

**THE PHILIP C. JESSUP INTERNATIONAL LAW MOOT
COURT COMPETITION**

1976

**The Amerind Investment Case,
United States v. France, 1976.**

Problem

THE 1976 PHILIP C. JESSUP INTERNATIONAL LAW
MOOT COURT COMPETITION

UNITED STATES v. FRANCE

The Problem

The Governments of France and of the United States have entered into a comproemis in the form of a Special Agreement (marked Annex A) for presentation of a controversy for resolution by the International Court of Justice.

The applicant is the Government of the United States, which has submitted its Application to the Court (Annex B).

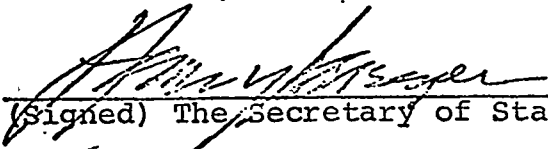
All the facts of the controversy are stated in the Application, and therefore the memorials to be prepared by contestants do not need to include a statement of the facts. Memorials are to be prepared only on behalf of the Government of the Republic of France and the Government of the United States.


The text of Section 13(d)(1) of the Securities Exchange Act of 1934, as amended by the Foreign Investors Act of 1975, is found in Annex C.

This is a hypothetical problem drafted exclusively for the purposes of the Jessup Competition. Neither the facts nor the amendments to the Securities Exchange Act of 1934 are intended to portray actual situations or legislation.

FOURTH: This agreement, when executed by both parties, will be communicated to the Court by the parties.

In witness whereof, the above named have signed the present special agreement, in duplicate, the first day of September, in the year one thousand nine hundred and seventy five.


(Signed) The Secretary of State


(Signed) The Ambassador

UNITED STATES v. FRANCE

Application Instituting Proceedings

(Prepared for the exclusive purpose of the Jessup Moot Court Competition)

The President and Judges of the International Court of Justice,
The Hague:

1. The undersigned agent of the Government of the United States of America, duly authorized by the said government, has the honor to submit to the International Court of Justice the following Application Instituting Proceedings in the dispute between the Government of the United States and the Government of the Republic of France. The two governments have agreed in a Special Agreement pursuant to Article 40, Section 1, of the Statute of the International Court of Justice, to present, for decision of the International Court of Justice, the difference that has arisen between the two governments, as described in this application.

Subject of the Dispute

1. American Industries, Inc., (AMERIND) is a corporation organized under the laws of the State of Delaware of the United

States. The Corporation operates oil refineries, producing gasoline and petrochemical products, in the United States. The stock of AMERIND is wholly owned by American citizens and is traded and listed on the New York Stock Exchange.

2. Canada Industries, Inc., (CANIND) is a Corporation which has issued only one class of stock and is organized under the laws of Canada. Until 1974, all of the stock of CANIND was owned by citizens of Canada. CANIND operates oil refineries in Canada, producing gasoline and petrochemical products. The stock of the company has not been listed on any stock exchange.

3. Saudi Investments, (SAUDINC) is a Corporation organized under the laws of Lebanon, and all of its stock, which is not listed on any stock exchange, is owned by citizens of Saudi Arabia. SAUDINC is an investment company, whose sole activity is holding stock in other companies, and it does not conduct any industrial operations.

4. In January, 1975, SAUDINC acquired 51% of the stock of CANIND.

5. By February 14, 1975, CANIND, operating through the New York Stock Exchange, had gradually acquired AMERIND stock until it became the owner of 100% of the controlling stock of the Corporation. In connection with the acquisition of AMERIND stock, neither CANIND nor any of the other parties in interest gave notice of intention to buy or of the acquisitions, to AMERIND, to stockholders of AMERIND, or to the Securities Exchange Commission, or any other official of the United States Government.

