-B, 209A-B, 215A-B, 216A-B.)

(e) *Willamette*. As much as 40% of Willamette's southern production has been sold pursuant to contracts. (Tr. 1845-47.) These contracts include West Coast freight. (CX 90; Tr. 1838.)

77. In intra-corporate transfers of southern plywood between respondents' mills and respondents' distribution outlets, West Coast freight is added. (See Finding 96.)

78. In sales of southern plywood from respondents' mills, the record shows the following with respect to use of West Coast freight:

³⁶ See also CX 590 which shows that a Georgia-Pacific branch sets its price "based on Crow's." As indicated in Finding 91, the *Crow's* price always requires the automatic addition of West Coast freight.

Initial Decision

- (a) *Georgia-Pacific*. In sales of southern pine plywood made directly by Georgia-Pacific's mills, West Coast freight is added. (CX's 581, 880; Tr. 712, 739-40.)³⁷
- (b) *Boise*. In sales from the DeQuincy mills, the Boise Southern policy is —

We sell our wood on a net delivered price to destination. To figure this price you take your base price less a 5-3 discount and add the West Coast freight. (CX 417; see also CX 35A, F *in camera*.)

For Boise's policy respecting use of West Coast freight in sales of plywood produced by its Moncure, North Carolina mill, see Finding 93(b) and Tr. 578-79.³⁸

(c) *Weyerhaeuser*. In direct mill sales of southern pine plywood by Weyerhaeuser, West Coast freight is added. (CX's 885-87; Tr. 1186.)

(d) *Willamette*. Since Willamette began selling southern pine plywood, its mills have computed their delivered prices by adding on the West Coast rail freight rate to base prices. (CX's 2A-B, 3, 5A-C, 6A-B, 7, 9A-15A, 16-17C, 18, 20, 22-25, 68, 69A, 88A-L, 89A, 90, 861, 862A, 866A.)

(e) *Champion*. In its direct mill sales, U.S. Plywood adds West Coast freight to a base price. (Tr. 814, 863-64, 1026-27; see also Tr. 2132, 2724.)

79. In inter-manufacturer sales and purchases of southern plywood between respondents, or between respondents and other manufacturers, the record shows the following about the use of West Coast freight:

(a) *Georgia-Pacific*. In purchases of southern pine plywood by Georgia-Pacific, West Coast freight is added to a mill price. (CX's 360A-C, 601A-B, 609A-B, 628A-B; Tr. 1551.)

(b) *Boise*. In Boise's purchases of southern pine plywood for its Kingsberry Homes Division (a manufacturer of panelized homes), West Coast freight is added to [41] arrive at the delivered price. (CX's 336A-C, 353, 361, 362A-C, 366A-B, 397, 405.)

(c) *Champion*. The West Coast rail rate is used in purchases by U.S. Plywood from other southern mills. (CX's 199A-B, 595A-C, 664.)

(d) *Weyerhaeuser*. In purchases of southern plywood by Weyerhaeuser from Willamette, a base price is used which requires that West Coast freight be added. (CX's 41, 58, 884H.)

80. Although a substantial proportion of southern plywood is shipped to buyers by truck, the West Coast *rail* rate is used by respondents to arrive at delivered prices, whether shipments are made by rail or truck. (CX's 15A, 75C, 76E-F, 88D, 89A, 158P-Z15, 238A-B, 253B, 254, 255, 263, 401, 440A, D, L, S, 441A, E, i, K-L, 442A, G, N, S, X, Z3, Z7, Z8, 581, 596A-C, 702B; RX's 347A-E; Tr. 579, 1536.)³⁹

81. Southern plywood is invoiced either freight prepaid or freight collect with the delivered price calculated to include West Coast

³⁷ See also CX 549 which shows that sales by mills are treated in the same manner as mill direct sales by branches. In mill direct sales by branches, West Coast freight is added. (See Finding 97.)

³⁸ Until it was closed in 1974, Boise's Pensacola, Florida mill included West Coast freight in sales of southern plywood. (CX's 355W *in camera*, 360A-C.)

