UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, 1401 H Street, N.W. Suite 3000 Washington, D.C. 20530 Plaintiff, v. PREMDOR INC., 1600 Britannia Road East Mississauga, Ontario Canada L4W 1J2 PREMDOR U.S. HOLDINGS, INC., One North Dale Mabry Highway Suite 950 Tampa, Florida 33609 INTERNATIONAL PAPER COMPANY, 400 Atlantic Street Stamford, Connecticut 06921 and MASONITE CORPORATION, 1 South Wacker Drive Chicago, Illinois 60606 Defendants.	Civil No.: 01 1696 Judge Gladys Kessler Filed: January 23, 2002

PLAINTIFF'S RESPONSE TO PUBLIC COMMENT

The United States, pursuant to the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)-(h), hereby responds to the single public comment received, attached hereto as Exhibit A, regarding the proposed Final Judgment in this case.

I. BACKGROUND

On August 3, 2001, the United States filed a Complaint alleging that the proposed

acquisition of the Masonite business of International Paper Company ("IP") by Premdor Inc. ("Premdor") would substantially lessen competition in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. The Complaint alleges that Premdor and IP, through its subsidiary Masonite Corporation ("Masonite"), are two of the three largest firms involved in the production of interior molded doors. As alleged in the Complaint, the transaction will substantially lessen competition in the development, manufacture and sale of interior molded doorskins and interior molded doors in the United States, thereby harming consumers. Accordingly, the Complaint seeks among other things: (1) a judgment that the proposed acquisition would violate Section 7 of the Clayton Act; and (2) permanent injunctive relief that would prevent defendants from carrying out the acquisition or otherwise combining their businesses or assets.

At the same time the Complaint was filed, the United States also filed a proposed, stipulated Final Judgment and Hold Separate Stipulation and Order that would permit Premdor to acquire the Masonite business, provided that Premdor divests its Towanda, Pennsylvania doorskin manufacturing facility, along with intellectual property, research capabilities and other assets needed to be a viable doorskin manufacturer. The proposed Final Judgment orders defendants to divest the Towanda facility to an acquirer approved by the United States. Defendants must complete the divestiture within 150 calendar days after the filing of the Complaint in this matter, or within 120 calendar days after the closing of Premdor's acquisition of the Masonite business, whichever is earlier. If defendants do not complete the divestiture within the prescribed time, then, under the terms of the proposed Final Judgment, this Court will appoint a trustee to sell the Towanda facility.

The Hold Separate Stipulation and Order and the proposed Final Judgment require defendants to preserve, maintain and continue to operate the North American operations of the

Masonite business as an independent, ongoing, economically viable competitive business, with the management, sales and operations held separate from Premdor's other operations. The Hold Separate Stipulation and Order allows the defendants to submit to the United States a plan for partitioning the Towanda facility from the remainder of Masonite's North American operations. The United States has approved defendants' partition plan, and in accord with the Hold Separate Stipulation and Order, Premdor now controls of all of Masonite's North American operations other than the Towanda facility and other partitioned assets. The partitioned assets will continue to be held separate until they are divested to a suitable acquirer.

The United States and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. In compliance with the APPA, the United States filed the Competitive Impact Statement ("CIS") on August 3, 2001. The Complaint, proposed Final Judgment and the CIS were published in the Federal Register on August 28, 2001. The 60 day comment period required by the APPA expired with the United States having received only one public comment, from Lifetime Doors, Inc. In light of the recent disruption to mail delivery, the United States published a supplemental notice in the Federal Register on Dec. 21, 2001, and in the Washington Post from December 19, 2001 to December 25, 2001. The supplemental notice extended the comment period required by the APPA by fifteen days. The fifteen day supplemental comment period has now expired with the United States having received no additional public comments.