6. On March 6, 1975, notice of the acquisition of AMERIND stock by CANIND came to the attention of the Securities and Exchange Commission. The Commission promptly recommended to the President of the United States that action be taken under the Section 13(d)(1) of the Securities Exchange Act of 1934, as amended by the Foreign Investors Act of 1975, seeking the forfeiture of all of the stock acquired by CANIND, on the grounds of violation of the Act, and for an injunction against the exercise by CANIND of any of the rights of stockholders with respect to the AMERIND stock.

On March 9, 1975, the President, pursuant to the Act, gave orders that such action be instituted in the appropriate U.S. District Court.

On March 9, 1975, the action was instituted in the United States District Court for the District of Delaware. That court held, on April 18, 1975, that paragraph D of Section 13 (d)(1) of the Securities Exchange Act of 1934, as amended, by the Foreign Investors Act of 1975, was in conflict with the Constitution of the United States and refused to issue an order of forfeiture of the AMERIND stock, or of transfer of the stock to the United States Secretary of the Treasury as trustee. On May 23, 1975, the decision of the District Court was reversed by the United States Court of Appeals which held the Act constitutional and ordered the District to enter an order as requested by the Government of the United States. Thereupon, the Secretary of the Treasury on May 29, 1975 was duly recorded as owner of record of all of the stock of AMERIND. On June 30, 1975, the United States Supreme Court denied an application for a Writ of Certiorari, thereby refusing to hear or decide the case.*

7. On May 27, 1975, a large shipment of AMERIND plastic products left the United States, arriving in Germany on June

*The denial of a Writ of Certiorari, under United States law, does not imply any judgment as to the merits of the issues of a case. Thus, the decision of the U.S. Court of Appeals stands.

10, 1975. By the terms of the February 27, 1975 contract with the buyer, Aktiengesellschaft Nordduetsche Plastische (ANP) of Hamburg, Federal Republic of Germany, it was duly agreed that payment would be made by deposit of the purchase price in a bank in Canada in the name of CANIND. ANP is a privately owned company organized under the laws of Germany.

8. On July 3, 1975, before the deposit of the purchase price for the AMERIND plastics had been made by ANP, a suit was instituted in the German courts in Hamburg by the United States Government against ANP and CANIND, demanding that ANP be ordered to pay the purchase price to the Government of the United States. The basis of the action was the passing of all ownership rights in AMERIND to the Government of the United States pursuant to the order of the United States Court of Appeals. On August 1, 1975, the appropriate German court held that the action of the United States Government under the Securities Exchange Act of 1934, as amended, in seizing the stock of AMERIND, would not be recognized in the Federal Republic of Germany "because it violated basic principles of German public policy, including established standards of international law, even with respect to property in the United States at the time of the seizure."

The German Court held, therefore, that the suit by the United States Government against ANP and CANIND should be dismissed.

9. On June 4, 1975, a shipment of plastic products of AMERIND was also made to Compagnie Nationale Francais des Plastiques, S.A., (CNFP) of Bordeaux, France, a French Corporation, and payment therefore was ordered to be made to CANIND in Canada. The shipment arrived in France on June 12, 1975. The stock of CNFP was owned by the Agence de Faire le Commerce des Plastiques, a part of the French Ministry of Commerce and Industry. The CNFP had been formed by the French Government in order to assure continued supplies of petroleum products in France.

On June 16, 1975, the Government of the United States notified CNFP and the Government of the Republic of France that it had become the owner of the stock of AMERIND and that payment for the products should be made to AMERIND in the United States. Shortly thereafter, on June 18, 1975, a suit was instituted by the Government of the United States against CNFP in the appropriate French court. However, on August 11, 1975, the French court, noting the decision of the German courts in a similar case, directed that payment be made in full to CANIND. CNFP complied with the decision of the court.

