

Jersey ("Port")
Sea-Land Service, Inc. ("Sea-Land").

Synopsis: The Agreement provides for the Port to pay Sea-Land an incentive of \$15.00 for each import container and \$25.00 for each export container loaded or unloaded from a vessel at the Port's marine terminals during calendar year 1995, provided each container is shipped by rail to or from points more than 260 miles from the Port.

Agreement No.: 224-200905.

Title: Port Authority of New York & New Jersey/Evergreen America Corporation Container Incentive Agreement.

Parties:

Port Authority of New York & New Jersey ("Port")
Evergreen American Corporation ("EAC").

Synopsis: The Agreement provides for the Port to pay EAC an incentive of \$15.00 for each import container and \$25.00 for each export container loaded or unloaded from a vessel at the Port's marine terminals during calendar year 1995, provided each container is shipped by rail to or from points more than 260 miles from the Port.

Dated: January 5, 1995.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95-594 Filed 1-10-95; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.602 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at

the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-200906.

Title: Southdown, Inc./Eastern Cement Corp. Stevedoring Terminal Agreement.

Parties:

Southdown, Inc. ("Southdown")
Eastern Cement Corp. ("Eastern")

Filing Agent: Charles H. Still, Jr.
Bracewell & Patterson, L.L.P., Suite 2900, South Tower Pennzoil Place, 711 Louisiana St., Houston, TX 77002-2781.

Synopsis: The proposed Agreement provides that Eastern will lease equipment from and perform stevedoring services to Southdown at the Port of Palm Beach.

By order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: January 5, 1995.

[FR Doc. 95-598 Filed 1-10-95; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Huntington Bancshares Incorporated, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 3, 1995.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Huntington Bancshares Incorporated*, Columbus, Ohio; to acquire 100 percent of the voting shares of Security National Corporation, Maitland, Florida, and thereby indirectly acquire Security National Bank, Maitland, Florida.

In connection with this application, Huntington Bancshares of Florida, Inc., Columbus, Ohio, has applied to become a bank holding company.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Synovus Financial Corp.*, Columbus, Georgia; and TB&C Bancshares, Inc., Columbus, Georgia, to merge with Citizens & Merchants Corporation, Douglasville, Georgia, and thereby indirectly acquire Citizens & Merchants State Bank, Douglasville, Georgia.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Old National Bancorp*, Evansville, Indiana; to merge with Citizens National Bank Corporation, Tell City, Indiana, and thereby indirectly acquire The Citizens National Bank of Tell City, Tell City, Indiana.

Board of Governors of the Federal Reserve System, January 5, 1995

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-640 Filed 1-10-95; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[Docket No. 9271]

B.A.T. Industries p.l.c., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would permit, among other things, B.A.T. Industries and Brown & Williamson Tobacco Corporation to consummate the proposed acquisition of American Tobacco Company, but would require them to divest, within twelve months, six American Tobacco discount cigarette brands. If the required divestitures are

not completed on time, the consent agreement would permit the Commission to appoint a trustee to complete the transactions. In addition, the consent agreement would require the respondents, for ten years, to obtain Commission approval before acquiring any interest in a cigarette manufacturer or any assets used to manufacture or distribute cigarettes in the United States.

DATES: Comments must be received on or before March 13, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Joseph Krauss, FTC/H-324, Washington, DC 20580. (202) 326-2713.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's rules of practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The agreement herein, by and between B.A.T Industries p.l.c., Brown & Williamson Tobacco Corporation, by their duly authorized officers, hereafter sometimes referred to as respondents, and their attorneys, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent B.A.T Industries p.l.c. (BAT) is a public limited company incorporated under the laws of England, with its headquarters and principal place of business located at Windsor House, 50 Victoria Street, London, England, SW1H 0NL.

2. Respondent Brown & Williamson Tobacco Corporation (B&W) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its headquarters and principal place of business located at 1500 Brown & Williamson Tower, P.O. Box 35090, Louisville, Kentucky, 40232.

3. Respondents have been served with a copy of the complaint issued by the Federal Trade Commission charging them with violation of section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and have filed an answer to said complaint denying said charges.

4. Respondent B&W, and for the purposes only of this agreement and any proceedings arising out of, or to enforce, this agreement, the order herein, and the Preservation Agreement attached hereto as Appendix I, respondent BAT, admit all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

5. Respondents waive:

- a. Any further procedural steps;
- b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;
- c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and
- d. Any claim under the Equal Access to Justice Act.

6. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondents, in which event it will take such action as it may consider appropriate, or issue and serve its decision containing the Order herein, in disposition of the proceeding.

