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11 UNITED STATES DISTRICT COURT
 12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10	UNITED STATES OF AMERICA,)	
11)	
	Plaintiff,)	
12)	Civil No. C 87-0689 RFP
	v.)	
13)	SUIT FOR PRELIMINARY
)	AND PERMANENT INJUNCTION
14	DOMTAR INC;)	AGAINST ACQUISITION
	DOMTAR INDUSTRIES, INC.;)	
15	DOMTAR GYPSUM AMERICA, INC.;)	15 U.S.C. § 18
	THE FLINTKOTE COMPANY, INC.; and)	
16	GENSTAR GYPSUM PRODUCTS COMPANY,)	ANTITRUST
)	
17	Defendants.)	Filed: February 25, 1987

18
 19 COMPLAINT

20 The United States of America, by its attorneys, acting
 21 under the direction of the Attorney General of the United
 22 States, brings this civil action to obtain equitable and other
 23 relief against the defendants named herein and complains and
 24 alleges as follows:

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1 I.

2 JURISDICTION AND VENUE

3 1. This complaint is filed and this action is instituted
4 under Section 15 of the Clayton Act, as amended, 15 U.S.C.
5 § 25, to prevent and restrain the violation by defendants, as
6 hereinafter alleged, of Section 7 of the Clayton Act, as
7 amended, 15 U.S.C. § 18.

8 2. Domtar Gypsum America, Inc. transacts business,
9 maintains offices, and is found within the Northern District of
10 California.

11 3. The Flintkote Company, Inc. transacts business,
12 maintains offices, and is found within the Northern District of
13 California.

14 4. Genstar Gypsum Products Company transacts business,
15 maintains offices, and is found within the Northern District of
16 California.

17 5. Domtar Inc. proposes to acquire all of the gypsum
18 operations of Imasco Limited ("Imasco") through a Stock
19 Purchase Agreement dated October 10, 1986 between its wholly
20 owned subsidiary, Domtar Industries, Inc., and two wholly owned
21 subsidiaries of Imasco: The Flintkote Company, Inc., an
22 indirect Imasco subsidiary, and Imasco Enterprises, Inc.
23 ("IEI"), a direct Imasco subsidiary. The acquisition is

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1 scheduled to be consummated after midnight February 25, 1987. The
2 United States alleges that this proposed acquisition will violate
3 Section 7 of the Clayton Act.

4 II.

5 DEFINITIONS

6 6. "HHI" means the Herfindahl-Hirschman Index, a measure of
7 market concentration calculated by squaring the market share of
8 each firm competing in the market and then summing the resulting
9 numbers. For example, for a market consisting of four firms with
10 shares of 30, 30, 20, and 20 percent, the HHI is 2600 (30 squared
11 + 30 squared + 20 squared + 20 squared = 2600). The HHI, which
12 takes into account the relative size and distribution of the firms
13 in a market, ranges from virtually zero to 10,000. The index
14 approaches zero when a market is occupied by a large number of
15 firms of relatively equal size. The index increases as the number
16 of firms in the market decreases and as the disparity in size
17 between the leading firms and the remaining firms increases.

18 7. "Pacific Southwest market" means the southern portion of
19 the state of California, the southern portion of the state of
20 Nevada, and the state of Arizona.

21 8. "Domtar" means Domtar Inc., and each division, subsidiary
22 or affiliate thereof.

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III.

DEFENDANTS

9. Domtar Inc. is made a defendant herein. Domtar is a corporation organized and existing under the laws of Canada. It maintains its principal offices in Montreal, Quebec, Canada. In 1985, Domtar Inc.'s total revenues were about \$2.1 billion (Canadian) for all product lines and businesses.

10. Domtar Industries, Inc. ("DII") is made a defendant herein. DII is a Delaware corporation and a wholly owned subsidiary of Domtar.

11. Domtar Gypsum America, Inc. ("DGAI") is made a defendant herein. DGAI is a California corporation and a wholly owned subsidiary of DII. DGAI manufactures and sells gypsum board in the western United States, including the Pacific Southwest market. DGAI operates gypsum board plants located in Long Beach, California; Antioch, California; and Tacoma, Washington, as well as a mill for the manufacture of gypsum board paper located in San Leandro, California. In 1985, DGAI's net sales were about \$118 million.

12. The Flintkote Company, Inc. ("Flintkote") is made a defendant herein. Flintkote is a Delaware corporation which maintains its principal offices in San Francisco, California. It is an indirect wholly owned subsidiary of IEI.