³⁹ See Findings 120-122 for respondents' policies respecting truck pick-ups by customers.

freight. In terms of net return to the seller or payments by the buyer, there is no difference between a transaction invoiced freight collect or freight prepaid. If freight is prepaid, the mill pays the actual freight to the carrier and receives from the buyer the total invoiced delivered price including West Coast freight. If the terms of the transaction are freight collect, the buyer deducts the amount of actual freight, pays it to the carrier, and remits the balance of the delivered price, which includes West Coast freight, to the seller. [42]

I attach no significance to the fact that most southern pine plywood is invoiced on a freight prepaid basis while most western plywood is invoiced freight collect.⁴⁰ Complaint counsel failed to prove, as alleged in Complaint ¶ 18(g), that there is any deception in the sale of southern plywood whether it is sold freight prepaid or freight collect. Purchasers of plywood know that the delivered price includes West Coast freight, and there is no evidence that respondents intend to conceal (or have concealed) the West Coast freight factor by invoicing on a freight prepaid basis. (See Tr. 2240-41, 2804.)

West Coast Freight Formula and Price Uncertainty

82. By using the West Coast freight factor, respondents have transferred the certainty of the western freight rate schedule to the South. As a result the freight factor in the price of southern pine plywood does not vary by mill or customer location.⁴¹ The freight is calculated as if all the southern mills were located in the Portland, Oregon zone, and as if all customers were located in one of the neatly concentric (and predictable) West Coast zones where the rates increase as plywood is shipped from the West to the East. (CX 51A-B; see also Tr. 374, 713, 1402, 1525, 2741.)

83. Uncertainty about other aspects of southern plywood prices was also limited by practices followed by respondents. One of these practices relates to the fact that the freight charge on a particular transaction involving either western or southern plywood is a function of the West Coast rate multiplied by the weight of the plywood. Because the weight of plywood may vary from mill to mill (depending in part on the particular [43] species of softwood used in the manufacturing process), this factor, too, could have caused price uncertainty. (CX's 471, 808C, 864; Tr. 1828-29, 2723.)

84. The problem of weight uncertainty has been resolved by use of the so-called "association" weight of plywood rather than the actual weight of each shipment. The "association" weights (CX's 192A, 470A;

⁴⁰ See CX's 69A, 126A, 863A, 866A, 886Z29; Tr. 1830, 2240; but see also Tr. 880, 1657 for evidence of a contrary practice (freight collect shipments from southern mills) by several respondents.

⁴¹ See however, Finding 149 which discusses certain "add-ons" to customers located in...

1

Initial Decision

Tr. 357-58, 394-95, 815) are also known in the industry as "estimated," "standard," "shipping," "guaranteed,"⁴² "established," "average," or "industry" weights. (Tr. 357-58, 395, 587, 1063, 1537, 2722-23.) There is a different "association" weight for each thickness, to wit:

<i>Thickness (Inches)</i>	<i>"Association" Weight Per Thousand Pounds</i>
1/4	790
5/16	950
3/8	1125
1/2	1525
5/8	1825
3/4	2225

(CX's 17B, 604)⁴³

[44] 85. The "association" weights are usually above the actual weights of western plywood resulting in "underweights" which always accrue to the benefit of respondents' mills. (CX's 32A, 36B-D, 37A, 40A-B, 191B, 192A-B, 213, 325A-B, 365Z11 *in camera*, 423A, C-F, H, J, L, N, P *in camera*, 424A-429B *in camera*, 430A, C, E, G-H, *in camera*, 431A-C *in camera*, 432A, C, E, G *in camera*, 433A *in camera*, 434E *in camera*, 435A, C-J *in camera*, 436D *in camera*, 437E *in camera*, 438 *in camera*, 439D *in camera*, 473A-484D *in camera*; Tr. 595, 815-16, 2239-40.)⁴⁴ Southern pine weighs more than Douglas fir; therefore, the actual weights of southern plywood are closer to the "association" weights. (CX 192A; Tr. 815, 1066, 2242, 2476-77.) Nevertheless, there are "underweights" in the southern plywood industry. See, for example, CX's 471, 559K which indicate underweights at most Georgia-Pacific southern plywood mills and CX 864 which shows that all Willamette southern mills have had underweights on an annual basis; but see also CX 192A ("there really are no underweights, as a rule, on southern pine").