7. This agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the Commission's complaint, or that the facts as alleged in the complaint, other than jurisdictional facts, are true.

8. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's rules, the Commission may, without further notice to respondents, (1) issue its decision containing the following order to divest in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order to divest shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for

other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to-order to respondent's attorneys, at the addresses as stated in this agreement, shall constitute service. Respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

9. Respondents have read the complaint and order contemplated hereby. Respondents understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered That, as used in this order, the following definitions shall apply:

A. *BAT* means B.A.T Industries p.l.c., its subsidiaries, divisions, and groups, including Brown & Williamson Tobacco Corporation, its subsidiaries, divisions, and groups, and affiliates controlled by Brown & Williamson Tobacco Corporation ("B&W"), their successors and assigns, and their directors, officers, employees, agents, and representatives.

B. *American Brands* means American Brands, Inc., its subsidiaries, divisions, and groups, including The American Tobacco Company ("ATC"), their successors and assigns, and their directors, officers, employees, agents, and representatives.

C. *Commission* means the Federal Trade Commission.

D. *Acquisition* means the acquisition of ATC from American Brand by BAT.

E. The *Reidsville Assets* means all real property, fixtures and equipment at ATC's location at North Scales Street, Reidsville, NC 27320, including but not limited to, the following:

1. All machinery, fixtures, equipment, vehicles, transportation facilities, furniture, tools and other tangible personal property;

2. Inventory and storage capacity;

3. All rights, titles and interests in and to owned or leased real property, together with appurtenances, licenses and permits;

Provided however That the Reidsville Assets shall not include:

98.50/30—(MISTY 100's) (3) Modules; Maker/Protos, Packer/Focke 350
 120/32—(MISTY 120's) (2) Modules; Maker/Protos, Packer/Focke 350
 120/32—(CARLTON 120's) (1) (Module; Maker/Protos, Packer/Focke 350

Plus supporting equipment dedicated to the above identified brand styles including, but not limited to, plug makers, wrappers if separate, case packers, and routine maintenance parts and specific size parts.

F. *ATC Value Brands* means the following brands of cigarettes in the U.S.: Montclair, Riviera, Malibu, Bull Durham, Crowns, and Special Tens.

G. *ATC Full Revenue Brands* means the following brands of cigarettes in the U.S.: Tareyton, Silva Thins and Tall.

H. *ATC Brands* means the ATC Value Brands together with the ATC Full Revenue Brands.

I. *B&W Brand* means the following brand of cigarettes in the U.S.: Belair.

J. The term *Assets* means the following tangible and intangible assets exclusively relating to the manufacture, distribution and sale of those of the ATC Value Brands, the ATC Full Revenue Brands (excluding any Reidsville Assets) or the B&W Brand actually being divested (collectively the "Brands") including, to the extent they exist, but not limited to:

1. The Brand profit and loss statements, Brand contribution statements, and Brand advertising, promotional and marketing spend records for each Brand since January 1, 1990;

2. All trademarks, trade dress, trade secrets, technical information, intellectual property, patents, technology, know-how, tobacco content formulae, designs, specifications, drawings, processes and quality control data exclusively related to any of the Brands;

3. A bill of materials for each of the Brands, consisting of full manufacturing standards and procedures, quality control specifications, specifications for raw materials and components, including lists of authorized sources for materials and components;

4. All dedicated molds and equipment currently in use for each of the Brands;

5. A list of all direct customers who have bought the Brands from ATC or B&W at any time from January 1, 1990, including names, addresses, and telephone numbers of the individual customer contacts, and the unit and dollar amounts of sales, by Brand, to each customer;

6. All current and projected advertising, promotional and marketing information, materials and programs

specifically dedicated to the sale and distribution of each of the Brands;

7. All inventories of finished goods, packaging and raw materials uniquely relating to each of the Brands;

8. All names of manufacturers and suppliers under contract with ATC or B&W who produce for, or supply to, ATC or B&W in connection with the manufacture or sale of each of the Brands;

9. A copy of all product testing required by any regulatory authority specific to the Brands from January 1, 1990, including but not limited to tar and nicotine content testing as required by the FTC and all regulatory registrations and correspondence; and

10. All price lists for each of the Brand from January 1, 1990.

II

It is further ordered That:

A. BAT and B&W shall divest absolutely and in good faith, within 12 months of the date this order becomes final, the ATC Value Brands Assets. BAT and B&W shall also divest to the proposed acquirer of the ATC Value Brands Assets, the Reidsville Assets and the ATC Full Revenue Brands Assets. BAT and B&W shall also divest:

1. Such additional ancillary assets, formerly of ATC, and effect such arrangements in respect thereof, as are necessary to assure the marketability and the viability of the Reidsville Assets for the manufacture of cigarettes in the United States for sale and consumption in the United States; and

2. Such additional ancillary physical assets and legal rights, formerly of ATC, as are exclusive to those ATC Brands being divested and are necessary to assure the marketability and the viability of those ATC Brands;

Provided however, if the divestiture of only the ATC Value Brands Assets is approved by the Commission pursuant to Paragraph II. B., and the divestiture does not include the Reidsville Assets and/or the ATC Full Revenue Brands Assets, the obligations of BAT and B&W to divest under this order shall be satisfied upon the divestiture of the ATC Value Brands Assets.

B. BAT and B&W shall divest hereunder only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture provided herein is to remedy the lessening of competition resulting from the proposed acquisition as alleged in the Commission's complaint and, therefore, if the Reidsville Assets are divested, they shall be used only for the production of cigarettes in the U.S.

principally for sale and consumption in the U.S.

C. Pending divestiture as provided in this Paragraph II, BAT and B&W shall:

1. Take such actions as are necessary to maintain the viability and marketability of the Reidsville Assets by preventing the destruction, removal, wasting, deterioration, sale, transfer, encumbrance or impairment of any of the Reidsville Assets except for ordinary wear and tear. and

2. Take such actions as are necessary to maintain the viability and marketability of the ATC Brands Assets by preventing the destruction, sale, transfer, encumbrance or impairment of any of the ATC Brands Assets.

D. BAT and B&W shall comply with all terms of the Preservation Agreement, attached to this order and made a part hereof as Appendix I. The Preservation Agreement shall continue in effect until the date this order becomes final.

III

It is further ordered That:

A. If BAT and B&W have not divested, absolutely and in good faith and with the Commission's prior approval, as provided in Paragraph II. A., the Commission may appoint a trustee to divest the ATC Value Brands Assets, the B&W Brand Assets and the Reidsville Assets. Upon divestiture under this Paragraph III, the Reidsville Assets shall be used for the production of cigarettes in the U.S. principally for sale and consumption in the U.S. *provided, however*, that if the Commission has not approved or disapproved a proposed divestiture within 120 days of the date the application for such divestiture has been placed on the public record, the running of the divestiture prior shall be tolled until the Commission approves or disapproves the divestiture. In the event that the Commission or the Attorney General brings an action pursuant to section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, BAT and B&W shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by BAT and B&W to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III. A. of the order, BAT and

B&W shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of BAT and B&W, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If BAT and B&W have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to BAT and B&W of the identity of any proposed trustee, BAT and B&W shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Reidsville Assets, the ATC Value Brands Assets and the B&W Brand Assets.

3. Within twenty (20) days after appointment of the trustee, BAT and B&W shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

4. The trustee shall have twelve (12) months from the date the Commission approve the trust agreement described in Paragraph III B. 3. to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Reidsville Assets, the ATC Value Brands Assets and the B&W Brand Assets or to any other relevant information, as the trustee may request, and shall take all reasonable steps to ensure that the confidentiality is maintained of matters and documents so designated by either of the respondents. BAT and B&W shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. BAT and B&W shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by BAT and

B&W shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract (which may include provision for the contract manufacture of cigarettes) that is submitted to the Commission, subject to BAT's and B&W's absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to the acquirer as set out in Paragraph II B. of this order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity selected by BAT and B&W from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of BAT and B&W, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of BAT and B&W, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the BAT and B&W, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Reidsville Assets, the ATC Value Brands Assets and the B&W Brand Assets.

8. BAT and B&W shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claims, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or

bad faith by the trustee. BAT and B&W shall be responsible for the defense of any and all claims against the trustee under this subsection and the trustee shall do and omit nothing which may prejudice such defense.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III A. of this order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the Reidsville Assets, the ATC Value Brands Assets and the B&W Brand Assets.

12. The trustee shall report in writing to BAT and B&W and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

13. The trustee shall note, in his or her recommendation to the Commission, whether the proposed acquirer, or any other entity controlling or commonly controlled by the proposed acquirer, has, directly or indirectly, in any jurisdiction in the world and at any time within the last five years, had goods that it manufactured or supplied seized, impounded or destroyed by any authority pursuant to a claim of infringement of any intellectual property or other right over or in respect to those goods.

IV

It is further ordered That, for a period of ten (10) years from the date this order becomes final, BAT and B&W shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity, or other interest in any concern, corporate or non-corporate, engaged at the time of such acquisition, or within the two years preceding such acquisition, in the manufacture in the United States of cigarettes for consumption in the United States, or

B. Acquire any assets used for or previously used for (and still suitable for use for) the manufacture, distribution, or sale in the United States of cigarettes.

