

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

THE EUROPEAN COMMUNITY,
acting on its own behalf and on behalf of the
MEMBER STATES it has power to represent, and the
Kingdom of Belgium, Republic of Finland,
French Republic, Hellenic Republic,
Federal Republic of Germany, Italian Republic,
Grand Duchy of Luxembourg,
Kingdom of the Netherlands,
Portuguese Republic, and
Kingdom of Spain, individually,
Plaintiffs,
- against - COMPLAINT
RJR NABISCO, INC.,
R.J. REYNOLDS TOBACCO COMPANY,
R.J. REYNOLDS TOBACCO INTERNATIONAL, INC.,
RJR ACQUISITION CORP., f/k/a
NABISCO GROUP HOLDINGS CORP.,
RJR NABISCO HOLDINGS CORP.,
R.J. REYNOLDS TOBACCO HOLDINGS, INC.,
DEFENDANTS.

Plaintiffs, THE EUROPEAN COMMUNITY, acting on its own behalf and on behalf of
the MEMBER STATES it has power to represent, and the Kingdom of Belgium,
Republic of Finland, French Republic, Hellenic Republic, Federal Republic of Germany,
Italian Republic, Grand Duchy of Luxembourg, Kingdom of the Netherlands, Portuguese
Republic, and Kingdom of Spain, individually, (hereinafter referred to as the "MEMBER
STATES" and together with THE EUROPEAN COMMUNITY, as "PLAINTIFFS"), by
and through their undersigned attorneys, for their complaint herein allege:

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I. INTRODUCTION

1. For more than a decade, the DEFENDANTS (hereinafter also referred to as the “RJR DEFENDANTS” or “RJR”) have directed, managed, and controlled money-laundering operations that extended within and/or directly damaged the Plaintiffs. The RJR DEFENDANTS have engaged in and facilitated organized crime by laundering the proceeds of narcotics trafficking and other crimes. As financial institutions worldwide have largely shunned the banking business of organized crime, narcotics traffickers and others, eager to conceal their crimes and use the fruits of their crimes, have turned away from traditional banks and relied upon companies, in particular the DEFENDANTS herein, to launder the proceeds of unlawful activity.

2. The DEFENDANTS knowingly sell their products to organized crime, arrange for secret payments from organized crime, and launder such proceeds in the United States or offshore venues known for bank secrecy. DEFENDANTS have laundered the illegal proceeds of members of Italian, Russian, and Colombian organized crime through financial institutions in New York City, including The Bank of New York, Citibank N.A., and Chase Manhattan Bank.

DEFENDANTS have even chosen to do business in Iraq, in violation of U.S. sanctions, in transactions that financed both the Iraqi regime and terrorist groups.

3. The RJR DEFENDANTS have, at the highest corporate level, determined that it will be a part of their operating business plan to sell cigarettes to and through criminal organizations and to accept criminal proceeds in payment for cigarettes by secret and surreptitious means, which under United States law constitutes money laundering. The officers and directors of the RJR DEFENDANTS facilitated this overarching money-laundering scheme

by restructuring the corporate structure of the RJR DEFENDANTS, for example, by establishing subsidiaries in locations known for bank secrecy such as Switzerland to direct and implement their money-laundering schemes and to avoid detection by U.S. and European law enforcement.

This overarching scheme to establish a corporate structure and business plan to sell cigarettes to criminals and to launder criminal proceeds was implemented through many subsidiary schemes across THE EUROPEAN COMMUNITY. Examples of these subsidiary schemes are described in this Complaint and include: (a.) Laundering criminal proceeds received from the Alfred Bossert money-laundering organization; (b.) Money Laundering for Italian organized crime; (c.) Money laundering for Russian organized crime through The Bank of New York; (d.) The Walt money-laundering conspiracy; (e.) Money laundering through cut outs in Ireland and Belgium; (f.) Laundering of the proceeds of narcotics sales throughout THE EUROPEAN COMMUNITY by way of cigarette sales to criminals in Spain; (g.) Laundering criminal proceeds in the United Kingdom; (h.) Laundering criminal proceeds through cigarette sales via Cyprus; and (i.) Illegal cigarette sales into Iraq.

Numerous additional subsidiary schemes exist that harm THE EUROPEAN COMMUNITY and each of the MEMBER STATES named herein.

4. This civil action is based upon violations of the Racketeer Influenced and Corrupt Organizations Act, which was specifically intended by Congress to eradicate organized

crime on all fronts (including in foreign and interstate commerce) and to deprive violators of their ill-gotten gains. It is also based upon violations of standards of common law, including fraud, negligence, unjust enrichment, public nuisance, and conspiracy to commit such torts.

Plaintiffs seek damages; equitable relief such as disgorgement of profits; and injunctive relief (a) to enjoin DEFENDANTS from engaging in money laundering and facilitating organized crime, and (b) to compel DEFENDANTS to adopt necessary programs and procedures to prevent such conduct in the future. Absent such relief, there will be an increased risk to national security, continued harm to Plaintiffs, and damage to the vital interests of the United States and Plaintiffs.

II. PARTIES

5. THE EUROPEAN COMMUNITY is a governmental body created as a result of collaboration among the majority of the nations of Western Europe, more specifically, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, The Netherlands, Portugal, Spain, Sweden, and the United Kingdom. Pursuant to the Treaty establishing THE EUROPEAN COMMUNITY, as last amended by the Treaty of Amsterdam (1999), Article 2, THE EUROPEAN COMMUNITY is vested with the responsibility "to promote throughout the Community a harmonious, balanced and sustainable development of economic activities, . . . a high level of protection and improvement of the quality of the environment, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among the Member States." THE EUROPEAN COMMUNITY has certain legal rights and responsibilities. Pursuant to Article 281 of the Treaty establishing THE EUROPEAN COMMUNITY, THE EUROPEAN COMMUNITY is a legal person. Pursuant to

Article 282 of the Treaty establishing THE EUROPEAN COMMUNITY, THE EUROPEAN COMMUNITY possesses the most extensive legal capacity accorded to legal persons under the laws of the Member States, and it may, in particular, acquire or dispose of property and may be a party to legal proceedings. In such instances, THE EUROPEAN COMMUNITY is represented by the European Commission. Pursuant to Article 280 of the Treaty establishing THE EUROPEAN COMMUNITY, THE EUROPEAN COMMUNITY has the duty to counter fraud and any other illegal activities affecting the financial interests of THE EUROPEAN COMMUNITY through measures which shall act as a deterrent and be such as to afford effective protection in the Member States. THE EUROPEAN COMMUNITY has a duty to protect against harm to the financial institutions and infrastructure within THE EUROPEAN COMMUNITY. THE EUROPEAN COMMUNITY possesses additional duties and authorities that have been conferred upon it by the MEMBER STATES or that it shares with the MEMBER STATES, by virtue of treaty and/or law, including but not limited to the following: (a) The duty and authority to regulate foreign commerce; (b) The duty and authority to regulate and set rules to combat money laundering; (c) The duty and authority to prescribe regulations for the seizure of bank accounts and assets and to take other related actions to combat money laundering and other financial crimes committed against the financial interests of THE EUROPEAN COMMUNITY and the MEMBER STATES; (d) The duty and authority to ensure and regulate the free movement of goods within THE EUROPEAN COMMUNITY; (e) The duty and authority to regulate safety and security at sea; (f) The duty and authority to regulate and take action to protect against breaches of THE EUROPEAN COMMUNITY Customs Territory or THE EUROPEAN COMMUNITY Customs Border; (g) The duty and authority to regulate ports, customs territories, free trade zones, and customs bonded warehouses; (h) The duty and

authority to regulate transportation into THE EUROPEAN COMMUNITY or within its borders; and (i) The duty to promote throughout the Community a harmonious, balanced, and sustainable development of economic activities and to protect and promote the economic well being of its citizens. THE EUROPEAN COMMUNITY has the general duty and the authority to act to abate any harm to itself or to the general public of THE EUROPEAN COMMUNITY within its areas of competence as set forth above. Among the legal rights of THE EUROPEAN COMMUNITY is the right to hold a legal or beneficial interest in property. THE EUROPEAN COMMUNITY is represented in the United States by a Delegation in Washington, D.C. The Delegation has full diplomatic privileges and immunities, and the Head of the Delegation is accorded full ambassadorial status.

6. Each of the named MEMBER STATES, Kingdom of Belgium, Republic of Finland, French Republic, Hellenic Republic, Federal Republic of Germany, Italian Republic, Grand Duchy of Luxembourg, Kingdom of the Netherlands, Portuguese Republic, and Kingdom of Spain, is a sovereign State. As such, each State possesses the legal capacity to acquire, own, or dispose of property and may be a party to legal proceedings. Each MEMBER STATE is a “person” as defined under the applicable United States law. Each MEMBER STATE has the right to hold a legal or beneficial interest in property.

7. Within the areas of their competency and jurisdiction, THE EUROPEAN COMMUNITY and each of the named MEMBER STATES are the legal entities with the duty and responsibility for enforcing the money and banking laws within their respective jurisdictions.

If any entities, including the RJR DEFENDANTS, launder criminal proceeds or commit other illegal acts that violate the money and/or banking laws of the PLAINTIFFS, it is these PLAINTIFFS with the duty and competency to enjoin and obtain redress for such conduct.

8. RJR NABISCO, INC. was a Delaware corporation and, according to public records, maintained its principal place of business at 1301 Avenue of the Americas, New York, New York 10019-6013. During relevant times, RJR NABISCO, INC. was the parent corporation of R.J. REYNOLDS TOBACCO COMPANY and has participated in the sale and manufacture of cigarettes and other tobacco products both individually and through its agent and instrumentality, DEFENDANT R.J. REYNOLDS TOBACCO COMPANY, and related entities and ventures. At all relevant times, RJR NABISCO, INC. assumed an active role in the tobacco business and treated the tobacco business as a department or division of RJR NABISCO, INC.

At times pertinent to this complaint, RJR NABISCO, INC., individually and through its agents, subsidiaries, divisions, or affiliated companies, or ventures, materially participated in the operation and management of RJR's money-laundering enterprise, and materially participated, conspired, assisted, encouraged, and otherwise aided and abetted one or more of the other DEFENDANTS in the unlawful and fraudulent conduct alleged herein, all of which has affected foreign and interstate commerce. Upon information and belief, based on RJR's public filings, RJR NABISCO, INC., was renamed R.J. REYNOLDS TOBACCO HOLDINGS, INC., a Delaware corporation, and is now a direct, wholly-owned subsidiary of RJR ACQUISITION CORP., f/k/a NABISCO GROUP HOLDINGS CORP. During relevant times herein, RJR NABISCO, INC., has conducted continuous and systematic business in the State of New York, maintains a substantial financial presence in the State of New York, utilizes offices of its own and of its affiliated corporations in New York, and is otherwise subject to the jurisdiction of the courts in the State of New York.

9. R.J. REYNOLDS TOBACCO COMPANY is a New Jersey corporation whose principal place of business is located at 401 North Main Street, Winston-Salem, North Carolina

27102. At times pertinent to this complaint, R.J. REYNOLDS TOBACCO COMPANY, individually and through its agents, subsidiaries, divisions, or affiliated companies or ventures, materially participated in the operation and management of RJR's money-laundering enterprise, and materially participated, conspired, assisted, encouraged, and otherwise aided and abetted one or more of the other DEFENDANTS in the unlawful and fraudulent conduct alleged herein, all of which has affected foreign and interstate commerce. During relevant times herein, R.J.

REYNOLDS TOBACCO COMPANY conducted continuous and systematic business in the State of New York, maintains a substantial financial presence in the State of New York, utilizes offices of its own and of its affiliated corporations in New York, and is otherwise subject to the jurisdiction of the courts in the State of New York.

10. R.J. REYNOLDS TOBACCO INTERNATIONAL, INC. is a Delaware corporation. At times pertinent to this complaint, R.J. REYNOLDS TOBACCO INTERNATIONAL, INC., individually and through its agents, subsidiaries, divisions, or affiliated companies or ventures, materially participated in the operation and management of RJR's money-laundering enterprise, and materially participated, conspired, assisted, encouraged, and otherwise aided and abetted one or more of the other DEFENDANTS in the unlawful and fraudulent conduct alleged herein, all of which has affected foreign and interstate commerce.

During all relevant times, R.J. REYNOLDS TOBACCO INTERNATIONAL, INC. conducted continuous and systematic business in the State of New York, maintained a substantial financial presence in the State of New York, utilized offices of its own and of its affiliated corporations in New York, and is otherwise subject to the jurisdiction of the courts in the State of New York.

11. RJR NABISCO HOLDINGS CORP. is a Delaware corporation whose principal place of business is 1301 Avenue of the Americas, New York, New York 10019-6013.

During all relevant times, RJR NABISCO HOLDINGS CORP. was the parent corporation of RJR NABISCO, INC. On June 14, 1999, RJR NABISCO HOLDINGS CORP. changed its name to NABISCO GROUP HOLDINGS CORP. In 2001, NABISCO GROUP HOLDINGS CORP.

changed its name to RJR ACQUISITION CORP. RJR ACQUISITION CORP., f/k/a NABISCO GROUP HOLDINGS CORP. is a Delaware corporation whose principal place of business is 7 Campus Drive, Parsippany, New Jersey 07054-0311.

12. On June 14, 1999, RJR NABISCO HOLDINGS CORP. distributed all of the common stock of its subsidiary, R.J. REYNOLDS TOBACCO HOLDINGS, INC., to the shareholders of RJR NABISCO HOLDINGS CORP.

13. During all relevant times, the holding corporations, identified above in paragraphs 11 and 12, participated, directly and indirectly, in the sale and manufacture of cigarettes and other tobacco products through their agent and instrumentality DEFENDANT, R.J. REYNOLDS TOBACCO COMPANY, and related entities and ventures. These holding corporations assumed an active role in the tobacco business, and at relevant times have treated the tobacco business as a department or division. At times pertinent to this complaint, these holding corporations, individually and through their agents, subsidiaries, divisions, or affiliated companies or ventures, materially participated in the operation and management of RJR's money-laundering enterprise, and materially participated, conspired, assisted, encouraged, and otherwise aided and abetted one or more of the other

DEFENDANTS in the unlawful and fraudulent conduct alleged herein, all of which has affected foreign and interstate commerce.

During relevant times herein, the holding corporations, identified above in paragraphs 12 and 13, conducted continuous and systematic business in the State of New York, maintained a substantial

financial presence of their own and their affiliated corporations in New York, and are otherwise subject to the jurisdiction of the courts in the State of New York.

14. The RJR DEFENDANTS are and were, during all relevant times, involved in directing, managing, and controlling money-laundering operations that extended within and/or directly damaged the PLAINTIFFS. At all times pertinent to this complaint, the RJR DEFENDANTS, individually and through their employees, agents, joint venturers, coconspirators, subsidiaries, divisions, or affiliated companies, actively directed, managed, and controlled the RJR money-laundering enterprise, and actively participated, conspired, assisted, encouraged, and otherwise aided and abetted one or more of their coconspirators in the unlawful and fraudulent conduct alleged herein, all of which has affected and continues to affect foreign and interstate commerce in the United States.

15. The foregoing RJR corporations, as well as their affiliated entities, ventures, and successors, are and were, during all relevant times, affiliated, consolidated, combined, and unitary entities for purposes of tobacco operations and related activities. Tobacco operations were departments within the RJR corporate family. The RJR DEFENDANTS maintain control of tobacco operations worldwide through a web of affiliated entities and joint ventures. This corporate structure was an essential aspect of RJR's successful efforts to launder the proceeds of criminal activity to the detriment of the PLAINTIFFS.

16. The RJR DEFENDANTS are and were, during all relevant times, responsible for the acts and omissions of their employees, for acts undertaken within the general area of their authority and for the benefit of the RJR DEFENDANTS. As alleged herein, the RJR DEFENDANTS were central figures in the overall conspiracy that actively embarked on and extensively participated in the fraudulent scheme. By means of corporate policies that put RJR

DEFENDANTS' resources and strategy at the heart of the conspiracy, the RJR DEFENDANTS were aggressor entities that acted to harm the economic interests of the Plaintiffs.

17. The RJR DEFENDANTS, during relevant times, have adopted a "worldwide" policy that purports to exercise control of the activities of their employees, as well as those of their direct and indirect subsidiaries. Under this policy, which is said to be monitored and enforced by RJR's Audit Committee, RJR DEFENDANTS have undertaken responsibility for the acts of the employees of the RJR DEFENDANTS, wherever taken, including acts related to money-laundering activities within Europe and elsewhere which materially injured THE EUROPEAN COMMUNITY and its MEMBER STATES.

III. JURISDICTION

18. As to the Plaintiffs, the MEMBER STATES, jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331, 1337 because this matter involves allegations of illegal behavior arising under the laws of the United States, including violations of RICO. Furthermore, jurisdiction in this Court is proper pursuant to RICO, 18 U.S.C. §§ 1964(a),(c) and 28 U.S.C. § 1651(a). The DEFENDANTS are “persons” within the meaning of 18 U.S.C. § 1961(3). As to all Plaintiffs, jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332 because the matter in controversy exceeds the sum or value of \$75,000 and involves parties of diverse citizenship.

The Plaintiffs are “persons” within the meaning of 18 U.S.C. § 1961(3). Finally, this Court may exercise jurisdiction over Plaintiffs’ non-federal claims pursuant to 28 U.S.C. § 1367, as this Court possesses both federal question and diversity jurisdiction.

IV. VENUE

19. Venue is proper in this Court pursuant to 18 U.S.C. § 1965(a) because DEFENDANTS reside, are found, have an agent, or transact affairs in this District. Venue is also proper in this Court pursuant to 18 U.S.C. § 1965(b) because, to the extent any DEFENDANT may reside outside of this district, the ends of justice require such DEFENDANT or DEFENDANTS to be brought before the Court. Venue properly lies in this Court pursuant to 28 U.S.C. § 1391(b)(2) or, alternatively, pursuant to 28 U.S.C. § 1391(a)(2). Further, certain of the conspiratorial acts alleged herein took place within this judicial district.

V. THE LINK BETWEEN RJR’S CIGARETTE SALES, MONEY LAUNDERING, AND ORGANIZED CRIME

Money-Laundering Links Between Europe, The United States, Russia, and Colombia

20. Cigarette sales, money laundering, and organized crime are linked and interact on a global basis. According to Jimmy Gurule, Undersecretary for Treasury Enforcement: “Money laundering takes place on a global scale and the Black Market Peso Exchange System, though based in the Western Hemisphere, affects business around the world. US law enforcement has detected BMPE-related transactions occurring throughout the United States, Europe, and Asia.” 21. The primary source of cocaine within THE EUROPEAN COMMUNITY is Colombia. Large volumes of cocaine are transported from Colombia into THE EUROPEAN

COMMUNITY and then sold illegally within THE EUROPEAN COMMUNITY and the MEMBER STATES. The proceeds of these illegal sales must be laundered in order to be useable by narcotics traffickers. Throughout the 1990s and continuing to the present day, a primary means by which these cocaine proceeds are laundered is through the purchase and sale of cigarettes, including those manufactured by the RJR DEFENDANTS. Cocaine sales in THE EUROPEAN COMMUNITY are facilitated through money-

laundering operations in Colombia, Panama, Switzerland, and elsewhere which utilize RJR cigarettes as the money-laundering vehicle.

22. In a similar way, the primary source of heroin within THE EUROPEAN COMMUNITY is the Middle East and, in particular, Afghanistan, with the majority of said heroin being sold by Russian organized crime, Middle Eastern criminal organizations, and terrorist groups based in the Middle East. Heroin sales in THE EUROPEAN COMMUNITY and the MEMBER STATES are facilitated and expedited by the purchase and sale of the DEFENDANTS' cigarettes in money-laundering operations that begin in THE EUROPEAN COMMUNITY and the MEMBER STATES, Eastern Europe, and/or Russia, but which ultimately result in the proceeds of those money-laundering activities being deposited into the coffers of the RJR DEFENDANTS in the United States.

Background on the Convergence of Narcotics Trafficking and Money Laundering

23. This complaint is about Trade and Commerce or, more correctly, illegal Trade and illegal Commerce, and how money laundering facilitates the financing and movement of goods internationally. Merchants engaging in global trade often turn to the more stable global

currencies for payments of goods and services purchased abroad. In many markets, the United States dollar is the currency of choice and, in some cases, the United States dollar is the only accepted form of payment. Merchants seeking dollars usually obtain them in a variety of ways, including the following three methods. Traditional merchants go to a local financial institution that can underwrite credit. Private financing is usually available for those with collateral. A third and least desirable source of dollar financing can be found in the "black markets" of the world. Black Markets are the underground or parallel financial economies that exist in every country. Criminals and their organizations control these underground economies, which generally operate through "money brokers." These "money brokers" often fulfill a variety of roles not the least of which is an important intermediate step in the laundering process, one that we will refer to throughout this complaint as the "cut out." (See paragraphs 32-35 below.)

24. The criminal activity that provides the dollars for these black market moneylaundering operations is often drug trafficking and related violent crimes. South America is the world leader in the production of cocaine, and the United States and the European Union are the world's largest cocaine markets. Likewise, Colombia and countries in the Middle East produce heroin. Cocaine and heroin are smuggled to the United States and Europe, and are sold for United States dollars as well as in local European currencies (and now the Euro). Russian drug smugglers obtain heroin from the Middle East and cocaine from South America, and sell both drugs in large quantities in the United States and in Europe. Retail street sales of cocaine and heroin have risen dramatically over the past two decades throughout the United States and Europe. Consequently, drug traffickers routinely accumulate vast amounts of illegally obtained

cash in the form of United States dollars in the United States and Euros in Europe. The U.S.

Customs Service estimates that illegal drug sales in the United States alone generate an estimated fifty-seven billion dollars in annual revenues, most of it in cash.

25. A drug trafficker must be able to access his profits, to pay expenses for the ongoing operation, and to share in the profits; and he must be able to do this in a manner that seemingly legitimizes the origins of his wealth, so as to ward off oversight and investigation that could result in his arrest and imprisonment and the seizure of his monies. The process of achieving these goals is the money-laundering cycle.

26. The purpose of the money-laundering cycle is to establish total anonymity for the participants, by passing the cash drug proceeds through the financial markets in a way that conceals or disguises the illegal nature, source, ownership, and/or control of the money.

Background on Black Market Money Exchanges

27. Within Europe, the United States, South America, and elsewhere, a community of illegal currency exchange brokers, known to law-enforcement officials as “money brokers,” operates outside the established banking system and facilitates the exchange of narcotics sale proceeds for local cash or negotiable instruments. Many of these money brokers have developed methods to bypass the banking systems and thereby avoid the scrutiny of regulatory authorities. These money exchanges have different names depending on where they are located, but they all operate in a similar fashion.

28. A typical “money-broker” system works this way: In a sale of Colombian cocaine in THE EUROPEAN COMMUNITY, the drug cartel exports narcotics to the MEMBER STATES where they are sold for Euros. In Colombia, the cartel contacts the money broker and

negotiates a contract, in which the money broker agrees to exchange pesos he controls in Colombia for Euros that the cartel controls in Europe. The money broker pays the cartel the agreed-upon sum in pesos. The cartel contacts its cell (group) in the European Union and instructs the cell to deliver the agreed-upon amount of Euros to the money broker’s European agent. The money broker must now launder the Euros he has accumulated in the European Union. He may also need to convert the Euros into U.S. dollars because his customers may need U.S. dollars to pay companies such as RJR for their products.

29. The money broker uses his European contacts to place the monies he purchased from the cartel into the European banking system or into a business willing to accept these proceeds (a process described in more detail below). The money broker now has a pool of narcotics-derived funds in Europe to sell to importers and others. In many instances, the narcotics trafficker who sold the drugs in THE EUROPEAN COMMUNITY is also the importer who purchased the cigarettes. Importers buy these monies from the money

brokers at a substantial discount off the “official” exchange rates and use these monies to pay for shipments of items (such as cigarettes), which the importers have ordered from United States companies and/or their authorized European representatives, or “cut outs.” The money broker uses his European contacts to send the monies to whomever the importer has specified. Often these customers utilize such monies to purchase the DEFENDANTS’ cigarettes in bulk and, in many instances, the money brokers have been directed to pay the RJR DEFENDANTS directly for the cigarettes purchased. The money broker makes such payments using a variety of methods, including his accounts in European financial institutions. The purchased goods are shipped to their destinations. The importer takes possession of his goods. The money broker uses the funds derived from the importer to continue the laundering cycle.

30. In that fashion, the drug trafficker has converted his drug proceeds (which he could not previously use because they were in Euros) to local currency that he can use in his homeland as profit and to fund his operations; the European importer has obtained the necessary funds from the black market money broker to purchase products that he might not otherwise have been able to finance (due to lack of credit, collateral, or U.S. dollars, and/or a desire for secrecy); the company selling cigarettes to the importer has received payment on delivered product in its currency of choice regardless of the source of the funds; and the money broker has made a profit charging both the cartel and the importer for his services. This cycle continues until the criminals involved are arrested and a new cycle begins. Money laundering is a series of such events, all connected and never stopping until at least one link in the chain of events is broken.

31. Many narcotics traffickers who sell drugs in THE EUROPEAN COMMUNITY now also purchase and import cigarettes. In particular, as the trade in cigarettes becomes more profitable and carries lesser criminal penalties compared to narcotics trafficking, the “business end” of selling the cigarettes has become at least as attractive and important to the criminal as the narcotics trafficking. Finally, it makes no difference whatsoever to the moneylaundering system whether the goods are imported and distributed legally or illegally.

Regardless of whether he sells his cigarettes legally or illegally, the narcotics trafficker has achieved his goal in that he has been able to disguise the nature, location, true source, ownership, and/or control of his narcotics proceeds. At the same time, the cigarette manufacturer (in this case RJR) has achieved its goal because it has successfully sold its product in a highly profitable way.

Background on Money Laundering: The “Cut-Out” Strategy

32. There are numerous important steps in any money laundering cycle. “Dirty” money of necessity moves in a way that is specifically designed to conceal or disguise its nature, source, ownership, and/or control. Successful “layering” of “dirty” transactions will often involve intermediaries, like money brokers, as a matter of necessity and convenience. These “money brokers” play an important role in the laundering conspiracy. They serve to isolate relevant coconspirators from the overt criminal acts, and because of that they

are often referred to by law-enforcement agencies as “cut outs.” The “cut out” is purposefully inserted into the transaction to create a layer of activity between the overt criminal actors and those receiving the laundered proceeds or profits of the criminal scheme. The “cut out’s” role is to shield the true participants in the conspiracy from discovery.

33. In this money-laundering conspiracy, the RJR DEFENDANTS’ role will often be masked by the activities of the “cut outs.” Consequently, the “cut-out” strategy will be referred to often throughout this complaint. The “cut-out” strategy is also relevant to the sales and marketing end of the international cigarette export cycle. When a cigarette manufacturer intentionally sells its products into criminal distribution channels via carefully selected wholesalers, so that it can deny responsibility for “where the customer sells the product,” the manufacturer is using that wholesaler as a “cut out” to insulate itself from the overt acts involved in the sale of cigarettes as a means of supporting the money-laundering cycle.

34. The cut-out strategy works for the benefit of the manufacturers looking to increase market share and for those merchants looking to conceal their involvement in legal or illegal business activity. Overall, this process develops into the creation of an unfair business

strategy for the manufacturer that increases its market share by creating a competitive disadvantage. By operating outside the legal framework for fair business operations, the manufacturer creates an unfair advantage for itself as against its competitors in virtually all aspects of business activity, including profit margins, financing terms, price structures, shipping, storage, advertising, regulation (e.g., in the case of cigarettes, health warnings), reporting obligations, and other aspects of business strategy. The resulting “competitive disadvantage” is particularly onerous to domestic companies that must comply with an array of regulations ranging from the sourcing of raw materials to laws governing treatment of their employees.

Consequently, domestic manufacturers in THE EUROPEAN COMMUNITY (both state owned and privately owned) are particularly harmed by the cut-out strategy.

35. As will become clear from the RJR DEFENDANTS’ use of Weitnauer Trading Company Ltd. (hereinafter referred to as “Weitnauer”), Michael Haenggi, Copaco, Alfred Bossert, and many others, the “cut out” was an integral part of the RJR DEFENDANTS’ direction of and participation in this international money-laundering conspiracy.

VI. THE RACE FOR MARKET SHARE

36. RJR has been aware of organized crime’s involvement in the distribution of its products since at least the 1970’s. On January 4, 1978, the Tobacco Institute’s Committee of Counsel met at the offices of Philip Morris in New York City. The Committee of Counsel was the high tribunal that set the tobacco industry’s legal, political, and public relations strategy for more than three decades. The January 4, 1978, meeting was called

to discuss, among other things, published reports concerning organized crime's involvement in the tobacco trade and the

tobacco industry's complicity therein. The published reports detailed the role of organized crime in the tobacco trade (including the Colombo crime family in New York), and the illegal trade at the Canadian border and elsewhere. RJR's general counsel, Max Crohn, attended and participated in the meeting. All of the large cigarette manufacturers were present at the meeting and represented by counsel, such as Philip Morris (Arnold & Porter, Abe Krash), and Brown & Williamson (Paul Weiss Rifkind Wharton & Garrison, Martin London). The Committee of Counsel took no action to address, investigate, or end the role of organized crime in the tobacco business. Instead, the Committee agreed to formulate a joint plan of action to protect the industry from scrutiny of the U.S. Congress. Notice and the agenda for the meeting, and the minutes of the meeting, were transmitted by the use of the U.S. mails.

37. Throughout the 1990s and continuing to the present day, the RJR DEFENDANTS have undertaken extensive efforts to increase their market share and to expand the sales of their products throughout the world.

38. To accomplish this end, the RJR DEFENDANTS have actively engaged in the sale of their products to criminals and/or criminal organizations, which can purchase goods with their criminal proceeds only if the payments for those goods are made covertly so as to avoid detection by law enforcement. The RJR DEFENDANTS engaged in such conduct through illegal acts, including money laundering, wire fraud, mail fraud, and other violations of United States law. The RJR DEFENDANTS have controlled, directed, encouraged, supported, and facilitated the activities of the criminals who purchase their products. The RJR DEFENDANTS have collaborated with criminals, directly and indirectly, and have sold cigarettes to persons and entities that they know or had reason to know were laundering criminal proceeds through the purchase of cigarettes.

39. By engaging in this illegal conduct the RJR DEFENDANTS have achieved multiple benefits for themselves, including but not limited to the following: (a.) The RJR DEFENDANTS have increased their cigarette sales because they have new and additional customers, namely, the money-launderers and the criminal organizations they service.

(b.) The RJR DEFENDANTS have increased their profit margins because they require the criminals to pay a premium for their cigarettes and/or subject the criminals to sales and credit terms that are more favorable to the RJR DEFENDANTS than those granted to legitimate customers.

(c.) The RJR DEFENDANTS have increased their market share by adding to their customer base to the detriment of their competitors.

(d.) The RJR DEFENDANTS have enhanced the market value of their tobacco operations, while decreasing the market value of their competitors' operations.

40. The RJR DEFENDANTS, jointly and as individual corporations, control, direct, encourage, support, promote, and facilitate the criminal activities that harm THE EUROPEAN COMMUNITY in a variety of ways, including but not limited to the following: (a.) The RJR DEFENDANTS developed mechanisms and procedures, including the use of cut outs, to allow their criminal customers to pay them for cigarettes in ways that could not be detected by U.S. and European law enforcement. In most instances, the RJR DEFENDANTS mandate that their criminal clients utilize these procedures to ensure that the RJR DEFENDANTS' role in these money-laundering activities will remain undetected.

(b.) The RJR DEFENDANTS accept payments from persons or entities they know, or have reason to know, are criminals and money launderers, and/or from distributors that they know, or have reason to know, are selling cigarettes to criminals and money launderers.

(c.) The RJR DEFENDANTS make arrangements by which the cigarettes they sell can be paid for in such a way that the payments are virtually untraceable.

(d.) The RJR DEFENDANTS make arrangements for payments for their cigarettes to be made into foreign accounts, including accounts held by Swiss corporations and/or Swiss bank accounts, in an attempt to improperly utilize Swiss banking and privacy laws as a shield to protect the criminals from government investigations concerning their activities.

(e.) The RJR DEFENDANTS agree to receive payment for cigarettes by way of third-party checks and other forms of payment executed by persons who have no relationship to the transaction other than that they have provided the funds. Such persons are a common part of money-laundering schemes. Payments for cigarettes by such third-party persons are a clear indication of money-laundering activity.

(f.) The RJR DEFENDANTS established protocols for "layered transactions" that allowed for payment for cigarettes to be made through multiple intermediaries (cut outs) to conceal the ultimate source and nature of the illicit funds.

(g.) The RJR DEFENDANTS invoiced distributors and intermediaries (cut outs) for cigarettes that were sold to criminal customers to conceal the fact that these sales were being made to criminals. In fact, however, the intermediaries and distributors were never expected to pay for the invoiced cigarettes and, at most, would act as pass-through accounts by which the criminals paid the RJR DEFENDANTS for cigarettes.

(h.) The RJR DEFENDANTS generate false or misleading invoices, bills of lading, shipping documents, and other documents that expedite the process by which the cigarettes are secretly delivered to criminals.

(i.) The RJR DEFENDANTS approve their criminal customers on an expedited basis and do not require them to go through the formalities required of legitimate customers.

(j.) The RJR DEFENDANTS engage in a pattern of activity by which they ship cigarettes designated for one port knowing that, in fact, the cigarettes will be diverted to another port to be sold illegally and/or in violation of United States laws and embargoes.

(k.) The RJR DEFENDANTS have formed, financed, and directed the activities of industry groups to disseminate false and misleading information to Plaintiffs and the public to conceal their illegal activities.

(l.) The RJR DEFENDANTS controlled, directed, encouraged, supported, and facilitated cigarette sales to criminals by giving instructions to distributors, shippers, shipping companies, retailers, and/or various other intermediaries so as to effectuate the sale of large amounts of cigarettes by criminal organizations.

41. But for the involvement and active assistance of the RJR DEFENDANTS, money launderers and criminals could not have laundered the proceeds of their criminal activities and continued such activities at such levels to the detriment of THE EUROPEAN COMMUNITY and the MEMBER STATES.

42. The members of this vertical group, consisting of the DEFENDANTS, the distributors, the shippers, the criminal customers, currency brokers, and the RJR DEFENDANTS' agents and subsidiaries who receive payment for the cigarettes, work together

for the common purpose of depriving Plaintiffs of money and property and engaging in a course of conduct to gain massive profits from the sale of cigarettes as a part of a global moneylaundering enterprise while harming Plaintiffs' economic interests. The activities of this core group constitute a conspiracy in law and in fact.

VII. RJR'S DIRECT INVOLVEMENT IN MONEY LAUNDERING

43. The RJR DEFENDANTS have been actively involved in money laundering for many years, and have carried out their scheme through acts within this District and throughout this State. Examples of the methods and means by which the RJR DEFENDANTS have been complicit in the money-laundering scheme, directly and through the acts of their coconspirators, are set forth below.

RJR's Relationships with Money Launderers 44. The RJR DEFENDANTS solicited contacts with companies and individuals in Europe, Central America, and the Caribbean that the DEFENDANTS knew, or had reason to know, were money launderers. Large parts of RJR's illegal activities were conducted through a branch of RJR called North American Duty Free (NADF). Richard LaRocca was vice president/general manager for North America Duty Free. He had been recruited by the RJR DEFENDANTS because of his special knowledge of the Spanish cigarette market. Richard LaRocca knew and worked directly with Michael Haenggi who was a major customer of RJR and a central figure in a massive cigarette sales/money-laundering scheme. In 1997, Michael

Haenggi freely admitted to the New York Times that he sold RJR cigarettes in bulk to known criminals. In spite of this public announcement, the RJR DEFENDANTS made a corporate decision to continue selling huge volumes of cigarettes to Michael Haenggi even though they were on notice that payments from Haenggi would include the proceeds of criminal activity.

45. In light of the dramatic increase of narcotics sales in THE EUROPEAN COMMUNITY over the last two decades, narcotics traffickers and money launderers in THE EUROPEAN COMMUNITY increasingly needed to launder enormous volumes of cash and/or convert their cash from one form of currency to another. The RJR DEFENDANTS wished to increase their market share in certain target markets in THE EUROPEAN COMMUNITY by obtaining additional customers for their product on whom they could rely to sell the cigarettes in the markets targeted by the DEFENDANTS. In general, it was immaterial to the RJR DEFENDANTS whether the cigarettes were sold legally or illegally, so long as the cigarettes were sold in the target markets. Accordingly, the RJR DEFENDANTS reached an agreement with their coconspirators, the narcotics traffickers and money launderers, that the DEFENDANTS would provide these criminals with the capability to launder the proceeds of their criminal activities, including narcotics trafficking, by purchasing the DEFENDANTS' tobacco products. The RJR DEFENDANTS arranged for secret delivery of the cigarettes and secret means by which the coconspirators could pay for the cigarettes, an essential component of the money-laundering scheme. In return, the narcotics traffickers and money-launderers agreed to sell the products in the markets targeted by the RJR DEFENDANTS and sold the cigarettes under the instructions of the RJR DEFENDANTS. In this way, the proceeds of enormous amounts of Colombian cocaine money and Russian heroin money derived from narcotics sales in

the United States and THE EUROPEAN COMMUNITY, as well as the proceeds of other crimes, were laundered through the purchase and sale of the RJR DEFENDANTS' products.

46. The RJR DEFENDANTS had a well-established relationship with distributors in Switzerland, Panama, the Caribbean, Eastern Europe, and elsewhere who were well situated to develop and exploit relationships with criminal individuals and organizations. The RJR DEFENDANTS directly and indirectly encouraged their distributors to solicit and/or expand their relationships with customers who were purchasing the cigarettes largely for the purpose of laundering criminal proceeds.

47. The RJR DEFENDANTS entered into agreements and understandings with money launderers and narcotics traffickers in Europe, Russia, and South America to meet the business needs of RJR and their coconspirators. These money launderers include but were not limited to Gerardo Cuomo, Patrick Laurent, Gilbert Llorens, Corrado Bianchi, Werner Denz, Martin Denz, Luis Garcia, members of the Mansur family, and Patrick Monnier.

Communications with or on behalf of these individuals were accomplished through a regular use of the U.S. wires and mails.

48. Two Swiss companies known as Algrado A.G. (hereinafter referred to as “Algrado”) and Weitnauer were primary distributors of RJR products and an essential link in the money-laundering chain. During the time that the RJR DEFENDANTS and their coconspirators, including Algrado and Weitnauer, were selling cigarettes through the aforesaid scheme, they developed a sophisticated mechanism by which the proceeds of these sales could be laundered to disguise their criminal origins. For example, throughout the 1990s and until some time in 1998, a significant conduit for the laundering of criminal proceeds in THE EUROPEAN COMMUNITY and the MEMBER STATES was a series of accounts opened in Liechtenstein

and Switzerland by Mingo Finance Limited, a British Virgin Island company. Payments of criminal proceeds to Algrado for RJR products were made through several Mingo Finance accounts, including but not limited to account #: 0577983-AB/US at the Bank of Liechtenstein, One Herrengasse 12, located in Vaduz, Liechtenstein. The RJR DEFENDANTS knew or, but for their willful blindness would have known, that the payments through Mingo Finance constituted the proceeds of criminal activity.

RJR’s Direction and Control of the Money-Laundering Scheme

49. The RJR DEFENDANTS controlled every aspect of the financial transactions involving the purchase of their cigarettes. The RJR DEFENDANTS set either favorable or unfavorable financing terms for their customers as a means to reward, punish, and/or control the customers. The RJR DEFENDANTS also controlled the exact methods and means by which RJR was paid for the cigarettes. In this way, RJR structured its payment schemes to maximize its own security from detection by United States and European law enforcement.

50. In addition to establishing the rules by which the RJR DEFENDANTS would be paid by cash, Brady Bonds, secret payments to Swiss accounts, or other means as described more fully below, the RJR DEFENDANTS also dictated that their criminal customers route payments to RJR through intermediary distributors, shippers, and other cut outs. This procedure, known in money-laundering jargon as “layering,” is conducted for the sole purpose of concealing the payments’ true source from THE EUROPEAN COMMUNITY and United States law enforcement. In the case of money-laundering transactions related to THE EUROPEAN COMMUNITY and the MEMBER STATES, such intermediaries included Weitnauer, Algrado,

Copaco, and various exchange houses in Switzerland, including Intercambi S.A. In the case of sales of cigarettes into Iraq, the primary intermediary was IBCS and other companies owned by Issa Audeh.