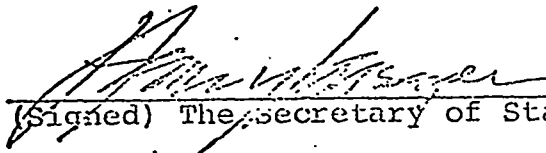
The present action is brought by the Government of the United States of America against the Government of the Republic of France in order to obtain payment of the purchase price for the shipment of plastic products. The Government of the Republic of France and the Government of the United States of America agreed, in a Special Agreement executed on the first day of September, 1975, to bring this matter before the International Court of Justice for adjudication in accordance with applicable rules of law.

10. The Government of the United States has not given any formal notice of this action to any government other than France, for the asserted reason that no other government and no nationals or companies of any other country now possess any direct or indirect ownership interest in AMERIND, the sale of whose property gave rise to the controversy.

11. Referring to the Special Agreement between the Government of the United States of America and the Government of the Republic of France, executed September 1, 1975, the Government of the United States of America asserts:

(a) that the Government of the United States of America is entitled to a judgment of the International Court of Justice, declaring that the plastic products shipped from the factories of AMERIND to France on June 4, 1975, had become the property of the United States and that payment therefore should have been made to the Secretary of the Treasury of the United States, as trustee; and

(b) for the reasons to be stated in the memorial of the Government of the United States of America, the judgment of the Court should be in favor of the Government of the United States of America.


(Signed) The Secretary of State

Excerpts from
THE SECURITIES EXCHANGE ACT OF 1934

As amended January, 1975, by the Foreign Investors Act of 1975
for purposes exclusively of the Jessup Moot Court Competition

(Information to be Filed by Five Per Cent Beneficial
Owners and Penalties for Failing to File)

Sec. 13(d)(1)(A). Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is registered pursuant to section 12 of this title, or any equity security of an insurance company which would have been required to be so registered except for the exemption contained in section 12(g)(2)(G) of this title, or any equity security issued by a closed-end investment company registered under the Investment Company Act of 1940, or any other company engaged in activities that the President of the United States has found to be of importance to the economy or defense of the United States, is directly or indirectly the beneficial owner of more than 5 per cent of such class shall, within ten days after such acquisition, send to the issuer of the security at its principal executive office, by registered or certified mail, send to each exchange where the security is traded, and file with the Commission, a statement containing such of the following information, and such additional information, as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors--

(i) the background and identity, including the nationality and permanent place of residence, of all persons by whom or on whose behalf the purchases have been or are to be effected;

(ii) the source and amount of the funds or other considerations used or to be used in making the purchases, and if any part of the purchase price or proposed purchase price is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purposes of acquiring, holding or trading such security, a description of the transaction and the names of the parties thereto, except that where a source of funds is a loan made in the ordinary course of business by a bank, as defined in section 3(a)(6) of this title, if the person filing such statement so requests, the name of the bank shall not be made available to the public;

(iii) if the purpose of the purchases or prospective purchases is to acquire control of the business of the issuer of the securities, any plans or proposals which such persons may have to liquidate such issuer, to sell its assets to or merge it with any other persons, or to make any other major change in its business or corporate structure;

determination, the company shall be informed that the proposed acquisition is illegal, and the President shall instruct the Attorney General to institute proceedings in the appropriate United States District Court for an order (i) enjoining the proposed acquisition, or (ii) if the acquisition has been consummated as an additional penalty to those imposed by this chapter for failure to make timely reports or take actions required by this Act, declaring the forfeiture of the securities and vesting of ownership therein in the Secretary of the Treasury, as trustee. After the order of the Court has become final, the Secretary, as trustee, shall possess all rights of ownership of the securities. As soon thereafter as possible, after due notice to the public, the Secretary shall transfer ownership of the securities by sale to the highest bidder who, if a natural person, is a citizen of the United States or, if not a natural person, is a United States company, and submits a bid pursuant to regulations issued by the Secretary. The proceeds of the sale shall be treated as a fine for violation of law and shall become miscellaneous receipts of the Treasury.