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INFORMATION CONCERNING IMASCO LIMITED'S APPLICATION
FOR EXEMPTION UNDER FIRA

On December 22, 1980 Imasco applied to the Hon. Herb Gray, Minister of Industry Trade and Commerce for a ministerial opinion to the effect that Imasco was exempt from the provisions of the Foreign Investment Review Act. The application was based on the grounds that "de facto" control of Imasco rests with the company's board of directors and management.

A number of factors prompted the application. Among these are: the many difficulties, lengthy delays and additional costs Imasco experienced in re-investing in Canada the approximately \$100 million per year currently available to it for new investments. These funds are earned primarily in Canada through the efforts of some 11,000 Canadians.

In fact, the company's experience with the uncertainties and the delays in the review process of the Agency and their unavoidable consequences in the business world have led Imasco to conclude that it could not rely solely on re-investment of its earnings in Canada to meet its growth targets and responsibility to shareholders.

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In recent years, Imasco has gone outside Canada and made significant investments in Hardee's Food Systems, Inc. of Rocky Mount, N.C. and Burger Chef Systems of Indianapolis, Indiana. Our total investment in these enterprises is over \$200 million.

This step was taken despite Imasco's long history of commitment to Canada. Indeed, the preferred course of the board of directors of the company has always been and continues to be expansion within Canada.

Another factor prompting the company's application was direct encouragement from the Hon. Herb Gray to seek an exemption. In a letter dated December 8, 1980 Mr. Gray commented as follows to the president of Imasco:

"...the determination of 'non-eligibility' or eligibility of any corporation depends upon the eligibility or non-eligibility of the person or persons who in fact control the corporation. If, as you state, Imasco is

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in fact controlled by Canadians then the corporation is not a 'non-eligible person' for purposes of the Act. But of course it is up to Imasco to show, if called upon to do so, that this is indeed the case."

The application for a ruling by the Minister documented extensively the Company's contention that Imasco is in fact controlled by Canadians. The following are a number of arguments made in support of the company's position:

-- The company's senior shareholder is B.A.T Industries p.l.c. of London, England. At the time of Imasco's founding in 1912 B.A.T held 83% of its voting shares. Today B.A.T holds 49.8% and by the end of 1984 is expected to hold approximately 40%.

-- B.A.T has not been represented on the board of directors of Imasco for more than 36 years and over the same period has not had a representative on the senior management team.

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- Less than 15% of Imasco's net earnings are paid out to B.A.T by way of dividends and all shareholders receive identical treatment.

- Imasco conducts its own research and development activities in Canada. Its tobacco division has the largest self-contained research facility in the tobacco industry in Canada. Furthermore, in association with Shoppers Drug Mart and the Canada Development Corporation, the company conducts the largest-independent research programme related to the pharmaceutical industry in Canada.

- Imasco's procurement policy is based on using Canadian materials and equipment where possible.

- Imasco's banking relations, insurance arrangements, capital expenditure programmes and new business investments are determined by its board of directors and management group.

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-- Control in fact of all aspects of Imasco rests with the board of directors. Each director has signed an affidavit attesting to his independent participation in all matters affecting Imasco. This means that all functions of management including the business strategies pursued by Imasco are the responsibility of board members acting as autonomous persons. No director or officer of the company is subject to any direction from B.A.T

There has been no material change in any of the facts contained in the application since it was submitted to the Minister. To date no one in the Department or Agency has questioned or challenged these facts in any way.

On September 18, 1981 the chairman and the president of Imasco met with the Minister to review the status of Imasco's application. At this meeting the Minister expressed a number of concerns about the position of B.A.T in relation to Imasco.

Following this meeting, in an attempt to address the issues raised by the Minister, Imasco, with the agreement of B.A.T made a further proposal on November 20, 1981.

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The key feature of this proposal was an undertaking by B.A.T to legally bind itself to assign its voting rights to the Canadian "non-executive" directors of the Imasco board. Because of the fiduciary responsibility of the members of the board of directors of B.A.T to its shareholders this assignment could not be granted irrevocably. However, the proposal included a provision that if the assignment should be revoked for any reason, all transactions completed by Imasco in the two years preceeding the revocation would become reviewable by the Foreign Investment Review Agency. The two year period was selected because Ministerial exemptions are renewable every two years.

On August 3, 1982, Imasco was notified that its proposals were insufficient to enable the Minister to rule in favour of the company.

The company is bitterly disappointed by this turn of events. The Company's shareholders and the Canadian investment community are well aware that Imasco believes an exemption from the constraints of the Foreign Investment Review Act is important for the company's continued growth in Canada. In fact, in previous public statements, the exemption has been described as the single most important strategic factor affecting the growth of Imasco in Canada.

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The Minister could have concluded that Imasco was controlled in fact by Canadians even though this control co-exists with a significant foreign shareholding. As Mr. Gray stated in a letter he wrote prior to the filing of the company's application, the key criterion is the status "of the person or persons who in fact control the corporation". Any review of Imasco's corporate history clearly shows that the persons who in fact control the corporation are Canadians.

Mr. Gray's unwillingness to rule in Imasco's favour and his continuing view of Imasco as a foreign controlled corporation not only flies in the face of the realities of Imasco's particular situation but keeps in a kind of corporate limbo many enterprises which, like our country, were founded and matured with help from a foreign parent.

The Minister has missed an opportunity to liberate and focus the creative economic energies of all such corporations on further investment in Canada. This at a time of high inflation, high unemployment, high interest rates and when the Canadian dollar is near its all-time low.

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The Minister's decision also puts in question the entire evolution of corporations like Imasco. Successive board of directors and management teams at Imasco have convinced B.A.T of the importance and benefits of giving to the members of the board complete autonomy to direct the commercial destiny of Imasco as a Canadian corporation and ensure that it is an active, responsible member of the Canadian community.

Imasco's board of directors has reached two conclusions since receiving the Minister's decision:

First, despite this setback Imasco's resolve to invest in Canada is undiminished. The company will direct its efforts towards ensuring that changes are made to the Act so that it may more effectively provide economic benefits to all Canadians.

However, being subject to the Foreign Investment Review Act places Imasco and many other companies at a competitive disadvantage in terms of costs and time for making acquisitions in Canada. Consequently, it is expected that an important portion of Imasco's cash flow available for new investment in Canada may, of necessity, be invested outside the country.

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It is worth recording that Imasco's recent investments in Hardee's and Burger Chef represent an expenditure of over \$200 million while total expenditures in the 4 business investments approved by the Foreign Investment Review Agency since March 1980 total only \$12 million.

The second conclusion is that the basis on which foreign investment is currently reviewed is in many instances contrary to the country's economic interests.

Imasco has always agreed with the concept that government should screen foreign investments to ensure that the economic needs of Canada and Canadians are well protected. The evolution of Imasco since 1912 is evidence of the company's belief in this policy. Therefore, to be placed in the position of being denied the status of a Canadian company and forced to look for investment opportunities outside of Canada for the moneys we earned in Canada is shocking.

This surely cannot be the desired result of public policies intended to ensure maximum benefits in Canada from foreign investment.

Imasco is determined to make its experience known to Canada's legislators and to ask that this undesirable side effect be remedied when the Parliament of Canada next examines the Foreign Investment Review Act.

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