II. RESPONSE TO THE PUBLIC COMMENT

A. Legal Standard Governing the Court's Public Interest Determination

The Tunney Act directs the Court to determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. § 16(e). In making that determination, the

"court's function is not to determine whether the resulting array of rights and liabilities is one that will best serve society, but only to confirm that the resulting settlement is within the reaches of the public interest." *United States v. Western Elec. Co.*, 993 F.2d 1572, 1576 (D.C. Cir.), *cert. denied*, 510 U.S. 984 (1993). The Court should evaluate the relief set forth in the proposed Final Judgment and should enter the Judgment if it falls within the government's "rather broad discretion to settle with the defendant within the reaches of the public interest." *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *accord United States v. Associated Milk Producers*, 534 F.2d 113, 117-18 (8th Cir.), *cert. denied*, 429 U.S. 940 (1976). The Court should review the proposed Final Judgment "in light of the violations charged in the complaint and . . . withhold approval only (a) if any of the terms appear ambiguous, (b) if the enforcement mechanism is inadequate, (c) if third parties will be positively injured, or (d) if the decree otherwise makes a 'mockery of judicial power.'" *Massachusetts Sch. of Law at Andover, Inc. v. United States*, 118 F.3d 776, 783 (D.C. Cir. 1997) (quoting *Microsoft*, 56 F.3d at 1462). The Tunney Act does not empower the Court to reject the remedies in the proposed Final Judgment based on the belief that "other remedies were preferable," *Microsoft*, 56 F.3d at 1460, nor does it give the Court authority to impose different terms on the parties. *See, e.g., United States v. American Tel. & Tel. Co.,* 552 F. Supp. 131, 153 n.95 (D. D.C. 1982) (*"AT&T"*), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983) (mem.); *accord* H.R. Rep. No. 93-1463, at 8 (1974).

B. Response to Lifetime Doors, Inc.

Lifetime Doors, Inc. ("Lifetime") urges the United States to rescind the proposed Final Judgment and move to block Premdor's acquisition of Masonite's doorskin business. Lifetime argues that the proposed Final Judgment, in its present form, fails to guarantee a viable buyer for

the divested assets, and allows for irreparable damage to the market while Premdor seeks a buyer for the Towanda facility. In the alternative, Lifetime argues that the proposed Final Judgment is inadequate because it does not require the buyer of the Towanda facility to produce the exact line of products that was available before Premdor acquired Masonite.

The United States has considered Lifetime's concerns, but remains convinced that the proposed Final Judgment is in the public interest. Before the divestiture is complete, the Hold Separate Stipulation ensures that the Towanda facility will be operated as an independent and viable economic entity, and in the judgment of the Monitoring Trustee and the United States, Premdor has fulfilled its obligations to date. While there is no *guarantee* that a viable purchaser will be found for the Towanda facility, Premdor has taken all appropriate steps to locate an acceptable purchaser. *See Report to U.S. District Court for the District of Columbia and Department of Justice on Premdor and Masonite Compliance with Court Ordered Consent Decree*, submitted by Accenture, filed November 2, 2001. Moreover, there is no evidence that the sale of Masonite to Premdor, and the subsequent partition of the Towanda facility from the remainder of Masonite, has in fact resulted in "damage to the market", as feared by Lifetime.

Lifetime also urges that the purchaser of the Towanda facility be forced to sell "all product designs and sizes currently produced by Masonite" to independent door manufacturers. Lifetime acknowledges that Premdor is required to make all current designs and sizes of molded door skins available to the purchaser of the Towanda facility, but still fears that all designs will not be purchased by the ultimate owner of Towanda, and that the lack of a full line will harm independent door manufacturers. The United States disagrees with the comment. The eventual owner of the Towanda facility will have the incentive to determine the most profitable product line to offer door manufacturers, and further, will have every incentive to ensure the profitable

continuation of the independent door manufacturers, its likely largest customer base. If the purchaser of Towanda fails to offer a certain design or color of doorskin to its customers, despite having access to the full means of production for that model, the United States presumes that the market mechanism will ensure that consumers' interests are adequately protected.

III. CONCLUSION

After careful consideration of the comment, the United States concludes that entry of the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint and is in the public interest. The United States will move the Court to enter the proposed Final Judgment after the public comments and this Response have been published in the Federal Register, as 15 U.S.C. § 16(d) requires.

Dated: January 23, 2002
Washington, D.C.

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing Response to Public Comment via First Class United States Mail and facsimile transmission, this 23rd day of January 2002, on:

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