Provided, however, that this Paragraph IV shall not apply to

transactions entered into in the ordinary course of business.

V

It is further ordered That:

A. Within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until BAT and B&W have fully complied with the provisions of Paragraphs II and III of this order, BAT and B&W shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with Paragraphs II and III of this order. BAT and B&W shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II and III of the order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. BAT and B&W shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One year (1) from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, BAT and B&W shall file a verified written report with the Commission setting forth in detail the manner and form in which they have complied and are complying with Paragraph IV of this order.

VI

It is further ordered That BAT and B&W shall notify the Commission at least thirty (30) days prior to any proposed change in the corporations, such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporations, that in each case may affect compliance obligations arising out of the order.

VII

It is further ordered That, for the purpose of determining or securing compliance with this order, subject to any legally recognized privilege, BAT and B&W shall permit any duly authorized representative of the Commission:

A. Upon written notice to counsel, access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other

records and documents in the possession or under the control of BAT and B&W relating to any matters contained in this order; and

B. Upon five days' written notice to counsel and without restraint or interference from BAT and B&W, to interview officers, directors, or employees of BAT and B&W, who may have counsel present.

Appendix I

Preservation Agreement

This Preservation Agreement is by and between B.A.T. Industries p.l.c., a public limited company incorporated under the laws of England, with its headquarters and principal place of business located at Windsor House, 50 Victoria Street, London, England, SW1H 0NL ("BAT"), Brown & Williamson Tobacco Corporation, a corporation incorporated under the laws of the State of Delaware with its headquarters and principal place of business located at 1500 Brown & Williamson Tower, PO Box 35090, Louisville, Kentucky ("B&W"), and the Federal Trade Commission, an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.*

Premises for Agreement

Whereas, BAT pursuant to an agreement dated April 26, 1994, agreed to purchase substantially all of the outstanding stock of the American Tobacco Company ("ATC"), a whole owned subsidiary of American Brands, Inc.; and

Whereas, the Commission has reason to believe that the agreement would violate section 5 of the Federal Trade Commission Act, and that, if consummated, would violate section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act, statutes enforced by the Commission, and the Commission has issued its administrative complaint challenging the agreement; and

Whereas, if the parties accept the attached Agreement Containing Consent Order ("Consent Agreement"), the Commission is required to place it on the public record for a period of sixty (60) days for public comment and may subsequently withdraw such acceptance pursuant to the provisions of § 3.25(f) of the Commission's rules; and

Whereas, the Commission is concerned that if an agreement is not reached preserving the *status quo ante* of the Reidsville Assets and the ATC Brands Assets during the period prior to final acceptance of the Order by the

Commission (after the 60-day comment period), any divestiture resulting from any proceeding challenging the legality of the acquisition might not be possible, or might produce a less than effective remedy; and

Whereas, the Commission is concerned that if the acquisition is consummated, it will be necessary to preserve the continued viability and marketability of the Reidsville Assets and the ATC Brands Assets, as defined in the Consent Agreement; and

Whereas, the purpose of this Preservation Agreement and of the Consent Agreement is to preserve the Reidsville Assets and the ATC Brands Assets until the date this Order becomes final, in order to remedy any anticompetitive effects of the acquisition; and

Whereas, BAT's and B&W's entering into this Preservation Agreement shall in no way be construed as an admission by BAT and B&W that the acquisition is anticompetitive or illegal; and

Whereas, BAT and B&W understand that no act or transaction contemplated by this Preservation Agreement shall be deemed immune or exempt from the provisions of the antitrust laws, or the Federal Trade Commission Act by reason of anything contained in this Preservation Agreement;

Now, therefore, in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Agreement, it will not seek further relief from the parties with respect to the acquisition, except that the Commission may exercise any and all rights to enforce this Preservation Agreement, and the Consent Agreement to which this Preservation Agreement, is annexed and made a part thereof, and the final order in this proceeding, and, in the event the required divestiture is not accomplished, to appoint a trustee to seek the divestiture of the Reidsville Assets, the ATC Value Brands Assets and the B&W Brand Assets as provided in the Consent Agreement, the parties agree as follows:

Terms of Agreement

1. BAT and B&W agree to execute, and upon its issuance, to be bound by the attached Consent Agreement.

2. BAT will be free to close the acquisition with American Brands immediately after the Commission's approval of the Consent Agreement for placement on the public record for comment.