51. At key distribution points such as Antwerp, Belgium, the RJR DEFENDANTS utilized certain storage and shipping companies to handle their products. These storage

and shipping companies maintained lists of “direct customers of RJR” which included special handling instructions for shipments designated for RJR customers that RJR knew were involved in criminal activities. These direct customers included but were not limited to Porespa, Copaco, Arbol, Brascotres, Icosa, Sacon, and others. These special handling instructions included, for example, that all invoices for shipments to certain companies must be sent to Renato Meyer, an employee of the RJR DEFENDANTS in Switzerland who was a central actor in RJR’s money-laundering scheme. Instructions concerning other customers included that the cartons (master cases) should be “neutralized and decoded.” To neutralize and decode a master case meant to remove the marks and numbers on the case that otherwise could be used by THE EUROPEAN COMMUNITY authorities to track and regulate the product. As to other companies, special instructions included that invoices must not travel with the product but must be sent to a particular fax number. These special instructions, directed by the RJR DEFENDANTS, were intended to conceal the true purchaser of the cigarettes and/or RJR’s relationship with these special customers. These “direct customer” lists clearly demonstrated that the RJR DEFENDANTS knew that they were selling to criminal customers and thereby demonstrated that the RJR DEFENDANTS knew that they were receiving criminal proceeds in payment for their products.

52. RJR’s criminal customers were obtained, serviced, and supervised by other RJR employees in Switzerland in addition to Renato Meyer, including Diego Luchessa and Oscar Ivanissevich. Distributors and warehousemen in Belgium had regular communications with these individuals regarding many of RJR’s criminal customers, including Porespa, Copaco, Arbol, Brascotres, and others. For example, these criminal companies routinely used certain ships for the shipment of RJR products. These ships included the Tara I, the Ali B, Bleu Diamond II, and Wendy I. Details of the shipments of cigarettes aboard these vessels were requested by and delivered to RJR employees in Switzerland, including Diego Luchessa, so that RJR could keep track of the cigarettes all the way to their ultimate destination. In this way, the RJR DEFENDANTS knew who their ultimate customers were and knew that they were receiving criminal proceeds in payment for their products.

The Gerardo Cuomo Money-Laundering Organization

53. The RJR DEFENDANTS knowingly sold large volumes of cigarettes to Gerardo Cuomo, an Italian citizen residing in Switzerland who is currently under indictment by the Italian government for charges of money laundering and other criminal activities. The RJR DEFENDANTS, their coconspirators, and Gerardo Cuomo created a complex web of companies located in various bank secrecy havens to disguise the true nature and origin of the criminal proceeds that the Cuomo money-laundering organizations were receiving from Italian mafia-type criminal organizations which included the proceeds of arms trafficking, drug trafficking, and other illegal activity. Monies received from Cuomo’s criminal activities, as well as from the criminal activities of other mafia organizations, would be ferried illegally out of Italy in large

cash amounts and received by the money-laundering broker organizations located in Switzerland, including but not limited to the Alfred Bossert organization and the Gegis money-laundering broker organization. Gerardo Cuomo accomplished his purchase of RJR cigarettes through the use of the U.S. wires and/or mails.

54. The principal company of the Gerardo Cuomo money-laundering organization was Maxim S.A., located at Via Motta #34, 6900 Lugano, Switzerland. This company would distribute RJR cigarettes to itself and to Italian criminal cigarette distribution, drug-trafficking, and arms-trafficking organizations. These organizations delivered payment for the cigarettes to money brokers in Switzerland who would in turn credit the payments to Maxim S.A.

55. From the accounts held by the Bossert money-laundering broker organization and the Gegis money-laundering organization, payments would be wired to the different companies that were providing huge volumes of RJR cigarettes to the Gerardo Cuomo organization. The criminal proceeds would then be exchanged for RJR cigarettes as part of the money-laundering process. Providers of the RJR products included: (a.) Kyro Avia Limited located at 202 Christoforous Court, 3734 Limassol, Cyprus. Payments to Kyro Avia were made to account 233-10561419.1 at Union Bank of Switzerland, 4001 Basel, Switzerland. Payments of criminal proceeds were made to Kyro Avia on behalf of the Gerardo Cuomo organization by the money-laundering broker organizations throughout the 1990s.

(b.) Van Caem Belgium Bvba, located at Van Cuyckelestraat #7, Bus 13, 2000 Antwerp, Belgium. Payments of criminal proceeds to Van Caem were made throughout the 1990s and were made to account 633.033.219 at KBC Bank Nederland N.V., located in Amsterdam, Holland, Swift KRED NL 2X through KBC Bank N.Y., SWIFT KRED U.S. 33.

(c.) Rosacta Co. Ltd., located at 62 Arch. Makarios Avenue, 3728 Limassol, Cyprus. Payments of criminal proceeds to Rosacta were made to account 241-07- 158027-02 at Hellenic Bank Ltd., located at Gladstonos Avenue in Anaxagoras Street, 3041 Limassol, Cyprus, Swift #: HEBACY2NLIM. Payments to Rosacta were made throughout the 1990s.

(d.) Namari Holdings Ltd., located at 22 Grenville Street, in St. Helier, Jersey, Channel Islands, JE4PX. Payments of criminal proceeds to Namari were made to Harris Bank International Corp., located at 430 Park Avenue, New York, New York 10022, Swift # HATRUS33, for credit to the Royal Bank of Scotland International PLC, located at Royal Bank House, Baxt Street, St. Helier, Jersey, JE48XF, account 16028601 for credit to sub-account Namari Holdings Ltd., sub-account 34878/610/1045889 – Account name: “Nama Hold-USD1”.

(e.) Corlett Trading Limited also located at 202 Christoforous Court, 3734 Limassol, Cyprus. Payments of criminal proceeds to Corlett were made to account 310 465 US dollars in the name of Corlett Trading Limited at Anker Bank Genf Postfach 4923, 8022

Zurich, Switzerland, clearing number 8279. Payments were made to Corlett Trading for product exchanged for criminal proceeds throughout the 1990s.

(f.) Old Navy Trading, 56 Macarious Avenue, Christoforous Court, Office 202, 3734 Limassol, Cyprus. Payments of criminal proceeds were made to Old Navy Trading for products received and exchanged for criminal proceeds to account 10-561'419.1 US dollars at Union Bank of Switzerland, located in Basel, Switzerland. Payments were made to Old Navy Trading throughout the 1990s.

(g.) Icosa A.G., located at Post Office Box 409, 4132 in Muttenz, Switzerland. Numerous payments of criminal proceeds were made to Icosa A.G. throughout the 1990s to account 700.192.00 held at Banque Vanorient Geneva, in Geneva, Switzerland.

(h.) Rowill International located at Mikseban, 238 Links, 2930 Brasschaat, Belgium. Numerous payments of criminal proceeds were made to Rowill International on behalf of the Cuomo money-laundering organization by the Swiss money-laundering broker organizations to account 63.30.56.103 at KBC Bank, located in Rotterdam, Netherlands, Swift KRED-NL-2X and additional payments were made to a second Rowill account 411-2015001-22 at the KBC Bank located in Antwerp, Belgium, Swift KRED-DE-22.

56. All of the aforesaid companies ultimately delivered these criminal proceeds to the RJR DEFENDANTS. The aforesaid scheme was developed and facilitated by the RJR DEFENDANTS.

The Alfred Bossert Money-Laundering Organization

57. One of the primary Swiss money-laundering organizations involved in the wholesale laundering of the proceeds of narcotics trafficking, arms trafficking, and other criminal activities in THE EUROPEAN COMMUNITY was the organization created by Alfred Bossert, located in and around Lugano, Switzerland. Mr. Bossert's primary company, "Intercambi S.A.," received and continues to receive large cash payments stemming from the criminal activity of various criminal organizations operating in THE EUROPEAN COMMUNITY, including the proceeds of narcotics trafficking. These payments would be received by the Bossert organization in Switzerland, the sums would be counted, and the person

or entity to which the funds belonged would be credited with the appropriate amount. The Bossert organization would then, either directly or through a variety of money-laundering "subcontractors" such as Enrico Rosini and/or Gecap S.A., change the various currencies (i.e., Italian lira, Spanish pesetas, and others) into U.S. dollars, and would hold those dollars in several accounts created and/or controlled by the Bossert organization or its "subcontractors".

58. On a monthly basis, the Bossert organization would send a "statement" to the various owners of the funds, such as the organization created by Corrado Bianchi, a major RJR customer, indicating the dates and sums received on their behalf from mafia-type

criminal organizations. Furthermore, the Bossert organization would receive instructions from its various clients, including Corrado Bianchi, to make payment out of their informal “account” to a variety of destinations, including directly to RJR and other providers of cigarettes. In this way, huge volumes of cash were illegally transported out of THE EUROPEAN COMMUNITY and the MEMBER STATES by mafia-type criminal organizations, converted into United States dollars, and funneled to the RJR DEFENDANTS via their coconspirators.

59. The Bossert organization holds the funds for its money-laundering clients and issues payment through accounts it controls according to the instructions received by the clients.

These accounts included account 251884/01/US dollars, located at Corner Banca S.A. located at Via Canova 16, 6901 Lugano, Switzerland; account #: Q5-790-418/US dollars, located at the Swiss Bank Corporation (SBC) located in Lugano, Switzerland; account #:1.1.17300.01.333.0002, located in Banca del Sempione, in Lugano, Switzerland; or accounts held by companies controlled by Intercambi, S.A.; or by the Bossert organization such as the account held by Okapi Panama S.A., including account 242.151/02 in the name of Okapi Panama, S.A. at the ABN/AMRO Bank in Lugano, Switzerland.

60. RJR cigarettes were paid for in bulk through the aforesaid scheme. The RJR DEFENDANTS were fully aware that their primary customers for the sale of cigarettes into Italy were various families of the Italian mafia and that the RJR DEFENDANTS were receiving criminal proceeds, including narcotics proceeds, in payment for their cigarettes, and that a primary purpose of these purchases was to conceal the nature, source, ownership, and control of the criminal proceeds. No reasonable company, upon receiving these payments from the Bossert money-laundering organization, could possibly have concluded that these funds were derived from legitimate sources. The payment for cigarettes, not by the true purchaser but rather through cut-outs such as Alfred Bossert, is a clear and classic sign of money laundering.

Money Laundering for Italian Organized Crime

61. Throughout the 1990s and at least through 2000, the RJR DEFENDANTS and their coconspirators maintained four major customers for sales of their products to Italian organized crime groups via Montenegro. These four customers, known within the trade as the “fabulous four,” were the following: (a.) Gilbert Llorens; (b.) Luis Garcia Manolo, a/k/a Il Spaniolo; (c.) Patrick Laurent; and (d.) Patrick Monnier. This group of the “fabulous four” each enjoyed a “license” granted by the exclusive license holder in Montenegro, Montenegrin Tabak Transit (MTT). Montenegrin Tabak Transit received an exclusive license from the Montenegrin government for the transit of tobacco products through Montenegro.

62. The RJR DEFENDANTS and their coconspirators maintained an additional, second tier of coconspirators who were actually representatives of Italian mafia organizations,

and included Gerardo Cuomo, Guglielmo Chiavi, Augusto Arcellaschi, Gregory Tsortzakis, Ciro Mazarella, Francesco Prudentino, and others.

63. Representatives of the first tier group of the “fabulous four” also participated in this second tier of RJR coconspirators, providing the product directly to Montenegro, and then taking the product out of Montenegro and providing it to Italian mafia-type criminal organizations.

64. The RJR DEFENDANTS also sold products to these groups through routes other than Montenegro using criminal organizations that included but were not limited to, Gerardo Cuomo, Martin Denz, and Luciano Caré.

65. Throughout the 1990s, the Italian mafia-type criminal organizations illegally transported large volumes of cash, including narcotics proceeds and the proceeds of other crimes, to Switzerland for deposit with money-laundering broker organizations located in Switzerland, including but not limited to the Alfred Bossert organization. After the funds were received, the various currencies would be exchanged for U.S. dollars and held in “informal” accounts at the disposal of the particular cigarette distributor that was dealing with the criminal organization in question. Upon receipt of notification from the money-laundering broker, the provider would order the release of the appropriate quantity of cigarettes to the representatives of the purchasing criminal organization.

66. The RJR DEFENDANTS made special arrangements with these criminal groups to ensure that they could make secret payments to the RJR DEFENDANTS so that the RJR DEFENDANTS could sell their products to these groups and these groups could avoid detection by law-enforcement authorities of THE EUROPEAN COMMUNITY and the MEMBER STATES. As a result, a complex scheme of money launderers, money couriers,

corporate structures, and banking relationships was established to launder the aforesaid proceeds.

Billions of dollars in criminal proceeds were laundered in this manner. The RJR DEFENDANTS were both the architects and the beneficiaries of the payment plan by which these massive amounts of funds were laundered. But for the RJR DEFENDANTS’ complicity in the money-laundering scheme, the money laundering could not have been accomplished.

67. The RJR DEFENDANTS and their coconspirators made use of an organized group of money couriers whose function was to receive criminal proceeds in Italy and other parts of THE EUROPEAN COMMUNITY and to illegally ferry those proceeds out of Italy and THE EUROPEAN COMMUNITY to Switzerland, where the couriers would hand the cash proceeds over to the Swiss money-laundering broker organizations. Examples of the courier organizations include those associated with Nedo Caneva, Adriano Corti, Donino Verdamo, Aldo Tacchini, Pietro Cerroni, Lorenzo Fieni, Americo Mirandi, and Angelo Carboni. These courier organizations provided a vital and necessary link between

the Italian mafia-type criminal organizations and the Swiss money-laundering broker organizations, and provided an essential link in the laundering of the criminal proceeds distributed to the RJR DEFENDANTS.

68. Throughout the 1990s, employees of the RJR DEFENDANTS traveled to the warehouses and facilities of these criminals groups to inspect product, ensure freshness, replace damaged goods, and provide other services for these criminal organizations just as they would any other customer. In this way, the RJR DEFENDANTS knew who their customers were and knew, or but for their willful blindness would have known, that their customers were organized criminal organizations. The United States wires and mails were used on a regular basis for communication between the RJR DEFENDANTS and these individuals and/or their employees.

Money Laundering through the Bank of New York

69. The RJR DEFENDANTS have participated in and have received the proceeds of a massive money-laundering scheme through the Bank of New York. Throughout the late 1990s, the Bank of New York was the hub of a money-laundering scheme created by Russian organized crime, including Russian narcotics traffickers. In this scheme, a group of bank entities, some legitimate and some fabricated, opened correspondent accounts with the Bank of New York. Through these correspondent banks and the Bank of New York, Russian organized criminals were able to launder hundreds of millions of dollars of criminal proceeds in the Eastern District of New York. The RJR DEFENDANTS were prime beneficiaries of this moneylaundering enterprise. THE RJR DEFENDANTS received millions of dollars per month in payments through the Bank of New York that constituted the proceeds of Russian organized criminal activity, including narcotics trafficking. The RJR DEFENDANTS knew or should have known that the money that they were receiving through this route constituted the proceeds of criminal activity and was being illegally laundered. In spite of this fact, the RJR DEFENDANTS continued for years to sell cigarettes to these customers and receive these criminal proceeds in New York. The transfer of these illicit funds to and through the Bank of New York was accomplished through a continuing use of the U.S. wires and mails. The vast majority of the aforesaid transactions were accomplished through the use of the SWIFT system, which is based in Belgium and which is an important part of U.S., EUROPEAN COMMUNITY, and international banking systems.

70. Sinex Bank. One example of the ways in which the Bank of New York was utilized to launder criminal proceeds by way of payments to the RJR DEFENDANTS involved a

bank known as Sinex Bank. Sinex Bank was incorporated under the laws of the country of Nauru in 1996 and was created almost exclusively for the purpose of laundering the proceeds of Russian organized crime. Sinex bank did business in the United States by way of an office maintained in this district in Kew Gardens, Queens, New York, by Aleksey Volkov, one of its directors. The owners and general managers of the bank were indicted and are currently incarcerated as a result of their activities laundering Russian criminal proceeds through the Bank of New York.

71. Sinex's criminal customers initiated bank transfers that were sent to Depozitarno Kliringovy Bank (DKB). Transfers to DKB Bank were cleared through DKB's accounts at the Bank of New York in Queens. These payments were then sent to accounts at Credit Suisse First Boston in Geneva, Switzerland, for the benefit of the RJR DEFENDANTS.

Such payments occurred over a several-year period. Examples of such payments in one limited time period include the following: Date Payee Amount May 27, 1997 RJ Reynolds Tobacco International S.A. \$1,000,050.

May 28, 1997 RJ Reynolds Tobacco International S.A. 491,745.

May 29, 1997 RJ Reynolds Tobacco International 200,000.

May 30, 1997 RJ Reynolds Tobacco International 260,000.

June 2, 1997 RJ Reynolds International S.A. 379,235.

June 3, 1997 RJ Reynolds Tobacco International 245,850.

June 25, 1997 RJ Reynolds Tobacco International 125,000.

July 23, 1997 RJ Reynolds Tobacco International 290,000.

July 24, 1997 RJ Reynolds Tobacco International 459,745.

July 25, 1997 RJ Reynolds Tobacco International 679,910.

R.J. Reynolds Tobacco International, S.A., the recipient of the above-listed funds, was the subsidiary and/or agent and/or alter ego of the RJR DEFENDANTS. Criminal proceeds received by R.J. Reynolds Tobacco International, S.A. were received for the benefit of the RJR DEFENDANTS. R.J. Reynolds Tobacco International S.A. was based in Switzerland by the RJR DEFENDANTS as a part of the money-laundering scheme by which criminal organizations could make payments to the RJR DEFENDANTS and avoid detection from U.S. and European law-enforcement agencies by utilizing Swiss secrecy laws.

72. In each of the above-described transactions, the "ordering bank" was Sinex Bank. The RJR DEFENDANTS, as payees for these orders, knew or should have known that they were receiving millions of dollars in payments ordered by an obscure bank located on a tiny Pacific island. The RJR DEFENDANTS thus knew or should have known that they were receiving laundered criminal proceeds. No legitimate purchaser of cigarettes would be ordering payment for product through Sinex Bank. Equally revealing, on the payment detail forms that would have been delivered to or available to the RJR DEFENDANTS, Sinex Bank identified itself as the Ordering Customer. By identifying itself as the "Ordering Customer," Sinex Bank was concealing the true identity of the entities that were paying for the RJR cigarettes. Such concealment is a classic indication of money

laundering and would have been certain to alert the RJR DEFENDANTS that the proceeds in question were most likely laundered criminal proceeds.

73. Between 1996 and 1999, Sinex Bank laundered up to Seven Billion Dollars in criminal proceeds. Much of the data surrounding these transactions has not yet been available to the Plaintiffs. Accordingly, it would be impractical to list individually all of the similar transactions by which Russian organized crime proceeds were laundered through payments to the

RJR DEFENDANTS. All the aforesaid transactions occurred through extensive use of the U.S.

wires and mails. Employees of the Bank of New York and officers of Sinex Bank have pled guilty to U.S. money-laundering charges in connection with the above-described scheme. THE EUROPEAN COMMUNITY'S banking system, transportation system, and free market were exploited, and various crimes were committed in THE EUROPEAN COMMUNITY, including fraud, forgery, and others, as many of the cigarettes that were purchased through this scheme were transported through THE EUROPEAN COMMUNITY to Russia.

74. Benex and BECS. One part of the conspiracy involving the Bank of New York includes the following facts. In late 1995, Peter Berlin and his wife, Lucy Edwards, who was then a vice president in the Bank of New York, Eastern European Division, in Manhattan, entered into an agreement with certain coconspirators, including Russian individuals, to establish bank accounts at the Bank of New York. Several accounts were established for the Russian coconspirators at the Bank of New York, including accounts in the names of "Benex" and "BECS." These accounts were managed from offices in Forest Hills, Queens, and that office was run by individuals who were working for a Russian bank, DKB. DKB would transfer funds into the Benex and BECS accounts in bulk amounts on a daily or almost daily basis and then DKB would issue daily instructions from its offices in Moscow directing employees in the Queens office to transfer funds out of the accounts to various third-party transferees and beneficiaries located around the world.

75. Benex and BECS operated as front companies for the Russian coconspirators and the Russian banks they controlled. A large number of Russian individuals and businesses used this illegal banking operation to transfer and receive money in violation of Russian currency control limitations and to promote schemes to defraud the Russian government. Edward Berlin

and Lucy Edwards were charged by the United States government with conspiracy to, among other things, "launder money through international funds transfers intended to promote criminal activity, including a wire fraud service scheme to defraud the Russian government." In pleading guilty, Berlin and Edwards admitted under oath that they personally assisted individuals to transfer money through the Benex and BECS accounts

knowing that the reason, intent, and purpose of using these entities was to defraud the Russian government.

76. The money-laundering scheme described above was designed to launder the proceeds of crimes committed by Russian organized crime groups, including at least one group that utilizes the purchase and sale of cigarettes as a primary mechanism for its money-laundering activities—the Soltntsevskaia Group. The FBI has indicated that “the Benex and BECS accounts have been used to transmit funds for illegal purposes or to individuals or groups known or suspected to be involved in Russian organized crime or other criminal activities,” including kidnapping, financial crimes, narcotics trafficking, arms trafficking, and other crimes. Wire transfers involved in this scheme were made through United States financial institutions and were sent to countries throughout the world, including Luxembourg and Belgium. Cigarettes sold by the RJR DEFENDANTS were a part of this money-laundering conspiracy, and all or part of the funds laundered through the aforesaid conspiracy were laundered within the Eastern District of New York. In a substantial percentage of the transactions described above, THE EUROPEAN COMMUNITY and the MEMBER STATES were victims of the criminal schemes.

THE EUROPEAN COMMUNITY facilities and institutions were exploited as a part of this narcotics trafficking and money-laundering scheme. Many of the aforesaid transactions were conducted by Russian organized crime groups based in THE EUROPEAN COMMUNITY.

These schemes involved illegal acts in Belgium, Austria, Greece, the United Kingdom, and other

MEMBER STATES as part of an extensive narcotics trafficking/money-laundering scheme.

Narcotics involved in this scheme were sold in THE EUROPEAN COMMUNITY and in the United States.

The Walt Money-Laundering Conspiracy

77. WALT S.R.L. (hereinafter Walt) was an Italian company with offices in several European countries. Walt was owned and run by Luciano Caré, whose organization is currently under criminal investigation by European authorities for money laundering and other criminal activities in several MEMBER STATES and THE EUROPEAN COMMUNITY. The cigarettes for criminal proceeds money-laundering conspiracy carried out through Walt has harmed THE EUROPEAN COMMUNITY and several MEMBER STATES, including Italy, Spain, Belgium, France, and Portugal. It has also harmed several non-European Community jurisdictions, including the United States, Senegal, and Angola.

78. Throughout the 1990’s and, upon information and belief, continuing through at least 2001, the Walt scheme traded cigarettes manufactured by RJR in the United States with

and through several criminal organizations within THE EUROPEAN COMMUNITY. The illegal proceeds received by Walt from these criminal organizations were then transported through several MEMBER STATES, including but not limited to Belgium, France, Spain, and Italy, via clandestine and covert means. Once transported to Italy, the criminal proceeds were delivered to banking institutions and deposited into accounts, including but not limited to account numbers 00300/24/08279513, and 00300/16/09330095 in the San Paolo Bank, located in Genoa, Italy. From this account and others, funds representing criminal proceeds were wired to

the Bank of New York, for further credit to R.J. REYNOLDS TOBACCO INTERNATIONAL in Geneva. Examples of these transactions occurred on April 12, 1997 (\$53,000), and September 30, 1997 (\$90,010). Such transactions continued throughout the 1990s and, upon information and belief, through 2001.

79. An additional example of a transfer of criminal proceeds from Walt to the RJR DEFENDANTS occurred on November 12, 1997, when Walt transferred \$82,800 from its account number 06572674071 at the Monte Paschi Bank, located in Paris, France, to R.J.

REYNOLDS TOBACCO INTERNATIONAL located in Switzerland. Payment was received in the R.J. REYNOLDS account #719100-82-1 in Credit Swiss Bank, in Geneva, Switzerland. The RJR DEFENDANTS knew that Walt was not the true purchaser of the cigarettes, but instead was serving as a cut out for criminal groups. The RJR DEFENDANTS knew or should have known that Walt had no license to import or sell cigarettes in Italy and therefore could not be a legitimate purchaser of the RJR products in question.

Money Laundering through Cut Outs in Ireland and Belgium

80. The RJR DEFENDANTS sold cigarettes and laundered criminal proceeds through a series of cut outs located in Ireland and Belgium. An example of such a moneylaundering scheme is set forth below.

81. The RJR DEFENDANTS maintained as direct customers two companies called Willbrook Trading Ltd. and Glenpower Ltd. These were Irish companies based at the same address in Dublin, Ireland. They both maintained Swiss bank accounts at the same Swiss

bank. Even though these companies ostensibly purchased RJR cigarettes through third-party distributors, they were direct customers of RJR and were serviced directly by RJR employees.

82. Willbrook Trading Ltd. and Glenpower Ltd. sold RJR-brand cigarettes to numerous companies owned and operated by criminals and/or criminal organizations, including Maverick Trading Limited and Delphinus Services Ltd. Both companies were owned and operated by individuals who have been charged with conspiracy, forgery, and other

crimes within THE EUROPEAN COMMUNITY. Maverick Trading Limited and Delphinus Services Ltd., while incorporated in Guernsey, Channel Islands, were actually operated from Antwerp, Belgium.

83. In the years 1996 through 1998, the organization that included Willbrook Trading Ltd. and Glenpower Ltd. purchased almost forty million dollars worth of RJR cigarettes and sold them to Maverick Trading Ltd., Delphinus Services Ltd., and/or other related companies. All or virtually all of the forty million dollars utilized to purchase the aforesaid cigarettes constituted criminal proceeds. The RJR DEFENDANTS knowingly laundered the aforesaid criminal proceeds by way of their sales of their cigarettes to Willbrook Trading Ltd.

and/or Glenpower Ltd. The aforesaid sales and transfers of proceeds were accomplished through multiple uses of the U.S. wires and mails.

84. Companies related to Maverick Trading Ltd. and Delphinus Services Ltd.

include Unicorn, Encoterra, Sunflower, Ando-Invest, and A.I.T.A., all located in Belgium, and a company known as Incomondo, located in Aruba. At a minimum, Maverick Trading Limited, Unicorn, Encoterra, Sunflower, and Incomondo laundered criminal proceeds through the use of bank accounts located in Belgium and by way of money transfers between Belgian bank accounts utilizing the SWIFT system. The majority of the funds utilized in the aforesaid

transactions ultimately inured to the benefit of and/or were transferred to the RJR DEFENDANTS.

Cigarette Sales to Launder Narcotics Proceeds

85. The sale of cigarettes has become one of the primary vehicles by which drug traffickers launder their illicit profits. RJR has become a prime recipient of this business.

Money brokers routinely purchase large volumes of RJR cigarettes with money that represents the proceeds of illicit drug sales. Representatives of RJR know or should know the source of these funds and their illicit nature, yet RJR continues to receive these funds and to sell cigarettes to these persons and entities.

86. Sales of RJR cigarettes have enabled drug lords to launder their illicit profits.

Representatives of the RJR DEFENDANTS are on actual notice that the source of funds used to purchase their cigarettes is drug trafficking, yet RJR continues to receive these funds and to sell cigarettes to these persons and their affiliates. By reason of this conduct, the RJR DEFENDANTS aid, abet, and act in concert with drug lords to launder their ill-gotten gains.

87. The DEFENDANTS have long been on notice that their cigarette sales are linked to money laundering. In or about 1994, the National Coalition Against Crime and Tobacco Contraband, which was funded by RJR and other tobacco companies, retained Lindquist Avey Macdonald Baskerville Inc. ("Lindquist") to investigate and analyze illegal activity involving cigarettes in the United States, among other things. In its August 15, 1994, report, Lindquist observed that: "There are indications that some Colombian cocaine barons still handle cigarettes, but for a different purpose. It is believed that, in some cases, they patriate

cocaine profits earned in the United States through cigarette purchases. These cigarettes are imported into Colombia and sold there, providing cocaine traffickers with a seemingly legal alibi for the source of their wealth." 88. That the RJR DEFENDANTS should have known that their distributors were laundering drug proceeds is undeniable. In or about the early 1990s, bank accounts in Miami, Florida, owned by various RJR cigarette distributors, were frozen by United States lawenforcement officials because funds credited to those accounts represented laundered drug money. The freezing of these accounts was well known to the RJR DEFENDANTS. By virtue of this event, the RJR DEFENDANTS were aware or should have been aware that their distributors had been involved in handling laundered narcotics proceeds. In spite of the fact that the conduct of these individuals was known to RJR, the RJR DEFENDANTS continued to develop these relationships actively so as to sell large volumes of cigarettes to these money launderers.

Cocaine Trafficking and Money Laundering in Spain

89. Cocaine trafficking occurs in Spain on a massive scale as a result of joint ventures between Colombian producers and Galician traffickers. In 1999, seventeen tons of Colombian cocaine were seized in Spain. These seizures represented a small percentage of the total amount of Colombian cocaine delivered into THE EUROPEAN COMMUNITY via Spain.

Prior to and during the 1990s, Galician organized crime groups specialized in trading in cigarettes manufactured by the RJR DEFENDANT S and laundering their money in Switzerland.

RJR's Winston brand is by far the most popular foreign-made cigarette in Spain and a large

percentage of the money laundering conducted in Spain through cigarette sales was thus accomplished using RJR products. Accordingly, the marriage between the Galician crime groups and Colombian crime groups has proven mutually beneficial. The Galicians obtained a valuable new product for distribution in the form of cocaine. The Colombians obtained partners who had established trafficking networks in THE EUROPEAN COMMUNITY, expertise in money laundering in Switzerland, and expertise in the purchase and sale of American cigarettes, RJR-brand cigarettes in particular.

90. The activities of Colombian organized crime in Spain are particularly violent.

In 1999 alone, eight Colombian nationals were murdered in Spain as a result of turf wars and realignment within the criminal community. Spaniards actually became the heads of Colombian cocaine networks in Europe, especially as far as money-laundering operations were concerned.

91. Partnerships between the Colombian cocaine producers and Galician traffickers often occurred as follows: The Colombians conveyed cocaine to Central America, where the Galicians picked it up and transported it to the coast of Northern Spain. In return for this service, the Galicians received 30% to 50% of each shipment, which they then sold in THE EUROPEAN COMMUNITY, in particular Spain, Belgium, and The Netherlands. The remaining fifty to seventy percent of the cocaine was marketed in Europe by the Colombians themselves once the narcotics were within the borders of THE EUROPEAN COMMUNITY.

Two such smuggling networks were identified and dismantled in 1999 by Spanish authorities.

One such network was known as “Los Mataderos” (The Slaughter House).

92. Throughout the 1990s, the RJR DEFENDANTS had dealings with individuals in Spain that they knew or should have known were a part of these criminal organizations. One such individual, a major customer of the RJR DEFENDANTS, was Laureano Oubina. Laureano

Oubina was a member of the Galician drug trafficking network described above. As far back as June 18, 1990, Laureano Oubina was identified by and arrested by Spanish law-enforcement authorities as a result of his involvement in narcotics trafficking and money laundering. At that time, Laureano Oubina was considered by Spanish law enforcement to be the Spanish connection for the Colombian “Medellin Cartel.” He was linked to notorious Colombian cocaine traffickers, including Pablo Escobar Gaviria and Fabio Ochoa Vazquez. Both before and after June 1990, Laureano Oubina was also a major customer of the RJR DEFENDANTS. He was a customer of Michael Haenggi who was a major distributor for the RJR DEFENDANTS and who, as described above, has publicly admitted that he was involved in the sale of cigarettes to criminals.

93. During all or part of the time that Laureano Oubina was purchasing and selling RJR cigarettes, he was using those cigarette purchases to launder narcotics proceeds.

Laureano Oubina’s involvement in narcotics trafficking was known to the RJR DEFENDANTS or should have been known to them. Laureano Oubina had several publicized bouts with lawenforcement agencies in Spain throughout the 1990s regarding his alleged narcotics trafficking.

In the most recent incident in October 1999, he escaped just as law-enforcement authorities were preparing to arrest him on a hashish trafficking charge.

Money Laundering through Central America and the Caribbean

94. Richard Larocca, Vice President-General Manager for North America Duty Free/Latin America; Tom Brock, Vice President, Special Markets Americas; John Dyson, Latin America Sales Manager, RJR Tobacco International Miami; Sergio Rotati, Vice President, RJR Tobacco International for Special Markets Latin America; Bill Ventura, RJR Director Latin America; Orlando Morales, RJR Tobacco International Miami Chief Financial Officer, and other

agents or employees of the DEFENDANTS established direct relationships with individuals in Europe, Central America, and the Caribbean who they knew, or should have known, were actively involved in laundering the proceeds of illicit narcotics sales. Executives and employees of the RJR DEFENDANTS traveled to Europe, the Caribbean, and to Central America on multiple occasions for the purpose of meeting and negotiating business agreements with individuals who the RJR DEFENDANTS knew, or should have known, were involved in the laundering of narcotics proceeds. This travel was routinely arranged through the use of the U.S.

wires and mails.

95. An example of the RJR DEFENDANTS' agreements with money launderers can be seen in RJR's relationship with El Torreon, S.A. In October 1992, John Dyson (Latin America Sales Manager for RJR Tobacco International located in Miami) traveled to Aruba to establish direct contacts between RJR distributors and Colombian narcotics money laundering organizations. The meeting was arranged through the use of the U.S. wires and/or mails. During the meeting, RJR set up the following scheme to receive Colombian narcotics money in exchange for cigarettes sold by RJR: (a.) RJR's Aruba distributor would sell products to El Torreon, S.A., which would then sell the product into the distribution channels selected by RJR.

(b.) El Torreon would pay for the product with narcotics proceeds collected in Medellin and flown from Medellin to be handed over to the Aruban distributor.

(c.) El Torreon's front man in Medellin was to be in charge of the collection of the narcotics proceeds in cash in Medellin and was to effectuate the transfer of the proceeds in person.

(d.) At the direction of Mr. Dyson, the El Torreon money-laundering arrangement was established to go into effect on January 1, 1993.

(e.) The Aruban RJR distributor explained to Mr. Dyson at the October 1992 meeting that the narcotics proceeds to be delivered to him would require special handling, and create special risks, and that the additional costs associated with the El Torreon money scheme would be charged to RJR. Mr. Dyson agreed to this.

(f.) Beginning in January 1993 and continuing for an undetermined time thereafter, the RJR DEFENDANTS laundered drug proceeds through this scheme.

(g.) The aforesaid criminal proceeds were delivered to the RJR DEFENDANTS in the United States through the use of the U.S. wires and/or mails.

96. El Torreon S.A. was owned, operated, and directed by a Spanish multinational corporation.

97. The development of these relationships with known money launderers, such as El Torreon S.A., was known or should have been known by all the RJR DEFENDANTS and in particular RJR NABISCO, INC., R.J. REYNOLDS TOBACCO COMPANY, and R.J.

REYNOLDS TOBACCO INTERNATIONAL, INC.

Money Laundering through Panama

98. The RJR DEFENDANTS knowingly and intentionally shipped large volumes of cigarettes to individuals and corporations in certain free trade zones such as the Colon Free Trade Zone in Panama for the purpose of expediting the money-laundering scheme. One such company was a company known as Compania Panamana de Comercio (Copaco). Copaco was a

major distributor for the RJR DEFENDANTS. Sales through Copaco were made to companies that were known money launderers. Copaco was wholly or partially owned and controlled by Michael Haenggi, who sold most of his RJR cigarettes to criminal customers in THE EUROPEAN COMMUNITY. Even as to cigarettes whose ultimate destination was nowhere near Panama, RJR shipped these cigarettes through cut outs in Panama so that the money launderers could use the secrecy laws of the Republic of Panama as a shield by which to prevent law-enforcement agencies and governments from identifying the true purchasers of the cigarettes. This trade allowed for the movement of laundered money out of Europe without detection. The RJR DEFENDANTS endeavored to conceal the sale of their products into money-laundering channels by transferring the cigarettes to several cut outs in several destinations prior to the ultimate delivery to the final customer, and by providing secret and circuitous means by which the cigarettes were paid for.

Money Laundering through the United Kingdom

99. From at least October 1995 through April 1997, the RJR DEFENDANTS knowingly supplied large volumes of cigarettes to a money-laundering group in the United Kingdom that was selling cigarettes into Spain as a part of a money-laundering enterprise. One of the companies involved in the operation was Entire Warehousing. Additionally, there were at least six other related companies that were engaged in a massive money-laundering scheme.

Through the period from 1995 through 1997, the aforesaid companies sold thousands of cases of cigarettes manufactured by the RJR DEFENDANTS into Spain. The RJR DEFENDANTS sold cigarettes to "distributors" in Panama and elsewhere with the full knowledge that the true

purchaser of the cigarettes was this money-laundering group. The cigarettes were sold to intermediary "distributors" in Panama and elsewhere to conceal from law-enforcement authorities the fact that the RJR DEFENDANTS were selling cigarettes to this criminal group.

The cigarettes in question were paid for with the proceeds of criminal activity. The RJR DEFENDANTS were the recipients of these criminal proceeds and were a key part of the money-laundering process. A substantial portion of the cigarettes that were sold to this moneylaundering conspiracy were provided by Cimarron Holdings, S.A., a company that appears on RJR's special customer lists described more fully in paragraph 51. Payments for cigarettes as a part of this conspiracy were paid for by Intercambi S.A., the primary company in the Alfred Bossert money-laundering organization.

100. Through the aforesaid transactions, cigarettes were sold by the RJR DEFENDANTS and criminal proceeds were laundered on or about the following dates: November 23, 1995; November 27, 1995; November 28, 1995; November 30, 1995; December 1, 1995; December 4, 1995; December 5, 1995; December 6, 1995; January 5, 1996; January 11, 1996; January 19, 1996; January 26, 1996; February 2, 1996; February 12, 1996; February 22, 1996; March 20, 1996; April 30, 1996; and May 16, 1996.

Distinctions between Sales to Legitimate Customers and Sales to Criminal Customers

101. Throughout the 1990s, the RJR DEFENDANTS utilized different business practices depending on whether their customer was a legitimate business customer or a criminal business customer. Criminal customers were handled differently because they represented a greater risk. Specifically, the RJR DEFENDANTS faced a risk that the products intended for

criminal customers might be confiscated or the customers arrested. Additionally, the RJR DEFENDANTS took steps to secrete from law enforcement authorities their relationship with these criminal customers so as to prevent law-enforcement authorities from becoming aware that the RJR DEFENDANTS were laundering criminal proceeds.

102. Cigarette sales to a legitimate customer can be identified by the following characteristics: (a.) Customers placed orders directly to RJR through the use of purchase orders. Purchase orders could be communicated by telephone or fax.

(b.) The purchase orders were processed and serviced by warehouses contracted by RJR.

(c.) The wholesaler of the cigarettes was responsible for complying with all applicable laws and the payment of applicable taxes.

(d.) Legitimate customers were usually provided with credit terms.

Because credit was being extended, the approval process for a new customer could take a substantial amount of time.

(e.) Legitimate customers routinely make payments directly to RJR via wire transfers.

(f.) Cigarettes purchased by legitimate customers were typically produced and shipped from a single source.

103. In contrast, when the RJR DEFENDANTS sold cigarettes to criminal customers, the procedure often was as follows: (a.) The customers could not place orders directly to RJR; orders had to be placed with some intermediary company (a cut out).

(b.) Orders for production of the cigarettes were placed by an intermediary company, not the wholesaler.

(c.) If the cigarettes passed through a Free Trade Zone, the customer, not RJR, coordinated the shipment and transportation instructions with the Free Trade Zone.

(d.) The customer was deemed “responsible” for compliance with applicable law regarding the sale of the cigarettes.

(e.) Sales were often for cash only; no credit or credit terms highly favorable to RJR were offered.

(f.) The RJR DEFENDANTS approved such sales almost immediately without any attempt to “know the customer.” In fact, the RJR DEFENDANTS make it a point to not develop a knowledge of the customer so they would not have to admit that they were aware of the customer’s criminal activities. Formal applications and waiting periods for approval that were the standard in the industry were circumvented.

(g.) The RJR DEFENDANTS accepted payment by checks payable to intermediary companies, third-party checks, bank checks, third-party wire transfers, and other forms of payment that were not typical in the cigarette trade. Payments often had to be made through “cut outs” to hide or disguise the true nature of the transaction and the participants.

(h.) On some occasions, payments were made directly to the account of an RJR subsidiary in Puerto Rico. However, in such instances, those payments were directed to be sent to a numbered account and did not name RJR in the payment details.

(i.) The RJR DEFENDANTS continually switched the banks where payments were to be made to RJR in order to escape detection by U.S. law enforcement. This process was known within RJR as “musical banks.”