13. Genstar Gypsum Products Company ("Genstar Gypsum") is made a defendant herein. Genstar Gypsum is a Delaware corporation

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1 which maintains its principal offices in Irving, Texas. Genstar
2 Gypsum is a wholly owned subsidiary of Flintkote. Genstar Gypsum
3 manufactures and sells gypsum board throughout the United States
4 including in the Pacific Southwest market. Genstar Gypsum
5 operates gypsum board plants located in Las Vegas, Nevada;
6 Sweetwater, Texas; Florence, Colorado; Savannah, Georgia; and
7 Camden, New Jersey, as well as associated gypsum deposits in the
8 United States and Canada and a mill for manufacturing gypsum board
9 paper in Vernon, California. In 1985, Genstar Gypsum's net sales
10 were about \$151.3 million.

11 IV.

12 TRADE AND COMMERCE

13 14. Gypsum board is a material consisting primarily of a
14 solid, flat core of processed gypsum between two sheets of paper
15 surfacing. It is manufactured in standard widths, lengths, and
16 thicknesses. In 1985, total gypsum board production in the United
17 States amounted to 19.5 billion square feet, valued at
18 \$2.4 billion.

19 15. Gypsum board is the principal material used in the
20 construction of interior walls and ceilings in residential and
21 commercial buildings. It differs from all other construction
22 materials in physical composition, functional characteristics,
23 customary uses, means of production, and pricing. Buyers and
24 sellers of gypsum board do not view other construction materials
25 as acceptable substitutes for gypsum board.

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1 16. The sale by manufacturers of gypsum board constitutes a
2 line of commerce, or relevant product market, for antitrust
3 purposes.

4 17. Gypsum board is a heavy, bulky material in relation to
5 its value. It is also subject to breakage in transport when
6 handled improperly. Transportation costs are a substantial
7 portion of the delivered price of gypsum board. Because of its
8 heavy weight, bulkiness, and fragile nature, the delivered cost of
9 gypsum board increases significantly as the distance of customers
10 from the producing plant increases. As a result, most gypsum
11 board is sold within a radius of approximately 300 miles of the
12 plant at which it is made. Geographic markets for the manufacture
13 and sale of gypsum board therefore are primarily of limited
14 regional scope.

15 18. The demand for gypsum board in any given geographic
16 region, including the Pacific Southwest market, is highly
17 cyclical. Demand is heavily dependent upon, and fluctuates widely
18 with, changes in the levels of residential and commercial
19 construction. When demand is high, prices and profits tend to be
20 high. When demand is low, prices and profits tend to decrease
21 substantially.

22 19. The vast majority of sales to gypsum board consumers
23 located in the Pacific Southwest market historically have been
24 made by gypsum board manufacturing plants located in that market.
25 Demand for gypsum board in the Pacific Southwest market is

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1 currently high. Prices have increased by approximately 44 percent
2 since 1983, and most or all of the gypsum board manufacturing
3 plants located in the market are operating at or near full
4 capacity. Even at the cyclically high prices at which gypsum
5 board currently is being sold in the Pacific Southwest market,
6 only three manufacturers whose plants are located outside of that
7 market have been selling significant amounts of gypsum board into
8 the market. Two of these firms are located in New Mexico: Centex
9 American Gypsum Co., Inc. ("Centex"), in Albuquerque, New Mexico;
10 and Western Gypsum Co., Inc. ("Western"), in Santa Fe, New
11 Mexico. When demand slackens and prices in the market decline,
12 neither these nor other firms will be able profitably to sell
13 gypsum board in the market from plants located outside of the
14 market. The third firm is the Georgia Pacific Corporation
15 ("Georgia Pacific"). Georgia Pacific has recently been shipping
16 gypsum board into the market from its plants outside the market,
17 but only in anticipation of constructing a plant within the
18 Pacific Southwest market in Las Vegas, Nevada beginning in 1987.
19 Upon completion of the Las Vegas plant, Georgia Pacific expects to
20 cease such shipments from outside the market.

21 20. The Pacific Southwest market constitutes, for antitrust
22 purposes, a section of the country or relevant geographic market
23 for the sale by manufacturers of gypsum board.

24 21. The sale by manufacturers of gypsum board in the Pacific
25 Southwest market is highly concentrated. As measured by total

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1 gypsum board manufacturing capacity of the plants located within
2 the Pacific Southwest market and the Centex and Western plants,
3 and the anticipated capacity of the Georgia Pacific plant
4 identified in paragraph 19, Domtar is the fifth largest firm in
5 the Pacific Southwest market with a market share of approximately
6 11.0 percent, while Genstar Gypsum is the sixth largest firm with
7 a market share of approximately 10.9 percent. If Domtar were to
8 acquire Genstar Gypsum, it would become the second largest firm in
9 the Pacific Southwest market with a market share of 21.9 percent,
10 and the HHI in the market would increase by 240 points to 1747.