3. BAT and B&W agree that from the date this Preservation Agreement is signed by BAT and B&W until the earliest of the dates listed in subparagraphs 3.a and 3.b they will

comply with the provisions of this Preservation Agreement:

a. Three business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of § 3.25(f) of the Commission's rules; or

b. The day the order becomes final.

4. From the time BAT and B&W sign this Preservation Agreement until the date the order becomes final, BAT and B&W shall:

a. Take such actions as are necessary to maintain the viability and marketability of the Reidsville Assets by preventing the destruction, removal, wasting, deterioration, sale, transfer, encumbrance or impairment of any of the Reidsville Assets except for ordinary wear and tear, and

b. Take such actions as are necessary to maintain the viability and marketability of the ATC Brands Assets by preventing the destruction, sale, transfer, encumbrance or impairment of any of the ATC Brands Assets.

5. BAT and B&W also waive all rights to contest the validity of this agreement.

6. For the purpose of determining or securing compliance with this agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to counsel for BAT or B&W, BAT or B&W shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of BAT or B&W, in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of BAT or B&W relating to compliance with this agreement; and

b. Upon five (5) days' notice to BAT or B&W and without restraint or interference from them, to interview officers or employees of BAT or B&W, who may have counsel present, regarding any such matters.

7. This agreement shall not be binding on the Commission until approved by the Commission.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("the Commission") has accepted, subject to final approval, an agreement containing a proposed consent order from B.A.T Industries p.l.c. ("BAT") and Brown & Williamson Tobacco Corporation ("B&W"). The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. comments received during this period will become part of the public record.

After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's investigation of this matter concerns the acquisition of The American Tobacco Company ("ATC"), a wholly-owned subsidiary of American Brands, Inc. by BAT. B&W, BAT's wholly-owned subsidiary, and ATC are the third and fifth largest manufacturers of cigarettes, respectively, in the United States. In its administrative complaint, the Commission alleges, among other things, that the United States cigarette market is highly concentrated and would become substantially more concentrated as a result of the acquisition. The Commission also alleges that it has reason to believe that the acquisition would have anticompetitive effects and would violate section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act. The agreement containing consent order would, if finally accepted by the Commission, settle charges that the acquisition may substantially lessen competition in the manufacture and sale of cigarettes in the United States.

The order, accepted for public comment, contains provisions requiring BAT and B&W to divest certain brands of cigarettes and cigarette manufacturing facilities. The order requires BAT and B&W to divest, within twelve (12) months, six discount cigarette brands, formerly owned by ATC, including Montclair, Riviera, Malibu, Bull Durham, Crowns and Special Tens. The order also requires BAT and B&W to divest to the purchaser of the discount brands, three former ATC full revenue brands, Tareyton, Silva Thins and Tall, and the former-ATC cigarette manufacturing facility located at Reidsville, North Carolina. Under the terms of the divestiture, BAT and B&W may satisfy the divestiture requirements without divesting the full revenue brands and/or the Reidsville facility, if the Commission approves the divestiture of only the discount brands as satisfying the remedial concerns of the order. The purpose of the divestiture is to remedy the lessening of competition resulting from the acquisition as alleged in the Commission's complaint and, therefore, if the Reidsville facility is divested, it is to be used only for the production of cigarettes in the United States principally for sale and consumption in the United States.

Under the terms of the order, if BAT and B&W fail to complete the divestiture within the required period, the Commission may appoint a trustee to divest the six discount cigarette brands, the Reidsville facility and Belair, a B&W full revenue cigarette.

Any proposed divestiture pursuant to the order must be approved by the Commission after the divestiture proposal has been placed on the public record for reception of comments from interested persons. The Preservation Agreement executed as part of the agreement containing the consent order requires BAT and B&W, until the order becomes final, to take actions as are necessary to maintain the viability and marketability of the former ATC brands of cigarettes and the Reidsville facility.

For a period of ten years from the date the order becomes final, the order prohibits BAT and B&W from acquiring, without prior Commission approval, stock or assets of, or interests in, any company engaged in the manufacture and sale of cigarettes in the United States.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

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GENERAL ACCOUNTING OFFICE

Notice of Transmittal of the United States General Accounting Office Compliance Report to the President and the Congress Covering Reports Issued During the Session of Congress Ending December 1, 1994

Pursuant to the Omnibus Budget Reconciliation Act of 1990, Section 254(b), the United States General Accounting Office hereby reports that it has submitted its Compliance Report covering reports issued during the session of Congress ending December 1, 1994 to the President of the United States, the President of the Senate, and the Speaker of the House of Representatives.

Susan J. Irving,

Associate Director, Budget Issues, Accounting and Information Management Division.

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