(j.) The RJR DEFENDANTS engaged in “dual sourcing,” a practice in which cigarettes were sourced from multiple locations or transferred through circuitous and indirect shipping routes to conceal the true customer.

Money-Laundering Mechanisms Laundering of Cash

104. The way in which the RJR DEFENDANTS laundered narcotics proceeds and the proceeds of other forms of criminal activity evolved over the years. In the early- to mid-1990s, the money-laundering operations were often simple and overt, involving meetings between RJR employees and known money launderers in which the RJR employees would actually receive large volumes of cash in payment for cigarettes, or would be present when these transactions took place.

105. For example, for many years it was virtually a monthly routine that employees of the RJR DEFENDANTS would travel to Colombia by way of Venezuela. These employees, traveling with authorized RJR distributors, would enter Colombia illegally, paying bribes to guards at the Colombian border so that they could enter the country without their passports being stamped. They would then travel by car to various locations such as Maicao where they would meet face to face with money launderers and narcotics traffickers. There the RJR employees would receive payments for cigarettes in the form of bulk cash that may be denominated in United States dollars or Venezuelan bolivars. They would also receive easily transferable instruments such as third-party checks, cashiers checks, and other such instruments.

The employees of the DEFENDANTS would then travel back to Venezuela, bribing border

guards at the Venezuelan border to ensure that they could move the cash illegally across the border into Venezuela. Once the employees of the DEFENDANTS reached a major Venezuelan city such as Maracaibo they would, by direct or indirect means, wire transfer the funds to bank accounts of the RJR DEFENDANTS in the United States, thereby completing the moneylaundering cycle.

106. At all times throughout this process, the RJR DEFENDANTS and their employees were well aware that they were laundering the proceeds of criminal activities. The great lengths that were taken to conduct these activities in a surreptitious manner demonstrate the knowledge of the RJR DEFENDANTS that these activities were illegal. The process by which these illegal payments were made, received, transported, and laundered was established by highlevel executives of the RJR DEFENDANTS. This money-laundering operation could not have occurred without the knowledge and complicity of officers and managers of the RJR DEFENDANTS. The above-described travel was arranged through the use of the U.S. wires and mails and the laundered narcotics proceeds were transferred to the bank accounts of the RJR DEFENDANTS through the U.S. wires and mails.

Money Laundering through Brady Bonds

107. At another time in the 1990s, to avoid the transportation of bulk cash and to conceal further the illegal nature of their transactions, the RJR DEFENDANTS laundered the proceeds of criminal activities through the use of Brady Bonds. Brady Bonds, named after former United States Secretary of the Treasury Nicholas Brady, were created in association with the IMF and the World Bank as part of an effort to restructure outstanding sovereign loans into

liquid debt instruments. Brady Bonds were coupon-bearing bonds for which the principal and interest were collateralized by United States Treasury zero-coupon bonds and other high-grade instruments. Creditor banks exchanged sovereign loans for Brady Bonds incorporating principal and interest guarantees as a means by which debtor governments could have their debts reduced.

Issued as registered and/or bearer bonds, Brady Bonds were utilized to restructure the debt in a number of countries, including Venezuela. Brady Bonds are transferable and can be bought and sold through various exchanges.

108. As an example of how Brady Bonds were used to launder narcotics proceeds, employees and/or distributors of the RJR DEFENDANTS traveled to locations such as Maicao, Colombia, to receive payment for cigarettes by cash, check, or money order. Often these payments were made in Venezuelan bolivars, not the preferred currency for the RJR DEFENDANTS. To convert these bolivars into United States dollars, the RJR DEFENDANTS and/or their distributors would transport the cash, checks, or money orders to a major city in Venezuela. At that point, they would use the funds in question to purchase Brady Bonds. Once the Brady Bonds were purchased, they would be transferred to an exchange in New York City where they would then be sold for dollars. In this way, the DEFENDANTS could launder the proceeds of criminal activities, convert the proceeds into United States dollars, and deliver them to their bank accounts in New York without detection from law enforcement. The purchase, movement, and sale of the Brady Bonds were expedited through the United States wires and/or mails.

Money Laundering through Secret Swiss Accounts

109. In the mid- to late-1990s, the RJR DEFENDANTS received public notice that many of their distributors were laundering narcotics proceeds. Several of their major customers were indicted for money laundering by the U.S. government or by the governments of other countries. Other distributors had their bank accounts in Miami, Florida, seized because they contained the proceeds of narcotics trafficking. In spite of this notice that the RJR DEFENDANTS were selling their cigarettes to criminals and were laundering the proceeds of narcotics trafficking, the RJR DEFENDANTS did not cease conducting their business with these distributors and customers. Rather, they moved their international operations to Switzerland for the sole reason of conducting continuing illegal activities, including the laundering of criminal proceeds by taking advantage of Swiss secrecy laws to conceal their activities. The RJR DEFENDANTS established policies by which many of their criminal customers could pay for the cigarettes they purchased only by way of such secret bank accounts and Swiss companies.

This secret and surreptitious method of payment was eagerly embraced by the RJR DEFENDANTS' criminal customers. The primary reason they purchased cigarettes from the RJR DEFENDANTS was to launder the proceeds of their criminal activities. Secret payments were necessary to ensure that U.S. and European law-enforcement agencies did not detect their activities.

110. The decision to move certain operations to Switzerland and to provide for payment by their customers into Swiss accounts was made at an executive level by RJR NABISCO, INC., R.J. REYNOLDS TOBACCO COMPANY, R.J. REYNOLDS TOBACCO INTERNATIONAL, INC., RJR ACQUISITION CORP., f/k/a NABISCO GROUP HOLDINGS

CORP., RJR NABISCO HOLDINGS CORP., and R.J. REYNOLDS TOBACCO HOLDINGS, INC.. The RJR DEFENDANTS moved the records concerning almost all their illegal activities to Geneva, Switzerland, so as to escape the surveillance of the governments that are victimized by RJR's illegal activities, including THE EUROPEAN COMMUNITY and governments of the MEMBER STATES.

Movement of Operations to Cyprus

111. One of the RJR DEFENDANTS' primary agents for the storage and handling of cigarettes in THE EUROPEAN COMMUNITY was a company known as Belgian Pakhoed N.V. On May 26, 1997, Belgian Pakhoed N.V. sent a letter to the RJR DEFENDANTS notifying the RJR DEFENDANTS that a substantial number of the RJR DEFENDANTS' customers were "involved in major EC-fraud." Belgian Pakhoed N.V. identified these customers and told the RJR DEFENDANTS that Belgian Pakhoed N.V. would no longer load cigarettes on to ships operated by these customers.

112. By way of this communication, the RJR DEFENDANTS were put on notice that certain of their customers were criminals and that there was a high probability that these customers were paying RJR with criminal proceeds. The response of the RJR DEFENDANTS was not to cut off its supply of cigarettes to these customers, but rather to redirect their supply of cigarettes to these customers through the country of Cyprus, which is not a member of THE EUROPEAN COMMUNITY. The RJR DEFENDANTS continued to supply cigarettes to these customers for years after RJR had been notified that these customers were criminals, and RJR continued to receive and launder the proceeds of their crimes. Many of the aforesaid customers

were involved in money laundering and/or other criminal activities that were highly detrimental to THE EUROPEAN COMMUNITY.

Illegal Sales into Iraq

q113. Throughout the 1990s, the RJR DEFENDANTS committed an array of crimes, including money laundering, by selling United States-made cigarettes into Iraq in violation of United States law. The means by which this money-laundering operation was

conducted include the following: The RJR DEFENDANTS maintained a long-term relationship with an individual known as Issa Audeh. Issa Audeh had previously been an employee of R.J.

REYNOLDS TOBACCO INTERNATIONAL, INC. In the 1980s, Audeh served as Regional Director, Middle East/Near East Region for RJR. Around the late 1980s or early 1990s, Issa Audeh set up a group of companies located in Cyprus, including Audeh Trading and Consultancy Service and IBCS Trading and Distribution Company Limited (“IBCS”). IBCS was established in complicity with, and at the direction of, the RJR DEFENDANTS. The sole or primary purpose for IBCS was to sell and distribute RJR cigarettes throughout the Middle East, including Iraq. Throughout the 1990s, Issa Audeh and his companies became one of the largest international customers of the RJR DEFENDANTS. Throughout the 1990s, IBCS, as well as other companies managed or directed by Issa Audeh, acted pursuant to an agreement with RJR, under which RJR directed and controlled the actions of IBCS and other companies owned by Issa Audeh.

114. In late 1989 or early 1990, the RJR DEFENDANTS and Issa Audeh entered into an agreement with an individual known as Abdel Hamid Damirji for the purpose of distributing RJR products in Iraq. Through his Liechtenstein corporation, Tradinter Middle East

Development Establishment, Abdel Damirji worked with the RJR DEFENDANTS and Issa Audeh to establish RJR products and the RJR product name in Iraq.

115. In the fall of 1990 after the Iraqi invasion of Kuwait, Abdel Damirji transferred his cigarette sales operations to Jordan with the approval of the RJR DEFENDANTS for the purpose of supplying the Iraqi market with RJR cigarettes from Amman. The RJR DEFENDANTS, through their officer or employee, Edward Touma, as part of RJR’s “Special Markets-Middle East-Near East” division, in written and/or telephonic communications with Abdel Damirji, arranged a procedure by which Abdel Damirji would purchase RJR cigarettes from RJR through Issa Audeh in Cyprus. At times when Abdel Damirji needed more RJR cigarettes than could be supplied through Issa Audeh’s companies, Abdel Damirji obtained his RJR cigarettes directly from RJR. For example, in June 1991, the RJR DEFENDANTS sold and delivered directly to Abdel Damirji seven full air-cargo shipments consisting of approximately 17,000 master cases of RJR cigarettes. (There are 10,000 cigarettes in a master case.) Between March 1991 and September 1992, Abdel Damirji purchased at least six hundred thousand master cases of cigarettes, either directly from RJR or from Issa Audeh.

116. On approximately September 1, 1992, the RJR DEFENDANTS modified their procedures with Abdel Damirji so that Mr. Damirji would be obtaining his cigarettes through IBCS. In October 1992, in meetings between Mr. Damirji and Issa Audeh held in Limassol, Cyprus, their agreements were further modified. At that time, Abdel Damirji agreed to acquire, build, and secure warehousing for storage and distribution of RJR products in Mersin, Turkey. In return, RJR and IBCS agreed that Abdel Damirji would

have the exclusive rights to distribute RJR products in Iraq. Pursuant to this agreement, Abel Damirji spent almost one

million dollars building and equipping warehouses in Turkey for the purpose of selling RJR products into Iraq.

117. Between 1993 and 1995, the aforesaid agreement remained in place and Abdel Damirji acted as the exclusive distributor of RJR products in Iraq. During this period, hundreds of millions of dollars of RJR cigarettes were purchased by Abdel Damirji from the RJR DEFENDANTS and were sold and distributed in Iraq. During this time period, as part of the distribution arrangement, upon becoming aware of customers who wished to purchase RJR products in Iraq, IBCS and THE RJR DEFENDANTS would direct those customers to Damirji's company, Tradinter Middle East Development Establishment 118. In approximately October 1995, IBCS and/or the RJR DEFENDANTS promoted the establishment of a different group (hereinafter referred to as the Zenjelawi Group) that also would sell RJR cigarettes into Iraq. In September 1996, IBCS and the RJR DEFENDANTS began to supply a company known as Akshimpex Trading Limited ("Akshimpex") with RJR cigarettes for the Iraqi market. Akshimpex is owned by an individual who is, upon information and belief, an Iraqi citizen. Between October 24, 1996, and December 31, 1996, Abdel Damirji ordered and the RJR DEFENDANTS delivered forty-four containers of Winston cigarettes and fifty-seven containers of Aspen-brand cigarettes that were ultimately delivered and sold in Iraq. (A forty-foot container typically holds approximately ten million cigarettes.) According to an agreement between Abdel Damirji and Issa Audeh on behalf of RJR, these sales were made to "achieve the sales goal for 1996 . . . and the continuous promotion and sale of Winston and Aspen brand cigarettes to the Iraqi market." On or about January 1997, the RJR DEFENDANTS sold fifteen containers of Aspen-brand cigarettes to Akshimpex for sale into Iraq.

119. In approximately January 1997, the RJR DEFENDANTS ceased selling cigarettes to Abdel Damirji and his company Tradinter Middle East Development Establishment.

However, the RJR DEFENDANTS continued to sell their cigarettes to Akshimpex for sale into Iraq and in fact dramatically increased such sales. Since January 1997, Akshimpex has acted as the agent for the RJR DEFENDANTS for the delivery of their products into Iraq. From January 1997 through 2001, RJR employees visited Akshimpex on a regular basis to check on consignments of cigarettes to confirm that they were in fact going into Iraq.

120. Throughout the aforesaid time period, IBCS Trading and Distribution Company Limited was acting as the agent, alter ego, and/or coconspirator of the RJR DEFENDANTS. All acts attributable to IBCS are equally attributable to the RJR DEFENDANTS. Additionally, all the RJR DEFENDANTS were put on notice of the aforesaid facts because on or about October 15, 1997, Tradinter Middle East Development Establishment sued R.J. REYNOLDS TOBACCO INTERNATIONAL S.A., a subsidiary of the RJR DEFENDANTS. The lawsuit specifically identified R.J.

REYNOLDS TOBACCO INTERNATIONAL S.A. as a subsidiary of R.J. REYNOLDS TOBACCO COMPANY, INC.

and RJR NABISCO, and alleged that Tradinter Middle East Development Establishment had been granted by RJR the exclusive rights to sell RJR cigarettes into Iraq. IBCS, the codefendant of the RJR DEFENDANTS in the lawsuit, filed a responsive pleading to the lawsuit. In its responsive pleading, IBCS admitted sales of RJR products into Iraq, but only denied that there was an exclusive distribution agreement between IBCS, RJR, and Tradinter Middle East Development Establishment.

121. By May 1999, the RJR DEFENDANTS were actively maintaining a burgeoning business selling huge volumes of U.S.-made cigarettes into Iraq and laundering the

proceeds of those sales. In May 1999, the RJR DEFENDANTS sold their international operations, including their plant in Puerto Rico, to Japan Tobacco, Inc. and/or its affiliates. As a part of the purchase agreement, the RJR DEFENDANTS entered into a “transitional services agreement” under which, for a period of at least two years, the RJR DEFENDANTS would continue to manage and operate all or part of the international operations purchased by Japan Tobacco. The RJR DEFENDANTS therefore participated in and were materially responsible for the illegal transactions conducted by Japan Tobacco, Inc. regarding RJR products from at least May 1999 through May 2001. Additionally, from May 1999 through the present, all Winston cigarettes and other RJR-brand cigarettes sold internationally by the Japan Tobacco entities are sold under license of and with the complicity of the RJR DEFENDANTS. During that time, the RJR DEFENDANTS continued, and in fact increased, the volumes of cigarettes that were produced at the Puerto Rico plant for illegal sale into Iraq. In fact, during the first two-year period in which the transitional services agreement was in effect, the RJR DEFENDANTS, along with their coconspirator Japan Tobacco, Inc., produced and sold almost eight hundred forty-foot containers of United States-made cigarettes into Iraq, amounting to almost eight billion cigarettes. The majority of these cigarettes were delivered from Puerto Rico to Valencia and other ports in THE EUROPEAN COMMUNITY. There the cigarettes were offloaded and transferred to other ships that transported them to Cyprus. In this way, THE EUROPEAN COMMUNITY ports and facilities were misused as a part of this illegal scheme.

122. Following a brief period of warehousing in Cyprus, the cigarettes were sent to Iraq via Turkey. Shipments by way of the aforesaid route were so numerous that they cannot all be listed. However, said shipments included the following: Shipping Date from Cyprus Number of Containers Consignee to Iraq via Turkey

August 18, 1999 15 Akshimpex Trading Limited February 25, 2000 11 Akshimpex Trading Limited April 11, 2000 12 Akshimpex Trading Limited May 2, 2000 7 Akshimpex Trading Limited June 16, 2000 12 Akshimpex Trading Limited June 26, 2000 21 Akshimpex Trading Limited July 8, 2000 15 Akshimpex Trading Limited August 9, 2000 10 Akshimpex Trading Limited August 18, 2000 10 Akshimpex Trading Limited August 24, 2000 8 Akshimpex Trading Limited August 25, 2000 7 Akshimpex

Trading Limited September 7, 2000 5 Akshimpex Trading Limited September 11, 2000 7
Akshimpex Trading Limited September 20, 2000 12 Akshimpex Trading Limited
September 22, 2000 5 Akshimpex Trading Limited October 2, 2000 7 Akshimpex
Trading Limited October 11, 2000 15 Akshimpex Trading Limited October 18, 2000 2
Akshimpex Trading Limited November 6, 2000 11 Akshimpex Trading Limited
December 11, 2000 4 Akshimpex Trading Limited January 9, 2001 11 Akshimpex
Trading Limited January 23, 2001 22 Akshimpex Trading Limited February 25, 2001 9
Akshimpex Trading Limited

April 16, 2001 10 Akshimpex Trading Limited April 25, 2001 18 Akshimpex Trading
Limited April 30, 2001 15 Akshimpex Trading Limited May 8, 2001 10 Akshimpex
Trading Limited May 14, 2001 18 Akshimpex Trading Limited May 21, 2001 18
Akshimpex Trading Limited May 28, 2001 4 Akshimpex Trading Limited June 3, 2001
21 Akshimpex Trading Limited June 9, 2001 13 Akshimpex Trading Limited June 18,
2001 11 Akshimpex Trading Limited June 23, 2001 23 Akshimpex Trading Limited June
30, 2001 13 Akshimpex Trading Limited.

123. As to each of the shipments listed above, the paperwork accompanying the shipments as they left the manufacturing plant in Puerto Rico carried the following notice: "UNITED STATES LAW PROHIBITS DISTRIBUTION OF THESE COMMODITIES TO NORTH KOREA, VIETNAM, IRAQ, OR CUBA UNLESS OTHERWISE AUTHORIZED BY THE UNITED STATES." (Emphasis added.) The United States government authorized none of these shipments.

124. Shipments similar to those identified above were made into Iraq as recently as February 2002. On January 15, 2002, ten containers of Winston cigarettes and one container of Magna cigarettes were delivered from IBCS to Akshimpex Trading Ltd. Shortly thereafter, the aforesaid containers were delivered into Iraq. On January 24, 2002, IBCS delivered another sixteen containers of Winston cigarettes to Akshimpex for delivery into Iraq. On February 12,

2002, IBCS delivered six containers of Winston cigarettes to Akshimpex for delivery into Iraq.

All the aforesaid cigarettes were transported through the Habur Gate, the entrance portal from Turkey into Iraq, to the town of Dohuk in Iraq.

125. The RJR DEFENDANTS and Japan Tobacco, Inc. knew of and participated in this scheme. Bills of lading and other shipping documents prepared by IBCS demonstrate that IBCS shipped the cigarettes in the aforesaid shipments to "AKSHIMPEX TRADING LTD. IN TRANSIT TO IRAQ." Often IBCS directly invoiced customers in Iraq. The shipping company that transferred the cigarettes in question from Mersin, Turkey, to Iraq delivers the cigarettes into Iraq pursuant to a contract with Akshimpex. However, the shipping company often receives its instructions for shipment and delivery of the cigarettes by way of telephone calls from IBCS.

The shipping company is identified on shipping documents and ships' manifests when the "real owner" of the cigarettes contacts IBCS and tells IBCS to identify the shipping company on the documentation.

126. The owner of Akshimpex also owns or operates two companies from the same location known as MBA Trading and KA International. Recently, shipments of Winston cigarettes bound for Iraq have been identified as consigned to MBA Trading or KA International, largely in an attempt to deceive law-enforcement authorities concerning their true owners and destination.

127. The RJR DEFENDANTS and/or their coconspirators expedited the sale of these cigarettes by creating false paperwork that would misstate the destination of these cigarettes, for example, by making official declarations to customs authorities that the ultimate destination of the cigarettes was Russia when in fact the intended destination was Iraq. These cigarettes were not smuggled; although the value of the cigarettes was grossly understated, by

and large, all the cigarettes in question were declared and certified as being exported from Turkey and therefore entered Iraq "legally." This gross undervaluation of the cigarettes, "legal" importation based on false or misleading documentation, and sale of cigarettes on such a massive and sustained scale could only be accomplished and in fact were accomplished with the complicity of the Iraqi government and members of the ruling family.

128. The RJR DEFENDANTS and their coconspirators were well aware that they were violating United States law in providing economic benefit to the Iraqi regime by orchestrating this massive importation of cigarettes into Iraq. (Iraq Sanctions Act of 1990, Pub.

L. No. 101-513, §§ 586-586J, 50 U.S.C. § 1701 (1994 & Supp. IV 1998).) This massive scheme could not have occurred but for the full complicity of the RJR DEFENDANTS and their coconspirators, who made the scheme possible through their covert shipment of cigarettes and acceptance of covert payments.

129. Even following Japan Tobacco, Inc.'s acquisition of RJR's international operation, the RJR DEFENDANTS remained actively involved in the sale of cigarettes into Iraq.

Employees of the RJR DEFENDANTS' subsidiaries visited Turkey on a regular basis to oversee the delivery of RJR-brand cigarettes into Iraq and to ensure that the shipments in fact were being delivered from Turkey into Iraq. The RJR DEFENDANTS also employed a company to monitor the movements of their name-brand cigarettes through Turkey and into Iraq. RJR employees and/or agents even visited the Habur Gate, the entrance portal from Turkey into Iraq, to ensure that the cigarettes in question were being handled properly right up to the point where they were delivered across the border into Iraq. For example, RJR personnel visited the Habur Gate for this purpose in August 2001.

130. Additionally, in 2001 and 2002, the RJR DEFENDANTS produced and sold new brands of cigarettes that apparently were designed for the Iraqi/Middle East market. Two such brands were Easton and Barton. These cigarette brands, although virtually unknown in the West and unidentified in the RJR DEFENDANTS' annual report, were manufactured by the RJR DEFENDANTS in North Carolina for sale into Iraq.

131. The Easton brand name is purportedly owned by a company known as GMB Inc. located at 401 North Main Street, Winston-Salem, North Carolina. This address is also the address for the corporate offices of the RJR DEFENDANTS. Although GMB Inc. ostensibly owns the brand-name rights to Easton cigarettes, the cigarettes themselves are manufactured by the RJR DEFENDANTS. Easton-brand cigarettes made in the United States are labeled in part: "Manufactured by RJ Reynolds Tobacco Co., Winston-Salem, NC USA exclusively for A.T.C. .

. .Made in USA." The Barton Light cigarettes made in the United States are labeled in part: "Manufactured by RJ Reynolds Tobacco Co., Winston-Salem, NC USA. exclusively for A.T.C. .

. .Made in USA." 132. The Barton and Easton brand cigarettes are sold through the RJR distribution network, including IBCS and Akshimpex, into Iraq. Shipments of Easton and Barton brand cigarettes, manufactured by the RJR DEFENDANTS, were sold illegally into Iraq as recently as April 2002. Shipments of Barton and Easton brand cigarettes were accompanied by promotional materials, including hats, cigarette lighters, key rings, and matches.

133. The following illegal shipments of RJR-brand cigarettes into Iraq took place between January and April 2002: Winston 59,500 master cases (10,000 cigarettes per master case) Magna 65,000 master cases

Winchester 10,909 master cases Aspen 7,022 master cases Doral 1,500 master cases Barton 4,500 master cases Easton 1,560 master cases.

Shipments into Iraq on March 2, 2002, March 23, 2002, March 31, 2002, April 6, 2002, and April 11, 2002, included advertising and promotional materials for the RJR-brand cigarettes.

134. The RJR DEFENDANTS and their coconspirator, Japan Tobacco, Inc., have used and continue to use the ports and facilities of THE EUROPEAN COMMUNITY and the MEMBER STATES to expedite the illegal sales of cigarettes into Iraq. For example, as recently as April 2002, IBCS had delivered ten containers of RJR-brand cigarettes to Turkey to sell into Iraq. However, in an effort to disguise the route of these cigarettes and to deceive U.S. and THE EUROPEAN COMMUNITY law-enforcement officials, IBCS, under the direction of RJR's coconspirator, Japan Tobacco International, ordered that the cigarettes be shipped to a warehouse in Antwerp, Belgium. The aforesaid shipment was a complete ruse. The warehouse was instructed to hold the cigarettes temporarily and then ship them back to Turkey. The only purpose for shipping one hundred million cigarettes

from Turkey to Belgium and back to Turkey was to attempt to conceal from U.S. and THE EUROPEAN COMMUNITY law-enforcement officials that the true destination of the cigarettes was Iraq.

135. In many instances, the cigarettes in question, even when ostensibly in the possession of IBCS, remained titled to the RJR DEFENDANTS or Japan Tobacco, Inc. Thus, the RJR DEFENDANTS and/or Japan Tobacco, Inc. maintained control over the shipping, handling, and ultimate delivery of the cigarettes up to and including the time the cigarettes enter

Iraq. The aforesaid scheme was accomplished through a continuing use of the U.S. wires and/or mails.

RJR and the PKK

136. Substantial portions of the cigarettes sold into Iraq were sold to or for the benefit of various terrorist groups, including the PKK (Kurdistan Workers' Party). Throughout the 1990s and up to and including 2002, the RJR DEFENDANTS and their coconspirators have sold cigarettes into Iraq by way of the northern territories of Iraq, including the towns of Dohuk and Zokho. This region is wholly or partially controlled by terrorist groups, including the PKK.

The PKK and similar terrorist groups charge a fee for every container of cigarettes that is allowed to pass through their territory. These fees have been paid to the PKK by the RJR DEFENDANTS' coconspirators. Consequently, the RJR DEFENDANTS and their coconspirators have provided direct financial benefits to the PKK and other terrorist groups.

Although the regime of Saddam Hussein is often at odds with Kurdish groups in Northern Iraq, the illegal cigarette trade is so lucrative to Saddam Hussein and his family that they allow several Kurdish groups to import these cigarettes. Saddam Hussein's son Uday Hussein oversees and personally profits from the illegal importation of cigarettes into Iraq.

137. On October 8, 1999, Secretary of State Madeleine K. Albright designated the Kurdistan Workers' Party (PKK) as a "Foreign Terrorist Organization" (FTO) pursuant to the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, § 302, 110 Stat.

1214, 1248 (1996), as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996). As a result of this action, it became

illegal for a person in the United States or subject to the jurisdiction of the United States to provide funds or other material support to a designated FTO. On May 10, 2001, Secretary of State Colin L. Powell reaffirmed the designation of the PKK as an FTO on the ground that it has “continued to plan and prepare for possible acts of terrorism.” 138. The designation of the PKK as an FTO is consistent with its activities over the course of the past three decades. The PKK was established in the 1970s as a Marxist- Leninist insurgent group primarily composed of Turkish Kurds. In recent years, it has moved beyond rural-based insurgent activities to include urban terrorism. It seeks to establish an independent Kurdish state in southeastern Turkey, where the population is predominantly Kurdish. The PKK’s primary targets are the Turkish Government security force in Turkey, but it has also been active in THE EUROPEAN COMMUNITY against Turkish targets. The PKK conducted attacks on Turkish diplomatic and commercial facilities in dozens of West European cities in 1993 and again in spring 1995. In an attempt to damage Turkey's tourism industry, the PKK has bombed tourist sites and hotels and kidnapped foreign tourists. PKK members in Europe have been involved in wholesale and retail distribution of heroin and other criminal activities to finance their operations, including the purchase of arms. The PKK has received aid and comfort from Syria, Iraq, and Iran.

139. The PKK has had a particularly adverse affect on THE EUROPEAN COMMUNITY. The PKK has launched numerous terrorist attacks within THE EUROPEAN COMMUNITY. Additionally, the PKK is known to commit an array of other criminal offenses within THE EUROPEAN COMMUNITY, including heroin trafficking and weapons trafficking.

Accordingly, the acts of the RJR DEFENDANTS, described in paragraphs 113-135 above, proximately and directly injure THE EUROPEAN COMMUNITY because the RJR

DEFENDANTS’ activities enable the PKK to engage in narcotics trafficking, weapons trafficking, and terrorist activities that occur within and to the detriment of THE EUROPEAN COMMUNITY and the MEMBER STATES. In April 2002, THE EUROPEAN COMMUNITY declared the PKK a terrorist group.

Corruption of Public Officials in the Balkans

140. Throughout the 1990s, the RJR DEFENDANTS sold large volumes of cigarettes and received large amounts of criminal proceeds through the Balkans, including Montenegro. The RJR DEFENDANTS capitalized on an ongoing war and corrupt government officials as a means to expedite the sale of their products and to help disguise the illegal nature of their actions.

141. Throughout the 1990s, huge amounts of money were paid to public officials in Montenegro and elsewhere to guarantee the security of the cigarettes and the illicit funds that were passing through the Balkans. For example, the Montenegrin government required that all cigarettes passing through Montenegro be handled by the official freight

forwarder and handler of the Montenegrin government, Zetatrans. Zetatrans was paid approximately Thirty Dollars per case of cigarettes transited through Montenegro. This Thirty Dollars was divided up among various Montenegrin officials involved in this business and who controlled the “licenses” to ship cigarettes through Montenegro. These officials included Milo Djukanovic, now President of Montenegro; the now deceased former head of the Montenegrin Foreign Investment Agency, Milutin Lalic; and others.

142. As another example, in the mid 1990s, a company called Montenegrin Tabak Transit (MTT) was created by certain members of Italian organized crime in conjunction with Montenegrin government officials. The company was officially sanctioned by the Montenegrin Foreign Investment Agency and operated under the special protection of Milo Djukanovic. MTT was granted the exclusive license to transit cigarettes through the Port of Montenegro. Payments to MTT for the privilege of shipping cigarettes through Montenegro were made throughout the 1990s by members of Italian organized crime through Swiss money brokers, including but not limited to the Alfred Bossert money-laundering organization.

143. MTT, using banks in Switzerland and Liechtenstein, funneled payments from Italian organized crime groups to the Yugoslav federal government and Montenegrin regional governments. Payments through this process were delivered to Milutin Lalic, Milo Djukanovic, and others. “Licensing” payments by Italian organized crime organizations to MTT for the transportation of cigarettes reached almost one hundred U.S. dollars per case of cigarettes. Since tens of thousands of cases of cigarettes were transported through Montenegro as part of the money-laundering scheme throughout the 1990s, the net result was the payment of millions of dollars to government officials in the Yugoslav federal government and the Montenegrin regional government.

144. The RJR DEFENDANTS and their distributors sold cigarettes to their customers in Montenegro “CIF,” meaning that the price included cost, insurance, and freight in a lump sum. The RJR DEFENDANTS were well aware that these “licensing fees” were being paid by their coconspirators. The RJR DEFENDANTS’ employees traveled to Montenegro on a regular basis to inspect their cigarettes and service their customers and, as such, were well aware of these practices.

145. Political corruption in the Balkans causes economic harm to THE EUROPEAN COMMUNITY and the MEMBER STATES in numerous ways. Political instability in the region requires THE EUROPEAN COMMUNITY and the MEMBER STATES to expend large amounts of money to promote political stability. Additionally, THE EUROPEAN COMMUNITY and MEMBER STATES are required to expend large amounts of money to combat the criminality and economic instability fostered, promoted, and made possible by the existence of significant lawless regions so close to their borders which provide safe havens and staging grounds for criminal activities that directly affect THE EUROPEAN COMMUNITY and the United States.

Travel and Entertainment by RJR Employees

146. To advance the money-laundering schemes set forth above, the employees, executives, and managers of the RJR DEFENDANTS often traveled extensively, both to supervise the schemes and also to entertain RJR's criminal customers. RJR executives such as Tom Brock and Richard Larocca traveled to Europe and South America to meet with, entertain, and maintain relations with RJR's criminal customers. RJR executives and managers who engaged in such travel and entertainment often received large travel and entertainment budgets from the RJR DEFENDANTS. Some RJR executives received travel and entertainment budgets of up to one million dollars per year for the purpose of advancing the RJR DEFENDANTS' illicit activities in this fashion.

147. During the years when the RJR DEFENDANTS sold cigarettes in moneylaundering operations conducted via Montenegro, RJR employees conducted direct and personal supervision of such activities. RJR employees would periodically visit Switzerland, Italy, and Montenegro to gather market information for the RJR DEFENDANTS. The RJR DEFENDANT'S employees met and had discussions with various criminals and representatives of criminal groups to obtain information concerning the quantities of cigarettes being sold and the means by which they were sold. The RJR DEFENDANTS' employees traveled to Montenegro on a regular basis to witness the operations, view the warehouses, and observe the loading and unloading activities relating to RJR cigarettes.

148. RJR invited criminal coconspirators of the RJR DEFENDANTS to Geneva, Switzerland, on several occasions so that those individuals could have meetings with the executives of RJR INTERNATIONAL. Such travel, entertainment, and meetings occurred throughout the 1990s.

RJR's Efforts to Deceive the Plaintiffs

149. On many occasions, government officials of the MEMBER STATES such as Guardia di Finanza in Italy, pursuant to cooperation agreements entered into with RJR, have requested that the DEFENDANTS and/or their coconspirators, Japan Tobacco, Inc., inspect seized Camel and Winston cigarettes to determine whether they were legitimate product and the party to whom the cigarettes were sold. Almost invariably, the RJR DEFENDANTS and/or Japan Tobacco, Inc. have indicated that they are unable to determine to whom the product was sold. This was true even as to products that the RJR DEFENDANTS admitted were produced by them.

150. The representations by RJR and Japan Tobacco, Inc. that they could not identify the customers to whom the products were sold were false and fraudulent. The cigarettes in question contained markings that allow the RJR DEFENDANTS to identify at a minimum the first and second purchasers of the cigarettes. The RJR DEFENDANTS and Japan Tobacco, Inc.

deceived the Plaintiffs and refused to provide this information, which was known to them, in order to protect their valuable criminal customers and also to prevent the

Plaintiffs' lawenforcement authorities from conducting investigations that could demonstrate the RJR DEFENDANTS' complicity in the money-laundering schemes.

151. When the RJR DEFENDANTS indicated that they were unable to identify to whom the products were sold, they made a false representation to the Plaintiffs regarding a matter of great importance to the Plaintiffs. The Plaintiffs reasonably relied upon the representations of the RJR DEFENDANTS because the DEFENDANTS were supposed to be acting in good faith pursuant to cooperation agreements that they entered into with the Plaintiffs.

The Plaintiffs have suffered great financial harm as a result of DEFENDANTS' failure to identify the customers to which the seized products were sold. The RJR DEFENDANTS' false statements have made it costly and/or impossible to apprehend the coconspirators who are trafficking in the cigarettes as a part of the scheme to launder criminal proceeds.

152. The RJR DEFENDANTS filed or caused the filing of false and fraudulent documents that misstated the destination and the value of cigarettes. This was done to advance the money-laundering scheme. In many nations, including the MEMBER STATES and Turkey, costly surety bonds are required of shippers that transport cigarettes across the country. By grossly undervaluing the cigarettes being shipped, the RJR DEFENDANTS and their coconspirators reduced the purported value of their shipments and thereby dramatically reduced

the surety bonds that must be paid on the cigarettes. In so doing, the DEFENDANTS and their coconspirators reduce their costs associated with the sale and delivery of the cigarettes.

153. With respect to cigarette sales into Iraq, the DEFENDANTS and/or their coconspirators filed false and fraudulent documents with Spanish authorities to conceal that the final destination of the cigarettes was Iraq. The value of the cigarettes in question was fraudulently understated by the DEFENDANTS and/or their coconspirators to expedite the delivery of cigarettes into Iraq with the payment of minimal surety bonds. THE EUROPEAN COMMUNITY and the MEMBER STATES reasonably relied upon such false and fraudulent documents to their detriment.

154. The RJR DEFENDANTS, and in particular R.J. REYNOLDS TOBACCO INTERNATIONAL, INC., through their agent Paul Bourassa and others, continually worked to prevent THE EUROPEAN COMMUNITY and the MEMBER STATES from discovering THE RJR DEFENDANTS' role in the money-laundering scheme. The RJR DEFENDANTS cited Swiss secrecy laws and other excuses as an improper basis for refusing to provide THE EUROPEAN COMMUNITY and the MEMBER STATES with requested information concerning the criminal conduct of the RJR DEFENDANTS and their customers.

155. The RJR DEFENDANTS entered into an understanding or agreement, express or tacit, with their distributors, customers, agents, consultants, and other coconspirators, to

participate in a common scheme, plan or design to commit tortious and illegal acts, including money laundering. In pursuance of the agreement, RJR and other tobacco companies formed, managed, and directed the affairs of several groups including, without limitation: (a) International Committee on Smoking Issues (“ICOSI”); (b) EEC Task Force on Consumerism; (c) International Duty Free Confederation (“IDFC”); (d) “Confederation of European

Community Cigarette Manufacturers Ltd.” (“CECCM”); and (e) CECCM’s “Duty Free Study Group” which was comprised entirely of company representatives, including those of RJR.

Acting through the aforesaid groups, RJR obstructed government oversight and falsely represented to Plaintiffs and the public that the RJR DEFENDANTS were not involved in illegal activities.

RJR’s Responsibility for its Agents, Employees, and Coconspirators

156. The acts and omissions of the individuals employed by the RJR DEFENDANTS are imputed to the RJR DEFENDANTS under the doctrines of vicarious liability and respondeat superior. The RJR DEFENDANTS actually benefited from the performance of predicate acts of racketeering through increased sales, profits, name-brand recognition, and market share.

157. The RJR DEFENDANTS and their employees were central figures and aggressors in the fraudulent scheme. RJR personnel, including Richard Larocca, Tom Brock, Renato Meyer, Diego Luchessa, Oscar Ivanissevich, John Dyson, Sergio Rotati, Bill Ventura, Orlando Morales, and other RJR executives, performed their fraudulent and illegal acts on behalf of the RJR DEFENDANTS within the scope and course of their employment with RJR. The officers and directors of the RJR DEFENDANTS, including RJR Chairman Steven F. Goldstone, had knowledge of, or were willfully blind and recklessly indifferent toward, the unlawful activity.

158. The RJR DEFENDANTS are liable under principles of agency. Each of the RJR DEFENDANTS is responsible for the conduct of its supervisory employees, including

Richard Larocca, Tom Brock, Renato Meyer, Diego Luchessa, Oscar Ivanissevich, John Dyson, Sergio Rotati, Bill Ventura, and Orlando Morales, who violated the law and caused the RJR DEFENDANTS to enter into and act to further money-laundering conspiracies.

RJR’s Use of Wires and Mails 159. During all relevant times, the RJR DEFENDANTS communicated with each other and with their coconspirators on virtually a daily basis, by means of interstate and international wires, as a means of obtaining orders for cigarettes, arranging for sale and shipment of cigarettes, and arranging for and receiving payment for the cigarettes in question. Under principles of conspiracy and concert of action, the

RJR DEFENDANTS are jointly and severally liable for the actions of their coconspirators in the furtherance of the money-laundering scheme.

160. The RJR DEFENDANTS and their coconspirators utilized the interstate and international mail and wires, and other means of communications, to prepare and transmit documents that intentionally misstated the purchases of the cigarettes in question so as to mislead the authorities within the United States and THE EUROPEAN COMMUNITY in regard to the nature and objectives of the money-laundering scheme. THE EUROPEAN COMMUNITY and its MEMBER STATES, including the Kingdom of Belgium, Republic of Finland, French Republic, Hellenic Republic, Federal Republic of Germany, Italian Republic, Grand Duchy of Luxembourg, Kingdom of the Netherlands, Portuguese Republic, and Kingdom of Spain, reasonably relied on said misrepresentations of fact were damaged as a result, and continue to be damaged by such reliance.

161. The RJR DEFENDANTS, their subsidiary corporations, and their coconspirators have used the mail and telephonic and other wire forms of communication on a daily basis in furtherance of the money-laundering schemes described above. Specifically, the U.S. mails and wires are used by the RJR DEFENDANTS to bill and pay for the cigarettes, to confirm billing and payment for the cigarettes, to account for the payment of the cigarettes to the DEFENDANTS and their subsidiaries, and to maintain an accounting of the proceeds received by the RJR DEFENDANTS from the sale of the cigarettes, with said proceeds ultimately being returned to the RJR DEFENDANTS in the United States.

162. The RJR DEFENDANTS' coconspirators, the distributors and money launderers, utilize the mail and wire communications on a continuing basis to advance the money-laundering schemes, specifically to determine marketing strategies, to order cigarettes, to arrange for sale of the cigarettes, to arrange for distribution of cigarettes, to arrange for payment of cigarettes, and to further support other aspects of the money-laundering schemes.