⁴² A U.S. Plywood official believed that the term "association" weights implies "that someone got together and decided on a set of weights for all plywood shipped. The fact that many other mills use the same shipping weights we do is purely coincidental." Accordingly, this official advised his sales personnel "Please make certain that all of your people who handle plywood sales are aware of the importance to always refer to shipping weights as 'Guaranteed Weights.'" (CX 193.)

⁴³ The "association" weights currently in use in the plywood industry were contained in the National Recovery Act Code of Fair Competition, published in 1934. (RX's 8D, 9D.) The same weights were subsequently published by the Office of War Information in 1943 (RX's 6A, 7F), and by the Office of Price Stabilization in 1952. (RX 5F.) The use by the Douglas fir plywood industry of such a weight schedule was erroneously thought to have been discontinued prior to a Commission challenge to the legality of the practice in *Douglas Fir Plywood Association*, 47 F.T.C. 416, 440 (1950) *rev'd sub. nom. Oregon-Washington Plywood Co. v. FTC*, 194 F.2d 48 (9th Cir. 1952).

⁴⁴ For evidence that respondents' marketing strategy (shipment of lightest wood to distant markets) is directed at maximizing "underweights," see CX's 323, 377C *in camera*, 499A. Additional evidence respecting the preservation of "underweights" is shown in CX's 54, 192A, 213.

86. While the use of association weights in the South may not result in the same volume of "underweight" profit as that produced in the West, such an industry-wide schedule is essential in order to reduce price uncertainty, and, in fact, it has resulted in freight charges which are absolutely predictable. (Finding 88.) Aside from its [45] role in assuring such certainty in freight charges, industry-wide "association" weights serve no apparent legitimate purpose. Thus an official of Georgia-Pacific observed that actual average weights for each mill can be calculated and this "would be beneficial to both the railroad industry and Georgia-Pacific." (CX 472A; see also CX 485B and Tr. 1541.) One producer, MacMillan-Bloedel, on the basis of actual tests, has established with the railroads a schedule containing an approved weight for each thickness of plywood which is substantially different from the "association" weight. (Tr. 1064-65.)

87. Respondents use "association" weights in arriving at the total West Coast freight charge, whether the sale of southern plywood is made from a distribution center or mill, and whether it is a spot or a contract sale.⁴⁵ In addition, "association" weights are used in all intra-corporate transfers. The record evidence showing the use of "association" weights appears as follows:

(a) *Georgia-Pacific*. Georgia-Pacific's sales of southern softwood plywood, including intra-corporate transfers, are made on the basis of freight charges calculated from "association" weights.⁴⁶ (CX's 487B, D, 516A-C, 544A-E, 559K, 591B, 594B, 597D, 604, 617B, 618B, 620B, 623B.)

(b) *Boise*. Boise calculates freight charges for southern plywood on the basis of "association" weights. (CX's 387A-388C; Tr. 587, 590-91, 2382, 2390.)

(c) *Weyerhaeuser*. At all times since Weyerhaeuser has sold southern softwood plywood, it has computed the freight charges [46] on the basis of association weights. (CX's 97, 98, 111A, 114A; Tr. 1164-66, 1190, 2239.)

(d) *Willamette*. Willamette uses "association" weights in calculating freight charges in its mill sales. (CX's 17A-B, 51B, 69A, 88D; Tr. 1828.)

(e) *Champion*. U.S. Plywood uses "association" weights in its computation of freight charges. (CX's 192A-B, 238A-B, 282A-G, 284A-D, 362B; Tr. 2722-23.)

88. The combination of the West Coast rail freight rate and "association" weights eliminates all uncertainty about the freight factor in the delivered price of southern plywood. The freight charge to any customer in any of the West Coast freight zones is completely predictable; in fact, no calculation is necessary since *Crow's* and *Random Lengths*, the industry's trade publications, conveniently multiply the West Coast rate by the "association" weights. For example, *Crow's* typically reports:

⁴⁵ ". . . all shipments [of southern pine] are based on West Coast freight to destination, again using association or guaranteed weights. . . ." (CX 192A.)

⁴⁶ Except for the period when Georgia-Pacific experimented with F.O.B. mill prices. (CX's 808A-810B; see note 35, . . .)