11 22. This increase in concentration, however, understates the
12 competitive effect of the violation alleged herein. First, it is
13 based on the improbable assumption that the entire output of the
14 Centex and Western plants in New Mexico would be directed to the
15 Pacific Southwest market in response to a significant,
16 non-transitory price increase at current high demand levels.
17 Second, it does not account for the fact that, when demand
18 slackens in the future and prices fall, the New Mexico plants will
19 not be able to sell profitably in the Pacific Southwest market
20 even in response to a non-transitory increase in those lower price
21 levels. For these reasons, the New Mexico plants would not
22 constrain pricing in that market by those firms with plants
23 located in the market.

24 23. Entry into the manufacture and sale of gypsum board is
25 difficult. Among the reasons that entry is difficult are the time

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1 and expense required to enter, limited supplies of gypsum ore
2 available to a new entrant in the Pacific Southwest market, the
3 existence of longstanding customer relationships and the need to
4 establish a reputation for reliability in fulfilling orders both
5 when demand is strong and when it is weak.

6 24. Domtar and Genstar Gypsum regularly purchase substantial
7 quantities of materials that are used in manufacturing gypsum
8 board in the Pacific Southwest market in interstate commerce, and
9 sell substantial quantities of gypsum board that has been
10 manufactured in the Pacific Southwest market in interstate
11 commerce. Domtar and Genstar Gypsum are each engaged in
12 interstate commerce and their activities substantially affect
13 interstate commerce.

14 V.

15 VIOLATION ALLEGED

16 25. Under the terms of the Stock Purchase Agreement
17 ("Agreement") dated October 10, 1986, between Flintkote, IEI, and
18 DII, Domtar proposes to acquire all of the gypsum operations of
19 Imasco. The Agreement provides that Domtar will acquire all of
20 the outstanding common stock of Genstar Gypsum and the other
21 gypsum operations of Imasco for \$241 million, plus interest from
22 October 1, 1986 to the date of closing.

23 26. The Agreement provides that, prior to the closing,
24 Flintkote will transfer to Genstar Gypsum all of its business and

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1 assets relating to the manufacture and sale of gypsum board
2 products, paper and paper products and plaster products.

3 27. The defendants will be free to consummate the acquisition
4 after midnight February 25, 1987.

5 28. The effect of the acquisition of Imasco's gypsum
6 operations by Domtar may be substantially to lessen competition in
7 the manufacture and sale of gypsum board in the Pacific Southwest
8 market in violation of Section 7 of the Clayton Act, in the
9 following ways, among others:

10 (a) actual and potential competition between DGAI and Genstar
11 Gypsum will be eliminated; and

12 (b) competition generally in the manufacture and sale of
13 gypsum board may be substantially lessened.

14 PRAYER

15 WHEREFORE, plaintiff prays:

16 1. That pursuant to Section 15 of the Clayton Act, 15 U.S.C.
17 § 25, the Court issue a summons to Domtar Inc. and DII, commanding
18 each to appear in these proceedings and bring each within the
19 jurisdiction of this Court for purposes of this litigation.

20 2. That pending final adjudication of the merits of this
21 Complaint, a temporary restraining order and a preliminary
22 injunction be issued against the defendants preventing and
23 restraining each of them and all persons acting on their behalf
24 from taking any action, either directly or indirectly, in
25 furtherance of the proposed acquisition;

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1 3. That the proposed acquisition of Imasco's gypsum
2 operations by Domtar be adjudged to be in violation of Section 7
3 of the Clayton Act;

4 4. That the defendants be permanently enjoined from carrying
5 out any agreement, understanding, or plan, the effect of which
6 would be to combine the gypsum operations of Domtar and Imasco;

7 5. That the plaintiff have such other and further relief as
8 the Court may deem just and proper; and

9 6. That the plaintiff recover the costs of this action.

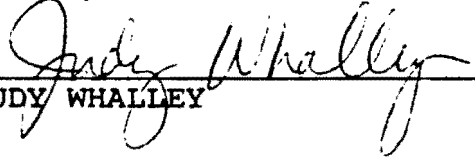
10 Dated:

11 
12 CHARLES F. RULE
13 Acting Assistant Attorney General

JOHN SCHMOLL

14 
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16 
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