163. Because the money-laundering conspiracy is a multi-million dollar per year operation and is continuing on a daily basis, it is impractical and impossible, in advance of discovery, to delineate each and every fraudulent communication in what is a pervasive and ongoing use of the mails and wires in furtherance of the money-laundering activities. By conducting some of their activities in countries known for bank secrecy, the RJR DEFENDANTS have taken affirmative steps to prevent the victims of their fraud and illicit conduct from discovering the exact details of the vast number of wire and mail communications that furthered the money-laundering schemes, including orders for tobacco products, and repatriation of the proceeds of the money-laundering schemes to the United States.

164. In addition to using the mail and wire communications themselves to advance the money-laundering schemes, the RJR DEFENDANTS, caused the use of the U.S.

mails and wires in furtherance of the money-laundering schemes by acting with knowledge that the use of the U.S. mails and/or wires would follow in the ordinary course of business and/or could be reasonably foreseen as a result of their activities. The mailing or use of wire communications was for the purpose of executing the scheme, to wit, the money-laundering activities. These mail and wire transmissions furthered the money-laundering schemes and were essential to the success of those schemes, since such communications were necessary for the coconspirators, who were separated by great distances and national borders to effectuate their common goals within the money-laundering enterprises.

VIII. IMPACT OF THE MONEY-LAUNDERING SCHEME ON THE UNITED STATES AND THE EUROPEAN COMMUNITY

165. International money laundering has become a threat to United States security, as well as to the security of THE EUROPEAN COMMUNITY and the MEMBER STATES. As Asa Hutchinson, Director of the United States Drug Enforcement Administration, has stated: “The illegal drug production that undermines America’s culture also funds terror and erodes democracies across the globe. They all represent a clear and present danger to our national security.” Since the money-laundering scheme that is the subject matter of this complaint is a fundamental part of the drug-production cycle, these money-laundering activities equally represent a threat to U.S. national security as well as the security of THE EUROPEAN COMMUNITY.

166. Money laundering through the purchase and sale of cigarettes has become a primary means by which terrorists finance their illegal activities. The RJR DEFENDANTS knowingly or negligently support the activities of terrorists when they allow terrorist groups to launder narcotics proceeds in THE EUROPEAN COMMUNITY through the purchase of United States-made cigarettes.

167. The majority of the conduct of the RJR DEFENDANTS that is material to this case is conducted by the RJR DEFENDANTS in the United States. There is a substantial effect experienced in the United States and in this district as a result of the schemes that are the subject matter of this complaint because:

(a.) The RJR DEFENDANTS receive, and have received, the profits and proceeds of said schemes in the United States. Such funds have been repatriated to this country through money laundering and other acts of concealment, all of which threaten the integrity of the U.S. financial system.

(b.) The money-laundering schemes that are the subject matter of this complaint, in particular those involving Russian organized crime, the Bank of New York, and Sinex Bank, are centered largely in and operate from this district. The majority of the moneylaundering activities described in relation to this portion of the scheme occurred in Queens, New York, and tens of millions of dollars of laundered criminal proceeds that constitute the subject matter of this complaint were laundered in Queens, New York.

(c.) Many millions of dollars of the laundered narcotics proceeds which are the subject matter of this lawsuit passed through The Bank of New York (BONY) to the RJR DEFENDANTS. The money-laundering activities at The Bank of New York proved to be so

pervasive that they damaged the integrity of that bank and had serious economic ramifications for other banks throughout the Eastern District of New York.

(d.) The United States and THE EUROPEAN COMMUNITY have recognized in international conventions their mutual interest in ending transnational moneylaundering schemes. The RJR DEFENDANTS' conduct contravenes the vital public interest in stemming such illicit conduct.

(e.) Large volumes of false documents have been filed with the United States Customs Service and the Bureau of Alcohol, Tobacco and Firearms by the RJR DEFENDANTS and/or their coconspirators. The purpose of these filings was to deceive the United States Customs Service and the Bureau of Alcohol, Tobacco and Firearms and allow the criminal activity to continue.

(f.) The money-laundering schemes are intertwined with organized crime in New York City. Some of the largest and most dangerous narcotics traffickers in the world reside and conduct business in the Eastern District of New York. Furthermore, certain individuals who work and reside in the Eastern District of New York have established a multimillion dollar industry within the Eastern District of New York for the laundering of criminal proceeds through cigarette sales. Millions of dollars worth of real estate has been purchased within the Eastern District of New York in conjunction with this money-laundering scheme.

(g.) This district and its transportation facilities have been used by the RJR DEFENDANTS as a springboard for the transnational shipment of cigarettes as part of the money-laundering scheme.

(h.) The money-laundering scheme is advanced by numerous acts of wire fraud and mail fraud, many of which occurred in the United States. The United States has an

interest in preventing such schemes from being carried out through the U.S. telecommunications system and postal system.

168. Throughout THE EUROPEAN COMMUNITY, cigarettes and narcotics are routinely part of the same criminal transactions, and the incidence of violence associated with such trade is rising rapidly. High-ranking executives of RJR knew or reasonably should have known that their tobacco products were being sold to and through narcotics traffickers through illegal means. These RJR executives failed to act with reasonable care to investigate and abate these activities and failed otherwise to act to prevent the damage to Plaintiffs.

169. All the aforesaid activities occurred with both the knowledge and at the direction of persons at both middle management and high-level management positions within the RJR DEFENDANTS' corporations. The vast majority of the cigarettes utilized in the moneylaundering schemes are shipped from the United States. The vast majority of the activities of the RJR DEFENDANTS that are the subject matter of this complaint, including management decisions and direction of the schemes, are conducted by the RJR DEFENDANTS in the United States and, more particularly, from the RJR DEFENDANTS' offices in the State and City of New York.

All of the predicate acts set forth herein share the same purpose and the same victims, namely, THE EUROPEAN COMMUNITY and its MEMBER STATES, including the Kingdom of Belgium, Republic of Finland, French Republic, Hellenic Republic, Federal Republic of Germany, Italian Republic, Grand Duchy of Luxembourg, Kingdom of the Netherlands, Portuguese Republic, and Kingdom of Spain.

IX. CONTINUING DAMAGE TO THE PLAINTIFFS AND COMPELLING NEED FOR INJUNCTIVE AND EQUITABLE RELIEF

170. THE EUROPEAN COMMUNITY and the MEMBER STATES have the right and duty to make claims for, and to seek injunctive relief against, the money-laundering conspiracy that is the subject matter of this complaint.

171. The Plaintiff, THE EUROPEAN COMMUNITY, exists for the purpose of promoting the stability and economic welfare of its MEMBER STATES. Money laundering and the criminal activities associated with money laundering pose a severe threat to the stability and economic welfare of THE EUROPEAN COMMUNITY, the MEMBER STATES, and their citizens. As a result of the DEFENDANTS' wrongful activities, THE EUROPEAN COMMUNITY and the MEMBER STATES have been injured in their businesses and deprived of money and property, and the DEFENDANTS have secured vast profits and proceeds from their illegal scheme. The injuries to the Plaintiffs include, but are not limited to, the following: (a.) Right, Title, and Interest in the Proceeds of Crime. Under the laws of the MEMBER STATES, the MEMBER STATES possess title in, or have a right to the proceeds of, any criminal activity conducted within their borders. This right is a civil right of reparation.

The RJR DEFENDANTS' money-laundering scheme described in this Complaint causes a loss of business and property to THE EUROPEAN COMMUNITY and the MEMBER STATES because the laundering of the criminal proceeds prevents the MEMBER STATES from collecting the money and property constituting the proceeds of criminal activity, to which right or title has vested in the MEMBER STATES.

(b.) Right, Title, and Interest in the Instrumentalities of Crime. Under the laws of the MEMBER STATES, the MEMBER STATES possess title in, or have a right to, any property used in the commission of a crime conducted within their borders, including money and goods. This right is a civil right of reparation. The RJR DEFENDANTS' money laundering described in this Complaint causes a loss of business and property to

the MEMBER STATES because the laundering of the criminal proceeds prevents the MEMBER STATES from acquiring title in or rights to the instrumentalities used in the commission of criminal activity, which title or right has vested in the MEMBER STATES.

(c.) Money Laundering Facilitates Organized Crime. The moneylaundering scheme by the RJR DEFENDANTS facilitates organized crime including narcotics trafficking, arms trafficking, and other offenses. THE EUROPEAN COMMUNITY, the MEMBER STATES, and their citizens are the victims of these crimes. But for the active assistance of the RJR DEFENDANTS, money launderers and criminals could not have laundered the proceeds of their criminal activities to the detriment of THE EUROPEAN COMMUNITY and the MEMBER STATES.

(d.) Costs of Fighting Money Laundering. The RJR DEFENDANTS' money-laundering scheme and related criminal activities cause direct economic losses to THE EUROPEAN COMMUNITY and the MEMBER STATES in the form of increased expenditures to prevent money laundering, including financial audits, anti-money-laundering protocols, and other expenditures that are necessitated by such conduct.

(e.) Costs of Regulating Transactions and Detecting Money Laundering.

Financial institutions in THE EUROPEAN COMMUNITY must train staff in detecting and reporting suspicious transactions and in any event report all transactions over EUR15,000 to the

authorities in the MEMBER STATES. Specifically constituted financial intelligence units ("FIU") must then quickly investigate the reported transactions as well as carrying out other investigations into money laundering. As a result, the MEMBER STATES have been injured in their business and property because of the costs to financial institutions of detecting and reporting such transactions and because of the funds and resources required for MEMBER STATES to carry out investigations in order to detect money laundering.

(f.) Law-Enforcement Costs of Fighting Underlying Criminal Activity.

THE EUROPEAN COMMUNITY and the MEMBER STATES are required to expend large amounts of money on law-enforcement activities to combat the criminal activity that is facilitated by the money laundering and related activities of the RJR DEFENDANTS and their coconspirators.. Such criminal activity includes, but is not limited to, narcotics trafficking, weapons trafficking, terrorism, and an array of other organized criminal activities. But for the money-laundering activities of the RJR DEFENDANTS, the efficacy of these crimes would be diminished, the incentive to commit these crimes would be reduced, and the law enforcement and other costs incurred by THE EUROPEAN COMMUNITY and the MEMBER STATES would be accordingly diminished.

(g.) Damage to EUROPEAN COMMUNITY and MEMBER STATE Property. The means employed by the RJR DEFENDANTS and their coconspirators routinely result in damage to or the destruction of property of THE EUROPEAN COMMUNITY or the MEMBER STATES such as automobiles and vessels. This damage to the PLAINTIFFS' property is foreseeable and anticipated by the RJR DEFENDANTS and their coconspirators, and results in additional expenditures by THE EUROPEAN COMMUNITY and MEMBER STATES to repair and replace the damaged property.

(h.) Damage to MEMBER STATES for Expenses to Store and Destroy Proceeds of Criminal Activity. As a result of the massive money-laundering scheme perpetrated by the RJR DEFENDANTS, the Republic of Italy has been required to warehouse, store, and ultimately destroy huge volumes of cigarettes and other property used in the scheme. As of early 2002, at one storage facility alone, the Republic of Italy is currently storing two million master cases of cigarettes that were purchased with the proceeds from crime. Often, such cigarettes must be stored for a long period of time because they will serve as evidence in legal actions.

Accordingly, the average case of cigarettes seized by law-enforcement authorities in Italy remains in storage approximately six years. The cost to the Italian government for the storage of these cigarettes, including warehouse facilities, employees, insurance, and costs associated with the full-time process of destroying cigarettes equals approximately thirteen dollars per case of cigarettes. Accordingly, the Italian government currently spends approximately twenty-six million dollars per year simply to warehouse, store, and destroy seized cigarettes. Of the cigarettes so stored, a substantial percentage are the products of the RJR DEFENDANTS. Other MEMBER STATES currently experience similar problems and resulting losses.

(i.) Damage to the Legitimate Economy. The RJR DEFENDANTS' money-laundering scheme and related criminal activities cause a direct and adverse economic impact on THE EUROPEAN COMMUNITY and the MEMBER STATES because this underground economy competes illegally against the legitimate economy of THE EUROPEAN COMMUNITY and the MEMBER STATES, and thereby causes direct financial loss to the PLAINTIFFS.

(j.) Competitive Losses of the MEMBER STATES. The RJR DEFENDANTS' money-laundering activities and their related criminality compete against the

legal cigarette trade within the MEMBER STATES and in particular compete against the MEMBER STATES that participate in the marketplace as either buyers or sellers of cigarettes.

Entities that purchase and sell cigarettes using laundered money enjoy an unfair competitive advantage over legitimate businesses due to favorable exchange rates, lack of government oversight, and other factors favoring the illegitimate trader. Legitimate purchasers, manufacturers, and/or distributors of cigarettes are direct competitors of the

money-laundering conspirators. As participants in the marketplace, the MEMBER STATES suffer a direct loss of money and property as a result of this illegal activity.

(k.) Damage to Italy as a Distributor of Cigarettes. The Republic of Italy possesses the exclusive right to import and distribute cigarettes within Italy. The Republic of Italy is adversely affected in its business and property as a direct result of the massive moneylaundering scheme to convert criminal proceeds into cigarettes, which was designed, implemented, and controlled by the RJR DEFENDANTS. The unfair advantage that the moneylaundering scheme has afforded to the RJR DEFENDANTS has impaired the ability of the Italian government to compete effectively in the Italian cigarette market. As a result, warehouses and other distribution facilities have been closed or otherwise rendered useless, and the Republic of Italy as rightful distributor of cigarettes has lost millions of dollars, both in lost cigarette sales as well as in the cost associated with the closing of factories, discharge of employees, and other measures made necessary by the illegal acts of the RJR DEFENDANTS and their coconspirators.

(l.) Damage to MEMBER STATES as Manufacturers and Distributors of Cigarettes. A similar situation exists with other MEMBER STATES, because certain governments participate in the manufacture and/or distribution of cigarettes. The MEMBER STATES that are market participants have been adversely affected in their business and property

as a direct result of the money-laundering scheme designed, implemented, and controlled by the RJR DEFENDANTS. The unfair advantage that the money-laundering scheme has given to the RJR DEFENDANTS and their coconspirators has rendered these MEMBER STATES unable to compete effectively in their own cigarette markets. As a result, factories and distribution facilities have been closed, workers have been fired, and the affected MEMBER STATES have lost millions of dollars, both in lost cigarette sales as well as in the costs associated with the closing of factories, discharge of employees, and other measures made necessary by the illegal acts of the RJR DEFENDANTS and their coconspirators.

(m.) RJR DEFENDANTS' Misuse and Disruption of the Marketplace.

THE EUROPEAN COMMUNITY provides at its expense a marketplace without internal frontiers that inures to the benefit of all commercial enterprises that operate within the borders of THE EUROPEAN COMMUNITY. This marketplace makes the sale of products such as cigarettes easier and more profitable. The money-laundering activities of the RJR DEFENDANTS and their coconspirators make illicit use of this marketplace for their own economic benefit and to the economic detriment of THE EUROPEAN COMMUNITY and the MEMBER STATES. Money laundering disrupts the legitimate trade and markets within THE EUROPEAN COMMUNITY, damages the economic viability of THE EUROPEAN COMMUNITY, and causes harm to the financial institutions and infrastructure within THE EUROPEAN COMMUNITY.

(n.) Damage to THE EUROPEAN COMMUNITY Financial Institutions.

The RJR DEFENDANTS' money-laundering scheme and related criminal activities undermine and damage THE EUROPEAN COMMUNITY'S financial system. The integrity of financial institutions, including banks, is compromised when they are used to launder criminal proceeds.

Financial messaging systems such as the SWIFT system, based in Belgium, have been exploited because they have been used on a continuing basis to expedite this money-laundering scheme.

(o.) Frustration of the Duty to Prevent Harm to Financial Institutions.

The RJR DEFENDANTS' money-laundering scheme and related criminal activities subvert and undermine THE EUROPEAN COMMUNITY'S duties, responsibilities, and legal authority, and inhibit the ability of THE EUROPEAN COMMUNITY to prevent harm to the financial institutions and infrastructure within THE EUROPEAN COMMUNITY.

(p.) Damage to MEMBER STATES (Bank Failures). When commercial banks fail as a result of money laundering, the MEMBER STATES sustain direct economic losses because they are often required to protect depositors who are victims of these bank failures.

(q.) Damage to MEMBER STATE Banks. Money laundering associated with the cigarette sales described in this Complaint has a direct and adverse impact on commercial banks owned wholly or partially by certain of the MEMBER STATES. The underground currency exchange deprives commercial banks of transaction fees and other sources of income associated with the international and/or foreign exchange transactions that are displaced by these money-laundering activities. When commercial banks fail as a result of money laundering, the MEMBER STATES sustain direct economic losses as a result of those failures.

(r.) Protection of MEMBER STATES' Currency. When each of the MEMBER STATES issues its currency, the MEMBER STATE acts as a guarantor of the stability of the currency it issues (see however the Euro at paragraph (s.) below). The MEMBER STATE provides value to the currency by its willingness to maintain the strength and integrity of

that currency. When the RJR DEFENDANTS and their coconspirators launder the currency of a MEMBER STATE, they convert and make illicit use of the currency and thereby erode the stability and credibility of that currency thereby depriving the PLAINTIFFS of money and property.

(s.) Protection of the Euro. On January 1, 1999, THE EUROPEAN COMMUNITY created a new currency, the Euro. It is the ultimate duty and responsibility of THE EUROPEAN COMMUNITY and the MEMBER STATES to protect the public's confidence in the Euro. When the RJR DEFENDANTS and their coconspirators launder

the Euro, they convert and make illicit use of the Euro, thereby undermining public confidence in the Euro and in the financial institutions that are based on the Euro.

(t.) Devaluation of PLAINTIFFS' Property. The money-laundering scheme of the RJR DEFENDANTS and their coconspirators involves the exchange for U.S.

dollars of the currencies of the MEMBER STATES often at deeply discounted unofficial exchange rates due to the criminal nature of these transactions. The exchange of tens of millions of dollars worth of the PLAINTIFFS' currencies at a deep discount rate acts to devalue the Plaintiffs' currencies. In that the Plaintiffs hold and own billions of dollars in their own currencies, the Plaintiffs suffer a direct loss of money and property when the money that they hold is thus devalued.

(u.) Distortion of the Money Supply. The process of laundering criminal proceeds through the purchase and sale of RJR cigarettes involves the unrecorded and irregular physical removal of huge amounts of local currency from the territory of the MEMBER STATES. The money-laundering activities of the RJR DEFENDANTS, when they involve an unrecorded and irregular removal of PLAINTIFFS' currencies, act to affect and distort the

supply of money in the MEMBER STATES. This distortion directly and adversely affects the official calculations of the money supply performed and maintained by the MEMBER STATES, thereby causing additional expenditures of funds by the PLAINTIFFS to detect and compensate for the huge unrecorded and irregular physical removals of PLAINTIFFS' currencies, depriving the PLAINTIFFS of money and property.

(v.) Balance of Payments. The process of laundering criminal proceeds through the purchase and sale of U.S.-made cigarettes involves the illegal conversion of local currency into U.S. dollars outside of the facilities provided by the MEMBER STATES for this exchange. The money-laundering activities of the RJR DEFENDANTS, when they involve an unrecorded and irregular conversion of the PLAINTIFFS' currencies into United States dollars, distort the official balance of payments calculated and maintained by the PLAINTIFFS, thereby causing additional expenditures of funds by the PLAINTIFFS to detect and compensate for the huge unrecorded and irregular foreign exchange operations, depriving the PLAINTIFFS of money and property.

(w.) MEMBER STATES' Contributions to EUROPEAN COMMUNITY Expenditures. The MEMBER STATES have suffered an injury to business and property because they have been required to contribute additional funding to THE EUROPEAN COMMUNITY as a result of the money-laundering activities of the RJR DEFENDANTS and their coconspirators.

(x.) MEMBER STATE Local Expenditures to Support EUROPEAN COMMUNITY Action. The MEMBER STATES have suffered an injury to business and property

because they have been required to expend additional funds and resources to support, on a local level, the efforts of THE EUROPEAN COMMUNITY as a result of additional

activities carried out, and expenditures incurred by, THE EUROPEAN COMMUNITY due to the money-laundering activities of the RJR DEFENDANTS and their coconspirators.

(y.) Distortion of the “Fourth Resource.” Huge volumes of irregular transactions have gone unrecorded due to the RJR DEFENDANTS’ money-laundering scheme.

This has produced distortions in the system of contributions made by the MEMBER STATES to THE EUROPEAN COMMUNITY. As a result, some MEMBER STATES have suffered injury to their business and property because they have been required to contribute more than their correct share of the “fourth resource.” THE EUROPEAN COMMUNITY has been injured in its business and property because increased expenditures of funds and resources are required to detect and compensate for the distortions produced in the fourth resource contribution assessments by the huge money-laundering transactions of the RJR DEFENDANTS and their coconspirators.

(z.) Frustration of THE EUROPEAN COMMUNITY’S Duty to Fulfill Its Obligations to the MEMBER STATES. The money laundering and related criminal activities of the RJR DEFENDANTS and their coconspirators substantially inhibit the capacity of THE EUROPEAN COMMUNITY to execute its duties to regulate foreign commerce; to regulate customs territories, free trade zones, and customs bonded warehouses; to regulate transportation into THE EUROPEAN COMMUNITY or within its borders, including the use of the roads; to regulate the free movement of goods within THE EUROPEAN COMMUNITY; to regulate safety and security at sea; to combat money laundering; to protect and promote the economic well being of its citizens; and to abate harm to itself and the general public within THE EUROPEAN COMMUNITY.

(aa.) Damage to EUROPEAN COMMUNITY Regulation of its Customs Territory. THE EUROPEAN COMMUNITY has a Customs Territory and a Customs Border separate and apart from the borders of the MEMBER STATES. The violation and permeation of that Border and that Territory by money-laundering activities and the illegal transport of money into and out of THE EUROPEAN COMMUNITY violates the legal rights of THE EUROPEAN COMMUNITY, threatens the safety, security, and well-being of governmental personnel and property within THE EUROPEAN COMMUNITY, and interferes with and damages the regulatory system and authority of THE EUROPEAN COMMUNITY.

(bb.) Damage to the MEMBER STATES Regarding Protection of Their Borders. The MEMBER STATES each have a national territory and borders separate and apart from the borders of the other MEMBER STATES and THE EUROPEAN COMMUNITY. The violation and permeation of those borders and that national territory by money-laundering activities and the illegal transport of money into and out of the MEMBER STATES violates the legal rights of the MEMBER STATES, threatens the safety, security, and

well being of governmental personnel and property within the MEMBER STATES, and interferes with and damages the regulatory system and authority of the MEMBER STATES. The MEMBER STATES suffer injury to their money and property from the additional expenditure required to counteract the scheme of the RJR DEFENDANTS and their coconspirators through additional equipment, personnel, border facilities, and other means.

(cc.) Injury to THE EUROPEAN COMMUNITY and MEMBER STATES Due to RJR DEFENDANT'S Support of Totalitarian Regimes. Illegal cigarette sales by the RJR DEFENDANTS and their coconspirators into Iraq and other areas have resulted in a direct financial benefit to totalitarian regimes and to terrorist groups that have caused harm to THE

EUROPEAN COMMUNITY and to the MEMBER STATES, including but not limited to destruction of public property, death and/or injury of government personnel, diminished economic productivity, increased law-enforcement expenses, and other costs associated with combating terrorism.

(dd.) Damage Caused by Bribery of Public Officials. Money-laundering activities, bribery of government officials, and other related criminal acts conducted in various countries and in particular the Balkans, have caused severe harm to THE EUROPEAN COMMUNITY and the MEMBER STATES including but not limited to increased lawenforcement and military expenditures, disruption of public services, expenses to stabilize unstable political situations in Eastern Europe that affect Western Europe, and damage to the trade and the economy of THE EUROPEAN COMMUNITY and the MEMBER STATES.

172. THE EUROPEAN COMMUNITY and the MEMBER STATES and their economies have suffered losses at least equal to, and properly measured by, the total amount of criminal proceeds laundered by the RJR DEFENDANTS. These losses were directly and proximately caused by the money-laundering activities of the RJR DEFENDANTS and their coconspirators. THE EUROPEAN COMMUNITY and the MEMBER STATES have the duty and responsibility to protect against, and to seek redress for, such losses.

173. As a direct and proximate result of the money-laundering activities that are conducted, aided, and encouraged by the RJR DEFENDANTS, losses of hundreds of millions of dollars per year are being suffered by THE EUROPEAN COMMUNITY and its MEMBER STATES, including the Kingdom of Belgium, Republic of Finland, French Republic, Hellenic Republic, Federal Republic of Germany, Italian Republic, Grand Duchy of Luxembourg, Kingdom of the Netherlands, Portuguese Republic, and Kingdom of Spain. THE EUROPEAN

COMMUNITY and the MEMBER STATES have been deprived of money and property in this manner throughout the 1990s and continuing through the present time. If the money-laundering activities of the RJR DEFENDANTS are not stopped, THE

EUROPEAN COMMUNITY and the MEMBER STATES will continue to lose money and property in the future. In addition, THE EUROPEAN COMMUNITY and the MEMBER STATES have been required to expend large amounts of money in their efforts to stop money laundering and to recoup funds that they have lost as a result of the activities of the RJR DEFENDANTS. All of these losses will continue into the future, absent judgment in Plaintiffs' favor and injunctive and equitable relief, including: (a.) RICO Injunctive and Equitable Relief. Under the RICO statute, 18 U.S.C. § 1964(a), and pursuant to inherent equitable powers of the Court, the U.S. District Court is empowered to prevent and restrain violations of 18 U.S.C. § 1962 by issuing appropriate orders, including without limitation : (i) ordering any person to divest himself or herself of any interest, direct or indirect, in any enterprise; (ii) imposing reasonable restrictions on the future activities or investments of any person that affect interstate or foreign commerce, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in; and (iii) ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons. In addition, under 28 U.S.C. § 1651(a), the U.S.

District Courts are empowered to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." Consistent with these powers, the MEMBER STATES seek an order that: (i) enjoins the RJR DEFENDANTS and their respective agents, servants, officers, directors, employees, and all persons acting in concert with them from laundering the proceeds of criminal activities through the sale of cigarettes; (ii)

compels each of the RJR DEFENDANTS who are found to have violated 18 U.S.C. § 1962 to disgorge all proceeds derived from any such violation and to make restitution to Plaintiff; (iii) enjoins the RJR DEFENDANTS and their respective agents, servants, officers, directors, employees, and all persons acting in concert with them from selling cigarettes and/or receiving payment for cigarettes without proper documentation, shipping records, markings, and similar indicia of compliance with law that will facilitate the proper tracking of the cigarettes and the funds with which they were purchased; (iv) enjoins the RJR DEFENDANTS and their respective agents, servants, officers, directors, employees, and all persons acting in concert with them from selling cigarettes to any distributor or any other person who cannot fully and accurately account for the source of the funds with which the cigarettes were purchased; (v) enjoins the RJR DEFENDANTS and their respective agents, servants, officers, directors, employees, and all persons acting in concert with them from engaging in any practices by which distributors, shippers, or wholesalers can pay for the cigarettes in question into offshore corporations, offshore bank accounts, or other locations that limit the ability of government officials to track the sale of cigarettes or the payment for said cigarettes; (vi) orders the RJR DEFENDANTS to create and utilize adequate protocols by which all cigarettes manufactured by the RJR DEFENDANTS and all payments made for such cigarettes into THE EUROPEAN COMMUNITY can be adequately tracked and monitored by government officials of THE EUROPEAN COMMUNITY and the MEMBER STATES; (vii) orders the RJR DEFENDANTS to take all reasonable and necessary steps to stop the money-laundering scheme, including the addition of any necessary labeling, tracking devices, or other

means that would allow the RJR DEFENDANTS and/or THE EUROPEAN COMMUNITY and the MEMBER STATES to track and monitor the movement of cigarettes into and within THE EUROPEAN COMMUNITY;

(viii) orders the RJR DEFENDANTS to disclose all knowledge within their possession concerning the names, locations, activities, and procedures of their non-legitimate customers; (ix) orders the RJR DEFENDANTS to implement “know your customer” protocols and rules for the acceptance of payments for their products that will make it difficult or impossible for criminals to launder criminal proceeds through the purchase of their products; (x) orders the imposition of a constructive trust and equitable lien upon the RJR DEFENDANTS’ ill-gotten gains, including without limitation those profits and proceeds derived from the moneylaundering scheme, and compels the RJR DEFENDANTS to disgorge to Plaintiffs all ill-gotten gains derived from the money-laundering scheme; (xi) orders the imposition of a constructive trust and equitable lien upon all monies laundered by the RJR DEFENDANTS as a part of the money-laundering scheme and compels the RJR DEFENDANTS to disgorge to Plaintiffs an amount equal to the total amount of monies laundered through the aforesaid scheme; (xii) orders divestiture of all interests held by the RJR DEFENDANTS, directly or indirectly, in the enterprises involved in the money-laundering activities; and (xiii) orders the RJR DEFENDANTS to adopt, monitor and enforce appropriate compliance programs to deter and remedy money-laundering activities involving their products. For purposes of this complaint, all of the foregoing injunctive and equitable remedies and those injunctive and equitable remedies that may hereafter be sought by THE EUROPEAN COMMUNITY and the MEMBER STATES or ordered by the Court with respect to THE EUROPEAN COMMUNITY’S and the MEMBER STATES’ claims under RICO shall be referred to herein as "RICO Injunctive and Equitable Relief." (b.) Common Law Injunctive and Equitable Relief. Under the common law, and pursuant to the inherent equitable powers of the Court, the U.S. District Court is

empowered to prevent and restrain the RJR DEFENDANTS’ and their coconspirators’ moneylaundering activities, enter prohibitory and mandatory injunctions, and impose other equitable relief, to provide full relief to Plaintiffs and to prevent continuing harm to the Plaintiffs’ interests. In addition, the federal courts are empowered under 28 U.S.C. § 1651(a) to “issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.” Consistent with these powers, THE EUROPEAN COMMUNITY and the MEMBER STATES seek an order that: (i) enjoins the RJR DEFENDANTS and their respective agents, servants, officers, directors, employees, and all persons acting in concert with them from laundering the proceeds of criminal activities through the sale of cigarettes or otherwise engaging in conduct that violates any common law, statutory or equitable standard; (ii) compels each of the RJR DEFENDANTS that is found to have violated any common law, statutory, or equitable standard to disgorge all proceeds derived from any such violation and to make restitution to Plaintiffs; (iii) enjoins the RJR DEFENDANTS and their respective agents, servants, officers, directors, employees, and all persons acting in concert with them from selling cigarettes without proper documentation, shipping records, markings, and similar indicia of compliance with law that would allow the proper tracking of the cigarettes and the

funds with which they were purchased so that they cannot be sold illegally; (iv) enjoins the RJR DEFENDANTS and their respective agents, servants, officers, directors, employees, and all persons acting in concert with them from selling cigarettes to any distributor or any other person who cannot fully and accurately account for where the cigarettes will ultimately be sold; (v) enjoins the RJR DEFENDANTS and their respective agents, servants, officers, directors, employees, and all persons acting in concert with them from engaging in any practices by which distributors, shippers, or wholesalers can pay for the cigarettes in question into offshore

corporations, offshore bank accounts, or other locations that limit the ability of government officials to track the sale of cigarettes or the payment for said cigarettes; (vi) orders the RJR DEFENDANTS to create and utilize adequate protocols by which all cigarettes manufactured by the RJR DEFENDANTS and all payments made for such cigarettes into THE EUROPEAN COMMUNITY can be adequately tracked and monitored by governmental officials of THE EUROPEAN COMMUNITY and the MEMBER STATES; (vii) orders the RJR DEFENDANTS to take all reasonable and necessary steps to terminate ongoing money laundering and prevent future money laundering, including the addition of any necessary labeling, tracking devices, or other means that would allow the RJR DEFENDANTS and/or THE EUROPEAN COMMUNITY and the MEMBER STATES to track and monitor the movement of cigarettes into and within THE EUROPEAN COMMUNITY; (viii) orders the RJR DEFENDANTS to disclose all knowledge within their possession concerning the names, locations, activities, and procedures of their non-legitimate customers; (ix) orders the RJR DEFENDANTS to implement "know your customer" protocols and rules for the acceptance of payments for their products that make it difficult or impossible for criminals to launder criminal proceeds through the purchase of their products; (x) orders the imposition of a constructive trust and equitable lien upon the RJR DEFENDANTS' ill-gotten gains, including without limitation those profits and proceeds derived from the money-laundering scheme, and compels the RJR DEFENDANTS to disgorge to Plaintiffs all ill-gotten gains derived from the money-laundering scheme; (xi) orders the imposition of a constructive trust and equitable lien upon all monies laundered by the RJR DEFENDANTS as a part of the money-laundering scheme and compels the RJR DEFENDANTS to disgorge to Plaintiffs an amount equal to the total amount of monies laundered through the aforesaid scheme; (xii) orders divestiture of all interests held by the RJR

DEFENDANTS, directly or indirectly, in the enterprises involved in the money-laundering activities; (xiii) orders the RJR DEFENDANTS to adopt, monitor and enforce appropriate compliance programs to deter and remedy money-laundering activities involving their products.

For purposes of this complaint, all of the foregoing injunctive and equitable remedies, and those injunctive and equitable remedies that may hereafter be sought by Plaintiffs or ordered by the Court on Plaintiffs' common law claims, shall be referred to herein as "Common Law Injunctive and Equitable Relief." COUNT I MEMBER STATES (AS TO ALL RJR DEFENDANTS) (RICO, 18 U.S.C. § 1962(a)) 174. The MEMBER STATES

restate and reallege paragraphs one (1) through one hundred seventy-three (173) and further allege: 175. The RJR DEFENDANTS, along with their coconspirators in the moneylaundering schemes, including associated distributors, shippers, currency dealers, wholesalers, money brokers, and other participants in the schemes identified above, were, at relevant times, an association-in-fact of individuals and corporations engaged in, and the activities of which affected, interstate and foreign commerce, and thus constituted an “enterprise” within the meaning of 18 U.S.C. § 1961(4) (the “RJR Money-Laundering Enterprise”). These persons and entities were and are associated in fact for the purpose, among others, of illegally laundering criminal proceeds of criminal activity to the economic detriment of Plaintiffs. The RJR Money- Laundering Enterprise is an ongoing organization whose constituent elements function as a

continuing unit for the common purpose of maximizing the sale of tobacco products through illegal means and carrying out other elements of the RJR DEFENDANTS’ scheme. The RJR Money-Laundering Enterprise has an ascertainable structure and purpose beyond the scope of the RJR DEFENDANTS’ predicate acts and the conspiracy to commit such acts. The Enterprise has engaged in and its activities have affected interstate and foreign commerce. The Enterprise continues through the concerted activities of the RJR DEFENDANTS to disguise the nature of the wrongdoing, to conceal the proceeds thereof, and to conceal the RJR DEFENDANTS’ participation in the Enterprise in order to avoid and/or minimize their exposure to criminal and civil penalties and damages. The role of each DEFENDANT in the RJR Money-Laundering Enterprise has been set forth above.

176. In connection with the fraudulent schemes set forth above, and to further their illegal aims, the RJR DEFENDANTS have engaged in numerous acts of “racketeering activity,” and each of the RJR DEFENDANTS has aided and abetted each other of the RJR DEFENDANTS and other coconspirators in committing those acts of “racketeering activity” within the meaning of RICO. 18 U.S.C. §§ 1961, et seq.; 18 U.S.C. § 2. The RJR DEFENDANTS have committed multiple predicate acts of racketeering including, but not limited to: (a.) Money Laundering. (18 U.S.C. §§ 1956(a)(1), 1961(1)(B)). Knowing that the property involved in certain financial transactions represented the proceeds of some form of unlawful activity, the RJR DEFENDANTS conducted or attempted to conduct financial transactions in interstate and foreign commerce involving the proceeds of specified unlawful activity with the intent to promote the carrying on of specified unlawful activity; or did so knowing that the transactions were designed in whole or in part to conceal or disguise the nature,

the location, the source of ownership, or the control of the proceeds of specified unlawful activity, or did so knowing that the transactions were designed in whole or in part to avoid a transaction reporting requirement under state or federal law. The RJR DEFENDANTS knew that the funds they received in exchange for cigarettes represented the proceeds of specified unlawful activity, including without limitation narcotics trafficking, wire fraud, mail fraud, and violations of the Travel Act. The RJR DEFENDANTS also knew that such transactions constituted offenses against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled

substance. The RJR DEFENDANTS knowingly conducted and attempted to conduct such financial transactions with the intent to promote the carrying on of such unlawful activity. In addition, the RJR DEFENDANTS knowingly conducted and attempted to conduct such financial transactions with the intent to conceal or disguise the nature (proceeds of racketeering activity), the location, the source (drug traffickers, money launderers), the ownership, or the control of the proceeds of specified unlawful activity. Finally, the RJR DEFENDANTS knowingly conducted and attempted to conduct such financial transactions to avoid transaction-reporting requirements under state or federal law, including without limitation currency and monetary instrument reports.

(b.) International Money Laundering. (18 U.S.C. §§ 1956(a)(2), 1961(1)(B)). The RJR DEFENDANTS transported, transmitted, and/or transferred monetary instruments or funds to a place in the United States from or through a place outside the United States with the intent to promote the carrying on of specified unlawful activity, or did so knowing that the monetary instruments or funds involved in the transportation, transmission, or transfer represented the proceeds some form of unlawful activity and knowing that such transportation, transmission, or transfer was designed in whole or in part to conceal or disguise

the nature, the location, the source, the ownership, or the control of the proceeds of a specified unlawful activity, or to avoid a transaction reporting requirement under state or federal law. By such conduct, the RJR DEFENDANTS engaged in financial transactions within the meaning of 18 U.S.C. § 1956(c)(4). Among other things, the RJR DEFENDANTS knew that money orders and funds sent from South America, the Caribbean, and Europe to the United States to pay for cigarettes purchased in bulk represented the proceeds of specified unlawful activity, including without limitation wire fraud, mail fraud, and violations of the Travel Act. The RJR DEFENDANTS also knew that such specified unlawful activity was an offense against a foreign nation involving the manufacture, importation, sale or distribution of a controlled substance. The RJR DEFENDANTS also aided and abetted violations of 18 U.S.C. § 1956(a)(1) and § 1956(a)(2).

(c.) Conspiracy to Engage in Money Laundering. 18 U.S.C. §§ 1956(h), 1961(1)). The RJR DEFENDANTS conspired to commit offenses defined in 18 U.S.C. § 1956 – including § 1956(a)(1) and § 1956(a)(2). The RJR DEFENDANTS, by their words and actions, agreed to accept currency, monetary instruments, and funds with the knowledge that the currency, monetary instruments, and funds represented the proceeds of specified unlawful activity conducted by themselves and their coconspirators. The RJR DEFENDANTS adopted the common purpose of the conspiracy and participated in its consummation. The goal of the money-laundering conspiracy was to deprive Plaintiffs of money and property, while assuring that the profits derived from cigarette sales were repatriated to the benefit of the RJR DEFENDANTS in a clandestine manner to avoid detection and prosecution.

(d.) Money Laundering (18 U.S.C. §§ 1957, 1961(1)). DEFENDANTS knowingly engaged or attempted to engage in monetary transactions in the United States, in

criminally derived property having a value greater than \$10,000 and derived from specified unlawful activity. 18 U.S.C. § 1957(f)(3) and § 1956(c)(7). DEFENDANTS engaged in monetary transactions, including deposits, withdrawals, transfers, or exchanges, in or affecting interstate or foreign commerce, involving funds or monetary instruments by, through, or to financial institutions. DEFENDANTS knew that the funds or instruments received in exchange for their cigarettes represented the proceeds of specified unlawful activity, including but not limited to, wire fraud, mail fraud, and violations of the Travel Act. The RJR DEFENDANTS knew that such specified unlawful activity included offenses against foreign nations involving the manufacture, importation, sale, or distribution of controlled substances.

(e.) Money Laundering of Proceeds of Offenses against Foreign Nations.

(18 U.S.C. § 1956(c)(7)(B)(vi); 18 U.S.C. § 1961(1)(B)). The RJR DEFENDANTS, knowing that the property involved in a financial transaction represented the proceeds of some form of unlawful activity, conducted or attempted to conduct financial transactions in interstate and foreign commerce involving the proceeds of specified unlawful activity with the intent to promote the carrying on of specified unlawful activity; or did so knowing that the transactions were designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or did so knowing that the transactions were designed in whole or in part to avoid transaction reporting requirements under state or federal law. The RJR DEFENDANTS knew that the proceeds of transactions with narcotics traffickers, participants in organized crime, money launderers, and others engaged in criminal conduct represented the proceeds of specified unlawful activity, including without limitation offenses with respect to which the United States would be obligated by a multilateral treaty either to extradite the alleged offender or to submit the case for prosecution, if the offender

were found within the territory of the United States. Specifically, the RJR DEFENDANTS laundered the proceeds of offenses that are subject to multilateral treaties, including without limitation the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), and the International Convention for the Suppression of the Financing of Terrorism (2001), and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Adopted November 21, 1997, entered into force in the United States: February 15, 1999).

(i.) The RJR DEFENDANTS have laundered the proceeds of various offenses covered by the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, including, for example: (i) the conversion or transfer of property, knowing that such property is derived from narcotics trafficking, or from an act of participation in such offense or offenses, for the purpose of concealing or disguising the illicit origin of the property or of assisting persons involved in the commission of such an offense or offenses to evade the legal consequences of their actions; (ii) the financing of narcotics trafficking; (iii) the concealment or disguise of the true nature, source, location,

disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from narcotics trafficking or from an act of participation in such an offense or offenses; (iv) the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from narcotics trafficking or from an act of participation in such offense or offenses; and (v) participation in, association or conspiracy to commit, attempts to commit, and aiding, abetting, facilitating and counseling the commission of acts of, narcotics trafficking.

(ii.) The DEFENDANTS have laundered the proceeds of various offenses covered by the International Convention for the Suppression of the Financing of

Terrorism (2001), including, for example, providing material support and resources to persons and entities engaged in terrorist activities, and providing assets, including products and services, to those persons and entities, acting with knowledge that such persons and entities, including without limitation the PKK and the Iraqi regime, were engaged in terrorism or the sponsorship of terrorist activities. Such persons and entities that engage in terrorist activity are so tainted by their criminal conduct that providing any assets, material support or resources to any of them facilitates such terrorist activities.

(iii.) The DEFENDANTS have laundered, and conspired to launder, the proceeds of various offenses covered by the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Adopted November 21, 1997, entered into force in the United States: February 15, 1999), including for example the proceeds of transactions obtained or continued as a consequence of payments, direct and indirect, to foreign public officials. As alleged above, DEFENDANTS made payments or provided things of value to foreign public officials, retained or obtained business as a result of such payments, and laundered the proceeds of those transactions, often through venues known for bank secrecy.

(f.) Money Laundering of Proceeds of Terrorism. (18 U.S.C. § 1956(c)(7)(D); 18 U.S.C. § 1961(1)(B); 18 U.S.C. § 1961(1)(G)). The RJR DEFENDANTS, knowing that the property involved in a financial transaction represented the proceeds of some form of unlawful activity, conducted or attempted to conduct financial transactions in interstate and foreign commerce involving the proceeds of specified unlawful activity with the intent to promote the carrying on of specified unlawful activity; or did so knowing that the transaction was designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or did so knowing that

the transaction was designed in whole or in part to avoid a transaction reporting requirement under state or federal law. DEFENDANTS knew that the proceeds of transactions with persons and entities engaged in terrorism represented the proceeds of specified unlawful activity, including but not limited to acts of terrorism.

(g.) Money Laundering of Proceeds of Offenses against a Foreign Nation Involving Narcotics Trafficking. (18 U.S.C. § 1956(c)(7)(B); 18 U.S.C. § 1961(1)(B)).

Knowing that the property involved in a financial transaction represented the proceeds of some form of unlawful activity, the RJR DEFENDANTS conducted or attempted to conduct financial transactions in interstate and foreign commerce involving the proceeds of specified unlawful activity with the intent to promote the carrying on of specified unlawful activity; or did so knowing that the transaction was designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or did so knowing that the transaction was designed in whole or in part to avoid transaction reporting requirements under state or federal law. The RJR DEFENDANTS knew that the proceeds of transactions with narcotics traffickers, money launderers and others engaged in criminal activity represented the proceeds of specified unlawful activity, including an offense against a foreign nation involving the manufacture, importation, sale or distribution of a controlled substance.

(h.) Money Laundering of Proceeds of Offenses against a Foreign Nation Involving a Scheme to Defraud Foreign Banks. (18 U.S.C. § 1956(c)(7)(B)(iii); 18 U.S.C. § 1961(1)(B)). The DEFENDANTS, knowing that the property involved in a financial transaction represented the proceeds of some form of unlawful activity, conducted or attempted to conduct financial transactions in interstate and foreign commerce involving the proceeds of specified

unlawful activity with the intent to promote the carrying on of specified unlawful activity; or, knowing that the transaction was designed in whole or in part to conceal or disguise the nature, the location, the source of ownership, or the control of the proceeds of specified unlawful activity, or, knowing that the transaction was designed in whole or in part to avoid a transaction reporting requirement under state or federal law. DEFENDANTS engaged in and facilitated financial transactions and acts of money laundering that deprived foreign banks, including those belonging to Plaintiffs, of money and property that would have been paid to such bank through the lawful transaction of business. DEFENDANTS knowingly engaged in financial transactions designed to launder the proceeds of fraud, or a scheme or attempt to defraud, foreign banks belonging to Plaintiffs.

(i.) Money Laundering of Proceeds of Violations of Foreign Corrupt Practices Act. (18 U.S.C. § 1956(c)(7)(D); 18 U.S.C. § 1961(1)(B)). In general, the Foreign Corrupt Practices Act (FCPA) makes it unlawful for DEFENDANTS, or any officer, director, employee, or agent thereof, to pay or promise to pay money or any thing of value to any foreign official for purposes of influencing any act or decision of the foreign official in his or her official capacity, inducing such official to do or omit to do any act in violation of the lawful duty of such official, or securing any improper advantage, or inducing such foreign official to use his or her influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist DEFENDANTS in obtaining or retaining business for or with, or directing business to, any person. "Foreign official" means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or of a public

international organization, or any person acting in an official capacity for or on behalf of such entities.

The DEFENDANTS, acting through intermediaries, provided money or things of value to foreign officials to obstruct oversight of DEFENDANTS conduct, preclude discovery of their involvement in money laundering and other criminality, and thereby permit their business to continue. The DEFENDANTS, knowing that the property involved in a financial transaction represented the proceeds of some form of unlawful activity, conducted or attempted to conduct financial transactions in interstate and foreign commerce involving the proceeds of specified unlawful activity with the intent to promote the carrying on of specified unlawful activity; or, knowing that the transaction was designed in whole or in part to conceal or disguise the nature, the location, the source of ownership, or the control of the proceeds of specified unlawful activity, or, knowing that the transaction was designed in whole or in part to avoid a transaction reporting requirement under state or federal law.

(j.) Providing Material Support or Resources to Designated Foreign Terrorist Organizations. (18 U.S.C. § 2339(B) and 18 U.S.C. § 1961(1)(G)). Beginning in or about 1990, and continuing until 2002, in the United States and elsewhere, the RJR DEFENDANTS, Audeh Trading and Consultancy Service and IBCS, with each other and with others known and unknown, did knowingly provide, conspire to provide, and aid and abet others in providing, material support or resources to the PKK, a designated FTO, in violation of 18 U.S.C. § 2339(B). The object of the conspiracy was to provide funds, goods, services, and other assets to the PKK, which caused the DEFENDANTS' cigarette shipments to be sent into Iraq and financed the PKK's terrorist activities and operations.

(k.) Wire fraud and mail fraud. (18 U.S.C. §§ 1341, 1343, 1961(1)(B)).

The RJR DEFENDANTS devised a scheme or artifice to defraud and/or to obtain money by means of false pretenses, representations, or promises, and used the mails and wires for the

purpose of executing the scheme, and acted with a specific intent to defraud by devising, participating in, and/or abetting the scheme. The wire and mail communications were made during the course of the conspiracy that covered at least 1991 to 2002. Hundreds of telephone conversations and faxes were made to further the fraudulent scheme on virtually a daily basis during the course of the conspiracy, including without limitation those identified in paragraphs 47, 68, 73, 83, 94, 106, and others. These telephone conversations, mailings, and wire transfer of funds furthered the scheme by expediting the secret payments to the RJR DEFENDANTS of funds that constituted the proceeds of criminal activity and were part of a clandestine system for the remittance of such proceeds to the RJR DEFENDANTS. The RJR DEFENDANTS, acting through their employees, agents, and coconspirators, made or caused to be made such telephone calls, mailings, and wire transfers of funds to further the scheme. The RJR DEFENDANTS knew that their coconspirators, in the course of carrying out the RJR DEFENDANTS' directions and orders, would use or cause to be used the interstate and international wires

and mails. The motive for committing fraud is plain: the acquisition of criminals as additional customers by laundering their criminal proceeds meant increased profits and market share for the RJR DEFENDANTS.

(1.) Violation of the Travel Act. (18 U.S.C. §§ 1952, 1961(1)(B)). The RJR DEFENDANTS traveled in interstate or foreign commerce, and used facilities in interstate and foreign commerce, including the mail, with intent to distribute the proceeds of unlawful activity, and to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of unlawful activity, and thereafter performed or attempted to perform unlawful activity. The RJR DEFENDANTS knew that the funds provided to them represented the proceeds of unlawful activity, including trafficking in narcotics and controlled

substances, and knew that, by accepting such payments, they aided the efforts of the drug traffickers to launder their ill-gotten gains. The RJR DEFENDANTS and their representatives and coconspirators traveled across national borders and otherwise used the facilities of foreign commerce to distribute the proceeds of unlawful activity to the benefit of the RJR DEFENDANTS. By this conduct, the RJR DEFENDANTS promoted, managed, established, and facilitated such unlawful activity.

177. The acts described above form a “pattern” of racketeering activity within 18 U.S.C. § 1961(5). The DEFENDANTS and others with whom they have been associated have been related in their common objectives of maximizing global cigarette sales and utilizing money laundering to achieve this end. The DEFENDANTS’ predicate acts have had the same or similar purposes, results, participants, victims, and methods of commission, and occurred over at least a ten-year period. The predicate acts have been consistently repeated and are capable of further repetition.

178. The DEFENDANTS’ pattern of racketeering activities dates from at least January 1, 1985, through the present and threatens to continue in the future.

179. The RJR DEFENDANTS used or invested, directly or indirectly, racketeering income, or a part thereof, or the proceeds of such income, to acquire an interest in, establish, and operate, the RJR Money-Laundering Enterprise, which is and was engaged in, or the activities of which affect and have affected, interstate or foreign commerce, in violation of 18 U.S.C. § 1962(a). The RJR DEFENDANTS were principals in the racketeering scheme. The MEMBER STATES suffered multiple injuries to their economic interests as a result of this use and investment of racketeering income.

180. Specifically, the RJR DEFENDANTS received the income and proceeds of a pattern of racketeering activity in which they participated as principals, including an international money-laundering scheme, acts of wire fraud and mail fraud, and violations of the Travel Act. Upon their receipt of such ill-gotten gains by wire transfers from money launderers and/or their associates, the RJR DEFENDANTS used and invested such income and proceeds, or a portion thereof, to acquire an interest in, establish, and operate the RJR Money-Laundering Enterprise, which was and is engaged in interstate and foreign

commerce. In particular, the RJR DEFENDANTS used the proceeds of the scheme: (a) to operate the RJR Money-Laundering Enterprise; (b) to replenish the supply of cigarettes for ultimate sale to known money launderers; (c) to acquire, purchase, and subsidize facilities necessary to the RJR Money-Laundering Enterprise, including manufacturing, sales, and distribution operations (e.g., the Puerto Rico plant), secret offices and offshore companies and bank accounts (e.g., Swiss companies and bank accounts); (d) to compensate employees and agents of the RJR DEFENDANTS engaged in the money-laundering activities; (e) to pay expenses incurred in connection with money-laundering activities such as telephone bills incurred in the wire fraud scheme and travel costs incurred by such employees; and (f) to establish a money-laundering scheme, infrastructure, and network. In sum, the RJR DEFENDANTS did not reinvest the proceeds of racketeering activity in their general business operations, but instead used and invested such proceeds to establish the infrastructure of, acquire an interest in, and operate the RJR Money-Laundering Enterprise, and it was this use and investment that harmed the MEMBER STATES. The use and investment of the proceeds of racketeering activity occurred in several ways, including but not limited to the following:

(a.) The proceeds from the money-laundering enterprise finance the sales and marketing operations that promote the increase of sales in succeeding years.

(b.) The increased market volume and premium prices charged to moneylaundering customers are utilized to offset the additional expenses incurred by the DEFENDANTS when they pay for the additional shipping and handling charges associated with the clandestine movement of the cigarettes through the circuitous routes established by the DEFENDANTS.

181. The MEMBER STATES were injured in their business and property by reason of the RJR DEFENDANTS' use and investment of racketeering income to acquire, establish, and operate the RJR Money-Laundering Enterprise. Absent this use and investment of racketeering income, the criminals who launder their criminal proceeds through the purchase of cigarettes would find their crimes less profitable and more difficult to commit, and the economic injury to the MEMBER STATES would have been avoided in whole or in part.

182. As a direct and proximate result of the violations set forth above, the Plaintiffs, the MEMBER STATES, have been injured in their business and property as set forth more fully above in paragraphs one hundred seventy (170) through one hundred seventy-three (173). The DEFENDANTS' violations of 18 U.S.C. § 1962(a) caused these losses. Under the provisions of 18 U.S.C. § 1964(c), the MEMBER STATES are entitled to bring this action and recover herein treble damages, the cost of bringing the suit, pre-judgment interest, and reasonable attorneys' fees.

COUNT II MEMBER STATES

(AS TO ALL RJR DEFENDANTS) (RICO, 18 U.S.C. § 1962(b))

183. The MEMBER STATES restate and reallege paragraphs one (1) through one hundred eighty-two (182) and further allege:

184. The RJR DEFENDANTS acquired or maintained, directly or indirectly, through a pattern of racketeering activity, an interest in and control of the RJR Money- Laundering Enterprise, which was and is engaged in, or the activities of which affect and have affected, interstate or foreign commerce in violation of 18 U.S.C. § 1962(b). The Plaintiffs, the MEMBER STATES, have been injured by the DEFENDANTS' acquisition and maintenance of an interest in and control of the enterprise through a pattern of racketeering activity.

185. The DEFENDANTS, through a pattern of racketeering activity, acquired or maintained, directly or indirectly, an interest in and control of the RJR Money- Laundering Enterprise that engaged in and the activities of which affect interstate and foreign commerce.

Specifically, the RJR DEFENDANTS maintained control of the RJR Money-Laundering Enterprise by means of racketeering activities, including, for example: (a) interstate and international wire communications in violation of 18 U.S.C., § 1343 (orders and instructions for payment were placed telephonically and RJR had total control over the enterprise and the payment for their product); (b) money laundering in violation of 18 U.S.C., §§ 1956 and 1957 (RJR controlled and concealed the flow of the proceeds of the cigarette sales – a key aim of the scheme – through money laundering); and (c) violations of the Travel Act, 18 U.S.C., § 1952 (cross-border travel and transactions to facilitate money laundering and other illicit activities).

Through this pattern of racketeering activities, which also included transmitting false statements to government authorities, the RJR DEFENDANTS were able to acquire and maintain an interest in and control of the RJR Money-Laundering Enterprise. This interest and control furthered, concealed, and protected the operations of the money-laundering enterprise, and thereby permitted the RJR Money-Laundering Enterprise to flourish without detection.

186. As a direct and proximate result of the DEFENDANTS' acquisition and maintenance of an interest in and control of the RJR Money-Laundering Enterprise, the Plaintiffs, the MEMBER STATES, have suffered the loss of money and property as set forth more fully above in paragraphs one hundred seventy (170) through one hundred seventy-three (173). The DEFENDANTS' violations of 18 U.S.C. § 1962(b) caused these losses. Under the provisions of 18 U.S.C. § 1964(c), the MEMBER STATES are entitled to bring this action and recover herein treble damages, the cost of bringing the suit, pre-judgment interest, and reasonable attorneys' fees.

COUNT III MEMBER STATES

(AS TO ALL RJR DEFENDANTS) (RICO, 18 U.S.C. § 1962(c)) 187. The MEMBER STATES restate and reallege paragraphs one (1) through one hundred eighty-six (186) and further allege.

188. The RJR DEFENDANTS, through the commission of two or more acts constituting a pattern of racketeering activity, directly or indirectly participated in the operation or management of the RJR Money-Laundering Enterprise, the activities of which affect interstate or foreign commerce.

189. At all relevant times, the RJR DEFENDANTS participated in the operation or management of an “enterprise,” within the meaning of 18 U.S.C. § 1961(4). The RJR DEFENDANTS, operating together and individually, directed and controlled the RJR Money- Laundering Enterprise. The RJR DEFENDANTS operated, managed, and exercised control over the money-laundering enterprise by, among other things: (a) establishing a money-laundering scheme in which the coconspirators facilitated the money-laundering scheme and concealed and remitted to the RJR DEFENDANTS the proceeds of the money-laundering scheme; (b) compelling their customers to sell cigarettes at a price set by the DEFENDANTS; and (c) investing and using the proceeds of the money-laundering scheme in the enterprise.

190. As a direct and proximate result of the violations set forth above, the Plaintiffs, the MEMBER STATES, have been injured in their business and property as set forth more fully above in paragraphs one hundred seventy (170) through one hundred seventy-three (173). The DEFENDANTS’ violations of 18 U.S.C. § 1962(c) caused these losses. Under the provisions of 18 U.S.C. § 1964(c), the MEMBER STATES are entitled to bring this action and recover herein treble damages, the cost of bringing the suit, pre-judgment interest, and reasonable attorneys’ fees.

COUNT IV MEMBER STATES

(AS TO ALL RJR DEFENDANTS) (RICO, 18 U.S.C. § 1962(d))

191. The MEMBER STATES restate and reallege paragraphs one (1) through one hundred ninety (190) and further allege: 192. The RJR DEFENDANTS entered into an agreement with each other and with distributors, shippers, currency dealers, and wholesalers to join in the conspiracy to violate 18 U.S.C. §§ 1962(a), 1962(b), and 1962(c). Each DEFENDANT entered into an agreement to join the conspiracy, and took acts in the furtherance of the conspiracy and knowingly participated in the conspiracy. The purpose of the conspiracy was to acquire and service new customers by laundering the proceeds of their criminal activity to the economic detriment of Plaintiffs and to the economic benefit of the RJR DEFENDANTS. The conspirators carried out the scheme and each conspirator was put on notice of the general nature of the conspiracy, that the conspiracy extended beyond the individual role of any single member, and that the conspiratorial venture functioned as a continuing unit for a common purpose. The RJR DEFENDANTS adopted the goal of furthering and facilitating the criminal endeavor.

Their stake in the money-laundering venture was in making profits and increasing market share through their informed and interested cooperation with their criminal customers, and their active assistance, stimulation, and instigation of the money-laundering activities.

193. The RJR DEFENDANTS, together with each member of the conspiracy, agreed and conspired to violate: (1) 18 U.S.C. § 1962(a) by using, or causing the use of, income they derived from the above-described pattern of racketeering activities in the acquisition,

establishment, and/or operation of the enterprise, the activities of which affect interstate or foreign commerce; (2) 18 U.S.C. § 1962(b) by acquiring or maintaining, or causing the acquisition or maintenance of, through a pattern of racketeering activity, an interest or control in the enterprise, the activities of which affect interstate or foreign commerce; (3) 18 U.S.C. § 1962(c) by participating, directly and indirectly, in the conduct of the affairs of the enterprise through a pattern of racketeering activity, including an agreement that the conspirators, or one of them, would commit or cause the commission of two or more racketeering acts constituting such a pattern; and (4) violating the USA Patriot Act.

194. The RJR DEFENDANTS participated in and cooperated with each other and with their coconspirators in the aforementioned conspiracy that enabled each cigarette manufacturer and distributor to enhance its market share, suppress its competition, and promote sale of its products.

195. As a result of the conspiracy, the RJR DEFENDANTS and their coconspirators were able to facilitate the laundering of large volumes of money that constituted the proceeds of criminal activity.

196. The membership of the conspiracy in question included the RJR DEFENDANTS and tobacco distributors, the shippers, the wholesalers, currency brokers, and the RJR DEFENDANTS' subsidiary corporations; who act in concert to produce the cigarettes, mislabel or fail to properly label the cigarettes, sell the cigarettes, and arrange for payment in a way that is undetectable by governmental authorities, with said payment ultimately being returned to the DEFENDANTS in the United States. As coconspirators, the RJR DEFENDANTS are liable for all of the actions committed by all of the coconspirators within the conspiracy and are liable for all of the damages sustained by the MEMBER STATES that were

caused by any members of the conspiracy, regardless of whether the RJR DEFENDANTS were themselves directly involved in a particular aspect of the enterprise.

197. As a direct and proximate result of the violations set forth above, the Plaintiffs, the MEMBER STATES, have been injured in their business and property as set forth more fully above in paragraphs one hundred seventy (170) through one hundred seventy-three (173). The DEFENDANTS' violations of 18 U.S.C. § 1962(d) caused these losses. Under the provisions of 18 U.S.C. § 1964(c), the MEMBER STATES are entitled to bring this

action and recover herein treble damages, the cost of bringing the suit, pre-judgment interest, and reasonable attorneys' fees.

COUNT V MEMBER STATES

(AS TO ALL RJR DEFENDANTS) (RICO, 18 U.S.C. §§ 1964(a), 1964(c), 28 U.S.C. § 1651(a))

198. The MEMBER STATES restate and reallege paragraphs one (1) through one hundred ninety-seven (197) and further allege: 199. The United States District Court is empowered to prevent and restrain violations of 18 U.S.C. § 1962 by issuing appropriate orders, including, but not limited to: ordering any person to divest himself or herself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor in which the enterprise engaged, the activities of which affect interstate or foreign commerce; or

ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons. 18 U.S.C. § 1964(a).

200. The RJR DEFENDANTS currently are actively engaged in the activities set forth within this complaint that promote and support the money laundering that is the subject matter of this complaint.

201. The DEFENDANTS intend to continue said activities and to interfere with investigations by governmental officials into the DEFENDANTS and their coconspirators' money-laundering activities.

202. The DEFENDANTS, by their conduct of selling cigarettes to money launderers, creating false and misleading documents, improperly labeling shipments of cigarettes, and setting forth mechanisms of payment by which criminals may pay for the cigarettes without being detected by government investigations, all continue to damage the MEMBER STATES.

203. As a result of the DEFENDANTS' conduct in violation of 18 U.S.C. §§ 1962(a), 1962(b), 1962(c), and 1962(d), the MEMBER STATES have been and continue to be irreparably injured as is alleged more fully above.

204. As a result of the nature of the money-laundering activities, it would be functionally impossible for the MEMBER STATES to put a complete halt to said moneylaundering activities as long as the DEFENDANTS continue to conduct these activities. In addition, the MEMBER STATES continue to suffer injury to business and property to an extraordinary degree.

205. Money damages will not provide a full and complete remedy for DEFENDANTS' unlawful conduct. There is no adequate remedy at law that will protect the

MEMBER STATES in the future from these money-laundering activities if the DEFENDANTS do not cease their involvement in and support of money-laundering activities. Pursuant to 18 U.S.C. §§ 1964(a), 1964(c), as well as 28 U.S.C. § 1651(a), the MEMBER STATES demand full RICO Injunctive and Equitable Relief.

COUNT VI EUROPEAN COMMUNITY AND MEMBER STATES

(AS TO ALL RJR DEFENDANTS) (COMMON LAW FRAUD)

206. Plaintiffs restate and reallege paragraphs one (1) through two hundred five (205) and further allege: 207. The RJR DEFENDANTS and their coconspirators intentionally falsified documents, falsified shipping records, and generated false and misleading billing records concerning the payment for cigarettes so as to mislead the Plaintiffs, THE EUROPEAN COMMUNITY and the MEMBER STATES, as to the purchasers of and source of funds for payment for their cigarettes. The RJR DEFENDANTS and their coconspirators made these false and material statements and representations and failed to disclose material information in such documents and records with intent to defraud the Plaintiffs. The DEFENDANTS made these material misrepresentations and omissions with the knowledge and intention that the Plaintiffs, THE EUROPEAN COMMUNITY and the MEMBER STATES, would reasonably rely on said documents. The RJR DEFENDANTS entered into an understanding or agreement, express or tacit, with their distributors, customers, agents, consultants, and other coconspirators, to participate in a common scheme, plan, or design to commit the aforesaid tortious acts, and

thereby launder criminal proceeds to the detriment of THE EUROPEAN COMMUNITY and the MEMBER STATES. In pursuance of the agreement, RJR and its distributors, customers, agents, consultants, and other coconspirators acted tortiously by, among other things, committing the aforesaid acts constituting fraud, thereby causing harm to Plaintiffs. The RJR DEFENDANTS, through agreement and joint action with their coconspirators, acted tortiously, recklessly, and unlawfully to the detriment of Plaintiffs. By means of the aforesaid concerted action, the RJR DEFENDANTS and their coconspirators are jointly and severally liable for the torts and other wrongful conduct alleged herein.

208. Plaintiffs reasonably relied upon the DEFENDANTS' misrepresentations, and incurred damage as a result of such reliance. Specific examples of the process by which these activities occurred are set forth above.

209. The Plaintiffs, THE EUROPEAN COMMUNITY and the MEMBER STATES, reasonably relied upon falsified or misleading documents produced or procured by the DEFENDANTS, and were thereby misled in the course of performing their duty to fight against money laundering and related criminal activity.

210. Furthermore, the RJR DEFENDANTS knowingly and intentionally generated false, misleading, and material information, and intentionally concealed other material

information, concerning their role in money laundering in connection with the sale of their products.

211. The Plaintiffs, THE EUROPEAN COMMUNITY and the MEMBER STATES, reasonably relied upon data and information provided to them by the DEFENDANTS and/or their coconspirators and agents in acting or refraining from acting with respect to moneylaundering activities.

212. The RJR DEFENDANTS, in falsifying documents to expedite money laundering, in providing misleading information, and in concealing material and true information concerning their money-laundering activities, acted in willful, wanton, gross, and callous disregard for the rights of the Plaintiffs, THE EUROPEAN COMMUNITY and the MEMBER STATES. The aforesaid actions were taken knowingly for the purpose of supporting the activities of the DEFENDANTS' coconspirators and with the intent of increasing the profits and sales of the DEFENDANTS and harming THE EUROPEAN COMMUNITY and the MEMBER STATES.

213. DEFENDANTS were duty-bound to disclose the material information concerning the destination of tobacco shipments and the concealed sources of funds used to purchase cigarettes. By law, no person may make false statements to the government. Having undertaken to make representations to THE EUROPEAN COMMUNITY and the MEMBER STATES, DEFENDANTS were obligated to provide full, complete, and truthful information concerning the destination of tobacco shipments and the sources of funds to purchase their products. DEFENDANTS had superior, if not exclusive, knowledge of such information, and it was not readily available to the Plaintiffs. DEFENDANTS intended and knew, or should have known, that Plaintiffs would reasonably rely, act, and refrain from acting, on the basis of false and/or incomplete information provided to Plaintiffs by DEFENDANTS, and Plaintiffs did so to their detriment. Under these circumstances, DEFENDANTS' conduct amounts to fraudulent misrepresentation and fraudulent concealment, and an effective conversion of Plaintiffs' money and property.

214. As a direct and proximate result of the RJR DEFENDANTS' fraud and the Plaintiffs' reliance upon said fraud, the Plaintiffs have suffered economic damages as are set

forth more fully above in paragraphs one hundred seventy (170) through one hundred seventythree (173). The Plaintiffs demand judgment for damages, both compensatory and punitive, as well as full Common Law Injunctive and Equitable Relief.

COUNT VII EUROPEAN COMMUNITY AND MEMBER STATES

(AS TO ALL RJR DEFENDANTS) (PUBLIC NUISANCE)

215. Plaintiffs restate and reallege paragraphs one (1) through two hundred fourteen (214) and further allege: 216. Plaintiffs are governmental authorities.

217. Money laundering and related criminal activities are a violation of law and a public nuisance.

218. The money-laundering activities in the United States and THE EUROPEAN COMMUNITY of the RJR DEFENDANTS: (a) have substantially and unreasonably interfered with, offended, injured and endangered, and continue to interfere with, offend, injure and endanger, the public health, morals, safety, convenience, and well-being of the general public, the financial infrastructure of THE EUROPEAN COMMUNITY, and the operation of the market for tobacco products in THE EUROPEAN COMMUNITY and the MEMBER STATES and have interfered with and endangered the Customs Territory, Customs Border and free market which THE EUROPEAN COMMUNITY is bound to protect; (b) constitute conduct that is proscribed by applicable laws, administrative regulations, and directives; (c) constitute conduct of a continuing nature and/or have produced a permanent or long-lasting effect, and the

DEFENDANTS know or should know that said conduct has a significant harmful effect upon the public right.

219. The money-laundering activities of the RJR DEFENDANTS in the United States, THE EUROPEAN COMMUNITY, and the MEMBER STATES have been, and continue to be, effectuated through widespread criminal activity, including mail fraud, wire fraud, and other illegal acts.

220. The RJR DEFENDANTS facilitated the laundering of criminal proceeds by means of a variety of acts and omissions conducted in or directed from the United States, including the following: (a) The RJR DEFENDANTS laundered criminal proceeds by covertly receiving funds that they knew or should have known were the proceeds of criminal acts and took steps to conceal the source and nature of the criminal proceeds. (b) The RJR DEFENDANTS arranged a process by which cigarettes purchased by criminals could be paid for by secret payments into Swiss corporations and/or Swiss bank accounts so as to conceal revenues derived from criminal activities. (c) The DEFENDANTS filed or caused the filing with THE EUROPEAN COMMUNITY and/or the MEMBER STATES of false and fraudulent documents that misstated the value of, the intended destination of, and the source of funds for the purchase of cigarettes that were placed within customs bonded warehouses and/or free trade zones within THE EUROPEAN COMMUNITY. (d) The RJR DEFENDANTS sold large volumes of United States-made cigarettes into Iraq in violation of United States laws and to the detriment of the Plaintiffs. (e) The RJR DEFENDANTS failed to supervise the distribution of their tobacco products to assure that such products were not sold into criminal channels or paid for with illicit funds. (f) The RJR DEFENDANTS failed to act reasonably when they were put on notice of their involvement with money launderers. (g) The RJR DEFENDANTS entered into an

understanding or agreement, express or tacit, with their distributors, customers, agents, consultants, and other coconspirators, to participate in a common scheme, plan or design to commit the aforesaid tortious acts and thereby launder money to the detriment of THE

EUROPEAN COMMUNITY and the MEMBER STATES. In pursuance of the agreement, RJR and its distributors, customers, agents, consultants, and other coconspirators acted tortiously by, among other things, committing the aforesaid acts constituting public nuisance, thereby causing harm to Plaintiffs. The RJR DEFENDANTS, through joint action with their coconspirators, acted tortiously, recklessly, unlawfully, and negligently to the detriment of Plaintiffs. By means of the aforesaid concerted action, the RJR DEFENDANTS and their coconspirators are jointly and severally liable for the torts and other wrongful conduct alleged herein.

221. Through these and other intentional and negligent acts and omissions, the RJR DEFENDANTS have substantially and unreasonably offended, interfered with, and caused damage to the public in the exercise of rights common to all, in a manner such as to (a) offend public morals, (b) interfere with use by the public of a public place, (c) endanger and injure the property, life, health, safety, and comfort of a considerable number of persons; and (d) injure and interfere with the market for tobacco products in THE EUROPEAN COMMUNITY and the MEMBER STATES; and (e) injure the economic well being of the citizens of THE EUROPEAN COMMUNITY and the MEMBER STATES. The acts and omissions of the RJR DEFENDANTS constitute a public nuisance. This public nuisance, or some part of it, continues unabated to the detriment of Plaintiffs' interests and has undermined and endangered the Customs Territory, Customs Border, and free market that THE EUROPEAN COMMUNITY is bound to protect.

222. The RJR DEFENDANTS knew, or reasonably should have known, that their acts and omissions relating to money laundering created great dangers to the community, including Plaintiffs' economic and non-economic interests. The DEFENDANTS directly, or through their coconspirators, undermined THE EUROPEAN COMMUNITY'S duties and authority to regulate ports; to regulate foreign commerce; to regulate customs territories, free trade zones, and customs bonded warehouses; to regulate transportation into THE EUROPEAN COMMUNITY or within its borders; to ensure and regulate the free movement of goods within THE EUROPEAN COMMUNITY; to regulate safety and security at sea; to regulate and take action to protect against breaches of THE EUROPEAN COMMUNITY Customs Territory or THE EUROPEAN COMMUNITY Customs Border; and to regulate and set rules to combat money laundering, all harms different from those suffered by members of the general public or the Member States, and all wrongs which it is the duty and responsibility of THE EUROPEAN COMMUNITY to redress.

223. The RJR DEFENDANTS have acted maliciously, wantonly, and with a recklessness that bespeaks an improper motive and vindictiveness, and have engaged in outrageous and oppressive conduct and with a reckless or wanton disregard of safety and rights.

Their conduct amounts to a fraud on the public.

224. As a direct and proximate result of the acts and/or omissions of the RJR DEFENDANTS, which constitute a public nuisance, Plaintiffs have sustained and

continue to sustain injury as set forth more fully in paragraphs one hundred seventy (170) through one hundred seventy-three (173). THE EUROPEAN COMMUNITY and the MEMBER STATES each have the right to recover damages as set forth in paragraphs one hundred seventy (170)

through one hundred seventy-three (173) in that each has suffered damages that are unique to it and which are of a kind different from those suffered by the general public.

225. By reason of the injury to their economic and non-economic interests due to the public nuisance described in the preceding paragraphs to this complaint, Plaintiffs are entitled to an award of damages, including actual, compensatory, and punitive damages. In addition, damages do not constitute a full and adequate remedy at law, and for this reason Plaintiffs are therefore entitled to full Common Law Injunctive and Equitable Relief, including a judgment permanently enjoining DEFENDANTS from the continuation of activities constituting a public nuisance, and compelling DEFENDANTS to take steps to abate and prevent the money laundering that is the subject matter of this complaint.

COUNT VIII EUROPEAN COMMUNITY AND MEMBER STATES

(AS TO ALL RJR DEFENDANTS) (UNJUST ENRICHMENT)

226. Plaintiffs restate and reallege paragraphs one (1) through two hundred twenty-five (225) and further allege: 227. The RJR DEFENDANTS were unjustly enriched at Plaintiffs' expense. The acts and omissions of these DEFENDANTS and others have placed in the possession of these DEFENDANTS money under such circumstances that in equity and good conscience they ought not to retain it.

228. The RJR DEFENDANTS were unjustly enriched through their moneylaundering scheme. The RJR DEFENDANTS entered into an understanding or agreement,

express or tacit, with their distributors, customers, agents, consultants, and other coconspirators, to participate in a common scheme, plan or design to commit the aforesaid tortious acts and thereby launder the proceeds of criminal activity to the detriment of THE EUROPEAN COMMUNITY and the MEMBER STATES. In pursuance of the agreement, RJR and its distributors, customers, agents, consultants, and other coconspirators acted tortiously by, among other things, committing the aforesaid acts constituting unjust enrichment, thereby causing harm to Plaintiffs. The RJR DEFENDANTS, through joint action with their coconspirators, acted tortiously, recklessly, unlawfully, and negligently, to the detriment of Plaintiffs. By means of the aforesaid concerted action, the RJR DEFENDANTS and their coconspirators are jointly and severally liable for the torts and other wrongful conduct alleged herein.

229. THE EUROPEAN COMMUNITY provides at its expense a marketplace without internal frontiers that inures to the benefit of all commercial enterprises that operate within the borders of THE EUROPEAN COMMUNITY. It is this marketplace makes the

sale of products such as cigarettes more expeditious and profitable. The DEFENDANTS and their coconspirators in laundering the proceeds of criminal activity, make illicit use of this marketplace to their economic benefit and to the economic detriment of THE EUROPEAN COMMUNITY and the MEMBER STATES. The RJR DEFENDANTS were unjustly enriched through their money-laundering scheme. By reason of their money-laundering scheme, the RJR DEFENDANTS were enabled to illegally enhance profits, market share, and the sales price of their international tobacco operations.

230. The unjust enrichment of the RJR DEFENDANTS was accomplished at the expense of Plaintiffs. By reason of the money-laundering scheme, Plaintiffs were, and continue

to be, deprived of money and property, and have suffered other economic and non-economic injuries, and DEFENDANTS reaped vast profits and proceeds from their illegal scheme.

231. Under these circumstances, the receipt and retention of the money derived from money-laundering operations are such that, as between Plaintiffs and DEFENDANTS, it is unjust for DEFENDANTS to retain it.

232. Equity and good conscience require the RJR DEFENDANTS to pay damages and restitution to Plaintiffs, disgorge their ill-gotten gains and, to effectuate these remedies, a constructive trust and equitable lien should be imposed by this Court upon the proceeds obtained by DEFENDANTS by reason of money-laundering activities, which proceeds are rightly owned by and belong to Plaintiffs. Plaintiffs have suffered damages as set forth more fully in paragraphs one hundred seventy (170) through one hundred seventy-three (173), and are entitled to recover actual, compensatory, and punitive damages. Judgment in Plaintiffs' favor should include full Common Law Injunctive and Equitable Relief.

COUNT IX MEMBER STATES

(AS TO ALL RJR DEFENDANTS) (UNJUST ENRICHMENT)

233. Plaintiffs restate and reallege paragraphs one (1) through two hundred thirtytwo (232) and further allege: 234. DEFENDANTS received funds, including the proceeds of narcotics trafficking, and received the instrumentalities of illicit conduct. Such funds and

instrumentalities, and the proceeds thereof, were and are the property of the MEMBER STATES as of the time of the commission of the illicit conduct.

235. By appropriating Plaintiffs' funds and property for themselves, DEFENDANTS have been enriched at Plaintiffs' expense. DEFENDANTS have rejected demands for compensation.

236. Under the circumstances, in good conscience and equity, DEFENDANTS cannot retain such funds and instrumentalities, and the proceeds thereof.

237. Equity and good conscience require the RJR DEFENDANTS to pay damages and restitution to Plaintiffs, disgorge their ill-gotten gains and, to effectuate these remedies, a constructive trust and equitable lien should be imposed by this Court upon the proceeds obtained by DEFENDANTS by reason of money-laundering activities, which proceeds are rightly owned by and belong to Plaintiffs. Plaintiffs are entitled to damages, including actual, compensatory, and punitive damages, and their injuries are set forth more fully above in paragraphs one hundred seventy (170) through one hundred seventy-three (173). Judgment in Plaintiffs' favor should include full Common Law Injunctive and Equitable Relief.

COUNT X EUROPEAN COMMUNITY AND MEMBER STATES

(AS TO ALL RJR DEFENDANTS) (NEGLIGENCE)

238. Plaintiffs restate and reallege paragraphs one (1) through two hundred thirtyseven (237) and further allege:

239. DEFENDANTS owed, and continue to owe, a duty of reasonable care to refrain from causing foreseeable loss to the Plaintiffs. DEFENDANTS were and are obligated to avoid negligently causing harm to Plaintiffs and were and are duty-bound to: (a.) design, implement, and utilize effective monitoring and oversight procedures, including appropriate compliance programs, to deter and detect money laundering-related activities by their employees and agents; (b.) investigate and terminate the money laundering-related conduct of their employees and agents, particularly inasmuch as their managerial personnel with decisionmaking authority were put on reasonable notice of such illicit conduct; (c.) deal with the Plaintiffs, and their representatives, in an honest, good faith, and forthright manner; (d.) terminate sales of their tobacco products to or through persons or entities known to be engaged, directly or indirectly, in money laundering; (e.) comply with federal and state statutes and the standards of care reflected therein; (f.) produce, market, and distribute their cigarette products lawfully and with due care; and (g.) use proper practices and procedures in the hiring, selection, approval, instruction, training, supervision, and discipline of employees and agents engaged in the production, marketing, and distribution of their products, some of whom the DEFENDANTS knew, or reasonably should have known, were assisting and otherwise engaged in money laundering.

240. As manufacturers, distributors, and dominant participants in the marketplace, DEFENDANTS had, and continue to have, the authority and ability to act reasonably to prevent money laundering in connection with the sale of their products for the protection of Plaintiffs.

Reasonable steps could and should have been taken by the DEFENDANTS to prevent or reduce the risk of their products being sold to persons who were using the purchase of cigarettes to launder the proceeds of criminal activity.

241. DEFENDANTS, as manufacturers, distributors, and dominant participants in the marketplace, have a special ability and duty to exercise reasonable care to detect and guard against the risks associated with the distribution of their products, for the benefit and protection of those foreseeably and unreasonably placed at risk of harm from the distribution of their products, including Plaintiffs.

242. DEFENDANTS' unreasonable acts and omissions created and enhanced the risk that their products would be distributed to persons who would use the purchase of cigarettes to launder criminal proceeds.

243. DEFENDANTS' unreasonable acts and omissions affirmatively and foreseeably caused substantial economic and non-economic damages to the Plaintiffs, and otherwise obstructed their ability to protect themselves from harms associated with money laundering. DEFENDANTS, acting with and through their employees, agents, and coconspirators, breached their duty of care, as aforesaid, by acts and/or omissions that posed an unreasonable and foreseeable risk of harm to Plaintiffs. The RJR DEFENDANTS entered into an understanding or agreement, express or tacit, with their distributors, customers, agents, consultants, and other coconspirators, to participate in a common scheme, plan, or design to commit the aforesaid tortious acts, and thereby launder criminal proceeds to the detriment of

THE EUROPEAN COMMUNITY and the MEMBER STATES. In pursuance of the agreement, RJR and its distributors, customers, agents, consultants, and other coconspirators acted tortiously by, among other things, committing the aforesaid acts constituting negligence, thereby causing harm to Plaintiff. The RJR DEFENDANTS, through joint action with their coconspirators, acted tortiously, recklessly, unlawfully, and negligently, to the detriment of Plaintiffs. By means of the aforesaid concerted action, the RJR DEFENDANTS and their coconspirators are jointly and severally liable for the torts and other wrongful conduct alleged herein. DEFENDANTS' breach proximately caused, and continues to cause, damage to the economic and non-economic interests of the Plaintiffs, as set forth more fully in paragraphs one hundred seventy (170) through one hundred seventy-three (173).

244. The RJR DEFENDANTS have acted maliciously, wantonly, and with a recklessness that bespeaks an improper motive and vindictiveness, and have engaged in outrageous and oppressive conduct and with a reckless or wanton disregard of safety and rights.

Their conduct amounts to a fraud on the public.

245. By reason of the injury to their economic and non-economic interests due to the negligence of the DEFENDANTS, as aforesaid, Plaintiffs are entitled to an award of damages, including actual, compensatory, and punitive damages. In addition, damages do not constitute a full and adequate remedy at law, and for this reason, Plaintiffs are entitled to full Common Law Injunctive and Equitable Relief, including a judgment permanently enjoining DEFENDANTS from the continuation of activities constituting negligence, and

compelling DEFENDANTS to take steps to abate and prevent the laundering of criminal proceeds through the purchase and sale of their product.

COUNT XI EUROPEAN COMMUNITY AND MEMBER STATES

(AS TO ALL RJR DEFENDANTS) (NEGLIGENT MISREPRESENTATION)

246. Plaintiffs restate and reallege paragraphs one (1) through two hundred fortyfive (245) and further allege: 247. The DEFENDANTS owed, and continue to owe, a duty of reasonable care to refrain from causing foreseeable loss to Plaintiffs. DEFENDANTS have assumed the special duty to speak truthfully to government officials, and particularly due to their superior knowledge of their own conduct, were bound to speak with due care. DEFENDANTS were and are obligated to avoid negligently causing foreseeable harm to Plaintiffs, and were and are dutybound to exercise reasonable care to: (a) refrain from negligently misrepresenting -- through documents and other forms of communication that the DEFENDANTS knew or should have known would be reasonably relied on by Plaintiffs -- the payment for and/or value of cigarettes; the destination of cigarettes; and the sources of funds with which cigarettes are purchased; (b) be truthful in their representations to Plaintiffs and their representatives concerning money laundering and other improper activities as aforesaid; and (c) avoid misleading Plaintiffs when providing Plaintiffs with such information as DEFENDANTS possess concerning the money laundering associated with DEFENDANTS' products into THE EUROPEAN COMMUNITY.

248. DEFENDANTS breached their duty to Plaintiffs by negligently making various material misrepresentations and/or failing to disclose material information to Plaintiffs and their representatives as aforesaid.

249. The DEFENDANTS have acted maliciously, wantonly, and with a recklessness that bespeaks an improper motive and vindictiveness and have engaged in outrageous and oppressive conduct and with a recklessness or wanton disregard of the Plaintiffs' interests and rights. Their conduct amounts to a fraud on the public.

250. DEFENDANTS, acting with and through their employees, agents, and coconspirators, breached their duty of care, as aforesaid, by acts and/or omissions that posed an unreasonable risk of foreseeable harm to Plaintiffs.

251. Plaintiffs reasonably relied on DEFENDANTS' misrepresentations and, as a result, DEFENDANTS' breach proximately caused, and continues to cause, damage to the economic interest of Plaintiffs. The RJR DEFENDANTS entered into an understanding or agreement, express or tacit, with their distributors, customers, agents, consultants, and other coconspirators, to participate in a common scheme, plan or design to commit the aforesaid tortious acts and thereby launder the proceeds of criminal activity to the detriment of THE EUROPEAN COMMUNITY and the MEMBER STATES. In pursuance of the agreement, RJR and its distributors, customers, agents, consultants, and other coconspirators acted tortiously by, among other things, committing the aforesaid

acts constituting negligent misrepresentation, thereby causing harm to Plaintiffs. The RJR DEFENDANTS, through joint action with their coconspirators, acted tortiously, recklessly, unlawfully, and negligently, to the detriment of Plaintiffs. By means of the aforesaid concerted action, the RJR DEFENDANTS and their coconspirators are jointly and severally liable for the torts and other wrongful conduct alleged herein.

252. By reason of the injury to its interests due to the negligence, malice and recklessness of the DEFENDANTS, as set forth more fully in paragraphs one hundred seventy

(170) through one hundred seventy-three (173), and Plaintiffs are entitled to an award of damages, including actual, compensatory, and punitive damages. In addition, damages do not constitute a full and adequate remedy at law, and for this reason, Plaintiffs are entitled to full Common Law Injunctive and Equitable Relief, including a judgment permanently enjoining DEFENDANTS from the continuation of activities constituting negligence.

COUNT XII MEMBER STATES (AS TO ALL RJR DEFENDANTS) (COMMON LAW CONVERSION) 253. The MEMBER STATES restate and reallege paragraphs one (1) through two hundred fifty-two (252) and further allege: 254. DEFENDANTS received funds, including the proceeds of narcotics trafficking, and received the instrumentalities of illicit conduct. Such funds and instrumentalities, and the proceeds thereof, were and are the property of the Member States as of the time of the commission of the illicit conduct.

255. DEFENDANTS were obligated to either remit such funds and instrumentalities to Plaintiffs, or refuse to accept such funds and instrumentalities.

DEFENDANTS did neither. Instead, DEFENDANTS appropriated the funds and instrumentalities for their own use.

256. DEFENDANTS misappropriated Plaintiffs' money and property, and have rejected demands for compensation.

257. DEFENDANTS have assumed and exercised ownership over funds and instrumentalities belonging to the Plaintiffs. Plaintiffs have sustained and will continue to sustain damages as a result of DEFENDANTS' conversion, for which DEFENDANTS are liable to Plaintiffs.

258. The RJR DEFENDANTS have acted maliciously, wantonly, and with a recklessness that bespeaks an improper motive and vindictiveness, and have engaged in outrageous and oppressive conduct and with a reckless or wanton disregard of safety and rights.

Their conduct amounts to a fraud on the public.

259. By reason of the injury to their economic and non-economic interests due to the negligence of the DEFENDANTS, as set forth more fully above in paragraphs one hundred seventy (170) through one hundred seventy-three (173), Plaintiffs are entitled to

an award of damages, including actual, compensatory, and punitive damages. In addition, damages do not constitute a full and adequate remedy at law, and for this reason, Plaintiffs are entitled to full common law Injunctive and Equitable Relief, including a judgment permanently enjoining DEFENDANTS from the continuation of activities constituting negligence, and compelling DEFENDANTS to take steps to abate and prevent the laundering of criminal proceeds through the purchase and sale of their products.

COUNT XIII MEMBER STATES

(AS TO ALL RJR DEFENDANTS) (MONEY HAD AND RECEIVED)

260. The MEMBER STATES restate and reallege paragraphs one (1) through two hundred fifty-nine (259) and further allege: 261. DEFENDANTS knowingly received money belonging to Plaintiffs, including funds representing the proceeds of illicit conduct.

262. DEFENDANTS benefited from the receipt of money, the benefit of which remains with DEFENDANTS. A trust or equitable lien is impressed upon such money and the proceeds thereof.

263. Under principles of equity and good conscience, DEFENDANTS should not be permitted to keep the money and the proceeds thereof. DEFENDANTS knew that the funds in question were the proceeds of illicit conduct and, as such, were the property of Plaintiffs.

Through deceit and acts of concealment, DEFENDANTS received, handled, deposited, and transferred such funds to their own accounts. Plaintiffs have changed their positions as a result of DEFENDANTS' conduct and have been precluded from taking action against those persons involved in the illicit conduct, including DEFENDANTS, at the time of such conduct.

DEFENDANTS' conduct was tortious, a trespass upon the rights and interests of Plaintiffs, and fraudulent.

264. Equity and good conscience require the RJR DEFENDANTS to pay damages and restitution to Plaintiffs, disgorge their ill-gotten gains and, to effectuate these remedies, a constructive trust and equitable lien should be imposed by this Court upon the

proceeds obtained by DEFENDANTS by reason of money-laundering activities, which proceeds are rightly owned by and belong to Plaintiffs. Plaintiffs are entitled to damages, including actual, compensatory, and punitive damages, and their injuries are set forth more fully above in paragraphs one hundred seventy (170) through one hundred seventy-three (173). Judgment in Plaintiffs' favor should include full Common Law Injunctive and Equitable Relief.

DEMAND FOR JUDGMENT

WHEREFORE, the Plaintiffs demand judgment in their favor and against DEFENDANTS as follows:

265. Pursuant to COUNT I, damages, including interest, against the RJR DEFENDANTS, jointly and severally, the precise amount to be supplied to the Court upon a trial on the merits; treble the actual damages pursuant to 18 U.S.C. § 1964(c), along with an award of the costs of the suit and a reasonable attorney's fee.

266. Pursuant to COUNT II, damages, including interest, against the RJR DEFENDANTS, jointly and severally, the precise amount to be supplied to the Court upon a trial on the merits; treble the actual damages pursuant to 18 U.S.C. § 1964(c), along with an award of the costs of the suit and a reasonable attorney's fee.

267. Pursuant to COUNT III, damages, including interest, against the RJR DEFENDANTS, jointly and severally, the precise amount to be supplied to the Court upon a trial on the merits; treble the actual damages pursuant to 18 U.S.C. § 1964(c), along with an award of the costs of the suit and a reasonable attorney's fee.

268. Pursuant to COUNT IV, damages, including interest, against the RJR DEFENDANTS, jointly and severally, the precise amount to be supplied to the Court upon a trial on the merits; treble the actual damages pursuant to 18 U.S.C. § 1964(c), along with an award of the costs of the suit and a reasonable attorney's fee.

269. Pursuant to COUNT V, RICO Injunctive and Equitable Relief against the RJR DEFENDANTS, jointly and severally, along with an award of the costs of the suit and a reasonable attorney's fee.

270. Pursuant to COUNT VI, against the RJR DEFENDANTS, jointly and severally, an award of compensatory and punitive damages, with interest, the precise amount to be supplied to the Court upon a trial of the merits; Common Law Injunctive and Equitable Relief; and the costs of the suit and a reasonable attorney's fee.

271. Pursuant to COUNT VII, against the RJR DEFENDANTS, jointly and severally, an award of compensatory and punitive damages, with interest, the precise amount to be supplied to the Court upon a trial of the merits; Common Law Injunctive and Equitable Relief; and the costs of the suit and a reasonable attorney's fee.

272. Pursuant to COUNT VIII, against the RJR DEFENDANTS, jointly and severally, an award of compensatory and punitive damages, with interest, the precise amount to be supplied to the Court upon a trial of the merits; Common Law Injunctive and Equitable Relief; and the costs of the suit and a reasonable attorney's fee.

273. Pursuant to COUNT IX, against the RJR DEFENDANTS, jointly and severally, an award of compensatory and punitive damages, with interest, the precise amount to be

supplied to the Court upon a trial of the merits; Common Law Injunctive and Equitable Relief; and the costs of the suit and a reasonable attorney's fee.

274. Pursuant to COUNT X, against the RJR DEFENDANTS, jointly and severally, an award of compensatory and punitive damages, with interest, the precise amount to be supplied to the Court upon a trial of the merits; Common Law Injunctive and Equitable Relief; and the costs of the suit and a reasonable attorney's fee.

275. Pursuant to COUNT XI, against the RJR DEFENDANTS, jointly and severally, an award of compensatory and punitive damages, with interest, the precise amount to be supplied to the Court upon a trial of the merits; Common Law Injunctive and Equitable Relief; and the costs of the suit and a reasonable attorney's fee.

276. Pursuant to COUNT XII, against the RJR DEFENDANTS, jointly and severally, an award of compensatory and punitive damages, with interest, the precise amount to be supplied to the Court upon a trial of the merits; Common Law Injunctive and Equitable Relief; and the costs of the suit and a reasonable attorney's fee.

277. Pursuant to COUNT XIII, against the RJR DEFENDANTS, jointly and severally, an award of compensatory and punitive damages, with interest, the precise amount to be supplied to the Court upon a trial of the merits; Common Law Injunctive and Equitable Relief; and the costs of the suit and a reasonable attorney's fee.

278. Such other and similar relief as the Court deems just, proper, and equitable; and trial by jury as to all issues triable as of right by jury.

Dated: New York, New York October 30, 2002

SPEISER, KRAUSE, NOLAN & GRANITO

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

THE EUROPEAN COMMUNITY,
acting on its own behalf and on behalf of the
MEMBER STATES it has power to represent,
and the Kingdom of Belgium,
Republic of Finland,
French Republic, Hellenic Republic,
Federal Republic of Germany,
Italian Republic,
Grand Duchy of Luxembourg,
Kingdom of the Netherlands,
Portuguese Republic, and
Kingdom of Spain, individually,

Plaintiffs,

v.

RJR NABISCO, INC.,
R.J. REYNOLDS TOBACCO COMPANY,
R.J. REYNOLDS TOBACCO INTERNATIONAL,
INC., RJR ACQUISITION CORP., f/k/a
NABISCO GROUP HOLDINGS CORP.,
RJR NABISCO HOLDINGS CORP.,
R.J. REYNOLDS TOBACCO HOLDINGS, INC.,
PHILIP MORRIS INTERNATIONAL INC.,
PHILIP MORRIS COMPANIES, INC.,
PHILIP MORRIS INCORPORATED, d/b/a
PHILIP MORRIS U.S.A.,
PHILIP MORRIS PRODUCTS, INC., and
PHILIP MORRIS DUTY FREE, INC.,

Defendants.

CASE NO: 01-Civ-5188
(NGG) (VVP)

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION TO SUBMIT A
PROFFER OF EVIDENCE CONCERNING THE LINK BETWEEN CIGARETTE
SMUGGLING IN THIS CASE AND TERRORISM**

PRELIMINARY STATEMENT

This Memorandum of Law is respectfully submitted by Plaintiffs, the European Community and Member States, to respond to a point raised by the Court at oral argument on January 11, 2002, concerning whether there is any link between the allegations in this case and terrorism. At the time of argument, it was not anticipated that any such proffer would be necessary given that the money laundering predicates relied upon by Plaintiffs in support of their civil RICO claim, as well the USA Patriot Act of 2001, are not limited to money laundering in the furtherance of terrorism.¹ For this reason, as well as client instructions that limited counsel's ability to address this matter in open court, counsel for Plaintiffs was not in a position to speak with authority to the issue raised by the Court. Plaintiffs' counsel has now been authorized to

¹ The USA Patriot Act of 2001 underscores that money laundering, in connection with foreign crimes, such as tax violations, is a violation of United States law, where those violations would subject the offender to extradition under a multilateral treaty, such as the 1988 Vienna Convention or the Palermo Convention. See Patriot Act § 315. See also Statement of Under Secretary of State for Global Affairs, Frank Loy, at 2-3 (Palermo Convention characterized as "binding international instrument" and its "cornerstone" is the "protection of the victims" of crimes covered by the Convention) (Exhibit A to the Declaration of John J. Halloran, Jr., dated January 31, 2002); Exhibit B at 1 ("The December 2000 signing of the United Nations Convention against Transnational Organized Crime in Palermo, Italy represents another significant development in the effort to promote international cooperation against money laundering and other forms of organized crime. . . . Once again, the drafting and signing of this Convention demonstrate the recognition by the international community that it must stand together to effectively fight international organized crime and money laundering"); Exhibit B at 37 (U.S. describes the Palermo Convention as "the first legally binding multilateral treaty specifically targeting transnational organized crime"). The protections and remedies created by the Patriot Act do not relate to terrorism alone. See Patriot Act § 302(b)(1) (one purpose of the Patriot Act is "to prevent, detect and prosecute international money laundering and the financing of terrorism") (emphasis added). It is clear, however, that cigarette smuggling and associated money laundering as alleged in this case provide a vehicle to finance terrorism and, as such, compel judicial cooperation of the widest possible scope among the United States and Plaintiffs under treaty, law and comity. Furthermore, a review of the legislative history of the money-laundering sections of the Patriot Act demonstrates that these money-laundering provisions had been under consideration for a number of years. See 147 Cong. Rec. S11026-29 (daily ed. Oct. 25, 2001). As such, they clearly pre-date the events of September 11, 2001, and are not limited to threats of terrorism.

answer the Court's inquiry. Based upon documents in the public domain, and other evidence available to counsel, counsel will demonstrate a direct link between cigarette smuggling related to this case and terrorism. For the following reasons, Plaintiffs respectfully request that this Court grant Plaintiffs' motion to submit the accompanying proffer of evidence concerning the link between cigarette smuggling related to this case and terrorism.

ARGUMENT

There is clear and convincing evidence that there is a link between cigarette smuggling and terrorism, and that has been confirmed by Congress and the Executive Branch.

Senator John F. Kerry, in his clear statement of "the intent of the legislature" concerning the anti-money laundering provisions of the USA Patriot Act of 2001, stated that "[s]muggling, money laundering, and fraud against our allies are an important part of the schemes by which terrorism is financed." See Exhibit C. Senator Kerry set forth the "legislative intent of the Counter-Money Laundering and Foreign Anti-Corruption Act of 2001" and therefore addressed the links between smuggling and terrorism on behalf of the entire Senate. Id. As one of the original sponsors of the "Counter-Money Laundering and Foreign Anti-Corruption Act of 2001" (Exhibit D), Senator Kerry's statement of legislative intent is authoritative.

In March 2000, the Commissioner of the U.S. Customs Service, Raymond W. Kelly, testified: "International cigarette smuggling has grown to a multi-billion dollar a year enterprise linked to transnational organized crime and international terrorism." See Exhibit E at 9. The Secretary of the Treasury Paul H. O'Neill has similarly observed that the proceeds of criminal activities often finance terrorism, and "cigarette smuggling" was a source of financing for the Hizballah organization. See Exhibit F at 5. This "global spread of international crime threatens vital US interests at home and abroad." See Exhibit G at 2.

Accordingly, the policy-making branches have found that cigarette smuggling is a source of financing for terrorist groups. This general view is confirmed by the accompanying proffer, which specifically shows several links between cigarette smuggling related to this case and terrorism, and thereby provides a compelling basis for this Court to apply the letter and intent of the Patriot Act to this case and provide access to the United States courts and laws to combat illicit conduct.

POINT I

THERE IS A CLEAR AND DIRECT LINK BETWEEN CIGARETTE SMUGGLING IN THIS CASE AND THE KURDISTAN WORKERS' PARTY (PKK) AND THE IRAQI REGIME

The following proffer links cigarette smuggling related to this case, which includes distribution routes from the United States through the European Community and the Member States, to terrorist organizations and to Iraq.

A. Cigarette Sales Through The European Community Into Iraq Occurred With The Involvement Of The PKK

Since the early 1990s, United States tobacco companies have distributed their products from the United States through the European Community and into Iraq. For example, cigarettes produced in the United States have been shipped to and through ports in the European Community, including Valencia, Spain, to companies in Cyprus, including Audeh Trading for years. See Exhibit H at 1 (Declaration of Theodouli Tourapi (Officer of Customs and Excise, Nicosia Office of Customs and Excise, Cyprus)).² Indeed, since 1996, approximately 5,000,000

² Recognizing that the Tourapi Declaration includes many exhibits that are somewhat difficult to follow, Plaintiffs submit, as Exhibit I, a summary of documents to aid the Court and the parties in tracking the cigarette shipments from the point of their production in the United States – through Spain, Cyprus and Turkey -- to the point of their ultimate delivery in Iraq. Hereafter, exhibits related to this routing will be as identified in the summary (Exhibit I) for the

master cases have been sent by RJR (and its successor, Japan Tobacco) to Cyprus (Audeh Trading/ICBS). Approximately one-half of such shipments were exported from Cyprus to Mersin, Turkey in transit. Id. at 1.

For many years, R.J. Reynolds Tobacco International S.A.(Geneva) provided consignments to Cypriot companies, often for massive amounts of Winston brand cigarettes. Id. at 3 & Annex M1. Part of the scheme was to falsely declare that the shipments were destined for export (i.e., to “Russia”) when, in fact, the products were destined for countries outside of Cyprus and Russia (i.e., Iraq). Id. at 4 & Annex P1. It is hard to exaggerate the scope of the scheme inasmuch as since August 1999 – during a time when both RJR and Japan Tobacco had responsibility for management or oversight of the operations – approximately 570,000 master cases (or 5.7 billion cigarettes) were distributed through Cyprus. See Exhibit J (chart). A substantial percentage of those cigarettes was delivered to and through ports in the European Community, including Valencia, Spain. As shown below, many of these shipments were destined for Iraq.

RJR and Japan Tobacco International S.A. distributed hundreds of container loads of cigarettes from Puerto Rico, to Valencia, Spain, to Limassol, Cyprus, to Beirut, Lebanon, to Mersin, Turkey, which products were then offloaded onto trucks and shipped overland to the Habur border crossing, and sold into Iraq. This scheme has been in place since at least August, 1999, at a time when RJR managed operations for Japan Tobacco under contract. Id.³

convenience of the Court. This routing is also corroborated by a document provided to the Court for in camera review. If the Court were to consider whether to unseal that document, Plaintiffs request reasonable advance notice so that the party providing the document can be given notice and be afforded an opportunity to be heard on the issue.

³ The Plaintiffs submit herewith, as Exhibit K, the purchase agreement by which Japan Tobacco, Inc. purchased RJR's international operations, including the Puerto Rico plant. The attached

As one example of this scheme, the accompanying proffer shows how RJR/Japan Tobacco manufactures products in the United States and ships them to Spain, and then to Cyprus, for ultimate delivery into Iraq. The steps of this scheme may be summarized as follows.

1. Japan Tobacco, located in Puerto Rico and acting under license of RJR, shipped containers of Winston brand cigarettes from the United States to Valencia, Spain by cargo ship. See Exhibit I at ¶¶ 1-3.

2. In Spain, the containers were off-loaded and later re-loaded onto a second vessel using the Spanish port facilities. From Spain, the containers were shipped to Cyprus. Id. at ¶¶ 4-11.

3. In Cyprus, the containers were unpacked and the Winston brand cigarettes were reloaded into new containers, bearing different markings. Id. at ¶ 12.

4. Subsequently, the containers containing the Winston brand cigarettes were exported from Cyprus, with “Russia” as the declared country of final destination. Id. at ¶ 12 & Exhibit I-12.

5. The five forty-foot containers with the Winston brand cigarettes (packed with 5,340 master cases) were shipped to Lebanon and then to Turkey. Id. at ¶¶ 13-16.

6. Those five containers were then shipped overland through Turkey to the Habur border crossing and into Iraq. Id. at ¶¶ 17-19.

It is important to note that each of the bills of lading for these shipments states specifically: “UNITED STATES LAW PROHIBITS DISPOSITION OF THESE

agreement provides for transitional services to be provided by RJR. The transitional services agreement itself was not a part of the SEC filing and, as such, is unavailable to the Plaintiffs. However, available drafts of the transitional services agreement provided that the agreement would be in place until Dec. 2001 and that Japan Tobacco, Inc. was not allowed to terminate the agreement until at least one year after the execution of the purchase agreement. In that the purchase agreement was executed in May 1999, it is therefore reasonable to infer that the transitional services agreement remained in place until at least May 2000.

COMMODITIES TO NORTH KOREA, VIETNAM, IRAQ, OR CUBA UNLESS OTHERWISE AUTHORIZED BY THE UNITED STATES.” See Exhibits I-1, I-2, I-3.

Based upon international cooperation in this matter, the European Community has learned that the scheme to ship cigarettes into Iraq involved the Kurdistan Workers’ Party, known as the PKK. The PKK is considered by the United States to be a “terrorist group.” See Exhibit G (Turkey); Exhibit L at 8 (U.S. identifies the PKK as a Foreign Terrorist Organization (FTO), noting that it operates in Europe and destroyed diplomatic and commercial facilities in dozens of West European cities). “PKK members in Europe have been involved in wholesale and retail distribution of heroin, as well as other criminal activities, to help fund their operations.” See Exhibit G (Turkey). Plaintiffs are submitting a document that authoritatively shows that the cigarette shipments into Iraq were linked to the PKK. In order to protect the confidentiality of the party providing the document, this document is being submitted to the Court for in camera review and consideration.⁴

B. Cigarette Smuggling Into Iraq Finances The Iraqi Regime

It is prohibited by United States law to export goods, directly or indirectly, to Iraq.⁵ The United States has recognized that “[k]ey regime officials and support organizations” in Iraq

⁴ If the Court were to consider whether to unseal that document, Plaintiffs request reasonable advance notice so that the party providing the document can be given notice and be afforded an opportunity to be heard on the issue. This showing concerning the PKK is relevant, at a minimum, to the public nuisance claim of the European Community and Member States – a claim to abate harm that is completely unrelated to the loss of revenue. One can hardly imagine a more harmful “public nuisance” than one that is carried out from American soil and fosters terrorist groups or regimes.

⁵ According to the U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC): “Goods . . . cannot be exported from the United States, or, if subject to U.S. jurisdiction, exported or reexported from a third country to Iraq” and “[a]ny activity that promotes or is intended to promote a prohibited exportation or reexportation, or the transshipment of goods . . . subject to U.S. jurisdiction through a third country, is also prohibited.” See Exhibit M at 1.

“live off the revenues generated through illicit trade.” See Exhibit N at 9 (Statement of DCI George J. Tenet). Among such persons is Uday Hussein, son of Saddam Hussein, who is said to be Saddam Hussein’s “heir-apparent.” Exhibit O at 1.

It is a matter of public record that Uday Hussein controls the cigarette smuggling operations in Iraq. Uday Hussein’s principal assistant, Abbas Al-Janabi, has said that he supervised cigarette smuggling operations for Uday Hussein. Exhibit P at 8. Al-Janabi defected from Iraq in 1998. The “main reason” that he defected was because he “supervised a cigarette importing transaction worth hundreds of millions of dollars. During negotiations with the other side, Uday accused [him] of leaning towards the interests of the other side as [he] came up with a proposal on which [the parties] could have reached an agreement.” Id.

Al-Janabi has described the Iraqi cigarette smuggling operation in great detail. He states that Uday Hussein controls “all the trade of cigarettes.” Exhibit O at 3. Al-Janabi also observed that “Uday is the single largest beneficiary of the sanctions, since he controls many facets of smuggling in Iraq. He controls the smuggling of whiskey, tobacco, fertilizers, petrol and others. His business interests extend to Turkey, Iran and Jordan. Uday Hussein has trading links with Iranians, through intermediaries in Paris.” Exhibit P at 6.⁶

Distribution of U.S.-brand cigarettes into Iraq continues on virtually a daily basis. As the affidavit of Tugrul Ozsengul shows:

On December 5, 2001, I went to Habur border gate of Turkey with Iraq and I witnessed that Winston cigarettes and Philip Morris brand cigarettes were being shipped across the border into Iraq. I questioned people working and living in the area about these shipments and learned that almost every day lorries, mainly of the above-mentioned brands, have been shipped to Iraq, and this situation has

⁶ Mr. Al-Janabi’s interview with the BBC is available, on video, at <http://news.bbc.co.uk/olmedia/video/events98/htiraq/htiraq40.ram>. It details and confirms the “illegal” smuggling transactions involving Iraq.

persisted for several years. Additionally, I learned that some of these cigarettes were being taken to Iran from Iraq.

Exhibit Q. These continuing shipments run afoul of U.S. law and sanctions. See fn. 5, supra.

POINT II

THE PROFFER IS RELEVANT TO THE COURT'S ABSTENTION ANALYSIS

Defendants, in a preemptive opposition to this proffer, argue that the proffer is “irrelevant.” Nathan Letter, dated January 24, 2002. This proffer is submitted in response to an inquiry from the Court on a matter of grave significance and it is relevant for this reason alone. Moreover, abstention, by its very nature, requires a court to go beyond the four corners of the pleading, and indeed, it would be an abuse of discretion for the Court not to consider all relevant factors in an abstention analysis, including the accompanying proffer.

There is no longer any dispute about the revenue rule; it is a prudential rule that permits the Court to abstain.⁷ The law of abstention makes it eminently clear that the district court is required to weigh and balance all relevant factors; such factors should not be applied in a mechanical manner; no list of factors may be said to be exhaustive and the relevant factors may vary from case to case; no single factor is determinative; and the burden to overcome the presumption favoring the exercise of jurisdiction rests with the party opposing federal jurisdiction.⁸ It is equally clear that while the district court is vested with discretion, such

⁷ The Panel’s decision confirmed that the revenue rule is a “prudential” or discretionary rule (Attorney General of Canada v. R.J. Reynolds, 268 F.3d 103, 129 (2d Cir. 2001)). The Panel did not hold that the revenue rule is a rule of subject matter jurisdiction, and indeed, made it clear that the rule was not “absolute.” Id., 268 F.3d at 113. Consistent with the discretionary nature of the revenue rule, the Panel repeatedly stated that the rule permits a court to “abstain.” Id. at 115, 119, 127.

⁸ See Burnett v. Physicians Online, Inc., 99 F.3d 72, 77 (2d Cir. 1996) (there is no mechanical checklist and the district court must balance the relevant factors in reaching an abstention decision); Cohen v. Reed, 868 F. Supp. 489, 499 (E.D.N.Y. 1994) (while each factor must be considered, they are not to be applied “mechanically” but weighed as required by the case’s

discretion must be exercised in light of the heavy presumption favoring the exercise of jurisdiction (particularly where, as here, a federal question is presented), and failure to consider all relevant factors is, in and of itself, an abuse of discretion. See Bethlehem Contracting Co. v. Lehrer/McGovern, Inc., 800 F.2d at 328 ("failure to consider factors weighing against dismissal had the result of turning the presumption in favor of exercising jurisdiction on its head"). Accordingly, this Court should consider all relevant factors, including the accompanying proffer, that demonstrate the compelling basis for federal jurisdiction consistent with the letter and spirit of the Patriot Act, and indeed, it would be clear error to refuse to do so.

A review of abstention doctrine cases reveals that as to each form of abstention there are various factors that the court must consider. For example, in the case of Colorado River abstention, the court is required to consider such factors as the inconvenience of the federal forum, the desirability of avoiding piecemeal litigation, the order in which concurrent fora were invoked, whether the plaintiff has asserted a claim under federal law, and whether abstention would protect the federal plaintiff's rights. See Colorado River Water Conservation v. United States, 424 U.S. 800, 818 (1976); De Cisneros v. Younger, 871 F.2d 305, 307 (2d Cir. 1989).

circumstances with the balance heavily favoring exercise of jurisdiction) (citing De Cisneros v. Younger, 871 F.2d 305, 307 (2d Cir. 1989)); Village of Westfield v. Welch's, 170 F.3d 116, 120 (2d Cir. 1999) (citation omitted) (the court's "discretion to abstain must be exercised within the 'narrow and specific limits' prescribed by the particular abstention doctrine involved") (quoting Dittmer v. County of Suffolk, 146 F.3d 113, 116 (2d Cir. 1998)); American Alliance Co. v. Eagle Ins. Co., 961 F. Supp. 652, 655-56 (S.D.N.Y. 1997) (abstention factors cannot be viewed as presenting a mechanical or exhaustive checklist); Colorado River Water Conservation v. United States, 424 U.S. 800, 818 (1976) ("no one factor is necessarily determinative"); Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 16 (1983) ("the weight to be given to any one factor may vary greatly from case to case, depending on the particular setting of the case"). It is clear error to impose upon Plaintiffs the burden to establish that this Court should not abstain; the burden rests with defendants to show that this Court should exercise its discretion to abstain. Arkwright-Boston v. City of New York, 762 F.2d 205, 210 (2d Cir. 1985).

While a court may weigh these factors on a case by case basis, for a court to ignore the factors would constitute an abuse of discretion.

In the final analysis, the revenue rule is simply another abstention doctrine, and there are several factors which the Court must analyze in order to determine whether abstention is appropriate. Because there is so little case law concerning an abstention analysis under the revenue rule, and the Panel in the Canada case did not purport to identify an exhaustive list of factors to be considered, this Court has not been foreclosed from considering any relevant factors that were not, and could not have been, before the Second Circuit in the Canada case. The Plaintiffs would submit that the factors traditionally associated with most abstention doctrines such as prejudice to the plaintiff, availability of an alternative remedy, undue delay, convenience of the forum, avoidance of piecemeal adjudication, and others are all applicable and must be considered by the Court, and all weigh against abstention.

In addition, the Second Circuit in Canada has identified other factors which should be taken into account for a court to abstain, to wit, (1) whether the Legislative Branch has taken a position on the issue; (2) whether the Executive Branch has taken a position on the issue, pursuant to treaty or otherwise. The Second Circuit has never mandated, nor could it mandate, that a district court must mechanically abstain from exercising jurisdiction (in a case in which the district court clearly has subject matter jurisdiction) without conducting the appropriate analysis. Accordingly, Canada requires that, at a minimum, this Court consider the positions of the Legislative Branch and the Executive Branch in this analysis, along with relevant treaties.

Since the ruling in Canada, the Legislative Branch has explicitly stated its position in regard to this matter when it refused to “carve-out tobacco companies from RICO liability for foreign excise taxes” (147 Cong. Rec. S11007 (daily ed. Oct. 25, 2001)), a view that was

unanimously adopted by the Senate on motion of Sen. Leahy (id. at S11005), and endorsed by the House as well. 147 Cong. Rec. H7198 (daily ed. Oct. 23, 2001). That and other pronouncements in conjunction with the Patriot Act, being the only statements from Congress that are germane to this analysis, must be accorded substantial weight. Because this Court has raised the point that the applicability of the Patriot Act may turn on a link to terrorism, this Court is compelled to either consider the Plaintiffs' proffer or conclude that the Patriot Act provides evidence of legislative intent whether or not there is a link to terrorism. To fail to consider the proffer would clearly constitute an abuse of discretion in light of the heavy burden placed upon the defendants to show that abstention is required, and the burden upon this Court to justify a decision to depart from its virtually unflagging duty to exercise jurisdiction.

Similarly, the Second Circuit in Canada has mandated that this Court consider the position of the Executive Branch in regard to this case and the facts surrounding this case. The evidentiary proffer submitted herewith shows that this case implicates issues of transnational organized crime, with links to terrorism, that were not before the Panel in Canada. These claims naturally implicate treaties and conventions that were not, and could not have been, at issue in Canada. Therefore, along with the proffer, this Court must consider the multilateral treaties cited by the Plaintiffs, including the 1988 Vienna Convention and the United Nations Convention against Transnational Organized Crime ("Palermo Convention"), just as the Second Circuit considered the one tax treaty in Canada. That these multilateral treaties were not before the Second Circuit in Canada underscores the importance of considering such expressions of Executive Branch policy in an abstention analysis.

The proffer, with its description of illicit conduct occurring on a global scale with links to narcotics trafficking and terrorism, justifies Plaintiffs' reliance on two multilateral treaties: the

1988 Vienna Convention and the Palermo Convention. Both treaties evince an Executive Branch policy of affording the widest possible judicial cooperation, including access to the courts, in proceedings related to money laundering. The 1988 Vienna Convention, which has been ratified, compels judicial cooperation of the widest possible scope in connection with money laundering linked to narcotics trafficking, which is one of the main subjects of the complaint. See 1988 Vienna Convention, Art. 7(1). Indeed, the 1988 Vienna Convention confirms that the cooperation provided for in the Convention is not exclusive. Id. at Art. 7(3). In addition, while it has not yet been ratified, the Palermo Convention is, at a minimum, strong evidence of a policy decision by the Executive Branch to provide for judicial cooperation in cases involving money laundering (as here) and provide for restitution and compensation to victims of money laundering (such as Plaintiffs). See fn. 1, supra. Thus, the 1988 Vienna Convention and the Palermo Convention, viewed separately or together, evidence an Executive Branch policy to afford Plaintiffs access to federal court to combat illicit conduct that falls within the framework of those treaties.⁹

The accompanying proffer only confirms the appropriateness of invoking the Palermo Convention and the 1988 Vienna Convention. Plaintiffs respectfully submit that if this Court were to consider abstaining in this case, it would have to conclude that those treaties cannot apply to any of the claims in this case (including civil claims predicated on money laundering

⁹ As the Member States have testified in their un rebutted affidavits on the motion to dismiss, the tax treaties relied on by Defendants are irrelevant to whether Plaintiffs should be afforded access to the courts on claims for injunctive relief and damages arising under domestic law. That the United States permits mutual administrative assistance in income tax matters has no bearing on whether claims in this case, predicated on allegations and evidence of a money laundering scheme, should be heard in federal court. The tax treaties do not speak to the claims in this case; the 1988 Vienna Convention and the Palermo Convention do speak to the claims in this case, and those instruments evince a policy of wide judicial cooperation that this Court is not free to disregard.

and organized crime) and/or that they do not set forth the policies of the Executive Branch in regard to access to the courts in international money laundering and organized crime cases. This Court should not override the expressed policy of judicial cooperation in money laundering and organized crime cases, and should decline to abstain.

Finally, in order to clarify one remaining matter, this Court mentioned the possibility of the motion to dismiss, if denied, being the subject of an interlocutory appeal. At the hearing, the undersigned attorneys indicated that we were “not necessarily opposed” to an interlocutory appeal. This statement was made without having the opportunity to discuss this matter with the Plaintiffs. Having now discussed this matter with the Plaintiffs, they have confirmed that they will not oppose an interlocutory appeal in the event that all or part of the motion to dismiss is denied.

CONCLUSION

This proffer raises very grave concerns that militate against abstention. If a link between cigarette smuggling in this case and terrorism is necessary to invoke the USA Patriot Act of 2001, or is otherwise relevant to this Court’s abstention analysis, the foregoing proffer only underscores the fundamental federal interest in this case and its consonance with United States vital interests. For these reasons, the links between this case and the PKK and Iraq confirm both that there is a compelling federal interest allowing this case to proceed, and that providing a federal forum to Plaintiffs will advance, not frustrate, United States interests. Thus, Plaintiffs respectfully request that the motion to submit the accompanying proffer of evidence be granted.

Dated: New York, New York
February 1, 2002

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Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Plaintiffs' Memorandum of Law in Support of Motion to Submit a Proffer of Evidence Concerning the Link Between Cigarette Smuggling in this case and Terrorism was served via the court's electronic filing system on February 1, 2002, on the following:

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**ANTI-CONTRABAND AND ANTI-COUNTERFEIT
AGREEMENT AND GENERAL RELEASE**

dated as of

July 9, 2004

among

**PHILIP MORRIS INTERNATIONAL INC.,
PHILIP MORRIS PRODUCTS INC.,
PHILIP MORRIS DUTY FREE INC., and
PHILIP MORRIS WORLD TRADE SARL**

**THE EUROPEAN COMMUNITY
REPRESENTED BY THE EUROPEAN COMMISSION**

AND

**EACH MEMBER STATE LISTED ON
THE SIGNATURE PAGES HERETO**

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**ANTI-CONTRABAND AND ANTI-COUNTERFEIT
AGREEMENT AND GENERAL RELEASE**

This Anti-Contraband and Anti-Counterfeit Agreement and General Release dated as of July 9, 2004, (this “**Agreement**”) is made by and among the European Community (the “**EC**”) represented by the European Commission, the Member States of the EC that have executed a copy of this Agreement and become parties hereto (the “**Participating Member States**”, and together with the EC, “**the Relevant Administrations**”) and Philip Morris International Inc., Philip Morris Products Inc., Philip Morris Duty Free Inc. and Philip Morris World Trade SARL (collectively with the Relevant Administrations, “**the Parties**”).

W I T N E S S E T H :

(1) **WHEREAS**, the smuggling of Cigarettes, both authentic and counterfeit, results in great economic loss and causes other various harms to the Relevant Administrations;

(2) **WHEREAS**, the Relevant Administrations are fully committed to combat the illegal introduction of both authentic and counterfeit Cigarettes into the Territory of the Member States;

(3) **WHEREAS**, Philip Morris International is committed to take commercially reasonable steps as a manufacturer of Cigarettes to promote the Parties’ joint objective that Philip Morris Cigarettes be sold, distributed, stored, and shipped in accordance with all applicable fiscal and legal requirements, and, in particular, sold at retail in accordance with all applicable tax and duty laws in the intended retail market;

(4) **WHEREAS**, while the smuggling of certain authentic brands of Cigarettes other than Philip Morris brands continues in significant quantities, for the last few years the incidence of bulk quantities of Contraband Philip Morris Cigarettes in the Member States has been greatly reduced, and during the same time period, there has been an increase in Cigarette counterfeiting activity such that currently, there is a growing threat to the Relevant Administrations’ finances from the illegal importation and introduction of Counterfeit Philip Morris Cigarettes;

(5) **WHEREAS**, the Member States and Philip Morris International have a mutual interest in (1) eliminating the illegal importation, distribution and sale of Cigarettes and any related illegal activity, (2) ensuring the collection of applicable taxes and duties on Cigarettes sold or distributed in the Territory of the Member States, including, without limitation, those that will be remitted wholly or in part to the EC by the Member States, (3) protecting lawful competition in the sale of Cigarettes, (4) protecting the Trademark rights of legitimate Cigarette

manufacturers, and (5) preventing citizens of the Member States from being misled about the source and quality of the Cigarettes they purchase; and whereas the EC has an interest in the foregoing insofar as they affect the interests of the EC and the achievement of the EC's objectives;

(6) WHEREAS, by virtue of Article 3 and Article 23 of the EC Treaty, the EC is competent for matters relating to customs duties on the import and export of goods in Member States, and by virtue of Part 5, Title II of the EC Treaty, the European Commission is obligated to ensure the orderly collection of the EC's own resources;

(7) WHEREAS, combating fraud and other illegal activities affecting the financial interests of the EC, including those resulting from the illegal Cigarette trade within the Territory of the Member States, is an obligation of the EC and Member States under Article 280 of the EC Treaty;

(8) WHEREAS, pursuant to Article 10 of the EC Treaty, the Member States shall take all appropriate measures, whether general or particular, to ensure fulfillment of the obligations arising out of the EC Treaty or resulting from action taken by the institutions of the EC and shall facilitate achievement of the objectives of the EC's tasks;

(9) WHEREAS, the EC and Member States, each within their respective competences and subject to budgetary constraints, intend to continue and improve their efforts to combat the smuggling of authentic and Counterfeit Cigarettes and the illegal importation and introduction of said Cigarettes into the Territory of the Member States;

(10) WHEREAS, it is in the best interest of Philip Morris International for there to be an end to the illegal importation of Contraband and Counterfeit Cigarettes into the Territory of the Member States and the counterfeiting of Philip Morris Cigarettes;

(11) WHEREAS, Philip Morris International agrees to provide all reasonable assistance, both direct and indirect, as set forth herein, to the EC and the Member States in the fight against Contraband and Counterfeit Cigarettes, including in part, monetary payments;

(12) WHEREAS, the EC and certain Member States commenced a civil action in the United States District Court for the Eastern District of New York, entitled European Community, et al. v. RJR Nabisco, et al., under Civil Action No. 01-CV-5188 (NGG), asserting various claims for damages, costs and equitable relief, based in part on alleged sales of Philip Morris Cigarettes in the Territory of the Member States in violation of applicable laws (such action, the "**Civil Action**");

(13) **WHEREAS**, the Civil Action has been dismissed by the United States District Court (as to some of the claims with prejudice and as to others without prejudice) and is currently the subject of an appeal (such appeal, together with the Civil Action, the “**Litigation**”);

(14) **WHEREAS**, pursuant to the mutual rights and obligations in this Agreement, the Parties agree that it is in the public interest, will further advance their objectives, and will facilitate the achievement of their goals to swiftly resolve, finally and fully, in an amicable and cooperative manner without any admission of liability, all matters between the Parties that relate to the alleged conduct, acts or omissions that were asserted or could have been asserted in the Litigation and any alleged Losses (as hereinafter defined) caused by such conduct, acts, or omissions;

(15) **WHEREAS**, the Parties acknowledge and agree to take all appropriate measures (1) to ensure fulfillment of their obligations under this Agreement, (2) to facilitate the achievement of the objectives of the Agreement, and (3) to abstain from any measures that could jeopardize the attainment of the objectives of this Agreement;

NOW, THEREFORE, in consideration of the mutual obligations described herein, the sufficiency of which is hereby acknowledged, the Parties, acting by and through their authorized agents, hereby memorialize and agree as follows:

ARTICLE 1
DEFINITIONS

Section 1.01. *Definitions.*

The following terms, as used herein, have the following meanings:

“**Affiliate**” means, with respect to any Person, any other legally related Person directly controlling, controlled by, or under common control with, such other Person. For purposes of this definition, “**control**”, when used with respect to any Person, means the power to choose the Board of Directors and/or establish the policies of such Person, whether through the ownership of voting securities or contract, and the terms “**controlling**” and “**controlled**” have meanings correlative to the foregoing.

“**Agreement**” shall have the meaning ascribed to it in the preamble of this Agreement.

“Anti-Contraband and Anti-Counterfeit Initiatives” shall have the meaning ascribed to it in Section 3.01 of this Agreement.

“Applicant” shall have the meaning ascribed to it in the EC Compliance Protocols, attached as Appendix B to this Agreement.

“Approved Contractor” means a Contractor approved by Philip Morris International in accordance with the EC Compliance Protocols, attached as Appendix B to this Agreement.

“Arbitrator(s)” shall have the meaning ascribed to it in Section 12.02(a) of this Agreement.

“Audit Order” shall have the meaning ascribed to it in Section 2.02(d) of this Agreement.

“Baseline Amount” means 90 million Cigarettes, which is half of the total combined Contraband Philip Morris Cigarettes seized by the Member States who were Member States on January 1, 2004, during the calendar years ended December 31, 2001, and December 31, 2002, but does not include seizures of less than five Master Cases of Philip Morris Cigarettes. The Baseline Amount may be amended pursuant to Section 4.01(s) and (t) of this Agreement.

“Blocked Contractor” means a former Approved Contractor who is no longer authorized by Philip Morris International to conduct business relating to the sale, distribution, storage, or shipment of Philip Morris Cigarettes in or through the Territory of the Member States or any Designated State.

“Carton” or **“Bundle”** or **“Outer”** means a package containing 10 Packs of Cigarettes (approximately 200 Cigarettes total) and includes all input materials used in the assembly of such container such as cardboard, plastic wrap and tear tapes.

“Certification of Compliance” shall have the meaning ascribed to it in Section 2.02(a) of this Agreement.

“Cigarette” means any product that contains tobacco and is intended to be burned or heated under ordinary conditions of use and includes, without limitation, any “roll-your-own” tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. For the purposes of this Agreement, 0.0325 ounces of “roll-your-own” tobacco shall be considered the equivalent of one individual Cigarette.

“Civil Action” shall have the meaning ascribed to it in the recitals of this Agreement.

“Compliance Order” shall have the meaning ascribed to it in Section 2.02(d) of this Agreement.

“Contraband Cigarettes” means Cigarettes that have been imported into, distributed in, or sold in, the Territory of a Member State, or were en route to the Territory of a Member State for sale in that Member State, in violation of the applicable tax, duty or other fiscal laws of that Member State or the EC, but, for purposes of this Agreement, shall exclude Counterfeit Cigarettes.

“Contraband Philip Morris Cigarettes” means Philip Morris Cigarettes that have been imported into, distributed in, or sold in, the Territory of a Member State, or were en route to the Territory of a Member State for sale in that Member State, in violation of the applicable tax, duty or other fiscal laws of that Member State or the EC, but, for purposes of this Agreement, shall exclude Counterfeit Philip Morris Cigarettes.

“Contractor” means a First Purchaser or any warehouser, shipper or freight forwarder engaged by Philip Morris International in connection with the storage or shipment of Philip Morris Cigarettes in or through the Territory of the Member States or a Designated State.

“Counterfeit Cigarettes” means Cigarettes bearing a Trademark of a Cigarette manufacturer that are manufactured by a third party without the consent of that Cigarette manufacturer, but shall in no event include (i) Cigarettes manufactured by the Trademark holder or any affiliate thereof, regardless of the actual or intended market of distribution, (ii) Cigarettes bearing a Trademark of a Cigarette manufacturer using tobacco either produced by or sold by that Cigarette manufacturer, or (iii) Cigarettes bearing a Trademark of a Cigarette manufacturer that are packaged in genuine packaging of that Cigarette Manufacturer, including genuine cartons and packs of that Cigarette manufacturer.

“Counterfeit Philip Morris Cigarettes” means Cigarettes bearing a Philip Morris Trademark that are manufactured by a third party without the consent of Philip Morris, but shall in no event include (i) Cigarettes manufactured by Philip Morris or any affiliate thereof, regardless of the actual or intended market of distribution, (ii) Cigarettes bearing a Trademark of Philip Morris using tobacco either produced by or sold by Philip Morris, or (iii) Cigarettes bearing a Trademark of Philip Morris that are packaged in genuine Philip Morris packaging, including genuine Philip Morris cartons and packs.

“Designated State” means any state listed in the Designated State List attached as Appendix G, which may be amended in accordance with the procedure therein.

“Due Diligence” means a reasonable state-of-the-art investigation conducted by Philip Morris International before the commencement of a business relationship with a Person relating to the sale, distribution, storage, or shipment of Philip Morris Cigarettes in or through the Territory of the Member States or any Designated State, as described in the EC Compliance Protocols, attached as Appendix B to this Agreement.

“Due Diligence Information” shall have the meaning ascribed to it in the EC Compliance Protocols, attached as Appendix B to this Agreement.

“EC” shall have the meaning ascribed to it in the preamble of this Agreement.

“EC Compliance Protocols” shall have the meaning ascribed to it in Section 2.01 of this Agreement.

“EC Treaty” shall have the meaning ascribed to it in Section 7.03 of this Agreement.

“Execution Date” means the later of (i) the date on which the signatures to this Agreement of all the Relevant Administrations who are Plaintiffs in the Litigation have been delivered to Philip Morris International; or (ii) the date on which the signature to this Agreement of Philip Morris International has been delivered to the EC.

“Expiration Date” means the 12th anniversary of the Execution Date.

“First Purchaser” means any Person, other than an Affiliate of Philip Morris International, to whom Philip Morris International directly sells a quantity of Philip Morris Cigarettes in excess of 2,500 Master Cases annually for sale, distribution or consumption within or into the Territory of one or more of the Member States or any Designated State, and such Person’s Affiliates.

“Fiscal Compliance Coordinator” shall have the meaning ascribed to it in the EC Compliance Protocols, attached as Appendix B to this Agreement.

“Fiscal Compliance Policy” shall have the meaning ascribed to it in Section 2.01 of this Agreement.

“Follow-up Due Diligence” shall have the meaning ascribed to it in the EC Compliance Protocols, attached as Appendix B to this Agreement.

“Future Cooperation Agreement” shall have the meaning ascribed to it in Section 13.14 of this Agreement.

“Identification Markings” means codes and markings on Philip Morris Cigarette packaging placed on that packaging by Philip Morris International or its authorized agents, which correspond to information regarding those Cigarettes as set forth in the Tracking and Tracing Protocols, attached as Appendix D to this Agreement.

“Initial Participating Member States” means the Participating Member States that have executed a copy of the Agreement on or prior to the Execution Date.

“Intended Market of Retail Sale” means the market which Philip Morris International intends as the market of either domestic retail or duty-free retail sale for Philip Morris Cigarettes when Philip Morris International sells such Cigarettes to a First Purchaser.

“International Compliance Policy” shall have the meaning ascribed to it in the EC Compliance Protocols, attached as Appendix B to this Agreement.

“Litigation” shall have the meaning ascribed to it in recitals (12) and (13) of this Agreement.

“Losses” means the monetary and non-monetary losses and other injuries alleged to have been sustained as a result of the sale, distribution, storage, or shipment of Contraband Philip Morris Cigarettes before the Execution Date, or for Subsequent Participating Member States, their respective Signature Dates, including any and all monetary and non-monetary losses and injuries claimed or described by the EC and the Member States in paragraphs 39 through 40 of the Complaint dated August 3, 2001, filed in the Case entitled European Community, et al. v. RJR Nabisco, et al., case number 01-CV-5188 (NGG) .

“Market of Interest” shall have the meaning ascribed to it in Protocol 6 of Appendix D to this Agreement.

“Master Case” means a case containing 10,000 Cigarettes.

“Member States” means States that are members of the European Union.

“Money Laundering” means conduct in violation of 18 U.S.C. §§ 1956 or 1957 or the comparable provisions under the laws of the EC or the Member States.

“New Member State” means any Member State which, having submitted to the Council of the European Union an application for membership of the European Union and said application having been granted and the State having acceded to the Treaty on European Union, has joined the European Union after January 1, 2004.

“Non-Participating Member States” means the Member States that are not a Party to this Agreement.

“Notice of Interest” shall have the meaning ascribed to it in Protocol 6 Appendix D to of this Agreement.

“OLAF” means the Anti-Fraud Office of the European Commission or any successor thereof.

“Pack” means a small package containing approximately 20 cigarettes and includes all input materials used in the assembly of such container such as cardboard, aluminum foil or metallized papers, plastic wrappings, tax stamps, and tear tapes.

“Participating Member States” shall have the meaning ascribed to it in the Preamble of this Agreement.

“Person” means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

“Philip Morris Cigarettes” means Cigarettes manufactured by Philip Morris or any of its Affiliates that manufacture Cigarettes, or Cigarettes manufactured by licensees and bearing Philip Morris Trademarks as set forth in Appendix I.

“Philip Morris” means Altria Group, Inc., f/k/a Philip Morris Companies Inc., and all of its current and former Affiliates, direct and indirect subsidiaries along with their direct and indirect subsidiaries, and/or any successors thereto, as well as all current and former employees, directors, officers, and servants, including outside attorneys.

“Philip Morris International” means Philip Morris International Inc. and its controlled subsidiaries, including without limitation Philip Morris Products Inc., Philip Morris Duty Free Inc. and Philip Morris World Trade SARL.

“Released Claims” shall have the meaning ascribed to it in Section 9.01(b) of this Agreement.

“Released Persons” shall have the meaning ascribed to it in Section 9.01(a) of this Agreement.

“Releasing Persons” shall have the meaning ascribed to it in Section 9.01(a) of this Agreement.

“Relevant Administrations” shall have the meaning ascribed to it in the Preamble of this Agreement.

“Relevant Law” shall have the meaning ascribed to it in Section 13.06(a) of this Agreement.

“Reporting System” shall have the meaning ascribed to it in the EC Compliance Protocols, attached as Appendix B to this Agreement.

“Representatives of the Relevant Administrations” means OLAF or other authorized representatives duly designated by the Relevant Administrations.

“Request for Termination” shall have the meaning ascribed to it in the EC Compliance Protocols, attached as Appendix B to this Agreement.

“Retail Demand” means the estimated demand for Philip Morris Cigarettes in a particular market to be sold at retail in that market in accordance with all applicable tax, duty or other fiscal laws.

“Sales Plan” shall have the meaning ascribed to it in the EC Compliance Protocols, attached as Appendix B to this Agreement.

“seizure” means a seizure from a single individual or entity (or in certain specific instances, multiple individuals or entities if shown to be acting in concert with one another), in a single location (or in certain specific instances, multiple locations in close proximity if shown to be part of the same scheme), at a single point in time, (or in certain specific instances, multiple points in time in close proximity if shown to be part of the same scheme).

“Signature Date” means, for each Initial Participating Member State the Execution Date and for each Subsequent Participating Member State, the date on which that Participating Member State executed a copy of the Agreement.

“Sold by a Retailer” means (i) the sale of Cigarettes by an authorized retailer to a customer in which all applicable Member State excise and VAT taxes on the retail price in the location of sale have been paid or accounted for in the sale price, or (ii) sales to a customer that has ordered 50 packs of Cigarettes or less through the use of the Internet or other means whereby the seller is not in the physical presence of the customer when the sale is made.

“Statement of Non-Compliance” shall have the meaning ascribed to it in Section 2.02(b) of this Agreement.

“Subsequent Participating Member States” means the Participating Member States that have executed a copy of the Agreement after the Execution Date.

“Subsequent Purchaser” means any Person and such Person’s Affiliates, other than an Affiliate of Philip Morris, who acquires more than 1,000 Master Cases of Philip Morris Cigarettes annually from sources other than Philip Morris International.

“Sufficient Evidence” shall have the meaning ascribed to it in the EC Compliance Protocols, attached as Appendix B to this Agreement.

“Supplemental Payments” means the payments by Philip Morris International that are to be made, without regard to fault, in accordance with Section 4.01(f) and 4.01(g) of this Agreement, to compensate the Relevant Administrations for their lost taxes and duties and other costs, as well as to provide a source of additional funding for anti-contraband enforcement, in the event of a seizure of Contraband Philip Morris Cigarettes.

“Territory of the Member States” means the customs territory of the EC, as defined in Article 3 of Council Regulation (EEC) No. 2913/92 establishing the Community Customs Code, including, for the avoidance of doubt, the free zones, free ports and duty-free areas physically situated therein as well as the Aland Islands.

“Territory of a Non-Participating Member State” means the territory of a Non-Participating Member State, as defined in Article 3 of Council Regulation (EEC) No. 2913/92 establishing the Community Customs Code, including, for the avoidance of doubt, the free zones, free ports and duty-free areas physically situated therein.

“Territory of a Participating Member State” means the territory of a Participating Member State, as defined in Article 3 of Council Regulation (EEC) No. 2913/92 establishing the Community Customs Code, including, for the avoidance of doubt, the free zones, free ports and duty-free areas physically situated therein, as well as the Aland Islands.

“Tracking and Tracing Protocols” shall have the meaning ascribed to it in Section 5.01 of this Agreement, and are attached as Appendix D to this Agreement.

“Termination Order” shall have the meaning ascribed to it in the EC Compliance Protocols, attached as Appendix B to this Agreement.

“Trademark” means a brand name (alone or in conjunction with any other word), logo, symbol, or any other indicia of product identification.

“**Vice President for Compliance Systems**” shall have the meaning ascribed to it in the EC Compliance Protocols, attached as Appendix B to this Agreement.

“**World Wide Duty Free**” means the worldwide market in which Philip Morris Cigarettes are sold by Philip Morris International for resale to retail consumers entitled to purchase free of domestic taxation.

ARTICLE 2

PHILIP MORRIS INTERNATIONAL’S SALES AND DISTRIBUTION PRACTICES

Section 2.01. *EC Compliance Procedures.*

Philip Morris International has already undertaken as a matter of company policy to comply with the principles set forth in the Philip Morris Companies Inc. Policy Statement on Compliance with Fiscal, Trade and Anti-Money Laundering Laws dated September 13, 1999 (the “**Fiscal Compliance Policy**”), a copy of which is attached as Appendix A to this Agreement. In addition to the provisions in Appendix A, Philip Morris International agrees to adopt, implement, and be bound by protocols, approved with the EC, regarding the sale, distribution, storage, and shipment of Philip Morris Cigarettes in and through the Territory of the Member States or any Designated State (the “**EC Compliance Protocols**”), which are attached as Appendix B to this Agreement.

Section 2.02. *Certification of Compliance with EC Compliance Protocols.*

(a) Each year, on the anniversary of the Execution Date, Philip Morris International shall provide the Relevant Administrations with a report, signed by the Vice President for Compliance Systems, describing Philip Morris International’s fulfillment of the requirements of (i) the EC Compliance Protocols, which are set forth in Appendix B of this Agreement, and (ii) the Tracking and Tracing Protocols, which are set forth in Article 5 and Appendix D of this Agreement (the “**Certification of Compliance**”).

(b) If, after receipt of any Certification of Compliance, OLAF reasonably concludes that Philip Morris International is failing to perform its obligations under the EC Compliance Protocols or the Tracking and Tracing Protocols, it may, but by no later than 60 days after OLAF has received the Certification of Compliance, provide Philip Morris International with a statement clearly describing the areas where OLAF reasonably believes that Philip Morris International is failing to perform its obligations under the EC Compliance Protocols or the Tracking and Tracing Protocols, OLAF’s reasons for that belief, and what measures OLAF believes Philip Morris International must take in order

to perform its obligations under the EC Compliance Protocols (the “**Statement of Non-Compliance**”).

(c) OLAF may also provide Philip Morris International with a Statement of Non-Compliance at any other time it reasonably believes that Philip Morris International is significantly failing to adhere to the EC Compliance Protocols or the Tracking and Tracing Protocols and such failure could likely result in a significant increase in the volume of Contraband Philip Morris Cigarettes.

(d) Within 30 days of receiving a Statement of Non-Compliance, under subsections (b) or (c) above, Philip Morris International must provide OLAF with a written response. Thereafter, authorized representatives of Philip Morris International and the European Commission shall meet and confer and attempt to resolve in good faith any dispute relating to the Statement of Non-Compliance. If the dispute has not been resolved within 60 days of Philip Morris International receiving a Statement of Non-Compliance, the European Commission may bring the dispute before the Arbitrator in accordance with Section 12.02 of this Agreement and may seek an order from the Arbitrator requiring Philip Morris International to bring itself into compliance with the EC Compliance Protocols or the Tracking and Tracing Protocols, as the case may be, (a “**Compliance Order**”) and/or an order requiring Philip Morris International to permit OLAF to conduct an audit of Philip Morris International in order to determine what Compliance Orders may be required (an “**Audit Order**”).

(e) An Audit Order issued under this Section shall specifically require Philip Morris International to do the following and only the following:

(i) if OLAF seeks entry into premises, allow OLAF entry to any of its business premises or business premises of its Affiliates, for the sole purpose of observing business operations, provided that OLAF provides Philip Morris International with reasonable notice of where and when it seeks to do so; and

(ii) if OLAF seeks to review documents, Philip Morris International shall provide OLAF with specified business records created after the Execution Date, that OLAF reasonably believes will assist in its anti-contraband and anti-counterfeit efforts.

(f) In any proceeding brought under Section 2.02(d), the Arbitrator may issue a Compliance Order or an Audit Order to Philip Morris International only when it has been proven by the greater weight of the evidence that (i) Philip Morris International has materially failed to adhere to the EC Compliance Protocols and/or the Tracking and Tracing Protocols, (ii) such failure was

identified by OLAF in its Statement of Non-Compliance, and (iii) such failure has not been adequately remedied by the time of the arbitration hearing.

ARTICLE 3
ANTI-CONTRABAND AND ANTI-COUNTERFEIT INITIATIVES

Section 3.01. *Anti-Contraband and Anti-Counterfeit Initiatives.*

(a) It is the policy of the EC and the Member States to vigorously combat the introduction, sale and distribution of Contraband Cigarettes and Counterfeit Cigarettes within or through the Territory of the Member States. Subject to budgetary constraints, the EC intends to intensify efforts to curb the introduction, sale and distribution of Contraband Cigarettes and Counterfeit Cigarettes; apply appropriate equipment for monitoring and tracking the introduction, sale, distribution, storage, and shipment of Contraband Cigarettes and Counterfeit Cigarettes; and continue to train law-enforcement personnel in how best to detect and seize Contraband Cigarettes and Counterfeit Cigarettes.

Section 3.02. *Support for Anti-Contraband and Anti-Counterfeit Initiatives.*

(a) Recognizing that it is in the best interest of Philip Morris International for there to be an end to the illegal importation and introduction of Contraband Cigarettes and Counterfeit Cigarettes into the Territory of the Member States and an end to the counterfeiting of Philip Morris Cigarettes, Philip Morris International agrees to provide reasonable assistance, both direct and indirect, to the EC and the Member States in the fight against Contraband Cigarettes and Counterfeit Cigarettes, as set forth in Section 4.01, Appendix B, Appendix C, and Appendix D. The monetary payments under this Agreement may serve as a source of additional funding for anti-contraband and anti-counterfeit initiatives.

(b) Subject to Article 10 of this Agreement, for any dispute relating to a payment that has been or will be provided by Philip Morris International in accordance with this Section 3.02 or Appendix C (Philip Morris International's Monetary Contributions), the Parties involved in the dispute shall meet and confer in an attempt to resolve the dispute in good faith. If the dispute has not been resolved within 60 days of a Party receiving formal notice of such a dispute, any Party involved in the dispute may refer the dispute to the Arbitrator(s) in accordance with Section 12.02 of this Agreement.

ARTICLE 4
ANTI-CONTRABAND AND ANTI-COUNTERFEIT COOPERATION

Section 4.01. *Contraband and Counterfeit Seizures.*

Subject to the limitations in subsections (k)-(u) below, for seizures of Cigarettes bearing Philip Morris Trademarks by the Member States after the Execution Date, the Parties agree to the following procedures:

(a) Within 30 days after notification to OLAF of a seizure by a Member State of five Master Cases or more of Cigarettes bearing Philip Morris Trademarks, OLAF may provide Philip Morris International with a notice of seizure, which shall include:

- (i) the date, time and location of the seizure;
- (ii) the brand of seized Cigarettes indicated on the packaging and, if available, any indication of the Intended Market of Retail Sale;
- (iii) the quantity of seized Cigarettes;
- (iv) any Identification Markings that appear on the Master Cases or cartons of the seized Cigarettes; and
- (v) as to seizures made by the Member States outside the Territory of the Member States, the basis of the seizing Member State's belief that the Cigarettes seized were destined for introduction into the Territory of the Member States.

(b) Philip Morris International shall be permitted to inspect the seized Cigarettes in the condition they were in at the time of seizure within 30 days after transmittal of the notice of seizure described in subsection (a) above, and to select random samples of the seized Cigarettes for examination. The seizing authority may also select samples which Philip Morris International must examine.

(c) Within 30 days after the inspection of the seized Cigarettes described in subsection (b) above, Philip Morris International shall provide a written response to OLAF stating whether the Cigarettes are Philip Morris Cigarettes or Counterfeit Philip Morris Cigarettes.

(d) Subject to the limitations in subsections (k)-(u) below, where notice of seizure described in subsection (a) above has been delivered reasonably in accordance with the requirements of subsection (a) above, if the Cigarettes are determined by Philip Morris International to be Counterfeit Philip Morris Cigarettes, its response shall include documentation and examination results demonstrating that conclusion. The determination as to whether Cigarettes are

Counterfeit Philip Morris Cigarettes or Philip Morris Cigarettes shall involve a consideration of the factors set forth in Appendix F to this Agreement, which shall be amended by agreement between the Parties as new technologies and techniques are developed.

(e) Subject to the limitations in subsections (k)-(u) below, where notice of seizure described in subsection (a) above has been delivered reasonably in accordance with the requirements of subsection (a) above, if the seized Cigarettes are Contraband Philip Morris Cigarettes manufactured after January 1, 2004, Philip Morris International's response shall include as much information as is available to it concerning:

- (i) the place of manufacture of the seized Cigarettes;
- (ii) the date of manufacture of the seized Cigarettes;
- (iii) the country of intended destination for the seized Cigarettes;
- (iv) any intervening warehousing and shipping;
- (v) the identity of the First Purchaser of the seized Cigarettes;
- (vi) the identity of any known Subsequent Purchaser of the seized Cigarettes;
- (vii) invoices to the First Purchaser that relate to the seized Cigarettes; and
- (viii) payment records from the First Purchaser for any Cigarettes seized.

(f) Subject to the limitations in subsections (k)-(u) below, where notice of seizure described in subsection (a) above has been delivered reasonably in accordance with the requirements of subsection (a) above, for seizures of Contraband Philip Morris Cigarettes by an Initial Participating Member State after the Execution Date or by a Subsequent Participating Member State after its Signature Date, the response of Philip Morris International shall also include a Supplemental Payment calculated as follows:

- (i) Philip Morris International shall make a Supplemental Payment to compensate the EC and the Participating Member State by which the Cigarettes were seized for their lost taxes and duties and other costs, in an amount equal to 100% of the taxes and duties that would have been assessed had the seized Contraband Philip Morris Cigarettes been legally distributed for retail sale in the Participating Member State by

which the Cigarettes were seized as set forth in Appendix E, which shall be updated by the Relevant Administrations upon notice to Philip Morris International as applicable taxes and duties change, less any amount of taxes and duties already paid to the EC or any Member State(s) in relation to those Contraband Philip Morris Cigarettes; and

(ii) If the Contraband Philip Morris Cigarettes seized, when added to the number of Contraband Philip Morris Cigarettes already seized in the same calendar year in the Member States that were Member States on January 1, 2004, results in a total number that exceeds the Baseline Amount, Philip Morris International's Supplemental Payment shall include an additional amount equal to four times the amount under subsection (f)(i), which shall compensate the EC and the Participating Member State by which the Cigarettes were seized for any costs not compensated by the amount under subsection (f)(i) and which may provide the EC and the Participating Member State by which the Cigarettes were seized with a source of additional funding for anti-contraband and anti-counterfeit efforts.

(g) Subject to the limitations in subsections (k)-(u) below, where notice of seizure described in subsection (a) above has been delivered reasonably in accordance with the requirements of subsection (a) above, for seizures of Contraband Philip Morris Cigarettes after the Execution Date by a Non-Participating Member State, the response of Philip Morris International shall also include a Supplemental Payment calculated as follows:

(i) Philip Morris International shall make a Supplemental Payment to compensate the EC for any lost taxes and duties and other costs, in an amount equal to 100% of the taxes and duties that would have been remitted to the EC in respect of such seized Contraband Philip Morris Cigarettes had such Cigarettes been legally distributed for retail sale in the Non-Participating Member State by which the Cigarettes were seized as set forth in Appendix E, less the EC's share of any amount of taxes and duties already paid to the EC or any Member State(s) in relation to those Contraband Philip Morris Cigarettes, and

(ii) If the Contraband Philip Morris Cigarettes seized, when added to the number of Contraband Philip Morris Cigarettes already seized in the same calendar year in the Member States that were Member States on January 1, 2004, results in a total number that exceeds the Baseline Amount, Philip Morris International's Supplemental Payment shall include an additional amount equal to four times the amount under subsection (g)(i), which shall compensate the EC for any costs not compensated by the amount under subsection (g)(i) and which may

provide the EC with a source of additional funding for anti-contraband and anti-counterfeit efforts.

(h) For the Supplemental Payments to be made pursuant to subsections (f) and (g) above, it shall not be incumbent on the Relevant Administrations to establish fault on the part of Philip Morris International and such payments, if due, shall be made even though Philip Morris International shall have complied in all respects with its obligations under this Agreement relating to anti-contraband efforts and initiatives.

(i) The Parties recognize and understand that the mere fact of seizure of Contraband Philip Morris Cigarettes at any point in the distribution chain does not, in and of itself, automatically implicate Philip Morris International, or the First Purchaser to whom the seized Philip Morris Cigarettes were originally sold, as a violator of any applicable tax or duty laws.

(j) OLAF or any Participating Member State may sample and test seized Cigarettes at any time. If OLAF disputes the determination made by Philip Morris International as to whether the seized goods are Counterfeit Philip Morris Cigarettes or Contraband Philip Morris Cigarettes, OLAF shall reply in writing to Philip Morris International detailing the basis for the dispute within 60 days after receiving the response referred to in Section 4.01(c), and thereafter Philip Morris International and OLAF shall meet and confer and attempt to resolve the dispute in good faith. If the dispute cannot be resolved within 30 days of Philip Morris International receiving OLAF's reply, the samples in dispute shall be submitted to an independent laboratory or facility for examination to determine whether the Cigarettes are Counterfeit Philip Morris Cigarettes or Contraband Philip Morris Cigarettes in accordance with the factors set forth in Appendix F to this Agreement. The determination of the selected independent laboratory or facility as to whether the Cigarettes are Contraband Philip Morris Cigarettes or Counterfeit Philip Morris Cigarettes shall be final and binding on the Parties. The costs of the laboratory or facility's services shall be paid by the non-prevailing Party. The independent laboratory or facility shall be designated by mutual agreement of the Parties on the Execution Date. If a dispute arises with respect to the selection of the independent laboratory or facility, such dispute shall be settled by the Arbitrator in accordance with Section 12.02 of the Agreement.

(k) Notwithstanding any other provision in this Section 4.01 to the contrary, Philip Morris International shall have no obligation to make Supplemental Payments pursuant to subsections (f) and (g) above, and Contraband Philip Morris Cigarettes shall not be included in the calculations to determine the amount of any Supplemental Payment described in subsections (f) and (g) above, where:

(i) the notice of seizure described in subsection (a) above has not been delivered reasonably in accordance with the requirements of subsection (a) above;

(ii) Philip Morris International has not been permitted to inspect the seized Cigarettes in substantial accordance with the requirements of subsection (b) above, or the seizing authority has determined that the seized Cigarettes are not Contraband Philip Morris Cigarettes as evidenced by the release of the seized Cigarettes;

(iii) the total volume of Contraband Philip Morris Cigarettes seized in the particular seizure was less than five Master Cases of cigarettes after exclusion of any amount excluded by the seizing authority or a court pursuant to Article 8 of Directive 92/12 by virtue of having been acquired in another Member State for “own use” and transported by the purchaser;

(iv) the Contraband Philip Morris Cigarettes were manufactured prior to January 1, 2004;

(v) the Contraband Philip Morris Cigarettes were stolen by a third party and Philip Morris International can reasonably demonstrate that such theft has occurred;

(vi) the Contraband Philip Morris Cigarettes were seized by a Member State outside of the Territory of the Member States and the greater weight of the evidence demonstrates that the Cigarettes seized were not destined for introduction into the Territory of the Member States; or

(vii) the Contraband Philip Morris Cigarettes were seized by a Member State and Philip Morris International can reasonably demonstrate that such Contraband Philip Morris Cigarettes were sold, distributed, stored, and shipped in accordance with all applicable fiscal and legal requirements of the EC and a Member State, or were Sold by a Retailer.

(l) For any dispute relating to (i) application of the provisions in subsection (k) above, (ii) the amount, if any, of a payment to be made under subsections (f) and (g) above, or (iii) the determination of the appropriate Member State by which the Cigarettes were seized, the Parties involved in the dispute shall meet and confer in an attempt to resolve the dispute in good faith. If the dispute has not been resolved within 60 days of a Party receiving formal notice of such a dispute, any Party involved in the dispute may refer the dispute to the Arbitrator for settlement in accordance with the provisions of Section 12.02 of this Agreement.

(m) If a Member State or the EC accepts a Supplemental Payment in regard to a particular seizure of Philip Morris Cigarettes and later collects duties or taxes or the monetary equivalent from Philip Morris in regard to that particular seizure, the Member State or the EC shall promptly refund to Philip Morris International the amount of the Supplemental Payment that had been paid equal to the duty and taxes or the monetary equivalent collected or paid as well as any corresponding portion of the amounts, if any, paid under subsections (f)(ii) or (g)(ii).

(n) If a Member State or the EC accepts a Supplemental Payment in regard to a particular seizure of Philip Morris Cigarettes and it is later found that duties and taxes or the monetary equivalent had already been paid with regard to that particular seizure, the Member State or the EC shall promptly refund to Philip Morris International the amount of the Supplemental Payment that had been paid equal to the duty and taxes or the monetary equivalent collected or paid as well as any corresponding portion of the amounts paid, if any, under subsections (f)(ii) or (g)(ii).

(o) Notwithstanding any other provision in this Agreement, other than subsections (p), (t), and (u) below, for seizures of Contraband Philip Morris Cigarettes in a New Member State,

(i) in the first year following that New Member State's accession to the European Union, no Supplemental Payment shall be payable by Philip Morris International and any such seizures shall not be counted against the Baseline Amount for the purpose of any other calculation under subsections (f) or (g) above.

(ii) Notwithstanding subsections (iii) and (iv) below, after adjustment of the Baseline Amount in accordance with subsection (s) below, Supplemental Payments shall be payable by Philip Morris International under subsections (f)(i), and/or (f)(ii) in the case of a Subsequent Participating Member State as applicable, or, (g)(i), and/or (g)(ii) in the case of a Non-Participating Member State as applicable, and such seizures shall be counted against the Baseline Amount for the purpose of any other calculation under subsections (f) or (g) above, beginning in the year following the year in which the incidence of Contraband Cigarettes and Counterfeit Cigarettes in that New Member State is determined to be less than 2% of the total market for Cigarettes in that New Member State.

(iii) in each of the second, third, fourth and fifth years following that New Member State's accession to the European Union, in the event that a New Member State does not satisfy subsection (ii) above, a Supplemental Payment shall be payable by Philip Morris International

only under subsections (f)(i) in the case of a Subsequent Participating Member State as applicable and/or (g)(i) in the case of a Non-Participating Member State as applicable, and only if in that year:

(A) the incidence of Contraband Cigarettes and Counterfeit Cigarettes in that New Member State is determined to be:

- (1) 12% or less (for the second year following accession);
- (2) 10% or less (for the third year following accession);
- (3) 7% or less (for the fourth year following accession);
- (4) 5% or less (for the fifth year following accession);

of the total market for Cigarettes in that New Member State; or

(B) the incidence of Contraband Cigarettes and Counterfeit Cigarettes in that New Member State is determined to be more than the thresholds set forth in subsection (A) above, but the incidence of Contraband Philip Morris Cigarettes divided by the total incidence of Contraband Cigarettes and Counterfeit Cigarettes in that New Member State, expressed as a percentage, is greater than 70% of (x) the total tax-paid retail sales of Philip Morris Cigarettes divided by (y) the total tax-paid retail Cigarette sales in that New Member State, expressed as a percentage.

(iv) from the sixth year following a New Member State's accession to the European Union, Supplemental Payments shall be payable by Philip Morris International and any such seizures shall be counted against the Baseline Amount for the purpose of any other calculation under subsections (f) or (g) above, only if the incidence of Contraband Cigarettes and Counterfeit Cigarettes as a percentage of the total market for Cigarettes in that New Member State has been determined to be less than or equal to the incidence of Contraband and Counterfeit Cigarettes in the Initial Participating Member States as a percentage of the total market for Cigarettes in the Initial Participating Member States, in the fifth year following the New Member State's accession as determined pursuant to subsection (q).

(p) In addition to the limitations on Supplemental Payments set forth in subsection (o) above, for the first five years following a New Member State's accession to European Union, if Contraband Philip Morris Cigarettes are seized in a New Member State and the amount of those Contraband Philip Morris Cigarettes when added to the number of Contraband Philip Morris Cigarettes already seized in the same calendar year in all the New Member States that joined the European Union in the same year as the seizing New Member State, results in a total number that exceeds the Baseline Amount as of January 1, 2004, Philip Morris International shall have no obligation to make Supplemental Payments for that seizure. In relation to any New Member State that joins the European Union after January 1, 2007, the Parties shall agree on a method for determining how this subsection (p) shall operate.

(q) For the purposes of subsections (o) and (p) above, the incidence of Contraband Cigarettes and Counterfeit Cigarettes in any New Member State and in the Initial Participating Member States in accordance with subsection (o)(iv) above shall be determined by a methodology agreed to by the Parties.

(r) If a Member State or any subdivision thereof sells or resells, or authorizes the sale or resale of, seized Contraband Philip Morris Cigarettes no Supplemental Payment is due in relation to such Cigarettes and, if paid, any such Supplemental Payment shall be refunded.

(s) If a New Member State, upon or after accession to the European Union, joins the Agreement and becomes eligible for Supplemental Payments under subsection (f)(ii), Philip Morris International and the European Commission shall, with regard to the factors set forth in Appendix K, meet and confer as to when and how the Baseline Amount shall be amended or recalculated. If no agreement is reached, the Arbitrator, pursuant to Section 12.02 of this Agreement, shall determine the appropriate amendment to, or recalculation of, the Baseline Amount, with due regard to the factors set forth in Appendix K. No payments shall be made under subsection (f)(ii), however, until an amended Baseline Amount shall have been established.

(t) If at any time, a Party asserts that there is a serious persisting problem concerning Contraband Cigarettes or Counterfeit Cigarettes entering into a New Member State, which could bring about serious imbalances in the application of the Agreement, Philip Morris International and the EC shall meet and discuss as soon as reasonably possible any appropriate measures to ensure the continued functioning of the Agreement, including, if necessary, amendment or suspension of Philip Morris International's obligations under Article 4 as to that New Member State. If no agreement is reached, the Arbitrator, pursuant to Section 12.02 of this Agreement, shall determine the appropriate amendment or relief, with due regard to the factors set forth in Appendix K.

(u) If at any time, a Party asserts that there is a serious persisting problem concerning seizures of Contraband Philip Morris Cigarettes in a Participating Member State who was a Member State on January 1, 2004, which could bring about serious imbalances in the application of the Agreement, Philip Morris International and the European Community shall meet and discuss as soon as reasonably possible any appropriate measures to insure the continuing functioning of the Agreement, including, if necessary, amendment of Philip Morris International's obligations under Article 4 as to that Member State. If no agreement is reached, the Arbitrator, pursuant to Section 12.02 of this Agreement, shall determine the appropriate amendment or relief, with due regard to the factors set forth in Appendix K.

For purposes of this Section, it shall be presumed that a serious persisting problem exists if Philip Morris International can reasonably demonstrate that:

(i) For a substantial period of time, seizures in a Member State significantly exceed the seizures by that Member State in 2003 so as to materially deviate from the expectations of the Parties, and

(ii) More than fifty percent of the seized Cigarettes for which Supplemental Payments are made are Cigarettes which were sold at retail and the applicable taxes on the retail price of the Cigarettes were paid in either a New Member State of the European Community or a non-Member State outside the European Community.

If the increase in the incidence of Contraband Philip Morris Cigarettes in the aforesaid Member State is substantially attributable to a failure on the part of Philip Morris International to adhere to the terms of this Agreement, and/or its failure to sell Cigarettes into a market consistent with legitimate Retail Demand in that market, amendment of Article 4 obligations is not appropriate.

ARTICLE 5 TRACKING AND TRACING

Section 5.01. *Tracking and Tracing Protocols.*

Consistent with its Fiscal Compliance Policy and applicable packaging laws, Philip Morris International agrees to adopt, implement, maintain and be bound by the commercially reasonable practices and procedures with respect to the tracking and tracing of shipments of Philip Morris Cigarettes after the Execution Date as set forth in the "**Tracking and Tracing Protocols**" attached as Appendix D.

Section 5.02. *Certification of Compliance with Tracking and Tracing Protocols.*

(a) Each year, on the anniversary of the Execution Date, Philip Morris International shall provide the Relevant Administrations with a report, signed by the Vice President for Compliance Systems, describing Philip Morris International's compliance with the requirements of the Tracking and Tracing Protocols. Such certification shall be part of the annual Certification of Compliance and shall be governed by the procedures set forth in Section 2.02 of this Agreement.

ARTICLE 6
REVIEW OF AGREEMENT

Section 6.01. *Annual Meetings.*

At least once per year, the authorized representatives of Philip Morris International and the European Commission shall meet to confer and assess the functioning of the Agreement and its Protocols. At that meeting, Philip Morris International and the European Commission may each present any suggestions they may have to improve the functioning of the Agreement. Subject to Relevant Law, the European Commission and Philip Morris International may communicate to each other concerns relating to any Party's activities in connection with their commitments and obligations under the Agreement.

ARTICLE 7
FULFILLMENT OF OBLIGATIONS AND OBJECTIVES

Section 7.01. *Promotion of Public Policy.*

The Parties to this Agreement hereby acknowledge and agree that this Agreement is designed to provide meaningful assistance to the Participating Member States and the EC in curtailing the smuggling and illegal distribution of Cigarettes into and within the Territory of the Member States.

Section 7.02. *Respect for Obligations.*

The Parties hereby acknowledge and agree to take all appropriate measures: (1) to ensure fulfillment of their obligations under this Agreement, (2) to facilitate the achievement of the objectives of the Agreement, and (3) to abstain from any measures that would jeopardize the attainment of the objectives of this Agreement.

Section 7.03. *Agreement Consistent with EC and Applicable National Laws.*

The Parties to this Agreement hereby acknowledge and agree that compliance with the terms of this Agreement is consistent with EC and applicable national laws, and with the provisions of the Treaty Establishing the European Community (the “**EC Treaty**”), and will contribute to achieving the objectives of the EC Treaty.

Section 7.04. *The Parties’ Intentions.*

The mutual intention of the Parties is that this Agreement will swiftly, finally and fully resolve in an amicable and cooperative manner, without any admission of liability, all matters in which or in respect of which the following persons seek or might seek redress for alleged Losses: (i) the Parties; (ii) the political subdivisions of the Participating Member States; (iii) instrumentalities and agencies of (i) and (ii); and (iv) successors and assignees of all of the foregoing (collectively “**Resolved Matters**”). The Parties’ mutual intention is that all Parties and Released Persons be relieved of the threat of claims, actions, suits, assessments, or proceedings in any forum against them that seeks redress for any Resolved Matters.

ARTICLE 8
REPRESENTATIONS AND WARRANTIES

Section 8.01. *Mutual Representations.*

(a) Each of the Relevant Administrations hereby represents and warrants to Philip Morris International, and Philip Morris International hereby represents and warrants to each of the Relevant Administrations that:

- (i) the execution, delivery and performance of this Agreement by such Party is within its governmental or corporate powers, as the case may be, and has been duly authorized by all necessary action on its part;
- (ii) the Person executing this Agreement on behalf of such Party has the full right and authority to do so; and
- (iii) this Agreement constitutes a valid and binding agreement of such Party, enforceable in accordance with its terms.

ARTICLE 9
RELEASE AND DISMISSAL OF CLAIMS

Section 9.01. *Release.*

(a) The provisions of Sections 9.01(a), (b), and (c) shall inure to the benefit of Philip Morris (the “**Released Persons**”) and, consistent with Relevant Law, be binding upon each of (i) the Relevant Administrations; (ii) their respective political subdivisions; (iii) instrumentalities and agencies of (i) and (ii); and (iv) successors and assignees of all of the foregoing (collectively, the “**Releasing Persons**”). The release provided for in this Section 9.01 shall cover companies acquired by or merged into Philip Morris subsequent to the Execution Date, but only if the company’s aggregate EC market share was not in excess of 2% in 2002.

(b) On the Signature Date of the Agreement for each Releasing Person, such Releasing Person agrees to and shall, without any further action on the part of such Releasing Person, absolutely and unconditionally fully release and forever discharge the Released Persons, to the fullest extent permitted by law, from any and all civil claims, charges, demands, damages, subpoenas, discovery requests, actions, suits, causes of action, liabilities, costs, expenses and attorneys’ fees, including without limitation, all civil claims that may be allowable to the Releasing Persons within criminal proceedings in the form of restitution, disgorgement, forfeiture, punitive damages, or otherwise, for conduct prior to the Signature Date wherever arising and of whatever nature, whether known or unknown, suspected or unsuspected, accrued or unaccrued, asserted or unasserted, foreseen or unforeseen, with respect to, that result from, arise out of, or relate to the allegations, or the alleged acts (or omissions) forming the basis of the allegations, that were raised or asserted, or could have been raised or asserted, in the Litigation (collectively, the “**Released Claims**”), regardless of the legal theory or purported basis of legal duty or liability on which such Released Claims are, or could be, raised or asserted.

(c) The provisions of Sections 9.01(a), (b), and (c) (as well as the other provisions of this Agreement) are a result of a compromise of disputed claims and defenses, and Released Persons shall not be deemed to have admitted any of the allegations asserted in the Litigation.

(d) On the Execution Date of the Agreement, each Released Person agrees to and shall, without any further action on the part of such Released Person, absolutely and unconditionally fully release and forever discharge the Releasing Persons and their attorneys, to the fullest extent permitted by law, from any and all civil claims, charges, demands, actions, suits, causes of action, liabilities, costs, expenses, fees, and attorneys’ fees, including without limitation, all civil claims for compensation or monetary damages sought in civil

proceedings in the form of restitution, disgorgement, forfeiture, punitive damages, or otherwise for conduct prior to the Execution Date wherever arising and of whatever nature, whether known or unknown, suspected or unsuspected, accrued or unaccrued, asserted or unasserted, foreseen or unforeseen, that result from, arise out of or relate to the Litigation, regardless of the legal theory or purported basis of legal duty or liability on which such claims are, or could be, asserted.

Section 9.02. *Dismissal Of Claims.*

The Parties shall promptly seek and obtain dismissal with prejudice and without costs of all pending actions and/or appeals, as they relate to Philip Morris, and to the extent that they are related to the matters at issue in the Litigation, including any proceeding by Philip Morris International before the European Court of First Instance or the European Court of Justice. The Parties shall jointly submit a form of a Stipulation of Dismissal with Prejudice and without costs to the relevant court or courts which will be substantially in the form annexed as Appendix H to this Agreement.

ARTICLE 10
SETOFF

Section 10.01. *Right of Setoff*

(a) In addition to its rights and obligations under Article 7 and the releases set forth in Article 9 of this Agreement, Philip Morris International shall have the right to set off against any and all amounts otherwise due and payable to the Relevant Administrations under this Agreement, the amount of any damage, loss, liability, tax, custom duty, expense or non-criminal penalty actually incurred, payable or suffered by Philip Morris with respect to, resulting from, or arising out of, actions, suits, or proceedings, other than the Litigation (whether civil proceedings, administrative proceedings, tax proceedings, or civil claims made within criminal proceedings) brought against Philip Morris by (i) the EC, (ii) any Member State, (iii) the political subdivisions of any Member State; (iv) instrumentalities and agencies of (i), (ii), and (iii); and (v) successors and assignees of all of the foregoing, which seek redress as a result of the sale, distribution, storage, or shipment of Contraband Philip Morris Cigarettes before the Execution Date or, for Subsequent Participating Member States, their respective Signature Dates.

(b) Upon any Party learning of (i) the existence of any actual claim, action, suit, or proceeding, or (ii) any threatened claim that would require disclosure under Financial Accounting Standard Board Statement No. 5, that may result in Philip Morris International having a right to setoff under this Section

10.01, that Party shall provide each other Party, to the fullest extent permitted by law, with prompt notice of the existence of such claim, action, suit, or proceeding.

(c) Upon learning of the existence of (i) any actual claim, action, suit, or proceeding, or (ii) any threatened claim that would require disclosure under Financial Accounting Standard Board Statement No. 5, that may result in Philip Morris International having a right to setoff under this Section 10.01, Philip Morris International may, upon giving the EC 30 days notice, begin paying any funds which are due to the Relevant Administrations under this Agreement into an interest-bearing escrow account, up to the amount claimed, or if no specific amount is claimed, the amount at issue, in such actions or proceedings, rather than paying such funds directly to the Relevant Administrations. Payment of funds into escrow by Philip Morris International pursuant to this subsection (c) above shall not be deemed a breach of this Agreement.

(d) In each instance where Philip Morris International pays funds into escrow as set forth in Section 10.01(c), Philip Morris International and the EC shall make a good faith effort to agree as to whether utilization of the escrow account provided for in subsection (c) above is appropriate. If they have not agreed within 60 days after notice was provided pursuant to subsection (b) above, the EC shall have the right to make application to the Arbitrator(s), as described below in Section 12.02, to challenge the applicability of subsection (c) above. In order for such a challenge to be upheld by the Arbitrator(s), the EC must demonstrate that Philip Morris International does not have a reasonable basis to support its belief that it is incurring, or may incur, damage, loss, liability or expense that may be eligible for setoff pursuant to subsection (a) above. If the Arbitrator(s) determines that Philip Morris International does not have a reasonable basis to place the aforesaid funds into the escrow account, the Arbitrator(s) shall order that such funds together with accrued interest be released from the escrow account within 30 days and paid to the Relevant Administrations pursuant to this Agreement.

(e) Before exercising any right to setoff pursuant to subsection (a) above either by ceasing to make payments due to the Relevant Administrations or by claiming amounts held in escrow, Philip Morris International shall provide at least 30 days notice to the European Commission of its intention to do so. Upon receipt of such notice, Philip Morris International and the European Commission shall immediately make a good faith effort to agree as to whether setoff is appropriate and, if so, what the amount of the setoff should be. If Philip Morris International and the European Commission have not agreed within 60 days of notice being received by the European Commission, either Party may make an application to the Arbitrator in accordance with Section 12.02 to determine whether a right of setoff exists pursuant to this Section 10.01. In order to establish any right of setoff, Philip Morris International must demonstrate by the greater weight of the evidence that (i) Philip Morris has incurred or suffered

damage, loss, liability or expense that is eligible for setoff pursuant to subsection (a) above; and (ii) the amount so incurred or suffered. This subsection (e) does not in any way affect the rights of Philip Morris International to pay funds into escrow in accordance with subsection (c) above. Upon a ruling by the Arbitrator(s) that Philip Morris International has failed to establish a right of setoff, all funds owed to the Relevant Administrations under the terms of the Agreement that were the subject of dispute together with accrued interest, shall promptly be paid over to the Relevant Administrations. Upon a ruling by the Arbitrator(s) that Philip Morris International has established a right of setoff, Philip Morris International shall be entitled to recover such funds from escrow and/or set off against future payments in accordance with the Arbitrator's(s') ruling.

(f) *Claims in Excess of Amount Available for Setoff.* If a claim, action, suit, proceeding, assessment or demand has been made that would, if successful, entitle Philip Morris International to exercise its right to setoff under Article 10 and either (1) the amount of the claim, action, suit, proceeding, assessment or demand is likely to exceed the total amount available for setoff or escrow under Article 10, or (2) the claim, action, suit, proceeding, assessment or demand has been brought within two years of the Execution Date and the amount of the claim, action, suit, proceeding, assessment or demand is likely to exceed € 200 million; and, despite the good-faith and expeditious efforts of Philip Morris to defeat the claim action, suit, proceeding, assessment or demand, including invoking the releases provided for by this Agreement if applicable:

(i) the claim action, suit, proceeding, assessment or demand has not been dismissed, withdrawn, or reduced below the applicable threshold in (1) or (2) above, within one year after the court or tribunal has received full and complete arguments from the parties to the dispute as to whether the claim, action, suit, proceeding, assessment or demand should be dismissed because its assertion contravenes the provisions of this Agreement or otherwise, or

(ii) the claim, action, suit, proceeding, assessment or demand has been sustained by the court or tribunal after considering arguments by Philip Morris International that the claim, action, suit, proceeding, assessment or demand should be dismissed because its assertion contravenes the provisions of this Agreement or otherwise, and

(iii) Philip Morris can demonstrate that, as a result of the ongoing claim, burdens have been imposed on it or it is otherwise prejudiced by virtue of such claim.

then (A) as to any such claim, action, suit, proceeding, assessment or demand that is within the scope of Article 9, Philip

Morris International shall be discharged of its obligations to pay any amounts payable (i) under Appendix C to the Member State that brought the action, suit, proceeding, assessment or demand, (ii) under Article 4 of this Agreement to that Member State, and (iii) to the EC for its share of any Supplemental Payment for seizures by that Member State. In the event that the aforesaid claim, action, suit, proceeding, assessment, or demand is eventually dismissed or otherwise resolved for an amount below the applicable threshold set forth in (1) and (2) above, Philip Morris International's obligations to the Member State under Appendix C and to the Member State and the EC under Article 4 shall resume prospectively; and

(B) as to any such claim, action, suit, proceeding, assessment or demand that is not within the scope of Article 9, Philip Morris International shall be discharged of its obligations to pay (i) 50% of the amounts payable to all the Relevant Administrations under Appendix C, (ii) amounts payable under Article 4 of the Agreement to the Member State that brought the claim, action, suit, proceeding, assessment or demand, as well that Member State's share of any payments payable under Appendix C of this Agreement; and (iii) amounts payable to the EC for its share of any Supplemental Payments for any seizures by that Member State. In the event that the aforesaid claim, action, suit, proceeding, assessment or demand is eventually dismissed or otherwise resolved for an amount below the applicable threshold set forth in (1) and (2) above, Philip Morris International's obligations to the Relevant Administrations under Appendix C and to the Member State and the EC under Article 4 shall resume prospectively.

(iv) For the purposes of subsections (A) and (B) above, the term "Member State" that brought the action, suit, proceeding, assessment or demand shall include (i) the Member State; (ii) the political subdivisions of that Member State; (iii) instrumentalities or agencies of (i) or (ii); and (iv) successors and assignees of all of the foregoing.

Section 10.02. *No Other Effect.*

Subject to Article 11, nothing in this article shall reduce or otherwise affect the other duties of Released Persons to any Releasing Person or the requirements of Relevant Law, nor shall it reduce or otherwise affect the duty of the participating Released Person's obligations under this Agreement, which shall continue in full force and effect during and after any dispute resolution proceedings.

ARTICLE 11
TERMINATION

Section 11.01. *Termination.*

(a) This Agreement shall terminate upon the Expiration Date unless terminated earlier by subsections (b) through (g) of this Section.

(b) The Parties agree that pursuant to this Agreement each Party and all Released Persons shall have adequate remedies to protect them against any claims or demands which are (i) asserted against them in contravention of Article 9, or (ii) subject to setoff under the provisions of Article 10. Accordingly, a Party shall have the right to terminate this Agreement if, despite their good-faith efforts, the Parties are unable to agree upon substitute provisions, adjustments, or modifications to the Agreement so as to restore those remedies. A Party shall have the right to terminate this Agreement under the circumstances and in the manner set forth in subsections (c) through (g), inclusive, below.

(c) A Party shall have the right to terminate this Agreement if:

(i) A claim, action, suit, proceeding, assessment or demand that would, if successful, entitle Philip Morris International to exercise its right to setoff under Article 10 has been made by a Participating Member State in which the sales of Philip Morris Cigarettes are equivalent to or are more than 10 percent of the Philip Morris Cigarettes sold in the Territory of the Member States as of January 1, 2004, and a court in that Participating Member State, or the European Court of Justice, has issued a final and unappealable judgment that invalidates or renders unenforceable a material provision of Article 9 or Article 10, or there is a legislative, executive or administrative action with the same effect in that Participating Member State; or

(ii) Claims, actions, suits, proceedings, assessments or demands that would, if successful, entitle Philip Morris International to exercise its right to setoff under Article 10 have been made by Participating Member States in which collectively the sales of Philip Morris Cigarettes are equivalent to or are more than 10 percent of the Philip Morris Cigarettes sold in the Territory of the Member States as of January 1, 2004, and the European Court of Justice has, or courts in those Participating Member States have, issued final and unappealable judgments that invalidate or render unenforceable a material provision of Article 9 or Article 10, or there are legislative, executive, or administrative actions with the same effect in those Participating Member States.

(d) For the purposes of subsection (c) above, the term “Participating Member State” shall include (i) the Participating Member State; (ii) the political subdivisions of that Participating Member State; (iii) instrumentalities or agencies of (i) or (ii); and (iv) successors and assignees of all of the foregoing.

(e) A Party that seeks to terminate the Agreement must first submit a notice of termination to the other Parties, setting out the basis for termination. Such termination shall become effective 120 days from receipt of notice unless another Party challenges the notice of termination pursuant to Section 12.02 of this Agreement.

(f) In the event that an arbitration proceeding is invoked pursuant to subsection (e) above, if the Arbitrator(s) determines that there is a basis for termination, the Agreement shall terminate in its entirety unless the precipitating cause of the termination is clearly confined in its application to a particular Member State or particular Member States, in which case, the Arbitrator(s) shall determine the scope of the termination in the absence of an agreement by the remaining Parties.

(g) If the Agreement is terminated before the Expiration Date in accordance with the provisions set forth above in subsection (c), a new agreement shall take its place without any further action being necessary by the Parties, such agreement remaining in effect until the Expiration Date, consisting of (1) the Parties’ rights and obligations under Articles 7, 9 and 12 of this Agreement, (2) the Parties’ rights and obligations in effect on the date of termination of the Agreement under Article 2 and Appendix B of this Agreement, and (3) the Parties’ rights and obligations in effect on the date of termination of the Agreement under Article 5 and Appendix D of this Agreement. All other provisions of the Agreement shall be terminated.

Section 11.02. *Subsequent Agreement.*

It is the intention of the Parties, if feasible, to extend the duration of this Agreement beyond the Expiration Date. Accordingly, beginning no later than two years prior to the Expiration Date, if this Agreement has not been terminated earlier in accordance with its terms, the representatives of the Parties shall meet and attempt in good faith to reach another agreement between the Parties covering the same subject matter addressed herein.

ARTICLE 12
DISPUTE RESOLUTION

Section 12.01. *The Role of the European Court of First Instance and the European Court of Justice.*

(a) *Arbitration Clause for Articles 7 and 9.* In the absence of prior agreement, any claim, action, suit, proceeding or dispute between the Parties, between a Party and a Released Person or a Releasing Person, or between a Released Person and a Releasing Person, arising out of or relating to any breach, clarification or enforcement of Article 7 or 9 of this Agreement relating to the sale, distribution, storage or shipment of Contraband Cigarettes before the Execution Date or, for Subsequent Participating Member States, their respective Signature Dates, shall be brought exclusively before the European Court of First Instance pursuant to Article 238 of the EC Treaty. Each of the Parties hereby agrees, on its behalf and on behalf of the Released Persons or the Releasing Persons (as the case may be), that this Section 12.01 constitutes and is intended to be an arbitration clause for the purposes of Article 238 of the EC Treaty, and irrevocably consents to the jurisdiction of the European Court of First Instance in relation to any such dispute, and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the reference of such dispute to the European Court of First Instance or that any such dispute has been brought in an inconvenient forum. Process in any proceeding brought before the European Court of First Instance pursuant to Article 238 of the EC Treaty may be served on any Party anywhere in the world, whether within or without the jurisdiction of the European Court of First Instance. The applicable law to interpret this Agreement shall be the law of the State of New York, without giving effect to choice of law or conflict of law doctrine. The European Court of First Instance shall in its determination of any dispute concerning this Agreement, have regard to, *inter alia*, its own case law, and that of the European Court of Justice, on the interpretation of the EC Treaty and EC Law.

(b) *Referral of matters to the European Court of First Instance or the European Court of Justice.* In the event that a claim, suit, action, assessment, proceeding or demand (in this Section 12.01(b) hereinafter, “claim”) is brought against Philip Morris relating to the sale, distribution, storage, or shipment of Contraband Cigarettes before the Execution Date before any court or tribunal of the Member States (including the courts and tribunals of political subdivisions of the Member States) the Parties agree to follow the following procedures:

(i) the European Commission may be given notice of the claim by Philip Morris International;

(ii) As soon as reasonably possible after receiving notice of the claim, the European Commission agrees to: (a) consider whether the claim is within the scope of the Arbitration clause of Section 12.01(a) of this Agreement; (b) if it considers this to be the case, prepare a statement of position in admissible form that the claim concerns, in whole or in part, a matter covered by and subject to this Agreement and to the Arbitration clause in Section 12.01(a) and that the Agreement provides that disputes regarding the application of Articles 7 and 9 of this Agreement to such

claims should be brought exclusively before the Court of First Instance pursuant to Article 238 of the EC Treaty, the Agreement provides that if such claims are brought before any court or tribunal of the Member States (including a court or tribunal of the political subdivisions of the Member States), such proceeding should be suspended and referred or transferred to the European Court of First Instance pursuant to Article 238 of the EC Treaty, and the Agreement provides that to the extent that any Party is prevented from so transferring, all questions concerning the interpretation of any provision of Community Law that is necessary to enable such court to give judgment, be referred to the European Court of Justice under Article 234 of the EC Treaty and (c) provide said statement of position to all relevant Parties for use by any Party in a motion filed pursuant to Section 12.01(a) and, submit it to the competent authority of the Relevant Member State with a request that it be submitted to the appropriate court;

(iii) If the European Commission concludes that a claim, is not a matter covered by and subject to this Agreement or is not one to which the Arbitration clause of Section 12.01(a) applies, and any Party disagrees with that conclusion, or the European Commission does not render the aforesaid statement of position within sixty (60) days of the notice set forth herein, any Party may demand Arbitration pursuant to Section 12.02 of this Agreement. If the Arbitrators rule that the claim is within the scope of the Arbitration clause of Section 12.01(a), the European Commission agrees to (a) prepare a statement in admissible form that states that (i) the Arbitrator(s) have ruled that the claim is within the scope of the Arbitration clause of Section 12.01(a) of this Agreement, and (ii) the Agreement provides that disputes regarding the application of Articles 7 and 9 of this Agreement to such claims should be brought exclusively before the Court of First Instance pursuant to Article 238 of the EC Treaty, the Agreement provides that if such disputes are brought before any court or tribunal of the Member States (including a court or tribunal of the political subdivisions of the Member States), such proceeding should be suspended and referred or transferred to the European Court of First Instance pursuant to Article 238 of the EC Treaty, and the Agreement provides that to the extent that any Party is prevented from so transferring, all questions concerning the interpretation of any provision of Community Law that is necessary to enable such court to give judgment, be referred to the European Court of Justice under Article 234 of the EC Treaty, and (b) provide said statement to all relevant Parties for use by any Party in a motion filed pursuant to Section 12.01(a) and, submit it to the competent authority of the Relevant Member State with a request that it be submitted to the appropriate court;

(iv) Subject to Relevant Law, the Participating Member States, as well as their political subdivisions, instrumentalities, agencies,

successors and assigns, agree that they will not oppose a motion filed pursuant to Section 12.01(a).

Section 12.02. *Dispute Resolution for Claims Brought Under the Terms of the Agreement.*

(a) *Arbitration Clause.* Subject to Section 12.01, any dispute between the Parties arising out of or relating to this Agreement or any breach, clarification or enforcement of any provision of this Agreement or any conduct contemplated herein shall be brought exclusively before, and decided pursuant to the UNCITRAL Rules by the arbitrator who is at the top of the list attached to this Agreement as Appendix J (the “Arbitrator”). If the Arbitrator is unable to hear the Parties’ dispute within 60 days of reference, upon demand by any Party to the dispute, the next-highest-listed-arbitrator in Appendix J shall be deemed to be the Arbitrator for the purposes of that dispute. Should the Arbitrator be permanently unable to hear the Parties’ disputes, the next-highest-listed arbitrator in Appendix J shall be deemed to be the Arbitrator for the purposes of the Agreement. The Parties may add to, remove from, or reorder the list of arbitrators in Appendix J at any time by mutual agreement in writing.

(b) The arbitration proceedings shall be conducted in the English language in Brussels, unless otherwise agreed by the Parties to the dispute. Consistent with Relevant Law, and any applicable law governing Philip Morris’ disclosure obligations the arbitration proceedings shall be confidential to the extent possible, and the Parties shall not disclose the nature or scope of the proceedings, or any information obtained in or arising out of the proceedings, to any third party. No *amicus curiae* or “friend of the court” briefs may be filed in the proceedings. The Arbitrator(s) shall provide the rules of the proceedings and shall issue a written opinion stating the reasons for the relief granted. The arbitration proceedings, and the enforcement of any arbitral order or award, or an action to compel arbitration, shall be governed by the substantive laws of the State of New York without regard to choice of law doctrine. The Parties agree that the orders, decisions, and awards of the Arbitrator(s) shall be exclusively enforceable in the New York State Supreme Court (New York County), and any action to compel arbitration shall be commenced in New York State Supreme Court (New York County). The Party seeking to compel arbitration, or to enforce the orders, decisions, and awards of the Arbitrator(s), shall, at the time of the commencement of the action or proceeding, request assignment of the action or proceeding to the Commercial Division, Supreme Court of the State of New York (New York County). The final judgment of the New York State Supreme Court may be enforced by any Party in any court possessing personal and subject matter jurisdiction.

(c) Notwithstanding the foregoing, for any dispute between the Parties involving Article 3, Section 4.01(t) and (u), Article 11, Section 12.01(b), and any dispute involving Article 10 where the amount in dispute exceeds 20 percent of the “Base Payment” in Appendix C, any Party shall, upon request, have the right to have the dispute settled by a three-person arbitration panel with the Arbitrator acting as chairperson and one arbitrator to be selected by the Philip Morris International Party or Parties to the dispute and one arbitrator to be selected by the Relevant Administration Party or Parties to the dispute.

ARTICLE 13 MISCELLANEOUS

Section 13.01. *Notices.*

All notices, requests and other communications to any Party hereunder shall be in writing (including facsimile transmission) and shall be given to the Director of OLAF and the General Counsel of Philip Morris International.

Section 13.02. *Waivers.*

No provision of this Agreement may be waived unless such waiver is in writing and is signed by the Party against whom the waiver is to be effective.

Section 13.03. *Expenses.*

All costs and expenses incurred in connection with this Agreement or the Litigation shall be paid by the Party incurring such cost or expense.

Section 13.04. *Nature of Payments.*

The Parties agree that no part of any of the payments made pursuant to this Agreement is being paid as (or in settlement of actual or potential claims for) fines or penalties, civil or criminal, or enhanced, multiple or punitive damage awards. Nor does any part of such payments represent the cost of a tangible or intangible asset or other future benefit.

Section 13.05. *Successors and Assigns.*

Except as provided for in Section 9.01(a) of this Agreement, the provisions of this Agreement, including the obligations set forth herein, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

Section 13.06. *Legality and Severability.*

(a) All obligations under this Agreement are subject to the relevant laws, statutes, ordinances, rules, regulations or other provisions having the force or effect of law of the EC and/or any Member State, which are in effect in each Member State as of its Signature Date, or are enacted or amended by the EC or a Member State after its Signature Date (“**Relevant Law**”), and without prejudice to the rights of the Parties under Article 11, the Parties agree that to the extent that any obligation of any Party under this Agreement would violate Relevant Law, the Party shall be excused from performing such obligation only to the extent that performance would violate such law and shall not incur any liability as a result thereof.

(b) Without prejudice to the rights of the Parties under Article 11, in the event that any provision of this Agreement, or the application thereof, becomes or is declared by a court or tribunal of competent jurisdiction to be illegal, void or unenforceable, or there is a legislative, executive or administrative action with the same effect in a Participating Member State, the remainder of this Agreement shall continue in full force and effect and the application of such provision to other Persons or circumstances shall be interpreted so as to reasonably effectuate the intent of the Parties hereto. The Parties further agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the intent and purpose of such void or unenforceable provision.

Section 13.07. *Counterparts; Effectiveness; Third Party Beneficiaries.*

This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective on the Execution Date. No provision of this Agreement is intended to confer upon any Person other than the Parties and the Persons identified in Article 9 any rights or remedies hereunder.

Section 13.08. *Entire Agreement.*

This Agreement, including the Appendixes, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior drafts of this Agreement and any prior understandings reached between the Parties during negotiation of this Agreement, whether oral or written. Notwithstanding the foregoing, each of the Parties may rely upon express representations made in any letter from another Party or their counsel provided at or near the Execution Date or any Signature Date relating to the Agreement.

Section 13.09. *Captions.*

The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof.

Section 13.10. *Designated EC Representative.*

The EC hereby appoints the Director of OLAF as its designated representative for communications with Philip Morris International relating to the administration of this Agreement. The designated representative is hereby given authority by the EC to act on its behalf for the purposes of this Agreement, including without limitation, giving and receiving notices and inquiries, and reviewing and approving any documentation or protocols required to be reviewed or approved under this Agreement.

Section 13.11. *Amendments.*

Any provision of this Agreement may be amended but only if such amendment is in writing and is signed by each Party to this Agreement.

Section 13.12. *Authorship.*

No one Party or group of Parties shall be considered to have been the author of this Agreement.

Section 13.13. *Use of Information Provided by Philip Morris International.*

Any information provided to the Relevant Administrations or OLAF pursuant to the Agreement shall be used only for the purposes of promoting the Parties' joint objective of combating Cigarette smuggling, Cigarette counterfeiting and any related Money Laundering. In no case shall any such information be used or provided to third parties for any other purpose without prior written consent by Philip Morris International, unless the Relevant Administration is compelled to disclose the information by judicial or administrative process or by other requirements of law.

Section 13.14. *Equal Treatment Provision.*

If, at any time during the operation of this Agreement, the EC enters into an agreement with another Cigarette manufacturer relating to the same subject-matter as this Agreement ("Future Cooperation Agreement") on terms (after due consideration of relevant differences in volume of Cigarettes or other appropriate factors) more favorable to such Cigarette manufacturer than the terms of this Agreement, then Philip Morris International may request of the EC that it receive treatment under this Agreement at least as relatively favorable as the overall terms

provided to the other Cigarette manufacturer. The EC will act in good faith to consider any such request and may grant such a request if it is consistent with the intent of this Agreement.

Section 13.15. *Additional Participating Member States.*

Any Member State may become a Participating Member State by executing a copy of this Agreement in the appropriate form and delivering a counterpart thereof to Philip Morris International and the other Parties thereto.

Section 13.16. *Use of the Agreement.*

This Agreement may be admitted into evidence, without the consent of the Parties (i) in any proceeding for the purposes of enforcing the terms hereof, or (ii) if the contemplated use of said document would not be contrary to the intent of this Agreement, in support of any claim or defense any Party may wish to raise in any proceeding brought against it. Otherwise, the Agreement may not be admitted into evidence in any proceeding without the consent of the Parties.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first written above.

Philip Morris International Inc.,
Philip Morris Products Inc.,
Philip Morris Duty Free Inc., and
Philip Morris World Trade SARL

By:

Andre Calantzopoulos

European Community

The European Commission hereby executes this Agreement on behalf of the European Community and has the full right and authority to do so;

The execution and performance of this Agreement by the European Commission is within its powers and has been duly authorized by all necessary action on its part;

This Agreement constitutes a valid and binding Agreement of the European Community and is enforceable in accordance with its terms.

Michel Petite
Director General
Legal Service
European Commission

Franz-Hermann Brüner
Director General
European Anti-Fraud Office
European Commission

Date: _____

Kingdom of Belgium

The Minister of Finance of the Kingdom of Belgium hereby executes this Agreement on behalf of the Kingdom of Belgium and has the full right and authority to do so;

The execution and performance of this Agreement by the Ministry of Finance of the Kingdom of Belgium is within its governmental powers and has been duly authorised by all necessary action on its part;

This Agreement constitutes a valid and binding Agreement of the Kingdom of Belgium and is enforceable in accordance with its terms.

Minister of Finance of the
Kingdom of Belgium _____

Date: _____

Republic of Finland

The Minister of Finance of the Republic of Finland hereby executes this Agreement on behalf of the Republic of Finland and has the full right and authority to do so;

The execution and performance of this Agreement by the Ministry of Finance of the Republic of Finland is within its governmental powers and has been duly authorised by all necessary action on its part;

This Agreement constitutes a valid and binding Agreement of the Republic of Finland and is enforceable in accordance with its terms.

Minister of Finance of the
Republic of Finland

Date: _____

French Republic

The Ministry of the Economy, Finance and Industry of the French Republic hereby executes this Agreement on behalf of the French Republic and has the full right and authority to do so;

The execution and performance of this Agreement by the Ministry of the Economy, Finance and Industry of the French Republic is within its governmental powers and has been duly authorised by all necessary action on its part;

This Agreement constitutes a valid and binding Agreement of the French Republic and is enforceable in accordance with its terms.

On behalf of the
Minister of Economy,
Finance and Industry
of the French Republic _____

Date: _____

Federal Republic of Germany

The Ministry of Finance of the Federal Republic of Germany hereby executes this Agreement on behalf of the Federal Republic of Germany and has the full right and authority to do so;

The execution and performance of this Agreement by the Ministry of Finance of the Federal Republic of Germany is within its governmental powers and has been duly authorised by all necessary action on its part.

This Agreement constitutes a valid and binding Agreement of the Federal Republic of Germany and is enforceable in accordance with its terms.

On behalf of the Ministry of Finance
of the Federal Republic of Germany

Date: _____

Republic of Greece

The Minister of the Economy and Finance of the Republic of Greece hereby executes this Agreement on behalf of the Republic of Greece and has the full right and authority to do so;

The execution and performance of this Agreement by the Ministry of the Economy and Finance of the Republic of Greece is within its governmental powers and has been duly authorised by all necessary action on its part;

This Agreement constitutes a valid and binding Agreement of the Republic of Greece and is enforceable in accordance with its terms.

Minister of the Economy and Finance
for the Republic of Greece

Date: _____

Italian Republic

The Minister of Economy and Finance of the Italian Republic hereby executes this Agreement on behalf of the Italian Republic and has the full right and authority to do so;

The execution and performance of this Agreement by the Ministry of Economy and Finance of the Italian Republic is within its governmental powers and has been duly authorised by all necessary action on its part;

This Agreement constitutes a valid and binding Agreement of the Italian Republic and is enforceable in accordance with its terms.

Minister of Economy and Finance
of the Italian Republic

Date: _____

Grand-Duchy of Luxembourg

The Minister of Finance of the Grand-Duchy of Luxembourg hereby executes this Agreement on behalf of the Grand-Duchy of Luxembourg and has the full right and authority to do so;

The execution and performance of this Agreement by the Ministry of Finance of the Grand-Duchy of Luxembourg, is within its governmental and administrative powers and has been duly authorised by all necessary action on its part;

This Agreement constitutes a valid and binding Agreement of the Grand-Duchy of Luxembourg and is enforceable in accordance with its terms.

Minister of Finance of the
Grand-Duchy of Luxembourg _____

Date: _____

Kingdom of the Netherlands

The Minister of Finance of the Kingdom of the Netherlands hereby executes this Agreement on behalf of the Kingdom of the Netherlands and has the full right and authority to do so;

The execution and performance of this Agreement by the Ministry of Finance of the Kingdom of the Netherlands is within its governmental powers and has been duly authorised by all necessary action on its part;

This Agreement constitutes a valid and binding Agreement of the Kingdom of the Netherlands and is enforceable in accordance with its terms.

Minister of Finance of the
Kingdom of the Netherlands, _____

Date: _____

Portuguese Republic

The Minister of State and Finance of the Portuguese Republic hereby executes this Agreement on behalf of the Portuguese Republic and has the full right and authority to do so;

The execution and performance of this Agreement by the Ministry of Finance of the Portuguese Republic is within its governmental powers and has been duly authorised by all necessary action on its part;

This Agreement constitutes a valid and binding Agreement of the Portuguese Republic and is enforceable in accordance with its terms.

Minister of State and Finance
of the Portuguese Republic

Date: _____

Kingdom of Spain

The Minister of the Economy and Finance of the Kingdom of Spain hereby executes this Agreement on behalf of the Kingdom of Spain and has the full right and authority to do so;

The execution and performance of this Agreement by the Minister of the Economy and Finance of the Kingdom of Spain is within its governmental powers and has been duly authorized by all necessary action on its part;

This Agreement constitutes a valid and binding Agreement of the Kingdom of Spain and is enforceable in accordance with its terms.

Minister of the Economy and Finance
of the Kingdom of Spain

Date: _____

Altria Group, Inc., f/k/a Philip Morris Companies Inc., hereby warrants that should any of its direct or indirect subsidiaries that are not already Parties to this Agreement undertake to sell, distribute, ship or store Cigarettes within or through the Territory of the Member States, or any Designated State, whether directly or indirectly, Altria Group shall ensure that such subsidiaries adhere to the terms of this Agreement. Altria Group, Inc. also warrants that neither it, nor any of its direct or indirect subsidiaries, shall take any action to avoid or limit the obligations of Philip Morris International created by this Agreement. Altria Group, Inc. hereby declares that it has the authority to make the warranties herein concerning its said subsidiaries.

Altria Group, Inc.

By:

Press Release

Philip Morris International announces 12-year cooperation agreement with the European Commission and 10 EU member states to combat counterfeit and contraband cigarettes

Philip Morris International / Lausanne / 9 July 2004

Philip Morris International today announced the signing of a 12-year agreement with the European Commission and 10 member states of the European Union to work together to combat the illegal trade in cigarettes worldwide.

"This cooperation agreement represents a major step forward against the common enemy of counterfeit and contraband cigarettes," said André Calantzopoulos, President and CEO of Philip Morris International.

"The efforts of Philip Morris International, along with those of governments in the EU, to prevent the diversion of cigarettes into contraband channels have borne fruit. As the agreement recognizes, over the last few years, the incidence of genuine contraband Philip Morris cigarettes has been greatly reduced. But the trade in counterfeit cigarette brands - especially Marlboro - is rapidly growing. We, like the European Commission and the member states, are losing hundreds of millions of euros in revenue because of these fake cigarettes," added Mr Calantzopoulos.

Philip Morris International has agreed to make funds available for this anti-contraband and anti-counterfeit agreement. The payments could, subject to several variable factors, total approximately \$1.25 billion over 12 years, and would be payable over those years in varying amounts.

"The key markets of Europe have become the target of huge volumes of counterfeit cigarettes that are either sold in, or transit through, European countries. Philip Morris International, the Commission, and the member states must build on our joint efforts to eliminate the illegal supply chain that threatens legitimate market operators, distorts competition and undermines government policy," said Mr Calantzopoulos.

"The initiative builds on a number of policies and procedures that have been in place at Philip Morris International for a number of years," added Mr Calantzopoulos. "Under the agreement, we will expand our existing efforts to collaborate closely with governments, our customers, and others to protect the supply chain and ensure to the maximum extent possible that tobacco products are sold only within legitimate channels."

The agreement also brings to an end all prior disputes between the parties relating to historical contraband, including civil litigation brought by the EC and 10 member states of the European Union against Philip Morris International, and a related case brought by PMI against the European Commission.

"By ending disputes about the past, we can achieve the full benefit of cooperation," said Mr Calantzopoulos. "Indeed, a comprehensive, collaborative approach is the most effective way to protect our business against all forms of counterfeit and contraband."

For more information

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